



**CITY COUNCIL AGENDA**  
**Tuesday, February 21, 2017**

**6:00 p.m.** **Closed session as provided by Section 2.2-3712 of the Virginia Code**  
*Second Floor Conference Room* (Discussion of the acquisition of real property for a public purpose – Schenk's Branch)

**7:00 p.m.** **Regular Meeting - CALL TO ORDER**  
*Council Chambers*

**PLEDGE OF ALLEGIANCE**  
**ROLL CALL**

**AWARDS/RECOGNITIONS** Planning Awards; The Big Read; Recognition of Judith Mueller's Retirement  
**ANNOUNCEMENTS**

**CITY MANAGER RESPONSE TO MATTERS BY THE PUBLIC**

**MATTERS BY THE PUBLIC** Public comment is provided for up to 12 speakers at the beginning of the meeting (limit 3 minutes per speaker.) Pre-registration is available for up to 9 of these spaces, and pre-registered speakers are announced by noon the day of the meeting. An unlimited number of spaces are available at the end of the meeting.

- 1. CONSENT AGENDA\*** (Items removed from consent agenda will be considered at the end of the regular agenda.)
- a. Minutes for February 6
  - b. APPROPRIATION: Additional Funding for Social Services Benefits Programs – \$14,519 (2<sup>nd</sup> of 2 readings)
  - c. APPROPRIATION: Crisis Intervention Team Grant: Department of Criminal Justice Services – \$20,000 (2<sup>nd</sup> of 2 readings)
  - d. APPROPRIATION: Check and Connect Student Engagement Continuation Grant – \$147,000 (2<sup>nd</sup> of 2 readings)
  - e. APPROPRIATION: Donations for Community Risk Reduction Initiatives – \$3,246 (2<sup>nd</sup> of 2 readings)
  - f. RESOLUTION: Donations of Surplus City Police Cars to Piedmont VA Community College (1<sup>st</sup> of 1 reading)
  - g. ORDINANCE: Conditional Release of Bike/Pedestrian Access Easement on Meadowbrook Road to Accommodate Retail Development at 1200 Emmet Street (2<sup>nd</sup> of 2 readings)
  - h. ORDINANCE: Grant of Easement for Electric Duct Bank under Emmett Street, Stadium Road, Jefferson Park Avenue and Monroe Lane to the University of Virginia (2<sup>nd</sup> of 2 readings)
  - i. ORDINANCE: CenturyLink Communications Telecommunications Franchise Renewal (2<sup>nd</sup> of 2 readings)
  - j. ORDINANCE: FiberLight Telecommunications Franchise Renewal (2<sup>nd</sup> of 2 readings)
- 2. PUBLIC HEARING / ORDINANCE\*** Cable Television Franchise Agreement with Comcast (1<sup>st</sup> of 2 readings) – **20 minutes**
- 3. REPORT** Landmark Hotel – **30 minutes**
- 4. REPORT** Creation of City Staff Position (Arts Director) – **10 minutes**
- 5. REPORT** Thomas Jefferson Planning District Commission Annual Work Program – **30 minutes**

**OTHER BUSINESS**  
**MATTERS BY THE PUBLIC**

*\*ACTION NEEDED*

# GUIDELINES FOR PUBLIC COMMENT

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**We welcome public comment;  
it is an important part of our meeting.**

**Time is reserved near the beginning and at the end of each regular City Council meeting for Matters by the Public.**

**Please follow these guidelines for public comment:**

- If you are here to speak for a **Public Hearing**, please wait to speak on the matter until the report for that item has been presented and the Public Hearing has been opened.
- Each speaker has **3 minutes** to speak. Please give your name and address before beginning your remarks.
- Please **do not interrupt speakers**, whether or not you agree with them.
- Please **refrain from using obscenities**.
- If you cannot follow these guidelines, you will be escorted from City Council Chambers and not permitted to reenter.

CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	February 6, 2017
Action Required:	Approve Appropriation
Presenter:	Diane Kuknyo, Director, Department of Social Services
Staff Contacts:	Diane Kuknyo, Director, Department of Social Services Laura Morris, Chief of Administration, Department of Social Services
Title:	<b>Additional Funding for Benefits Programs - \$14,519</b>

**Background:**

The Virginia Department of Social Services has allocated one-time funding to local departments of social services to assist with the final implementation of the Virginia Case Management System (VaCMS). The additional funding is to be used for benefits staffing and operations to reduce work backlogs and convert all client cases to VaCMS. The Charlottesville Department of Social Services has received \$14,519 from this additional funding.

**Discussion:**

The Charlottesville Department of Social Services plans to use the additional funding for overtime opportunities and to continue short-term temporary staffing in the benefits division.

VaCMS is a part of the Virginia Department of Social Services' eligibility modernization effort. All applications and renewals for benefit programs such as the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and Medicaid will be processed through VaCMS. Currently, staff have to use multiple systems to review client information and process applications and renewals.

**Alignment with Council Vision Areas and Strategic Plan:**

Approval of this agenda item aligns with the City's Mission to provide services that promote an excellent quality of life for everyone in our community. It contributes to **Goal 2:** Be a safe, equitable, thriving and beautiful community and **Objective 2.4:** Ensure families and individuals are safe and stable.

**Community Engagement:**

Department staff work directly with citizens to provide social services, protect vulnerable children and adults, and promote self sufficiency.

**Budgetary Impact:**

Funds have been received and will be appropriated into the Social Services Fund. There are no general funds required or being requested.

**Recommendation:**

Staff recommend approval and appropriation of these funds.

**Alternatives:**

Funds that are not appropriated will need to be returned to the Virginia Department of Social Services.

**Attachments:**

Appropriation

**APPROPRIATION**  
**Additional Benefits Programs Funding**  
**\$14,519**

**WHEREAS**, The Charlottesville Department of Social Services has received Federal and State funding in the amount of \$14,519 to be used for benefits programs staffing and operations.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$14,519 is hereby appropriated in the following manner:

**Revenue – \$14,519**

Fund: 212                      Cost Center: 9900000000                      G/L Account: 430080

**Expenditures - \$14,519**

Fund: 212                      Cost Center: 3301005000                      G/L Account: 510030                      \$ 6,000

Fund: 212                      Cost Center: 3301005000                      G/L Account: 510060                      \$ 8,519

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CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	February 6, 2017
Action Required:	Approval and Appropriation
Presenter:	Lieutenant T. V. McKean., Police Department
Staff Contacts:	Lieutenant T. V. McKean Police Department Thomas Von Hemert, Jefferson Area C.I.T. Coordinator
Title:	<b>C.I.T. Grant – Department of Criminal Justice Services- - \$20,000</b>

**Background:**

The City of Charlottesville Police Department was awarded grant funds in the amount of \$20,000 from the Virginia Department of Criminal Justice Services (DCJS) for the region's Crisis Intervention Team (C.I.T.) for expenses incurred during calendar year 2016. DCJS was awarded a grant from the Office of the Attorney General to work in conjunction with C.I.T. programs, DBHDS, the Virginia C.I.T. Coalition to develop and implement a comprehensive and measurable process for assuring C.I.T. training capacity and consistency across the commonwealth.

**Discussion:**

The Thomas Jefferson Area Crisis Intervention Program provides regular training courses for Law Enforcement and other agencies, both local and from throughout the state. These week long training sessions for Police Officers, along with other training sessions for security guards, dispatchers, and others are provided regularly over the course of each year led by C.I.T. Coordinator, Thomas von Hemert. This training serves to keep agencies equipped with C.I.T. trained officers in order to better service those in mental crisis.

**Alignment with Council Vision Areas and Strategic Plan:**

Appropriation of this item aligns with Council's visions by providing funding to aid the Thomas Jefferson Crisis Intervention Team Program and the Charlottesville Police Department in delivering optimal C.I.T. services to our City as a Smart, Citizen-Focused Government. It supports our Mission of **providing services that promote exceptional quality of life for all in our community** by providing important quality services to those in need of mental health assistance and safety.

This appropriation also supports **Goal 2** of the Strategic Plan: **Be a safe, equitable, thriving and beautiful community**. The C.I.T. program provides education and training to members of the

Community who have frequent interaction with those in need of mental health assistance. These people include but are not limited to, police officers, dispatchers, corrections officers, and fire department personnel. C.I.T. encourages safer and more effective interaction between care providers and those in need, making those interactions and the community more equitable and safer for all. The Jefferson Area C.I.T. program also embraces **Goal 5: Foster Strong Connections** by involving all aspects of the mental health processes and making them more efficient and safer. C.I.T. facilitates and fosters relationships between Region 10, mental health providers, law enforcement, local hospitals, jails, and many others to ensure that those in need of mental health services can obtain them as safely and efficiently as possible. Outcomes for C.I.T. programs can be reported through the number of people who received services related to the program.

**Community Engagement:**

N/A

**Budgetary Impact:**

This has no impact on the General Fund. The funds will be expensed and reimbursed to a grants fund and used to operate the program through the Thomas Jefferson Area Crisis Intervention Team.

**Recommendation:**

Staff recommends approval and appropriation of funds.

**Alternatives:**

The alternative is to not approve this project to the detriment of increasing much needed mental health programs.

**Attachments:**

Appropriation



**APPROPRIATION**  
**\$20,000**  
**C.I.T. Grant – Department of Criminal Justice Services**

**WHEREAS**, the City of Charlottesville, through the Thomas Jefferson Crisis Intervention Team and the Charlottesville Police Department, receives grant funds from DCJS in the amount of \$20,000;

**WHEREAS**, the City of Charlottesville, through the Thomas Jefferson Crisis Intervention Team and the Charlottesville Police Department, receives grant funds to develop and implement a comprehensive and measurable process for assuring C.I.T. training capacity and consistency across the region;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the lump sum of \$20,000, received from DCJS is hereby appropriated in the following manner:

**Revenues: \$20,000**

\$20,000      Fund: 209      Internal Order: 1900226      G/L Account: 430080

**Expenditures: \$20,000**

\$20,000      Fund: 209      Internal Order: 1900226      G/L Account: 599999

**BE IT FURTHER RESOLVED**, by the Council of the City of Charlottesville, Virginia, that this appropriation is conditioned upon the receipt of funding from DCJS, and will be hereby considered as a continuing appropriation and funds received for this purpose will be immediately available to spend for the C.I.T. program.

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CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	February 6, 2017
Action Required:	Appropriation
Presenter:	Rory Carpenter, Community Attention
Staff Contacts:	Rory Carpenter, Community Attention Kaki Dimock, Director of Human Services
Title:	<b>Check and Connect Student Engagement Continuation Grant - \$147,000</b>

**Background:**

Check and Connect is an evidence-based truancy prevention program funded by a Byrne/Juvenile Assistance Grant from the Virginia Department of Criminal Justice Services (DCJS) and administered by the Human Services Department. The grant provides a comprehensive student engagement intervention for truant youth or youth at risk of truancy who live in the City of Promise footprint and attend Venable and Burnley-Moran Elementary and Walker Upper Elementary. The grant period is from January 1, 2017 through June 30, 2017. The total grant is \$110,250 in federal pass through funds, and a required local match of \$36,750 to be provided by the City's current appropriation for the City of Promise.

**Discussion:**

Truancy is a precursor to delinquent behavior that should be addressed in its early stages to avoid further penetration into the juvenile justice system. Locally, the connection between truancy and delinquency has been documented by the *Juvenile Offender Report, I* a research report developed by the Charlottesville/Albemarle Commission on Children and Families that deals with the risk and needs of 985 local juvenile offenders who were placed on probation between 1997 – 2000, 2004 – 2006, and 2011-2012. The average rate of truancy for the juvenile offenders in the study group was 48% per year over a nine year period.

**Alignment with Council Vision Areas and Strategic Plan:**

The Check and Connect grant aligns with the Council Vision Areas including America's Healthiest City and a Community of Mutual Respect, and it aligns with Goal 2, Objective 2.1 as follows:

- Goal 2: Be a safe, equitable, thriving and beautiful community
- Objective 2.1: Provide an effective and equitable public safety system

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<sup>1</sup> *Characteristics of Juvenile Offenders*, Ellis, Carpenter, Balnave, Oudekerk, 2012

The Human Service Department's programs provide residential and community based services that prevent delinquency and promote the healthy development of youth. The Check and Connect Program provides comprehensive support services for elementary and upper elementary children experiencing school attendance problems to prevent early school withdrawal and ultimately delinquent behavior by promoting students' engagement with school and learning. Expected outcomes include increased attendance and decreased delinquent behavior during and after program participation.

**Community Engagement:**

The community is engaged through the City of Promise by serving students and families in the Charlottesville school system through the Check and Connect Program and by collaborating with the many different agencies that interface with the program.

**Budgetary Impact:**

This has no impact on the General Fund. The funds will be expensed and reimbursed to a Grants Fund. The terms of the award require a local match of \$36,750 which will be provided by the current City appropriation from the City of Promise Program in the Human Services Fund.

**Recommendation:**

Staff recommends approval and appropriation of grant funds.

**Alternatives:**

If the grant funds are not appropriated, City of Promise would not be able to provide this service to local youth.

**Attachments:**

Appropriation

**APPROPRIATION**  
**Check and Connect Student Engagement Grant**  
**\$147,000**

**WHEREAS**, the City of Charlottesville has been awarded \$110,250 in Federal Funds from the Virginia Department of Juvenile Justice, and \$36,750 in Matching Funds for a total award of \$147,000 for the Check and Connect Student Engagement Program; and

**WHEREAS**, the grant award covers the period from January 1, 2017 through June 30, 2017.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$147,000 is hereby appropriated in the following manner:

**Revenue – \$147,000**

\$110,250	Fund: 209	Cost Center: 3413008000	G/L Account: 430120
\$ 36,750	Fund: 209	Cost Center: 3413008000	G/L Account: 498010

**Expenditures - \$147,000**

\$131,139	Fund: 209	Cost Center: 3413008000	G/L Account: 519999
\$ 15,861	Fund: 209	Cost Center: 3413008000	G/L Account: 599999

**Transfer - \$36,750**

\$36,750	Fund: 213	Cost Center: 3413009000	G/L: 561209 Transfers
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**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$110,250 from VA Department of Criminal Justice Services, and \$36,750 from Community Attention.

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**CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA**



<b>Agenda Date:</b>	February 6, 2017
<b>Action Required:</b>	Appropriation of Donations to Charlottesville Fire Department
<b>Presenter:</b>	Emily Pelliccia – Deputy Chief; Charlottesville Fire Department
<b>Staff Contacts:</b>	Emily Pelliccia – Deputy Chief; Charlottesville Fire Department
<b>Title:</b>	<b>Donations for Community Risk Reduction Initiatives - \$3,246</b>

**Background:**

On occasion, the Charlottesville Fire Department receives unsolicited donations from companies and/or individuals. The department has received four such donations that total \$3,246. They are outlined below:

1. Cadet Activity Fund, AFROTC DET 890 (\$100)
2. Charlottesville Area Community Foundation (\$300)
3. Virginia Diodes, Inc. (\$1,000)
4. SB & AH Inc. (\$1,846)

**Discussion:**

These funds will be utilized for community risk reduction activities specifically to support the Charlottesville Fire Department's free smoke alarm program for city residents. The presence of working smoke alarms in the home reduces the risk of death in a fire by more than 50%. As part of a comprehensive community risk reduction program, the Charlottesville Fire Department provides free smoke alarms to any City resident.

CFD's Smoke Alarm Installation Program has the goal of decreasing the chances of being injured or dying in a home fire by providing early warning detection with a working smoke alarm. The target communities for this program are those individuals who statistically have a higher risk of fires and injuries; households with young children, senior citizens, low income residents, and individuals with a disability. The smoke alarms were originally purchased through a grant but funding from that source no longer exists and therefore these donations will be used to purchase new smoke alarms for installation.

The Smoke Alarm Installation Program allows any member of the Charlottesville community to receive an installed smoke alarm in their home at no cost. These smoke alarms are installed by city firefighters on request and periodically through a door to door canvassing campaign. There are three primary ways for a household to receive a smoke alarm. (1) A firefighter may initiate the installation of a smoke alarm while on a call to an individual's home. (2) A person may contact the CFD Free Smoke Alarm Information number to request a smoke alarm or (3) a person who happens to live in a neighborhood where a smoke alarm canvass is occurring can receive one or more at time of canvass. Most installations are generated by individuals who call the information number after learning about the program from a flyer, presentation, or community event. In 2016 the Charlottesville Fire Department installed 314 smoke alarms and has a goal of installing 500 smoke alarms in 2017. Ultimately our goal is to ensure that every household in the City of Charlottesville has working smoke alarms. In 2015, the department launched a Smoke Alarm app that allows department members to enter citizen requests for smoke alarms. The app allows the department to track requests and installations and creates a record to indicate the need for smoke alarm replacement.

**Alignment with Council Vision Areas and Strategic Plan:**

This request directly aligns with Goal 2 of the City's strategic plan to "be a safe, equitable, thriving community". Objective 2.1 is to "provide an effective and equitable public safety system" and as part of this the Fire Department has identified several specific measures aimed at protecting the lives and health of the Charlottesville citizens.

**Community Engagement:**

N/A

**Budgetary Impact:**

The funds will be appropriated into the Fire Marshal's internal order budget in the General Fund.

**Recommendation:**

Staff recommends approval of this appropriation.

**Alternatives:**

The purpose of these donations is for the fire department to have benefit of these funds. The alternative to appropriating these funds is to return the funds to the individuals.



**APPROPRIATION**

**Donations for Community Risk Reduction Initiatives - \$3,246**

- 1) Cadet Activity Fund, AFROTC DET 890 (\$100)**
- 2) Charlottesville Area Community Foundation (\$300)**
- 3) Virginia Diodes, Inc. (\$1,000)**
- 4) SB & AH Inc. (\$1,846)**

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$3,246, to be received as donations from the above donors, be appropriated in the following manner:

**Revenues - \$3,246**

Fund: 105

Internal Order: 2000126

G/L Account: 451020

**Expenditures - \$3,246**

Fund: 105

Internal Order: 2000126

G/L Account: 599999

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**CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA**



Agenda Date:	February 21, 2017
Action Required:	Approve Resolution
Presenter:	Major Gary M. Pleasants, Police Department
Staff Contacts:	Major Gary M. Pleasants, Police Department
<b>Title:</b>	<b>Donation of Four Surplus City Police Cars to Piedmont Virginia Community College (PVCC)</b>

**Background:**

The Charlottesville Police Department has been asked to provide surplus vehicles as a resource to help support a program at Piedmont Virginia Community College. This program from their division of Community Self Sufficiency Programs, as outlined below in a correspondence from PVCC, will provide exponential benefits to our community. The Police Department supports this kind of initiative and with the approval of City Council would like to donate: 2003 Ford Taurus, VIN 1FAFP55243A207458; 2008 Chevrolet Impala, VIN 2G1WT58N681300617; 2006 Ford Taurus, VIN1FAFP53U56A128339; 2009 Chevrolet Impala, VIN 2G1WB5EK8A1196909.

**From PVCC:**

Piedmont Virginia Community College recently created a division of Community Self Sufficiency programs, in partnership with the Charlottesville Regional Chamber of Commerce. It is an outgrowth of the Chamber's Orange Dot Project and Charlottesville Works Initiative. We use a peer network to identify low-income families being left behind in our economy, and provide them with the training and supports they need to get a quality job in Charlottesville and the surrounding region.

During our work over the last two years, we are constantly confronted with the barrier of transportation.

As a response to this great need, here at Community Self-Sufficiency we are creating a car loan program that will temporarily provide our students vehicles while they are completing their training and education. Once they have successfully completed their training and obtained employment in these skilled positions, they will then have the financial capacity to purchase a vehicle of their own and return the loaner back to the program, allowing us to lend it to the next student in need of a vehicle. We have already figured out the thorny issues of insurance and "storing" the fleet when a car is not in use—what we need now are the vehicles.

To help us make this possible, we are seeking to partner with the Charlottesville Police Department in asking for the vehicles that are being retired by the force to be donated to our program to help the students' access and complete their training and education so that they may be able to obtain family sustaining waged employment.

Again, thank you so much for your time and consideration. We look forward to partnering with you and City of Charlottesville Police Department; together we can help take our community farther than ever before.

**Discussion:**

These vehicles, while no longer of real value to the City, will be considered an asset and utilized by a local agency that may have fewer resources than Charlottesville to work with and make a positive difference in our community.

**Alignment with Council Vision Areas and Strategic Plan:**

This donation aligns with **Goal 1:** in the Strategic Plan, to **Enhance the self-sufficiency of our residents**, specifically by providing the means to support initiatives: **1.1 Promote education and training;** and **1.2 Reduce employment barriers.** It also supports **Goal 3: Have a strong, diversified economy**, specifically initiative, **3.1 Develop a quality workforce.** Finally, **Goal 5, To foster strong connections,** is also supported by this resolution. It promotes **Objective 5.2, Build collaborative partnerships**, specifically under initiative **b. Partner with community service providers to educate/train/employ youth and adults preparing for the workforce.** This donation provides a direct operational need for the program to occur, and it builds a partnership with a local institution of higher education that will benefit the whole community. Partnerships of this type are important because they promote efforts between government agencies that directly benefit our citizens. In the Vision of Council to be a **leader in innovation, environmental sustainability,** as well as **flexible and progressive in anticipating and responding to the needs of our citizens;** along with the support of multiple goals in our Strategic Plan, this resolution is a complete alignment with the City's design in moving into the future.

**Community Engagement:** N/A

**Budgetary Impact:**

If the vehicles were to be sold at public auction, the estimated sale value/revenue would be in the range of \$10,700 to \$13,600, total, not individual value.

**Recommendation:**

Staff recommends approval of authorizing the donation

**RESOLUTION**

**Donation of surplus City Police Cars to Piedmont Virginia Community College (PVCC)**

**2003 Ford Taurus, VIN 1FAFP55243A207458; 2008 Chevrolet Impala, VIN 2G1WT58N681300617; 2006 Ford Taurus, VIN1FAFP53U56A128339; 2009 Chevrolet Impala, VIN 2G1WB5EK8A1196909.**

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Charlottesville that a 2003 Ford Taurus, VIN 1FAFP55243A207458; 2008 Chevrolet Impala, VIN 2G1WT58N681300617; 2006 Ford Taurus, VIN1FAFP53U56A128339; 2009 Chevrolet Impala, VIN 2G1WB5EK8A1196909, operated by the Police Department be donated to Piedmont Virginia Community College (PVCC).

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**CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA**



<b>Agenda Date:</b>	February 6, 2017
<b>Action Required:</b>	Approval of Ordinance (1 <sup>st</sup> reading) after Public Hearing
<b>Presenter:</b>	S. Craig Brown, City Attorney
<b>Staff Contacts:</b>	Matthew Alfele, NDS Planner Lisa Robertson, Chief Deputy City Attorney
<b>Title:</b>	<b>Conditional Release of Bike/Pedestrian Access Easement on Meadowbrook Road to Accommodate Retail Development at 1200 Emmet Street</b>

**Background:**

Capital One, N.A. is the current owner of a vacant parcel of land at the northeastern corner of the intersection of Barracks Road and Emmet Street (the “Property”). The Contract Purchaser of the Property (CA Land Holdings, LLC, represented by local developer Alan Taylor) plans to construct a new retail project on the site (the “Project”), and has submitted a proposed final site plan to NDS for review. NDS has completed its initial review of the proposed site plan (the “Site Plan”).

In 2007, the City acquired a 15 foot wide bicycle/pedestrian access easement (“Bike/Pedestrian Easement”) along Meadowbrook Road, adjacent to the Property. According to the Contract Purchaser, the Bike/Pedestrian Easement needs to be modified in order to comply with the Site Plan parking requirements. Parks and Recreation staff were consulted and have approved the re-design of the bicycle/pedestrian trail, which will shift most of the Bike/Pedestrian trail into the Meadowbrook Road right-of-way without affecting the width of roadway available to vehicles. The developer will pave the new Bike/Pedestrian trail and provide a retaining wall, fencing and trees near the pathway. The boundaries of the existing Bike/Pedestrian Easement and the new modified easement are shown on the attached plat.

**Discussion:**

It is staff’s position that the full width of the 2007 Bike/Pedestrian trail easement will not be necessary in light of the Contract Purchaser’s stated plans to construct the project in accordance with the proposed final Site Plan (which depicts a paved pathway at the rear of the Property, separated from the parking spaces of the Project by a retaining wall). The pathway connects to the public sidewalk on Barracks Road on the southern side of the Property.

It is staff’s recommendation that Council should approve the requested partial release and modification of the 2007 Bike/Pedestrian Easement conditionally, subject to the Contract Purchaser

obtaining title to the Property and approval of the Site Plan prior to the release of the existing easement. Therefore, the attached Ordinance has been drafted in such a manner that the proposed release will not take effect until the Site Plan incorporating the modified Bike/Pedestrian Easement has been approved, and the Contract Purchaser acquires title to the Property.

**Community Engagement:**

A public hearing is required by Virginia Code §15.2-1800(B), in order to give the public an opportunity to comment on the proposed release of a property interest. Notice of such public hearing was advertised in the local newspaper at least 7 days in advance of the public hearing.

**Budgetary Impact:**

There is no cost to the City to partially release and modify the 2007 Bike/Pedestrian Easement.

**Recommendation:**

Staff recommends approval of the ordinance to release and modify the above-referenced existing easement with the condition that the City will not allow the recordation of the Deed of Modification and Partial Release of Easement, unless and until the CA Land Holdings LLC, or its successor(s) in interest, acquires title to the Property and receives approval of the Site Plan.

**Attachments:**

Proposed Ordinance  
Deed of Modification and Partial Release of Easement  
Plat of the 2007 Easement and the Proposed Easement Area



**AN ORDINANCE  
AUTHORIZING THE PARTIAL RELEASE AND MODIFICATION  
OF A BICYCLE/PEDESTRIAN ACCESS EASEMENT  
LOCATED AT THE CORNER OF MEADOWBROOK ROAD AND BARRACKS ROAD**

**WHEREAS**, CA Land Holdings, LLC is the Contract Purchaser of vacant land situated at the northeastern corner of the intersection of Barracks Road and Emmet Street, addressed as 1200 Emmet Street and designated on City Tax Map 40 as Parcel 2.1 (the “Property”); and

**WHEREAS**, to accommodate construction of a retail project on the Property, said Contract Purchaser has requested the partial release and modification of an existing bicycle and pedestrian easement, said easement being described as a permanent bicycle and pedestrian access easement, 15 feet in width, along Meadowbrook Road, conveyed to the City of Charlottesville by deed dated November 5, 2007, of record in the Clerk’s Office for the Circuit Court of the City of Charlottesville in Deed Book 1172, Page 164 (hereinafter referred to as the “Subject Easement”); and

**WHEREAS**, the Contract Purchaser has represented that, in consideration of the partial release and modification of the Subject Easement, it will construct and improve a new bicycle and pedestrian pathway, and provide additional amenities (fencing and trees near the pathway but outside the Subject Easement), in accordance with details set forth within the approved final site plan for the retail development; and

**WHEREAS**, the Directors of Neighborhood Development Services (NDS) and Parks and Recreation have no objection to the partial release and modification of the Subject Easement, as depicted on the above-referenced site plan; and

**WHEREAS**, in accordance with Virginia Code Sec. 15.2-1800(B), a public hearing has been conducted by City Council, giving the public an opportunity to comment on the proposed partial release and modification of the Subject Easement; now, therefore,

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia that: **(i)** the proposed partial release and modification of the Subject Easement is hereby approved, subject to and expressly conditioned upon compliance with the conditions set forth below; and **(ii)** the Mayor is hereby authorized to execute a deed, in such form as may be approved by the City Attorney, for the partial release and modification of the Subject Easement as contemplated within this ordinance, provided, however, that such deed shall be held by the City Attorney, and shall not be delivered to the Contract Purchaser, any Property Owner, or their successor(s) in interest, nor shall any such deed be recorded in the City’s land records prior to compliance with the following conditions precedent:

1. Final approval by NDS of CA Land Holdings, LLC’s site plan for the retail development at 1200 Emmet Street; and
2. Acquisition of title to the Property by Barracks ROW, LLC, or its successor in title and interest; and
3. The modified easement shall have an area of no less than 1,358 square feet. CA Land Holdings, LLC shall be responsible for providing a recordable plat showing the location and area of the Subject Easement, as modified.

Prepared by Lisa A. Robertson (VSB #32486)  
Charlottesville City Attorney Office, P.O. Box 911, Charlottesville, VA 22902

Tax Map Parcel 400002100 (1200 Emmet Street North)

**This deed is exempt from state recordation taxes imposed by Virginia Code §58.1-802 pursuant to Virginia Code §58.1-811(C)(4).**

**THIS DEED OF MODIFICATION AND PARTIAL RELEASE OF EASEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, from the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia (hereinafter, the “CITY”), GRANTOR, to **BARRACKS ROW, LLC**, its successor(s) in title or assigns, GRANTEE, whose address is 455 Second Street, 4<sup>th</sup> Floor, Charlottesville, Virginia 22902.

WITNESSETH:

WHEREAS, GRANTEE is the owner in fee simple of certain real property located in the City of Charlottesville, Virginia, designated on City Real Estate Tax Map 40 as Parcel 2.1, being the same property acquired by the Grantor by Deed from Capital One, N.A., dated \_\_\_\_\_, 2017, of record in the Clerk’s Office for the Circuit Court of the City of Charlottesville as Instrument No. \_\_\_\_\_ (the “Property”); and

WHEREAS, by recordation of a Deed of Easement dated November 5, 2007, by S.J.S. Limited Company, of record in the Charlottesville Circuit Court Clerk’s Office in Deed Book 1172, Page 164, the CITY was conveyed a certain bicycle and pedestrian easement, fifteen (15) feet in width, along Meadowbrook Road (the “2007 Bicycle and Pedestrian Easement”); and

WHEREAS, GRANTEE has requested the CITY to modify and release a portion of the 2007 Bicycle and Pedestrian Easement as it crosses the Property; and

WHEREAS, the CITY has agreed to modify and release a portion of the 2007 Bicycle and Pedestrian Easement, after holding a public hearing, advertised in accordance with Virginia Code Sec. 15.2-1800(B), and adoption of an Ordinance by the Charlottesville City Council on \_\_\_\_\_, 2017;

WITNESSETH:

NOW, THEREFORE, in consideration of the sum of ONE DOLLAR (\$1.00), receipt of which is hereby acknowledged, the CITY does hereby agree to modify the boundaries of the 2007 Bicycle and Pedestrian Easement, so that, hereafter, the modified easement, approximately 1,358 square feet in area, shall have the boundaries shown on Sheet 3 of the Plat made by Roudabush, Gale & Associates, Inc., dated January 12, 2017, labeled “Variable Width Pedestrian Esm’t Hereby Granted”. All other terms and conditions contained in the 2007 Bicycle and Pedestrian Easement shall remain in effect with respect to the modified easement hereby established.

FURTHER, the CITY does hereby agree to VACATE and RELEASE and forever QUITCLAIM all its right, title and interest in and to only that portion of the 2007 Bicycle and Pedestrian Easement which is outside of the boundaries of the modified easement described herein above.

IN WITNESS WHEREOF, the City Council of the City of Charlottesville has caused this deed to be executed by its Mayor, pursuant to an Ordinance adopted by City Council on \_\_\_\_\_, 2017.

WITNESS the following signature and seal.

GRANTOR:

**CITY OF CHARLOTTESVILLE, VIRGINIA**

By: \_\_\_\_\_ (SEAL)  
A. Michael Signer, Mayor

*APPROVED AS TO FORM:*

\_\_\_\_\_  
Lisa A. Robertson, Chief Deputy City Attorney  
City of Charlottesville, Virginia

COMMONWEALTH OF VIRGINIA  
CITY OF CHARLOTTESVILLE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by A. Michael Signer, Mayor, on behalf of the City of Charlottesville, Virginia.

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

Registration #: \_\_\_\_\_

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

**LEGAL INFORMATION:**

TAX MAP PARCEL: 40-2.1  
ADDRESS: 1200 EMMET ST N  
PRESENT OWNER: BARRACKS ROW, LLC  
SOURCE OF TITLE: DB 1174, PG 690  
DB 248, PG 551 (PLAT)  
PLAT PREPARED BY THIS OFFICE DATED  
NOV. 14, 2016 AND REVISED DEC. 5,  
2016 TITLED "PLAT SHOWING  
RIGHT-OF-WAY DEDICATION AND  
EASEMENTS TO BE VACATED TAX MAP  
PARCEL 40-2.1 LOCATED AT THE CORNER  
OF EMMET STREET AND BARRACKS ROAD  
CITY OF CHARLOTTESVILLE, VIRGINIA",  
RECORDED AT \_\_\_\_\_

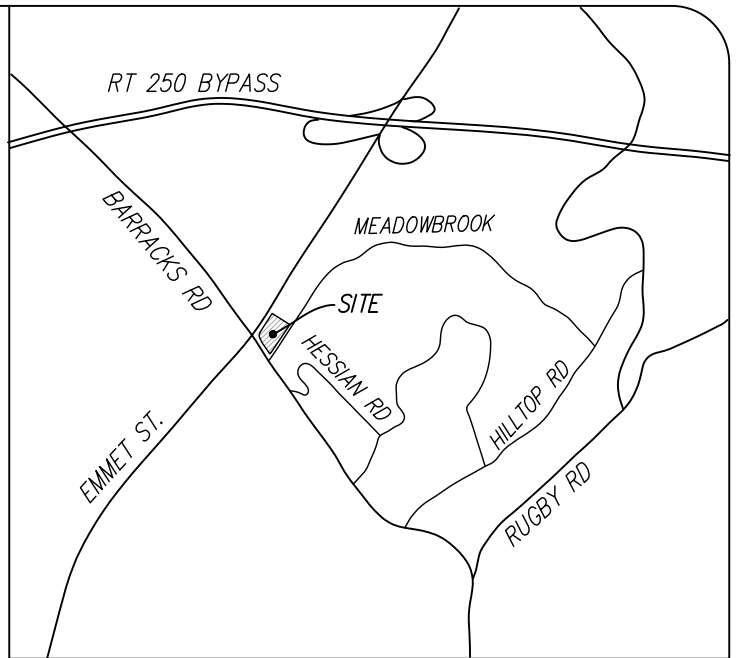
ZONED: URB (URBAN CORRIDOR) &  
ENTRANCE CORRIDOR OVERLAY

SETBACKS:  
PRIMARY STREET FRONTAGE: 5' MINIMUM, 30' MAXIMUM  
LINKING STREET FRONTAGE: 5' MINIMUM, 20' MAXIMUM  
SIDE & REAR: 10' MINIMUM ADJACENT TO ANY RESIDENTIAL,  
ALL OTHER ZONES NONE REQUIRED.

A PORTION OF THE PROPERTY DELINEATED ON THIS PLAT IS  
LOCATED IN A SPECIAL FLOOD HAZARD AREA (SFHA)  
SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE  
FLOOD. THE PROPERTY IS IN ZONE A OF THE SFHA (NO  
BASE ELEVATIONS DETERMINED), AS DELINEATED ON THE  
FEDERAL EMERGENCY MANAGEMENT AGENCY'S FLOOD  
INSURANCE RATE MAP OF ALBEMARLE COUNTY, VIRGINIA,  
COMMUNITY-PANEL NUMBER 51003C0286D, EFFECTIVE  
FEBRUARY 4, 2005.

THE PURPOSE OF THIS PLAT IS F R THE VACATION OF THE  
BICYCLE & PEDESTRIAN EASEMENT RECORDED AT DB 1172  
PG 164. AND THE DEDICATION OF A VARIABLE WIDTH  
PEDESTRIAN EASEMENT.

THIS PLAT IS BASED UPON A CURRENT FIELD SURVEY.

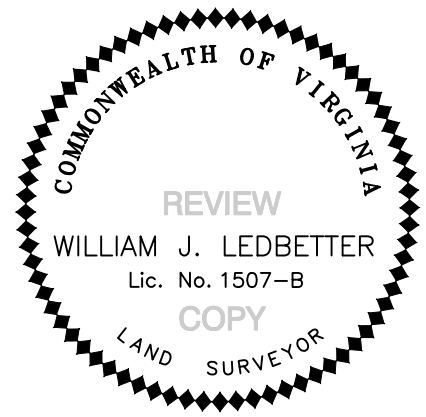


VICINITY MAP SCALE: 1"=1500'

- SHEET 1 - TITLE SHEET
- SHEET 2 - EASEMENT VACATION PLAT
- SHEET 3 - EASEMENT DEDICATION PLAT

**ABBREVIATIONS**

IF IRON FOUND  
PF PIPE FOUND




PLAT SHOWING  
**BICYCLE/PEDESTRIAN  
EASEMENT MODIFICATION**  
TAX MAP PARCEL 40-2.1  
LOCATED AT THE CORNER OF EMMET  
STREET AND BARRACKS ROAD  
CITY OF CHARLOTTESVILLE, VIRGINIA

PLAT PREPARED BY:  
AMMY GEORGE  
**SHEET 1 OF 3**

**ROUDABUSH, GALE & ASSOCIATES, INC.**  
ENGINEERS, SURVEYORS AND LAND PLANNERS

**JANUARY 12, 2017**

 A PROFESSIONAL CORPORATION  
SERVING VIRGINIA SINCE 1956   
914 MONTICELLO ROAD - CHARLOTTESVILLE, VIRGINIA 22902  
PHONE 434-977-0205 - FAX 434-298-5220 - EMAIL INFO@ROUDABUSH.COM

**SCALE: 1" = 60'**

REVISED: JAN. 19, 2017

**FILE: 2049**

TMP 40-2.2  
 GAD, LLC  
 DB 853 PG 22

S 57°27'12" E 164.36'

EMMET STREET  
 VARIABLE WIDTH RIGHT-OF-WAY

N 32°32'48" E 177.78'

TMP 40-2.1

ZONE A FLOODPLAIN  
 (SEE NOTE PAGE 1)

EX. DRAINAGE ESM'T  
 DB 248 PG 551

EX. 15' BICYCLE &  
 PEDESTRIAN ESM'T  
 DB 1172 PG 164  
 (TO BE MODIFIED)



MEADOWBROOK ROAD  
 30' RIGHT-OF-WAY

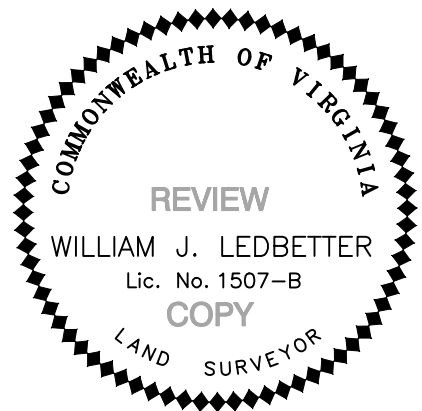
S 33°50'48" W 215.45'

BARRACKS ROAD  
 VARIABLE WIDTH  
 RIGHT-OF-WAY

N 35°21'46" W 112.42'

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	107.00'	35.09'	34.93'	S 51°05'00" W	18°47'20"
C2	10.00'	14.69'	13.40'	N 77°26'33" W	84°09'34"
C3	14.00'	1.59'	1.59'	N 32°06'34" W	6°30'25"
C4	39.50'	19.12'	18.93'	N 18°40'49" E	27°43'58"

LINE	BEARING	DISTANCE
L1	N 28°51'22" W	29.19'



PLAT SHOWING

# BICYCLE/PEDESTRIAN EASEMENT MODIFICATION

TAX MAP PARCEL 40-2.1  
 LOCATED AT THE CORNER OF EMMET  
 STREET AND BARRACKS ROAD  
 CITY OF CHARLOTTESVILLE, VIRGINIA



SHEET 2 OF 3

**ROUDABUSH, GALE & ASSOCIATES, INC.**  
 ENGINEERS, SURVEYORS AND LAND PLANNERS

JANUARY 12, 2017



A PROFESSIONAL CORPORATION  
 SERVING VIRGINIA SINCE 1956



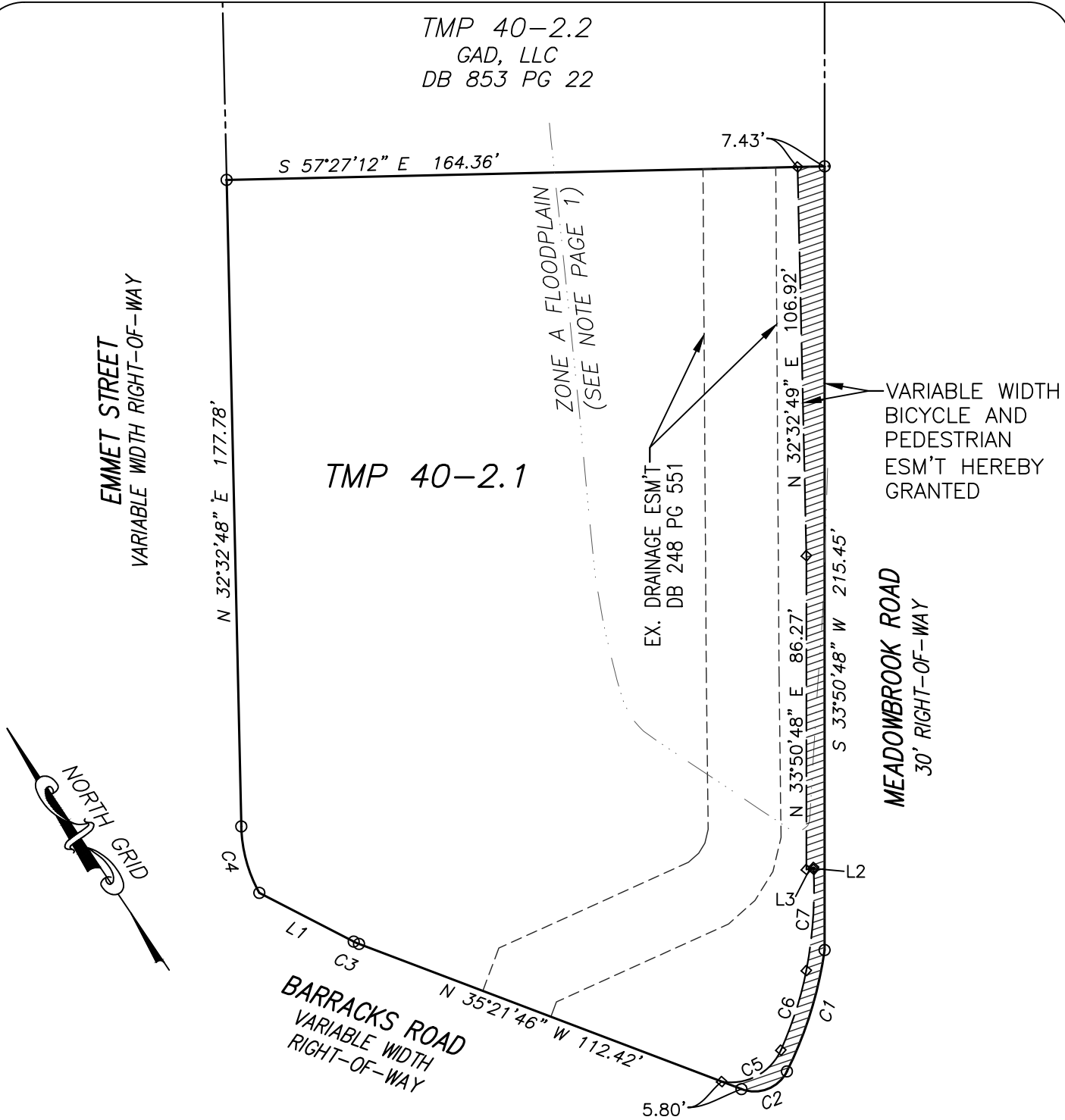
914 MONTICELLO ROAD - CHARLOTTESVILLE, VIRGINIA 22902  
 PHONE 434-977-0205 - FAX 434-298-5220 - EMAIL INFO@ROUDABUSH.COM

SCALE: 1" = 40'

REVISED: JAN. 19, 2017

FILE: 2049

TMP 40-2.2  
 GAD, LLC  
 DB 853 PG 22



TMP 40-2.1

EMMET STREET  
 VARIABLE WIDTH RIGHT-OF-WAY

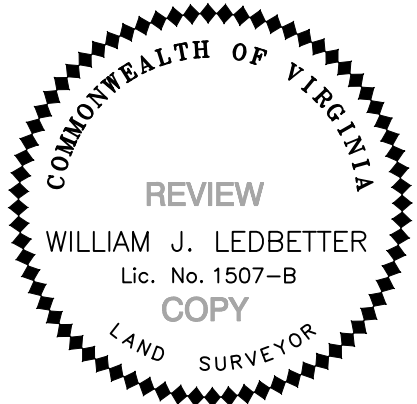
MEADOWBROOK ROAD  
 30' RIGHT-OF-WAY

BARRACKS ROAD  
 VARIABLE WIDTH  
 RIGHT-OF-WAY

VARIABLE WIDTH  
 BICYCLE AND  
 PEDESTRIAN  
 ESM'T HEREBY  
 GRANTED

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C5	15.00'	19.82'	18.41'	S 84°09'03" E	75°43'23.80"
C6	103.00'	23.01'	22.97'	N 51°35'12" E	12°48'06.28"
C7	120.37'	27.95'	27.89'	N 37°58'50" E	13°18'16.51"

LINE	BEARING	DISTANCE
L2	S 33°50'48" W	0.53'
L3	S 72°12'33" E	2.08'



PLAT SHOWING  
**BICYCLE/PEDESTRIAN  
 EASEMENT MODIFICATION**  
 TAX MAP PARCEL 40-2.1  
 LOCATED AT THE CORNER OF EMMET  
 STREET AND BARRACKS ROAD  
 CITY OF CHARLOTTESVILLE, VIRGINIA



SHEET 3 OF 3

**ROUDABUSH, GALE & ASSOCIATES, INC.**  
 ENGINEERS, SURVEYORS AND LAND PLANNERS

JANUARY 12, 2017

A PROFESSIONAL CORPORATION  
 SERVING VIRGINIA SINCE 1956  
 914 MONTICELLO ROAD - CHARLOTTESVILLE, VIRGINIA 22902  
 PHONE 434-977-0205 - FAX 434-298-5220 - EMAIL INFO@ROUDABUSH.COM

SCALE: 1" = 40'

REVISED: JAN. 19, 2017

FILE: 2049

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**CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA**



<b>Agenda Date:</b>	February 6, 2017
<b>Action Required:</b>	Yes (First Reading of Ordinance)
<b>Presenter:</b>	Craig Brown, City Attorney
<b>Staff Contacts:</b>	Marty Silman, City Engineer; Jason McIlwee, Public Utilities
<b>Title:</b>	<b>Grant of Easement for Electric Duct Bank under Emmett Street, Stadium Road, Jefferson Park Avenue and Monroe Lane to the University of Virginia</b>

**Background and Discussion:**

The University of Virginia is requesting a permanent (40 year) easement from the City in order to maintain an electric duct bank and related facilities within the public rights-of-way of Emmet Street, Stadium Road, Jefferson Park Avenue and Monroe Lane. The University has agreed with Dominion Power to connect three (3) substations identified as Alderman, Sherwood and Cavalier, as shown on the attached drawing, by installing the aforementioned underground electric duct banks. Having the electrical lines underground will greatly minimize the number and degree of electrical outages affecting buildings serving the University and the community.

The proposed easement has been reviewed and approved by the City Engineer, Public Utilities, and the City Attorney.

**Alignment with Council Vision Areas and Strategic Plan:**

Not applicable.

**Community Engagement:**

A public hearing is required by law to give the public an opportunity to comment on the proposed conveyance of a property interest. Notice of such public hearing was advertised in the local newspaper at least 7 days in advance of the public hearing.

**Alternatives:**

City Council can propose different terms and conditions for the conveyance of the easement.



**Budgetary Impact:**

None. All costs of installation and future maintenance of the facilities within the easement will be the responsibility of the University of Virginia.

**Recommendation:** Approval of the attached ordinance authorizing the grant of the requested easement.

**Attachments:** Letter Request from UVA; Ordinance; Deed and Plats



# UNIVERSITY of VIRGINIA

One Boar's Head Pointe • P.O. Box 400884  
Charlottesville, VA 22904-4884  
434-982-5844

SENIOR VICE PRESIDENT OF OPERATIONS  
Real Estate & Leasing Services

December 19, 2016

Mr. Craig Brown  
City Attorney  
City of Charlottesville  
P.O. Box 911  
Charlottesville, Virginia 22902

Re: Request for easement, 35kV Underground Duct Bank

Dear Craig,

The University of Virginia requests the conveyance of an easement along portions of Stadium Road, Jefferson Park Avenue, and Monroe Lane for the installation of an underground duct bank. The duct bank will connect three area substations, Alderman, Sherwood, and Cavalier.

The University averages 30 power disturbances each year due to problems associated with overhead power lines. These outages cause significant disruptions to research, teaching, patient care, and building operations.

To address both intermittent "blips" as well as sustained outages, the University and Dominion Power have agreed to connect the substations. The connections will enhance reliability and minimize interruptions. The ductbank will not remove or replace existing overhead lines or provide service to buildings, the new lines will solely connect the substations.

The resulting reliability will benefit many buildings serving the University and the community, to include the University Hospital, the 911 Center, and certain emergency shelters.

Our team has been working closely with city staff to determine an acceptable route and we look forward to working with your office and City Council to complete the approval process.

Sincerely,

Charles Hurt, Jr.  
Director, Real Estate and Leasing Services

Enclosures:

- Board of Visitors approval
- Route Overview
- Survey Plats
- Draft Easement

DOCKET  
BOARD OF VISITORS  
June 12, 2015

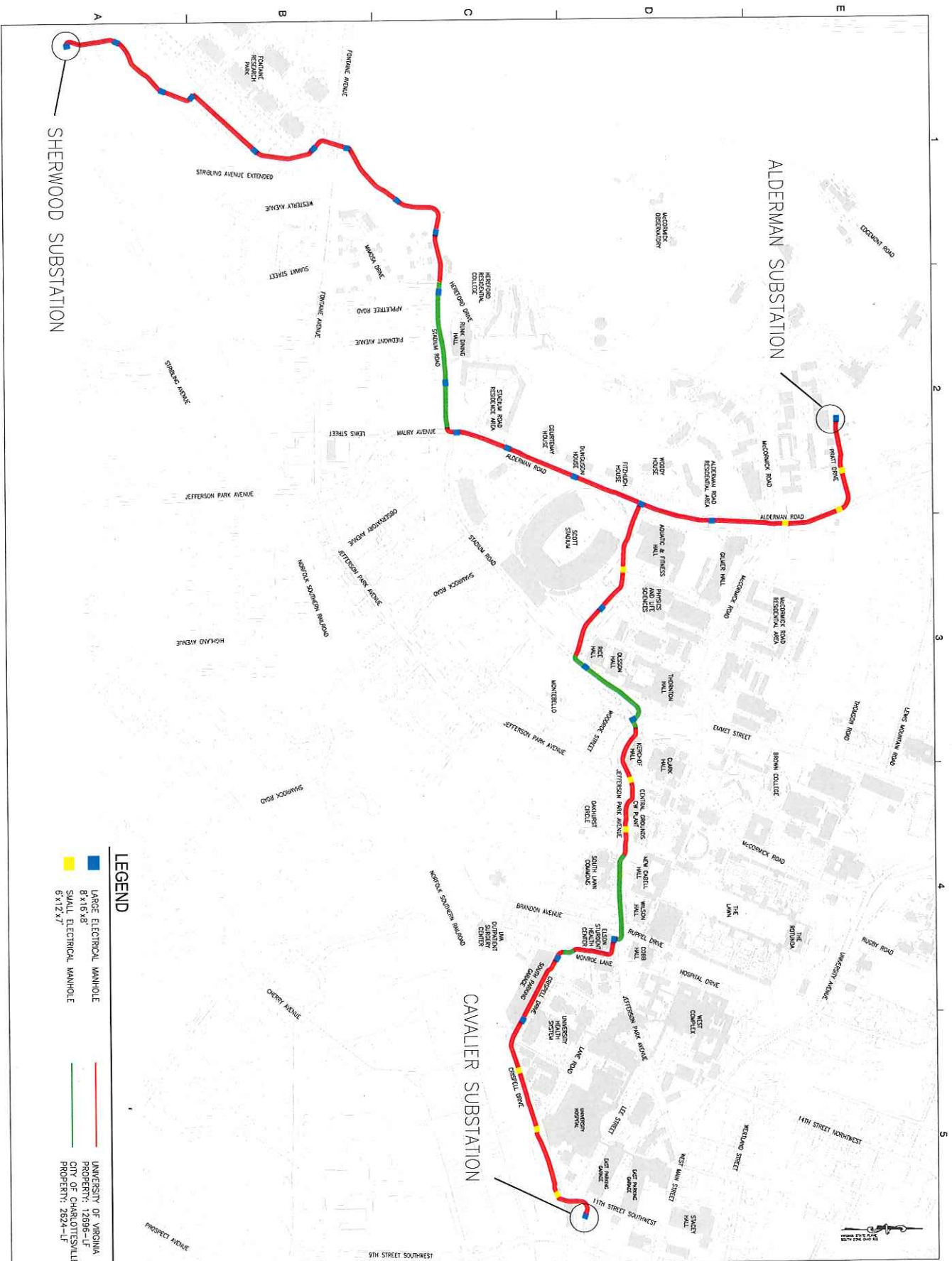
CONSENT ITEMS

1. THE GRANT TO AND ACCEPTANCE FROM DOMINION VIRGINIA POWER, THE CITY OF CHARLOTTESVILLE, THE UNIVERSITY OF VIRGINIA FOUNDATION, NORFOLK SOUTHERN RAILWAY, THE VIRGINIA DEPARTMENT OF TRANSPORTATION, AND OTHERS AS REQUIRED, OF EASEMENTS FOR THE INSTALLATION OF AN ELECTRICAL DUCTBANK  
(approved by the Buildings & Grounds Committee on June 11, 2015)

RESOLVED, the grant to and acceptance from Dominion Virginia Power, the City of Charlottesville, Norfolk Southern Railway, the Virginia Department of Transportation, the University of Virginia Foundation, and others as required, of easements to install an electrical ductbank is approved; and

RESOLVED FURTHER, the Executive Vice President and Chief Operating Officer is authorized, on behalf of the University, to approve and execute deeds of easement, licenses, agreements, permits, plats, and such other documents as may be necessary to complete this project, to approve revisions to the Plan (including, without limitation, revisions to change the location of proposed easements), to incur reasonable and customary expenses, and to take such other actions as deemed necessary and appropriate to grant and acquire such permanent and temporary easements to accomplish the installation of the duct bank and the installation and housing of electrical equipment; and

RESOLVED FURTHER, all prior acts performed by the Executive Vice President and Chief Operating Officer, and other officers and agents of the University, in connection with the grant and acceptance of such easements, are in all respects approved, ratified, and confirmed.



SHERWOOD SUBSTATION

ALDERMAN SUBSTATION

CAVALIER SUBSTATION

- LEGEND**
- LARGE ELECTRICAL MANHOLE  
8'x16'x8'
  - SMALL ELECTRICAL MANHOLE  
5'x12'x7'

UNIVERSITY OF VIRGINIA  
PROPERTY: 12896-LF  
CITY OF CHARLOTTESVILLE  
PROPERTY: 2624-LF

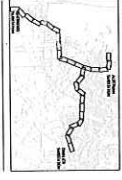
**OVERALL DUCTBANK PLAN**

TRIPLECTRIC INTERNATIONAL  
1000 NORTH DIXIE ROAD  
CHARLOTTESVILLE, VA 22902  
DATE: 05/20/16

**C3.XX**

NO.	DATE	BY	DESCRIPTION
1	5/17/16	DK	ADDITIONAL #2
2	5/19/16	DK	ADDITIONAL #1
3	4/22/16	DK	ISSUE DOCUMENTS
4		DK	REVISION

DESIGNED BY: DK  
CHECKED BY: JLN  
DATE: 05/20/16



**UNIVERSITY OF VIRGINIA**  
**35kV ELECTRICAL DUCTBANK**

100% CONSTRUCTION DOCUMENTS

CHARLOTTESVILLE, VIRGINIA



**AN ORDINANCE  
AUTHORIZING THE GRANT OF A UTILITY EASEMENT  
FOR ELECTRIC DUCT BANK FACILITIES  
UNDER EMMET STREET, STADIUM ROAD,  
JEFFERSON PARK AVENUE AND MONROE LANE  
TO THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA**

**WHEREAS**, the Rector and Visitors of the University of Virginia desire an easement for installation and maintenance of underground utility facilities (electrical duct bank) connecting three (3) Dominion Power substations in the University area, with the duct bank proposed to be located within the Emmet Street, Stadium Road, Jefferson Park Avenue and Monroe Lane rights-of-way in the City; and

**WHEREAS**, the City Engineer has reviewed and approved terms of the easement, and the locations of the easement as shown on four (4) plats made by Rice Associates, said plats being a part of the attached Deed of Easement; and,

**WHEREAS**, in accordance with Virginia Code section 15.2-1800, a public hearing was held before City Council to give the public an opportunity to comment on the grant of said easement; now, therefore

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia that the Mayor is hereby authorized to execute a Deed of Easement, in form approved by the City Attorney, to grant the Rector and Visitors of the University of Virginia the easement as shown on the plats attached to the above-referenced Deed of Easement.

Prepared by S. Craig Brown (VSB #19286)  
Charlottesville City Attorney's Office  
P.O. Box 911, Charlottesville, VA 22902

Tax Maps 11, 16 and 17 (Emmet Street, Stadium Road, Jefferson Park Avenue, and Monroe Lane Rights of Way)

**This deed is exempt from state recordation taxes pursuant to  
Virginia Code §§ 58.1-811(A)(1) and 58.1-811(C)(3).**

**THIS DEED** made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia, hereinafter called Grantor, and **THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA**, an educational institution of the Commonwealth of Virginia, P.O. Box 400884, Charlottesville, Virginia 22904-0884, hereinafter called Grantee;

**WITNESSETH:**

That for the sum of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, Grantor does hereby grant unto Grantee a use easement for electric duct bank facilities, and such piping, conduit, electrical and related facilities as Grantee desires to place in such duct bank, located within the rights-of-way of Emmet Street, Stadium Road, Jefferson Park Avenue and Monroe Lane, and as shown on four (4) plats prepared by Rice Associates, attached hereto and made a part of this deed, and described as follows: (1) Plat entitled "Plat Showing Variable Width Utility Easement Within the Right-of-Way of Stadium Road and Emmet Street" dated March 31, 2016; (2) Plat entitled "Plat Showing Variable Width Utility Easement Within the Right-of-Way of Stadium Road" dated March 30, 2016; (3) Plat entitled "Plat Showing Variable Width Utility Easement Within the Right-of-Way of Jefferson Park Avenue" dated April 1, 2016; and (4) Plat entitled "Plat Showing Variable Width Utility Easement Within the Right-of-Way of Monroe Lane" dated April 1, 2016.

The facilities constructed by Grantee shall remain the property of Grantee. Grantee shall have the right to inspect, rebuild, repair, improve and make such changes, alterations, additions to or extensions of its facilities within the boundaries of said easement which are consistent with the purposes expressed herein. All construction, maintenance, equipment and facilities shall comply with any applicable laws, regulations or codes.

Grantee shall restore Grantor's premises, including the right-of-way, as nearly to their original condition as possible, including backfilling of trenches, reconstruction of sidewalks, curbs or roads, reseeded of lands, removal of trash and debris, and removal of any of Grantee's equipment, accessories or appurtenances not consistent with the construction, maintenance or operation of said facilities or the exercise of any rights or privileges expressed herein. Grantee shall maintain said right-of-way and facilities in such repair as not to endanger or otherwise limit the enjoyment and use of adjacent properties.

Grantee shall have the right of ingress to and egress from said easement over the lands of the Grantor. Grantee shall exercise such right in such manner as shall not occasion injury or unreasonable inconvenience to the Grantor or the public. Grantee shall at Grantor's election pay

for or repair any injury to any of Grantor's land, structures, roads, fences, sidewalks, curbs and other improvements caused by Grantee, its employees, agents or contractors. Grantee shall notify Grantor immediately of any such injury, and shall make said payment or repair as soon as reasonably possible but not to exceed thirty (30) days after such injury occurs. Grantee shall be responsible for the payment of those claims for personal injury or death arising out of any act or omission of its employees or agents in connection with the exercise of its rights hereunder for which it is held liable under applicable law. Nothing contained herein shall be deemed an express or implied waiver of the sovereign immunity of Grantee.

Grantor, its successors and assigns may use said right-of-way for any purpose not inconsistent with the rights hereby granted, provided such use does not interfere with the safe and efficient construction, operation or maintenance of Grantee's facilities. Grantor's use of the right-of-way as a public road shall not in any way be construed to constitute interference with the construction, operation or maintenance of Grantee's facilities.

This easement shall be in effect for a period of forty (40) years; however, if Grantee at any time discontinues use of all or any portion of the easement herein conveyed for a period of one (1) year, all of Grantee's rights and interest in said easement or portion thereof shall terminate and revert to Grantor, its successors and assigns, and Grantee shall at its expense remove any facilities and restore Grantor's property as nearly to its original condition as practicable, and on written request by Grantor, Grantee shall quitclaim and release same.

If either party at any time deems it necessary or advisable to relocate for convenience any of Grantee's facilities installed and used pursuant to this deed of easement, Grantee shall relocate such facilities to a route or place mutually agreed upon between Grantor and Grantee; provided Grantor, for no additional consideration, shall grant unto Grantee such easements as may be necessary to effect such relocation, subject to the same rights, privileges and conditions, as hereinabove set forth. If such relocation is for the convenience of Grantee, Grantee shall pay the costs of such relocation and restoration of Grantor's property. If such relocation is for the convenience of Grantor, Grantor shall reimburse Grantee the costs of such relocation and restoration of Grantor's property. Upon relocation of any of the facilities from any portion of the easement hereby granted, that portion of the easement shall automatically terminate and all rights, title and interest therein shall revert to Grantor. Upon receipt of written request from Grantor, Grantee shall execute a deed of quitclaim to evidence such reversion to Grantor.

Both Grantor and Grantee agree and attest that no other agreement, either written or implied, has been entered into by either or both parties except as expressed hereinabove.

Grantor covenants that it is seized of and has the right to convey this easement, that Grantee shall have quiet possession, use and enjoyment of this easement, and that Grantor shall execute such further assurances thereof as may be required.

**IN TESTIMONY WHEREOF**, the City of Charlottesville, Virginia, pursuant to an ordinance adopted by the Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2017, has authorized this deed to be executed by A. Michael Signer, its Mayor.

**WITNESS** the following signatures and seals:

GRANTEE:

THE RECTOR AND VISITORS OF  
THE UNIVERSITY OF VIRGINIA

\_\_\_\_\_  
Patrick D. Hogan  
Executive Vice President &  
Chief Operating Officer

STATE OF VIRGINIA

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

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2017, by Patrick D. Hogan, Executive Vice President & Chief Operating Officer, for The Rector and Visitors of the University of Virginia.

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

Registration Number: \_\_\_\_\_

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

Reviewed and Approved as to  
Form and Legal Sufficiency:

\_\_\_\_\_  
Pamela H. Sellers  
Associate University Counsel and  
Special Assistant Attorney General



GRANTOR:

CITY OF CHARLOTTESVILLE,  
VIRGINIA

\_\_\_\_\_  
A. Michael Signer  
Mayor

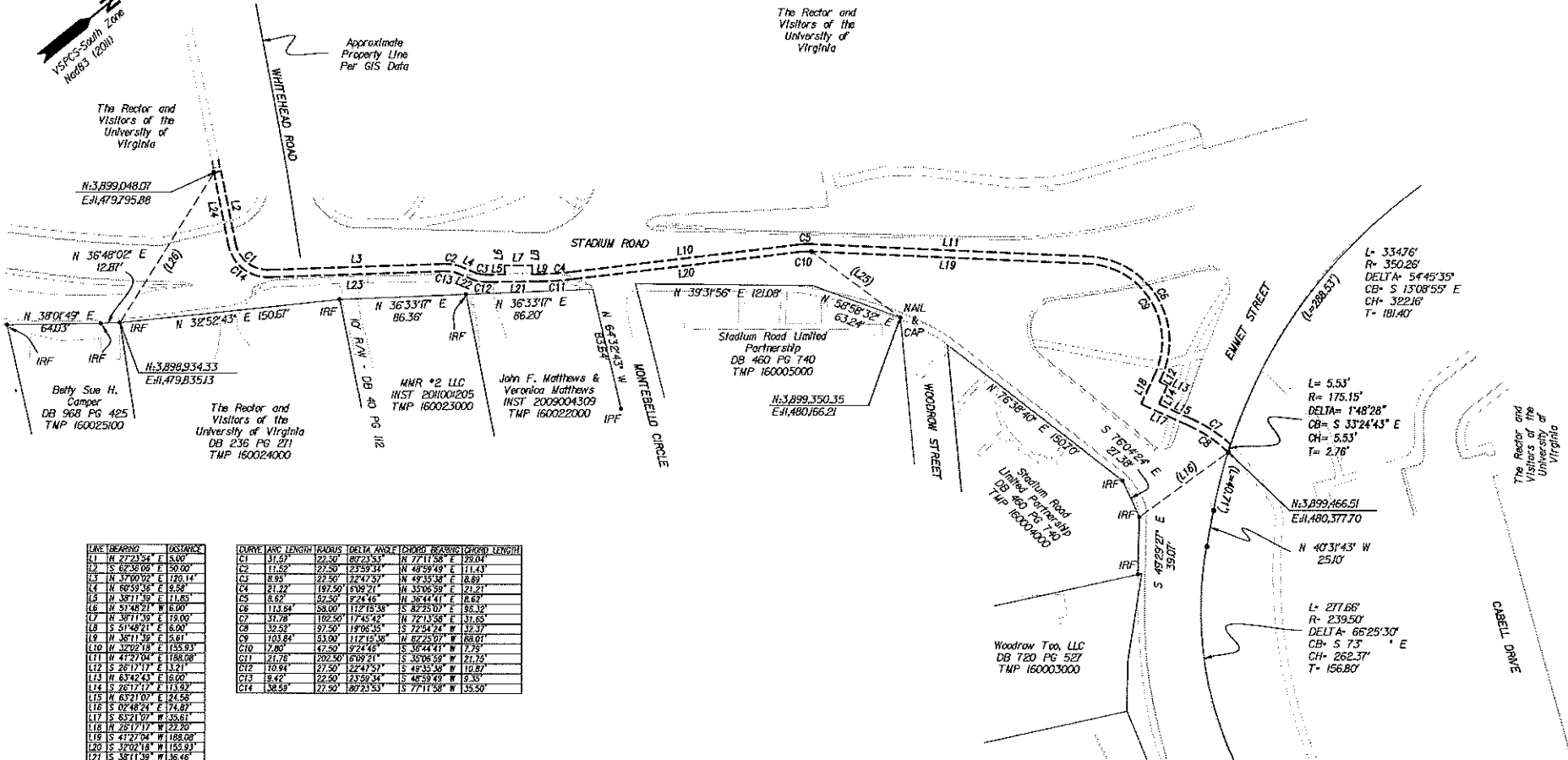
STATE OF VIRGINIA  
CITY OF CHARLOTTESVILLE, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by A. Michael Signer, Mayor of the City of Charlottesville.

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

Registration Number \_\_\_\_\_

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

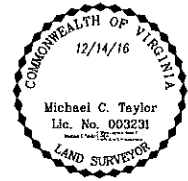


LINE	BEARING	DISTANCE
C1	N 77°33'4" E	8.80'
C2	S 62°36'00" E	50.00'
C3	N 37°00'02" E	170.14'
C4	N 60°59'35" E	9.58'
C5	N 38°11'59" E	11.65'
C6	N 51°48'21" W	18.00'
C7	N 38°11'59" E	19.00'
C8	S 51°48'21" E	18.00'
C9	N 38°11'59" E	8.81'
C10	N 32°22'18" E	155.93'
C11	N 47°37'04" E	1188.08'
C12	S 26°17'13" E	132.11'
C13	N 63°42'43" E	18.00'
C14	S 26°17'17" E	113.52'
C15	N 63°42'43" E	14.58'
C16	S 08°48'24" E	14.63'
C17	S 83°21'07" W	35.61'
C18	N 26°17'17" W	22.20'
C19	S 47°27'58" W	188.98'
C20	S 32°22'18" W	155.93'
C21	S 38°11'59" W	38.46'
C22	S 60°59'35" W	19.50'
C23	S 37°00'02" W	170.14'
C24	N 62°36'00" E	50.00'
C25	N 75°32'52" E	75.24'
C26	S 19°02'18" E	126.33'

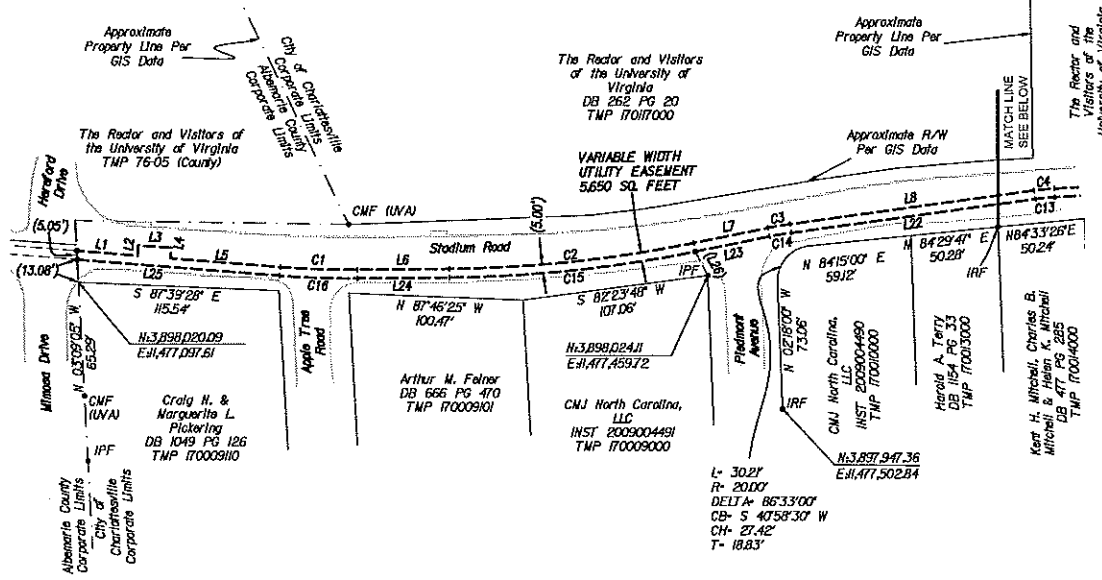
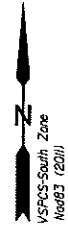
CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	TANGENT BEARING	CHORD BEARING	CHORD LENGTH
C1	31.67'	27.50'	187°23'5"	N 77°13'58" E	125.04'	
C2	11.62'	27.50'	123°59'34"	N 49°59'49" E	111.43'	
C3	8.85'	27.50'	122°47'57"	N 49°59'38" E	8.88'	
C4	21.72'	197.50'	6°09'21"	N 35°06'59" E	21.21'	
C5	8.82'	57.50'	172°44'6"	N 38°44'11" E	8.82'	
C6	113.84'	58.00'	112°16'38"	S 82°23'07" E	88.12'	
C7	31.78'	102.50'	17°45'42"	N 72°13'58" E	31.65'	
C8	33.52'	37.50'	18°06'35"	S 72°04'24" E	130.37'	
C9	103.84'	51.00'	112°16'38"	N 82°23'07" E	68.03'	
C10	7.80'	47.50'	8°24'48"	S 38°44'41" W	7.75'	
C11	21.72'	202.50'	6°09'21"	S 35°06'59" W	21.72'	
C12	10.94'	27.50'	22°47'57"	S 49°33'38" W	102.87'	
C13	8.42'	27.50'	123°59'34"	S 49°59'49" W	8.35'	
C14	138.59'	27.50'	187°23'5"	S 77°11'58" W	35.50'	

NOTES:  
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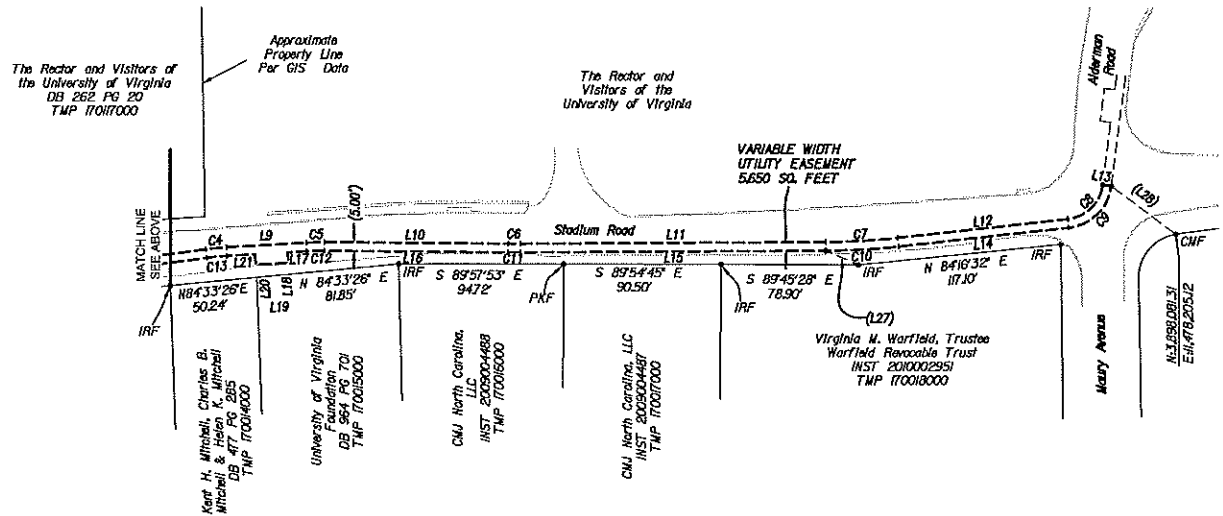
**ABBREVIATION LEGEND**  
 IRF - IRON ROD FOUND  
 IPF - IRON PIPE FOUND  
 PKF - PK NAIL FOUND  
 CNF - CONCRETE MONUMENT FOUND



**PLAT SHOWING VARIABLE WIDTH UTILITY EASEMENT WITHIN THE RIGHT-OF-WAY OF STADIUM ROAD AND EMMET STREET LOCATED IN THE CITY OF CHARLOTTESVILLE, VIRGINIA. MARCH 31, 2016**  
**RICE ASSOCIATES**  
 GEOSPATIAL CONSULTANTS  
 308 TURNER ROAD SUITE G  
 RICHMOND, VIRGINIA 23225  
 (804) 674-9723 FAX (804) 674-9726  
 RA Project # DD1500.00C File # DWG. RY: PSP CHECKED BY: MCT



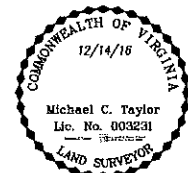
LINE	BEARING	DISTANCE
L1	S 85°28'31" E	13.27'
L2	N 04°31'29" E	18.00'
L3	S 85°28'31" E	19.00'
L4	S 04°31'29" E	18.00'
L5	S 85°28'31" E	18.25'
L6	N 89°25'08" E	52.81'
L7	N 76°34'01" E	43.83'
L8	N 82°12'07" E	141.66'
L9	N 86°38'45" E	46.15'
L10	S 89°31'04" E	105.71'
L11	N 89°41'46" E	175.49'
L12	N 84°42'57" E	84.60'
L13	S 82°44'29" E	5.00'
L14	S 13°27'57" W	98.66'
L15	S 89°41'46" W	125.45'
L16	N 89°31'04" W	105.71'
L17	S 86°38'45" W	10.59'
L18	S 07°17'15" E	16.00'
L19	S 85°38'45" W	118.00'
L20	N 03°21'15" W	6.00'
L21	S 86°38'45" W	18.16'
L22	S 82°12'07" W	141.66'
L23	S 76°34'01" W	43.83'
L24	S 89°25'08" W	52.81'
L25	N 89°25'08" W	116.85'
L26	S 27°58'33" E	15.52'
L27	S 66°45'25" E	20.25'
L28	S 53°32'23" E	46.57'



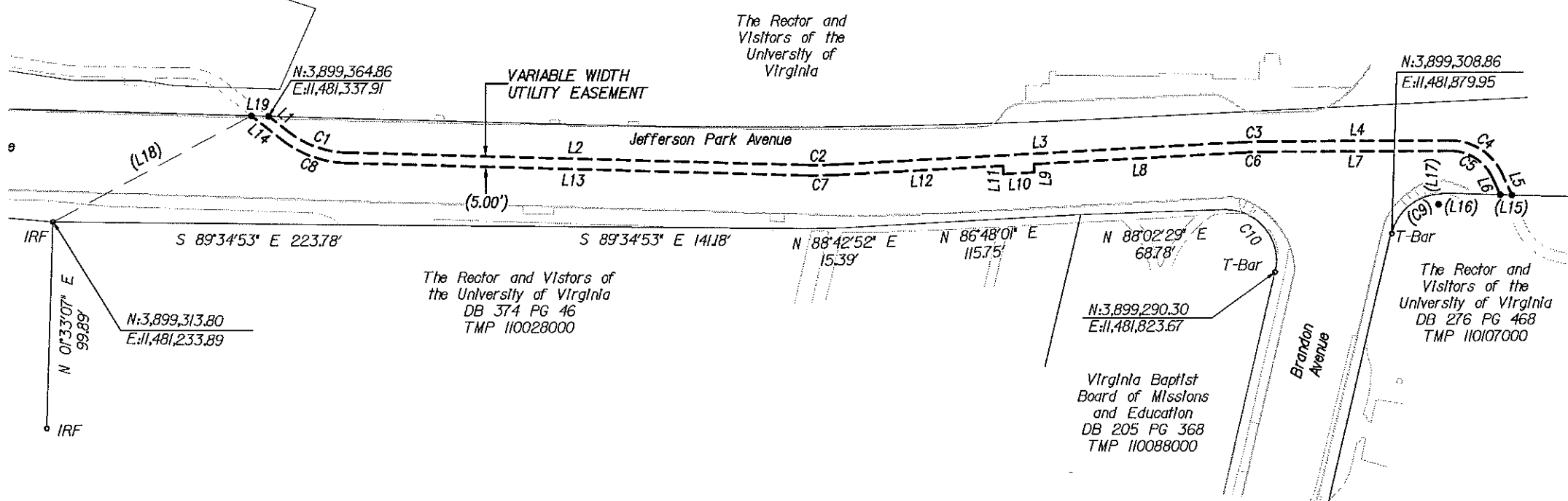
LINE	BEARING	DISTANCE
C1	44.24'	497.50'
C2	141.58'	141.58'
C3	12.84'	202.50'
C4	11.83'	135.50'
C5	10.31'	150.50'
C6	16.83'	497.50'
C7	41.49'	397.50'
C8	30.02'	22.50'
C9	136.70'	27.50'
C10	42.01'	405.50'
C11	6.85'	502.50'
C12	9.89'	147.50'
C13	11.44'	147.50'
C14	12.52'	187.50'
C15	142.52'	702.50'
C16	44.78'	502.50'

NOTES:  
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 IRF - IRON ROD FOUND  
 IPF - IRON PIPE FOUND  
 PKF - PK NAIL FOUND  
 CMF - CONCRETE MONUMENT FOUND



PLAT SHOWING  
**VARIABLE WIDTH UTILITY EASEMENT**  
 WITHIN THE RIGHT-OF-WAY OF  
**STADIUM ROAD**  
 LOCATED IN THE CITY OF  
 CHARLOTTESVILLE, VIRGINIA.  
 MARCH 30, 2016  
**RICE ASSOCIATES**  
 GEOSPATIAL CONSULTANTS  
 308 TURNER ROAD SUITE G  
 RICHMOND, VIRGINIA 23225  
 (804) 674-9723 FAX (804) 674-9726  
 RA Project # DD1500.00C File #  
 DWG BY: PSP CHECKED BY: MCT



CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	30.04'	47.50'	36°13'51"	S 70°23'27" E	29.54'
C2	16.00'	197.50'	4°38'33"	N 89°10'20" E	16.00'
C3	9.94'	202.50'	2°48'45"	N 86°15'26" E	9.94'
C4	31.36'	27.50'	66°20'43"	S 57°39'50" E	29.69'
C5	25.66'	22.50'	65°20'43"	N 57°39'50" W	24.29'
C6	9.69'	197.50'	2°48'45"	S 88°15'26" W	9.69'
C7	16.41'	202.50'	4°38'33"	S 89°10'20" W	16.40'
C8	53.20'	52.50'	36°13'51"	N 70°23'27" W	32.65'
C9	33.04'	24.50'	77°15'34"	S 51°37'48" W	30.59'
C10	45.31'	24.50'	105°58'00"	N 39°58'21" W	39.12'

LINE	BEARING	DISTANCE
L1	S 52°16'32" E	12.15'
L2	S 88°30'23" E	220.90'
L3	N 86°51'04" E	196.77'
L4	N 89°39'48" E	89.22'
L5	S 24°59'29" E	11.38'
L6	N 24°59'29" W	8.88'
L7	S 89°39'48" W	89.22'
L8	S 86°51'04" W	101.94'
L9	S 03°08'56" E	4.00'
L10	S 86°51'04" W	15.00'
L11	N 03°08'56" W	4.00'
L12	S 86°51'04" W	79.83'
L13	N 88°30'23" W	220.90'
L14	N 52°16'32" W	18.97'
L15	N 88°25'52" W	5.59'
L16	N 88°25'52" W	28.19'
L17	S 00°15'13" W	0.50'
L18	S 61°47'08" W	108.47'
L19	S 88°33'04" E	8.45'

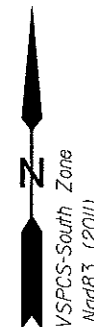
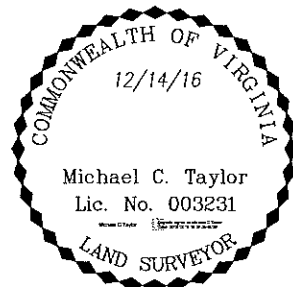
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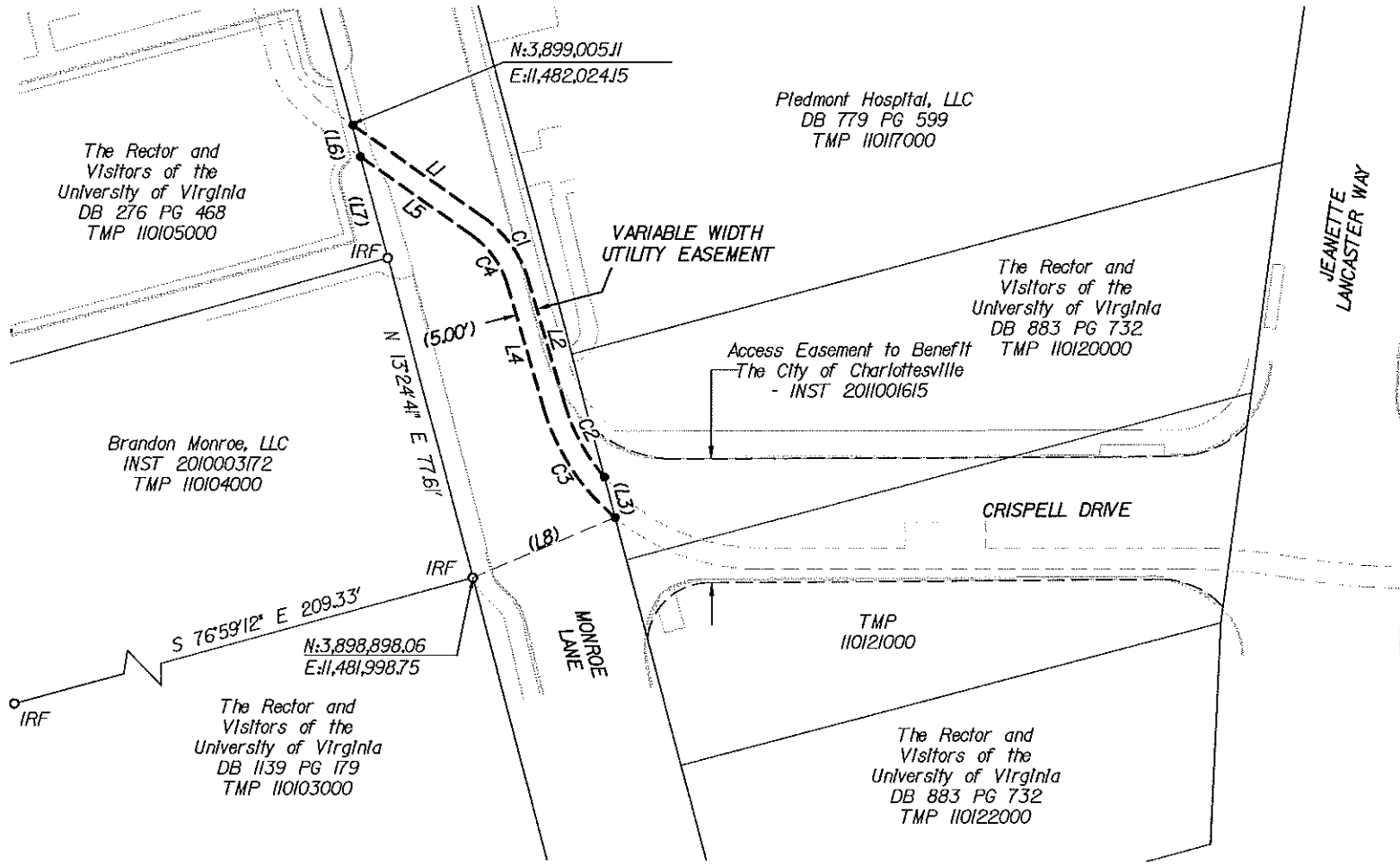
**PLAT SHOWING  
 VARIABLE WIDTH UTILITY  
 EASEMENT  
 WITHIN THE RIGHT-OF-WAY OF  
 JEFFERSON PARK AVENUE**

LOCATED IN THE CITY OF  
 CHARLOTTESVILLE, VIRGINIA.  
 APRIL 1, 2016

**RICE ASSOCIATES**  
 GEOSPATIAL CONSULTANTS

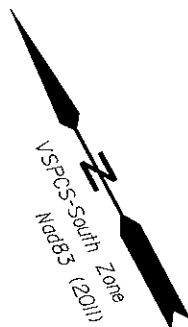
308 TURNER ROAD SUITE G  
 RICHMOND, VIRGINIA 23225  
 (804) 674-9723 FAX (804) 674-9726  
 RA Project # DD1500.00C File #  
 DWG BY: PSP CHECKED BY: MCT





CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	18.44'	27.50'	38°25'04"	S 07°13'10" E	18.10'
C2	20.10'	47.50'	24°14'34"	S 00°07'55" E	19.95'
C3	31.11'	52.50'	33°56'57"	N 04°59'07" W	30.65'
C4	15.09'	22.50'	38°25'04"	N 07°13'10" W	14.81'

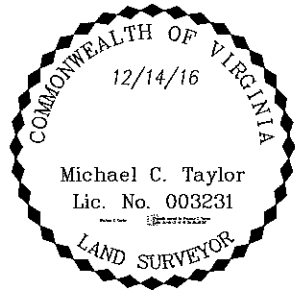
LINE	BEARING	DISTANCE
L1	S 26°25'42" E	37.87'
L2	S 11°59'21" W	29.77'
L3	S 13°23'08" W	9.82'
L4	N 11°59'21" E	29.77'
L5	N 26°25'42" W	31.83'
L6	N 13°11'32" E	7.84'
L7	N 13°11'32" E	24.58'
L8	N 84°34'07" W	36.28'



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 PKF - PK NAIL FOUND  
 CMF - CONCRETE MONUMENT FOUND



**PLAT SHOWING  
 VARIABLE WIDTH UTILITY  
 EASEMENT  
 WITHIN THE RIGHT-OF-WAY OF  
 MONROE LANE  
 LOCATED IN THE CITY OF  
 CHARLOTTESVILLE, VIRGINIA.  
 APRIL 1, 2016**

**RICE ASSOCIATES  
 GEOSPATIAL CONSULTANTS**  
 308 TURNER ROAD SUITE G  
 RICHMOND, VIRGINIA 23225  
 (804) 674-9723 FAX (804) 674-9726  
 RA Project # DD1500.00C File #  
 DWG BY: PSP CHECKED BY: MCT

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CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	February 6, 2017
Action Required:	Ordinance Approval (Consent Agenda – 1 <sup>st</sup> of 2 readings)
Presenter:	S. Craig Brown, City Attorney
Staff Contacts:	Andrew Gore, Assistant City Attorney
<b>Title:</b>	<b>CenturyLink Communications Telecommunications Franchise Renewal</b>

**Background:** Central Telephone Company of Virginia, d/b/a CenturyLink Communications (“CenturyLink”), has requested a renewal of its current franchise to maintain its existing fiber lines and equipment. CenturyLink has had a franchise agreement with the City since 1978.

**Discussion:** The proposed franchise ordinance contains the same terms as the model telecommunications franchise ordinance developed by the City Attorney’s Office and used in other franchises granted by the City. The purpose of the franchise will not change. In accordance with the franchise terms, CenturyLink is prepared to comply with the bonding and insurance requirements set forth in the agreement.

**Budgetary Impact:** The proposed franchise has no anticipated budget impact. However, the franchise agreement reserves the right to impose a public right-of-way use fee as allowed by Virginia law through the passage of an ordinance providing for such fee. Previously, Council has declined to adopt such a fee.

**Recommendation:** Approve the renewal of the franchise agreement.

**Alternatives:** Council may decline to adopt the ordinance and decline to renew the franchise agreement with CenturyLink.

**Attachment:** Request Letter; Proposed CenturyLink Franchise Agreement Ordinance

**Tina M. Colvin**  
CenturyLink  
Legal Department – Network Paralegal  
710 E. Mifflin Street  
Madison, WI 53706  
Phone 303 992-5783  
[tina.colvin@centurylink.com](mailto:tina.colvin@centurylink.com)



September 15, 2016

Barbara K. Ronan, Paralegal  
City Attorney's Office  
City of Charlottesville  
P.O. Box 911  
605 E. Main Street  
Charlottesville, VA 22902

VIA ELECTRONIC DELIVERY

Re: Request for Renewal of Franchise Agreement

Dear Ms. Ronan:

CenturyLink has been notified that the current Franchise Agreement with the City of Charlottesville has expired. By this letter, CenturyLink is requesting renewal of the Franchise.

Should you require any additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Tina M. Colvin".

Tina M. Colvin  
CenturyLink Paralegal 4

tmc

cc: Eric Schwalb, Esq.  
William Owen, CenturyLink Manager of Engineering and Construction



**CENTRAL TELEPHONE COMPANY OF VIRGINIA  
D/B/A CENTURYLINK  
TELECOMMUNICATIONS FRANCHISE**

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**AN ORDINANCE  
GRANTING A TELECOMMUNICATIONS FRANCHISE TO  
CENTRAL TELEPHONE COMPANY OF VIRGINIA D/B/A CENTURYLINK,  
ITS SUCCESSORS AND ASSIGNS  
TO USE THE STREETS AND OTHER PUBLIC PLACES  
OF THE CITY OF CHARLOTTESVILLE, VIRGINIA  
FOR ITS POLE, WIRES, CONDUITS, CABLES AND FIXTURES,  
FOR A PERIOD OF FIVE (5) YEARS**

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia, that CENTRAL TELEPHONE COMPANY OF VIRGINIA, D/B/A/CENTURYLINK (the “Company”), its successors and assigns, is hereby granted a telecommunications franchise for a period of five (5) years from the effective date hereof be and is hereby authorized and empowered to erect, maintain and operate certain telephone lines and associated equipment, including posts, poles, cables, wires and all other necessary overhead or underground apparatus and associated equipment on, over, along, in, under and through the streets, alleys, highways and other public places of the City of Charlottesville, Virginia (the “City”) as its business may from time to time require; provided that:

**ARTICLE I**

***SECTION 101 PURPOSE AND SCOPE***

To provide for the health, safety and welfare of its citizens and to ensure the integrity of its roads and streets and the appropriate use of the Public Rights-of-Way, the City strives to keep the right-of-way under its jurisdiction in a state of good repair and free from unnecessary encumbrances.

Accordingly, the City hereby enacts this Ordinance relating to a telecommunications right-of-way franchise and administration. This Ordinance imposes regulation on the placement and maintenance of Facilities and equipment owned by the Company currently within the City’s Public Rights-of-Way or to be placed therein at some future time. The Ordinance is intended to complement, and not replace, the regulatory roles of both state and federal agencies. Under this Ordinance, when excavating and obstructing the Public Rights-of-Way, the Company will bear financial responsibility for their work to the extent provided herein. Finally, this Ordinance provides for recovery of the City’s reasonable out-of-pocket costs related to the Company’s use of the Public Rights-of-Way, subject to the terms and conditions herein.

***SECTION 102 AUTHORITY TO MANAGE THE RIGHT OF WAY***

This Ordinance granting a telecommunications franchise is created to manage and regulate the Company's use of the City's Public Rights-of-Way along city roads pursuant to the authority granted to the City under Sections 15.2-2015, 56-460, and 56-462(A) of the Virginia Code and other applicable state and federal statutory, administrative and common law.

This Ordinance and any right, privilege or obligation of the City or Company hereunder, shall be interpreted consistently with state and federal statutory, administrative and common law, and such statutory, administrative or common law shall govern in the case of conflict. This Ordinance shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce other general ordinances necessary to protect the health, safety, and welfare of the public.

### ***SECTION 103 DEFINITIONS***

**103.1 CITY** means the City of Charlottesville, Virginia, a municipal corporation.

**103.2 COMPANY** means Central Telephone Company Of Virginia, D/B/A/Centurylink, including its successors and assigns.

**103.3 DIRECTOR** means the Director of Public Works for the City of Charlottesville.

**103.4 FACILITY** means any tangible asset in the Public Rights-of-Way required to provide utility service, which includes but is not limited to; cable television, electric, natural gas, telecommunications, water, sanitary sewer and storm sewer services.

**103.5 PATCH** means a method of pavement replacement that is temporary in nature.

**103.6 PAVEMENT** means any type of improved surface that is within the Public Rights-of-Way including but not limited to any improved surface constructed with bricks, pavers, bituminous, concrete, aggregate, or gravel or some combination thereof.

**103.7 PUBLIC RIGHTS-OF-WAY or PROW** means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, included other dedicated rights-of-way for travel purposes and utility easements of the City, paved or otherwise. This definition does not include a state highway system regulated pursuant to the direction of the Commonwealth Transportation Board.

## **Article II**

### ***Section 201 Initial Installation***

The installation of equipment, lines, cables or other Facilities by the Company shall be a mixture of overhead and underground in Public Rights-of-Way.

## ***Section 202 Subsequent Installation***

### **202.1 SUBSEQUENT INSTALLATION MADE PURSUANT TO AN APPROVED PROW PLAN:**

Additional Facilities installed within the PROW may be placed overhead or underground pursuant to an approved request by the Company made pursuant to Article III, and in accordance with such generally applicable ordinances or regulations governing such installations that have been adopted by the City from time to time.

### **202.2 GENERAL PREFERENCE FOR UNDERGROUND FACILITIES:** As a matter of policy, the City prefers that the installation of any Facility within the PROW occur underground.

Notwithstanding this preference, the City recognizes that in some circumstances the placement of Facilities underground may not be appropriate.

### **202.3 INSTALLATION OF OVERHEAD FACILITIES:** Where a subsequent PROW plan is approved for overhead installation, the Company shall use its existing Facilities, or those of another utility where available. If the PROW plan calls for overhead installation and existing Facilities cannot accommodate the proposed installation, the Company will clearly indicate in the PROW plan its intended placement of new Facilities for the Director's review and consideration pursuant to Article III.

### **202.4 FUTURE ORDINANCES:** Nothing herein shall be construed to limit the authority of the city to adopt an ordinance that will restrict the placement of overhead lines for all utilities using the PROW within a defined area of the City.

### **202.5 CONDITIONS FOR RELOCATING UNDERGROUND:** The Company agrees that if, at some future time, the telephone and other utility lines on the posts, poles, and other overhead apparatus upon which the Company has placed some or all of its Facilities in the City's PROWs are relocated underground, the Company will also, at such time, relocate its Facilities on those posts, poles, and other overhead apparatus underground at its expense. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

## ***Section 203 Inspection by the City***

The Company shall make the work-site available to the City and to all others as authorized by law for inspection at all reasonable times, during the execution of, and upon completion of, all work conducted pursuant to this Ordinance.

## ***Section 204 Authority of the City to Order Cessation of Excavation***

At the time of inspection, or any other time as necessary, the City may order the immediate cessation and correction of any work within the Public Rights-of-Way which poses a serious threat to the life, health, safety or well being of the public.

### ***Section 205 Location of Posts, Poles, Cables and Conduits***

In general, all posts, poles, wires, cables and conduits which the Company places within the Public Rights-of-Way pursuant to this Ordinance shall in no way permanently obstruct or interfere with public travel or the ordinary use of, or the safety and convenience of persons traveling through, on, or over, the Public Rights-of-Way within the City of Charlottesville.

### **SECTION 206 OBSTRUCTION OF THE PROW**

Generally, any obstruction of the PROW is limited to the manner clearly specified within an approved PROW plan.

**206.1 REMOVAL OF OBSTRUCTIONS:** Obstructions of the PROW not authorized by an approved PROW plan shall be promptly removed by the Company upon receipt of notice from the City. The City's notice of the Obstruction will include a specified reasonable amount of time determined by the Director for the Company's removal of the obstruction, given the location of the obstruction and its potential for an adverse effect on the public's safety and the public's use of the PROW. If the Company has not removed its obstruction from the PROW within the time designated within the notice, the City, at its election, will make such removal and the Company shall pay to the City its reasonable costs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the removal and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to administrative, overhead mobilization, material, labor, and equipment related to removing the obstruction.

**206.2 NO OBSTRUCTION OF WATER:** The Company shall not obstruct the PROW in a manner that interferes with the natural free and clear passage of water through the gutters, culverts, ditches tiles or other waterway.

**206.3 PARKING, LOADING AND UNLOADING OF VEHICLES SHALL NOT OBSTRUCT THE PROW:** Private vehicles of those doing work for the Company in the PROW must be parked in a manner that conforms to the City's applicable parking regulations. The loading or unloading of trucks must be done in a manner that will not obstruct normal traffic within the PROW, or jeopardize the safety of the public who use the PROW.

## Article III

### ***Section 301 Administration of the Public Rights of Way***

The Director is the principal City official responsible for the administration of this Ordinance granting a telecommunications franchise to the Company and any of its PROW Plans. The Director may delegate any or all of the duties hereunder to an authorized representative.

### ***Section 302 Submission of PROW Plan***

At least thirty (30) days before beginning any installation, removal or relocation of underground or overhead Facilities, the Company shall submit detailed plans of the proposed action to the Director for his or her review and approval, which approval shall not unreasonably be withheld, conditioned, or delayed.

### ***Section 303 Good Cause Exception***

**303.1 WAIVER:** The Director, at his or her sole judgment, is authorized to waive the thirty (30) day requirement in Section 302 for good cause shown.

**303.2 EMERGENCY WORK:** The Company shall immediately notify the Director of any event regarding its facilities that it considers to be an emergency. The Company will proceed to take whatever actions are necessary to respond to the emergency, or as directed by the Director.

If the City becomes aware of an emergency regarding the Company's facilities, the City will attempt to contact the person whose facilities occasioned the emergency. The costs associated with the City's respond shall be borne by the person whose facilities occasioned the emergency.

### ***Section 304 Decision on PROW Plan by the Director***

**304.1 DECISION:** The Director, or his or her authorized representative, shall, within thirty (30) days, either approve the Company's plans for proposed action as described in Section 302 or inform the Company of the reasons for disapproval. The Company shall designate a responsible contact person with whom officials of the Department of Public Works can communicate on all matters relating to equipment installation and maintenance.

**304.2 APPEAL:** Upon written request within thirty (30) days of the Director's decision, the Company may have the denial of a PROW Plan reviewed by the City Manager. The City Manager will schedule its review of the Director's decision within forty-five (45) days of

receipt of such a request. A decision by the City Manager will be in writing and supported by written findings establishing the reasonableness of its decision.

### ***Section 305 Mapping Data***

Upon completion of each project within the Public Rights-of-Way pursuant to this Ordinance, the Company shall provide to the City such information necessary to maintain its records, including but not limited to:

- (a) location and elevation of the mains, cables, conduits, switches, and related equipment and other Facilities owned by the Company located in the PROW, with the location based on (i) offsets from property lines, distances from the centerline of the Public Rights-of-Way, and curb lines; (ii) coordinates derived from the coordinate system being used by the City; or (iii) any other system agreed upon by the Company and the City;
- (b) the outer dimensions of such Facilities; and
- (c) a description of above ground appurtenances.

## **Article IV**

### ***Section 401 Compliance with all Law and Regulations***

Obtaining this telecommunications franchise shall in no way relieve the Company of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any applicable state or federal rule, law or regulation. The Company shall comply with and fulfill all generally applicable laws and regulations, including ordinances, regulations and requirements of the City, regarding excavations and any other work in or affecting the Public Rights-of-Way. The Company shall perform all work in conformance with all applicable codes and established rules and regulations, and it is responsible for all work conducted by the Company, another entity or person acting on its behalf pursuant to this Ordinance in the Public Rights-of-Way.

## **Article V**

### ***Section 501 Relocation of Company Facilities within the Public Rights-of-Way***

Upon written notice from the Director of a planned and authorized improvement or alteration of City sidewalks, streets or other property, or of a proposed relocation of any City-owned utilities that necessitate relocation of some or all of the Facilities owned by the Company and lines to accommodate same, the Company shall relocate at its own expense any such Facilities within one



hundred eighty (180) days of receipt of the notice. At Company's request, the city may consent to a longer period, such consent not to be unreasonably or discriminatorily withheld, conditioned or delayed. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

## ***Section 502 Rights-of-Way Patching and Restoration***

**502.1 RESTORATION STANDARD:** Where the Company disturbs or damages the Public Rights-of-Way, the Director shall have the authority to determine the manner and extent of the restoration of the Public Rights-of-Way, and may do so in written procedures of general application or on a case-by-case basis. In exercising this authority, the Director will consult with any state or federal standards for rights-of-way restoration and shall be further guided by the following considerations:

- (a) the number, size, depth and duration of the excavations, disruptions or damage to the Public Rights-of-Way;
- (b) the traffic volume carried by the Public Rights-of-Way; the character of the neighborhood surrounding the right-of-way;
- (c) the pre-excavation condition of the Public Rights-of-Way and its remaining life expectancy;
- (d) the relative cost of the method of restoration to the Company balanced against the prevention of an accelerated deterioration of the right-of-way resulting from the excavation, disturbance or damage to the Public Rights-of-Way; and
- (e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the Public Rights-of-Way that would otherwise take place.

**502.2 TEMPORARY SURFACING:** The Company shall perform temporary surfacing patching and restoration including, backfill, compaction, and landscaping according to standards determined by, and with the materials determined by, the Director .

**502.3 TIMING:** After any excavation by the Company pursuant to this Ordinance, the patching and restoration of the Public Rights-of-Way must be completed promptly and in a manner determined by the Director.

**502.4 GUARANTEES:** The Company guarantees its restoration work and shall maintain it for twenty-four (24) months following its completion. The previous statement notwithstanding, the Company will guarantee and maintain plantings and turf for twelve

(12) months. During these maintenance periods, the Company shall, upon notification by the City, correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of notice from the Director, within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure. Notwithstanding the foregoing, the Company's guarantees set forth hereunder concerning restoration and maintenance, shall not apply to the extent another company, franchisee, licensee, permittee, other entity or person, or the City disturbs or damages the same area, or a portion thereof, of the Public Rights-of-Way.

**502.5 DUTY TO CORRECT DEFECTS:** The Company shall correct defects in patching, or restoration performed by it or its agents. Upon notification from the City, the Company shall correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of the notice from the Director within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure.

**502.6 FAILURE TO RESTORE:** If the Company fails to restore the Public Rights-of-Way in the manner and to the condition required by the Director pursuant to Section 502.5, or fails to satisfactorily and timely complete all restoration required by the Director pursuant to the foregoing, the City shall notify the Company in writing of the specific alleged failure or failures and shall allow the Company at least ten (10) days from receipt of the notice to cure the failure or failures, or to respond with a plan to cure. In the event that the Company fails to cure, or fails to respond to the City's notice as provided above, the City may, at its election, perform the necessary work and the Company shall pay to the City its reasonable costs for such restoration within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such restoration.

**502.7 DAMAGE TO OTHER FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY:** The Company shall be responsible for the cost of repairing any Facilities existing within the Public Rights-of-Way that it or the Facilities owned by the Company damage. If the Company damages the City's Facilities within the Public Rights-of-Way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, the Company shall correct the damage within a prompt period after receiving written notification from the City. If the Company does not correct the City's damaged Facilities pursuant to the foregoing, the City may make such repairs as necessary and charge all of the reasonable costs of such repairs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within such thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to

Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such repair.

**502.8 DIRECTOR'S STANDARD:** All determinations to be made by the Director with respect to the manner and extent of restoration, patching, repairing and similar activities under the franchise granted by this Ordinance, shall be reasonable and shall not be unreasonably conditioned, withheld, or delayed. The Company may request additional time to complete restoration, patching, repair, or other similar work as required under the franchise granted by this Ordinance, and the Director shall not unreasonably withhold, condition, or delay consent to such requests.

## Article VI

### ***Section 601 Indemnification and Liability***

**601.1 SCOPE OF INDEMNIFICATION:** Subject to the following, the Company agrees and binds itself to indemnify, keep and hold the City council members, Board and its employees free and harmless from liability on account of injury or damage to persons, firms or corporations or property growing out of or directly or indirectly resulting from:

- (a) the Company's use of the streets, alleys, highways, sidewalks, rights-of-way and other public places of the City pursuant to the franchise granted by this Ordinance;
- (b) the acquisition, erection, installation, maintenance, repair, operation and use of any poles, wires, cables, conduits, lines, manholes, facilities and equipment by the Company, its authorized agents, subagents, employees, contractors or subcontractors; or
- (c) the exercise of any right granted by or under the franchise granted by this Ordinance or the failure, refusal or neglect of the Company to perform any duty imposed upon or assumed by the Company by or under the franchise granted by this Ordinance.

**601.2 DUTY TO INDEMNIFY, DEFEND AND HOLD HARMLESS:** If a suit arising out of subsection (a), (b), (c) of Section 601.1, claiming such injury, death, or damage shall be brought or threatened against the City, either independently or jointly with the Company, the Company will defend, indemnify and hold the City harmless in any such suit, at the cost of the Company, provided that the City promptly provides written notice of the commencement or threatened commencement of the action or proceeding involving a claim in respect of which the City will seek indemnification hereunder. The Company shall be entitled to have sole control over the defense through counsel of its own choosing and over settlement of such claim provided that the Company must obtain the prior written approval of City of any settlement of such claims against the City, which approval shall not be unreasonably withheld or delayed more than thirty (30) days. If, in such a suit, a final judgment is obtained against the City, either independently or jointly with the Company, the Company will pay the judgment, including all reasonable costs, and will hold the City harmless therefrom.

### ***Section 602 Waiver by the City***

The City waives the applicability of these indemnification provisions in their entirety if it:

- (a) elects to conduct its own defense against such claim;

- (b) fails to give prompt notice to the Company of any such claim such that the Company's ability to defend against such claim is compromised;
- (c) denies approval of a settlement of such claim for which the Company seeks approval; or
- (d) fails to approve or deny a settlement of such claim within thirty (30) days of the Company seeking approval.

### ***Section 603 Insurance***

**603.1** The Company shall also maintain in force a comprehensive general liability policy in a form satisfactory to the City Attorney, which at minimum must provide:

- (a) verification that an insurance policy has been issued to the Company by an insurance company licensed to do business in the State of Virginia, or a form of self insurance acceptable to the City Attorney;
- (b) verification that the Company is insured against claims for personal injury, including death, as well as claims for property damage arising out of (i) the use and occupancy of the Public Rights-of-Way by the Company, its agents, employees and permittees, and (ii) placement and use of Facilities owned by the Company in the Public Rights-of-Way by the Company, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;
- (c) verification that the City Attorney will be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
- (d) verification that comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City Attorney in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Ordinance; and
- (e) verification that the policy has a combined single limit coverage of not less than two million dollars (\$2,000,000).

The policy shall include the City as an additional insured party, and the Company shall provide the City Attorney with a certificate of such coverage before beginning installation of any lines, cable or equipment.

**603.2** The Company shall also require similar indemnification and insurance coverage from any contractor working on its behalf in the public right-of-way.

### ***Section 604 Negligence and Intentional Acts***

Nothing herein contained shall be construed to render the Company liable for or obligated to indemnify the City, its agents, or employees, for the negligence or intentional acts of the City, its Council members, its Board, its agents or employees, or a permittee of the City.

## **Article VII**

### ***SECTION 701 GENERAL REQUIREMENT OF A PERFORMANCE BOND***

Prior to the Effective Date of this Ordinance, the Company has deposited with the City a Performance Bond made payable to the city in the amount of one hundred thousand dollars (\$100,000). The Performance Bond is to guarantee that the project is done in a proper manner without damage to the PROW. The bond shall be written by a corporate surety acceptable to the City and authorized to do business in the Commonwealth of Virginia. Upon completion of construction of the Facilities, the Company may reduce the Performance Bond to the amount of twenty-five thousand dollars (\$25,000) and made payable to the City, and the Performance Bond shall be maintained at this amount through the term of this Agreement.

### ***SECTION 702 CHANGED AMOUNT OF THE PERFORMANCE BOND***

At any time during the Term, the City may, acting reasonably, require or permit the Company to change the amount of the Performance Bond if the City finds that new risk or other factors exist that reasonably necessitate or justify a change in the amount of the Performance Bond. Such new factors may include, but not be limited to, such matters as:

- (a) material changes in the net worth of the Company;
- (b) changes in the identity of the Company that would require the prior written consent of the City;
- (c) material changes in the amount and location of Facilities owned by the Company;
- (d) the Company's recent record of compliance with the terms and conditions of this Ordinance; and
- (e) material changes in the amount and nature of construction or other activities to be performed by the Company pursuant to this Ordinance.

### ***SECTION 703 PURPOSE OF PERFORMANCE BOND***

The Performance Bond shall serve as security for:

- (a) the faithful performance by the Company of all terms, conditions and obligations of this Ordinance;**
- (b) any expenditure, damage or loss incurred by the City occasioned by the Company's failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Ordinance;**
- (c) payment of compensation required by this Ordinance;**
- (d) the payment of premiums for the liability insurance required pursuant to this Ordinance ;**
- (e) the removal of Facilities owned by the Company from the Streets at the termination of the Ordinance, at the election of the City, pursuant to this Ordinance;**
- (f) any loss or damage to the Streets or any property of the City during the installation, operation, upgrade, repair or removal of Facilities by the Company;**
- (g) the payment of any other amounts that become due to the City pursuant to this Ordinance or law;**
- (h) the timely renewal of any letter of credit that constitutes the Performance Bond; and**
- (i) any other costs, loss or damage incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Ordinance.**

### ***Section 704 Fees or Penalties for Violations of the Ordinance***

**704.1 FEE OR PENALTY:** The Company shall be subject to a fee or a penalty for violation of this Ordinance as provided for in applicable law.

**704.2 APPEAL:** The Company may, upon written request within thirty (30) days of the City's decision to assess a fee or penalty and for reasons of good cause, ask the City to reconsider its imposition of a fee or penalty pursuant to this Ordinance unless another period is provided for in applicable law. The City shall schedule its review of such request to be held within forty-five (45) days of receipt of such request from the Company. The City's decision on the Company's appeal shall be in writing and supported by written findings establishing the reasonableness of the City's decision. During the pendency of the appeal before the City or any subsequent appeal thereafter, the Company shall place any such fee or penalty in an interest-bearing escrow account. Nothing herein shall limit the Company's right to challenge such assessment or the City's decision on appeal, in a court of competent jurisdiction.

### **Article VIII**

#### ***SECTION 801 COMPENSATION/PROW USE FEE.***

The City reserves the right to impose at any time on the Company consistent with Section 253(c) of the Communications Act of 1934, as amended:

- (a) a PROW Use Fee in accordance with Section 56-468.1(G) of the Code of Virginia, and/or
- (b) any other fee or payment that the City may lawfully impose for the occupation and use of the Streets.

The Company shall be obligated to remit the PROW Use Fee and any other lawful fee enacted by the City, so long as the City provides the Company and all other affected certificated providers of local exchange telephone service appropriate notice of the PROW Use Fee as required by Section 56-468.1(G) of the Code of Virginia. If the PROW Use Fee is eliminated, discontinued, preempted or otherwise is declared or becomes invalid, the Company and the City shall negotiate in good faith to determine fair and reasonable compensation to the City for use of the Streets by the Company for Telecommunications.

#### ***SECTION 802 FRANCHISING COSTS***

Prior to the execution of this Ordinance, the City incurred costs for the services of third parties (including, without limitation, attorneys and other consultants) in connection with the award of this telecommunications Franchise. Within thirty (30) days after receipt from the City of an invoice for such costs, the Company shall pay at such time and in such manner as the City shall specify to the City or, at the direction of the City, to third parties an amount equal to the costs the City incurs for the services of such third parties. Payment by Company of such franchising costs shall not in any way be offset nor deducted from applicable PROW use fees required pursuant to Section 801 herein. In the event of any renewal, renegotiations, transfer, amendment or other modification of this Ordinance or the Franchise, the Company will reimburse the City in the



same manner for such third party costs, if any are incurred. The Company's obligations under this Section shall not exceed two thousand five hundred dollars (\$2500.00).

### ***SECTION 803 NO CREDITS OR DEDUCTIONS***

The compensation and other payments to be made pursuant to Article VIII: (a) shall not be deemed to be in the nature of a tax, and (b) except as may be otherwise provided by Section 56-468.1 of the Code of Virginia, shall be in addition to any and all taxes or other fees or charges that the Company shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company.

### ***SECTION 804 REMITTANCE OF COMPENSATION/LATE PAYMENTS, INTEREST ON LATE PAYMENTS***

(1) If any payment required by this Ordinance is not actually received by the City on or before the applicable date fixed in this Ordinance, or (2), in the event the City adopts an ordinance imposing a PROW Use Fee, if such Fee has been received by the Company from its customers, and has not been actually received by the City on or before the applicable date fixed in this Ordinance or thirty (30) days after receipt of the PROW Use Fee from its customers, whichever is later, then the Company shall pay interest thereon, to the extent permitted by law, from the due date to the date paid at a rate equal to the rate of interest then charged by the City for late payments of real estate taxes.

## **Article IX**

### ***Section 901 Reservation of All Rights and Powers***

The City reserves the right by ordinance or resolution to establish any reasonable regulations for the convenience, safety, health and protection of its inhabitants under its police powers, consistent with state and federal law. The rights herein granted are subject to the exercise of such police powers as the same now are or may hereafter be conferred upon the City. Without limitation as to the generality of the foregoing the City reserves the full scope of its power to require by ordinance substitution of underground service for overhead service, or the transfer of overhead service from the front to the rear of property whenever reasonable in all areas in the City and with such contributions or at such rates as may be allowed by law.

Notwithstanding anything herein to the contrary, nothing herein shall be construed to extend, limit or otherwise modify the authority of the City preserved under Sections 253 (b) and (c) of the Communications Act of 1934, as amended. Nothing herein shall be construed to limit, modify, abridge or extend the rights of the Company under the Communications Act of 1934, as amended.

## ***Section 902 Severability***

If any portion of this Ordinance is for any reason held to be invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

## **Article X**

### ***Section 1001 Maintenance Obligation***

The Company will maintain the poles, wires, cable, conduits, lines, manholes, equipment and other Facilities it owns within the City's PROW in good order and operating condition throughout the term of the franchise granted by this Ordinance.

### ***Section 1002 Tree Trimming***

Should the Company install any overhead lines, it shall have the authority to trim trees upon or overhanging the streets, alleys, walkways or Public Rights-of-Way to prevent the branches of such trees from interfering with its lines or other Facilities. However, all such trimmings shall be performed in a safe and orderly manner under the general direction of the Director of Public Works or his or her designee and in compliance with the pruning standards of the National Arborists Association as currently in effect.

## **Article XI**

### ***Section 1101 Initial Term of Telecommunications Franchise***

The term of the franchise granted by this Ordinance shall be for a period of five (5) years from the effective date of this Ordinance.

### ***Section 1102 Application for New Telecommunications Franchise***

If the Company wishes to maintain its equipment within the City and to continue the operation of the system beyond the term of the franchise granted by this Ordinance, it shall give written notice to the City at least one hundred twenty (120) days before expiration of the franchise granted by this Ordinance, stating that it wishes to apply for a new franchise. Such application shall include a report of the location of the Facilities owned by the Company within the City's PROW, and a statement as to whether the Company has complied with the provisions of this Ordinance.

### ***Section 1103 Operation of Facilities Owned by the Company While Renewal is Pending***

Upon a timely request by the Company prior to the expiration of its initial franchise, the Company shall be permitted to continue operations of the Facilities owned by the Company

within the City under the terms of the franchise granted by this Ordinance until the City acts. Nothing herein shall be construed to grant the Company a perpetual franchise interest.

## **Article XII**

### ***Section 1201 Notice***

All notices, except for in cases of emergencies, required pursuant to the franchise granted by this Ordinance shall be in writing and shall be mailed or delivered to the following address:

**To the Company:**

**To the City:**

City of Charlottesville  
Attn: City Manager  
605 East Main Street  
Charlottesville, VA 22902

**With a copy to:**

**With a copy to:**

S. Craig Brown, City Attorney  
City Attorney's Office  
P.O. Box 911  
Charlottesville, VA 22902

All correspondences shall be by registered mail, certified mail or regular mail with return receipt requested; and shall be deemed delivered when received or refused by the addressee. Each Party may change its address above by like notice.

### ***Section 1202 Emergency Notification***

Notices required pursuant to Section 303.2 shall be made orally and by facsimile to the following:

**To the Company:**

**To the City:**

Gas Dispatchers

(434) 970-3800 (office)

Emergency (434) 293-9164 (leaks)

(434) 970-3817 (facsimile)

Director of Public Works

(434) 970-3301 (office)

(434) 970-3817 (facsimile)

***Section 1203 Registration of Data***

The Company, including any subleasee or assigns, must keep on record with the City the following information:

- (a) Name, address and e-mail address if applicable, and telephone and facsimile numbers;
- (b) Name, address and e-mail address if applicable, and telephone and facsimile numbers of a local representative that is available for consultation at all times. This information must include how to contact the local representative in an emergency; and
- (c) A certificate of insurance as required under Article VI, Section 603 of this telecommunications franchise, and a copy of the insurance policy.

The Company shall keep update all of the above information with the City within fifteen (15) days following its knowledge of any change.

**Article XIII**

***Section 1301 Termination of Telecommunications Franchise***

The franchise granted by this Ordinance may be terminated:

- (a) by the Company, at its election and without cause, by written notice to the City at least sixty (60) days prior to the effective date of such termination; or
- (b) by either the Company or the City, after thirty (30) days written notice to the other party of the occurrence or existence of a default of the franchise granted by this

Ordinance, if the defaulting party fails to cure or commence good faith efforts to cure, such default within sixty (60) days after delivery of such notice.

Notwithstanding the provisions of this Section, the terms and conditions of the franchise granted by this Ordinance pertaining to indemnification shall survive a termination under this Section.

#### **Article XIV**

##### ***Section 1401 Removal of Facilities from the Public Rights-of-Way***

The Company shall remove all Facilities owned by the Company from the streets, alleys and public places of the City at the expense of the Company within six (6) months after the termination, abandonment, or expiration of this franchise granted by this Ordinance, or by such reasonable time to be prescribed by the City Council, whichever is later. No such removal will be required while any renewal requests as provided for in Section 1102 and Section 1103, are pending before the City. If such renewal request is denied, the six (6) month period provided above shall commence on the date of denial or expiration, whichever is later. The City reserves the right to waive this requirement, as provided for in Section 1402 herein. The City shall grant the Company access to the Public Rights-of-Way in order to remove its telecommunications Facilities owned by the Company pursuant to this paragraph.

##### ***Section 1402 Abandonment of Facilities Owned by the Company in the Public Rights-of-Way***

The telecommunications Facilities owned by the Company may be abandoned without removal upon request by the Company and approval by the City. This Section survives the expiration or termination of this franchise granted by this Ordinance.

#### **Article XV**

##### ***SECTION 1501 Prior Written Consent for Assignment***

The franchise granted by this Ordinance shall not be assigned or transferred without the expressed written approval of the City, which shall not be unreasonably or discriminatorily conditioned, withheld or delayed.

In addition, the City agrees that nothing in this Ordinance shall be construed to require Company to obtain approval from the City in order to lease any Facilities owned by the Company or any portion thereof in, on, or above the PROW, or grant an indefeasible right of use (“IRU”) in the Facilities owned by the Company, or any portion thereof, to any entity or person. The lease or grant of an IRU in such Facilities owned by the Company, or any portion or combination thereof,

shall not be construed as the assignment or transfer of any franchise rights granted under this Ordinance.

### ***Section 1502 Successors and Assigns***

Notwithstanding Section 1501, the Company may assign, transfer, or sublet its rights, without the consent of the City, to any person or entity that controls, is controlled by or is under common control with the Company, any company or entity with which or into which the Company may merge or consolidate, to any lender of the Company provided the City is advised of the action prior to enactment. Any successor(s) of the Company shall be entitled to all rights and privileges of this franchise granted by this Ordinance and shall be subject to all the provisions, obligations, stipulations and penalties herein prescribed.

## **Article XVI**

### ***Section 1601 Nonexclusive Franchise***

Nothing in the franchise granted by this Ordinance shall be construed to mean that this is an exclusive franchise, as the City Council reserves the right to grant additional telecommunications franchises to other parties.

## **Article XVII**

### ***Section 1701 All Waivers in Writing and Executed by the Parties***

Subject to the foregoing, any waiver of the franchise granted by this Ordinance or any of its provisions shall be effective and binding upon the Parties only if it is made in writing and duly signed by the Parties.

### ***Section 1702 No Constructive Waiver Recognized***

If either Party fails to enforce any right or remedy available under the franchise granted by this Ordinance, that failure shall not be construed as a waiver of any right or remedy with respect to any breach or failure by the other Party. Nothing herein shall be construed as a waiver of any rights, privileges or obligations of the City or the Company, nor constitute a waiver of any remedies available at equity or at law.

## **Article XVIII**

***Section 1801 No Discrimination***

The Company’s rights, privileges and obligations under the franchise granted by this Ordinance shall be no less favorable than those granted by the City to and shall not be interpreted by the City in a less favorable manner with respect to any other similarly situated entity or person or user of the City’s Public Rights-of-Way.

**Article XIX**

***Section 1901 Force Majeure***

Neither the Company nor the City shall be liable for any delay or failure in performance of any part of the franchise granted by this Ordinance from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations embargoes, epidemics, terrorist acts, riots insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions.

**Article XX**

***Section 2001 Effective Date***

This Ordinance shall be effective upon its passage.

Adopted by the Council of the City of Charlottesville on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

CENTRAL TELEPHONE COMPANY OF  
VIRGINIA D/B/A/ CENTURYLINK

Date: \_\_\_\_\_, 2016

By: \_\_\_\_\_

Its: \_\_\_\_\_



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**CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA**



Agenda Date:	February 6, 2017
Action Required:	Ordinance Approval (Consent Agenda – 1 <sup>st</sup> of 2 readings)
Presenter:	S. Craig Brown, City Attorney
Staff Contacts:	Andrew Gore, Assistant City Attorney
<b>Title:</b>	<b>FiberLight of Virginia, LLC Telecommunications Franchise Renewal</b>

**Background:** FiberLight of Virginia, LLC (“FiberLight”) has requested a renewal of its current franchise to maintain its existing fiber lines and equipment. FiberLight has had a franchise agreement with the City since 2011.

**Discussion:** The proposed franchise ordinance contains the same terms as the model telecommunications franchise ordinance developed by the City Attorney’s Office and used in other franchises granted by the City. The purpose of the franchise will not change. In accordance with the franchise terms, Fiberlight is prepared to comply with the bonding and insurance requirements set forth in the agreement.

**Budgetary Impact:** The proposed franchise has no anticipated budgetary impact. However, the franchise agreement reserves the right to collect the public rights-of-way use fee to the extent allowed under Virginia law by passage of an ordinance providing for such fee. Previously, Council has declined to adopt such a consumer fee.

**Recommendation:** Approve the renewal of the franchise agreement.

**Alternatives:** Council may decline to adopt this ordinance and decline to renew the franchise agreement with FiberLight.

**Attachments:** Request Letter; Proposed FiberLight of Virginia LLC Franchise Ordinance



**FiberLight Alpharetta Headquarters**  
11700 Great Oaks Way  
Suite 100  
Alpharetta, GA 30022

September 14, 2016

Ms. Paige Barfield  
City Counsel Clerk  
PO Box 911  
Charlottesville, VA 22902

RE: Franchise Request from FiberLight of Virginia, LLC

Dear Ms. Barfield:

Please accept this letter as our formal request to renew the expired franchise agreement between FiberLight of Virginia, LLC (FiberLight™) and the City of Charlottesville. The franchise agreement is to maintain and operate underground fiber optic cable and related facilities in the rights-of-way maintained by the City of Charlottesville.

Additionally, I have enclosed the following documents that are required:

1. A map identifying the locations of the line in the City's rights-of-way;
2. A copy of the Performance Bond in the amount of \$25,000.00 currently held by the City of Charlottesville; and
3. A Certificate of Insurance naming City of Charlottesville as an additional insured.

If you should have any questions regarding this matter, please do not hesitate to contact me at 678.824.6656 or via email at [Randall.Covard@Fiberlight.com](mailto:Randall.Covard@Fiberlight.com). Thank you for your assistance in this matter, it is greatly appreciated.

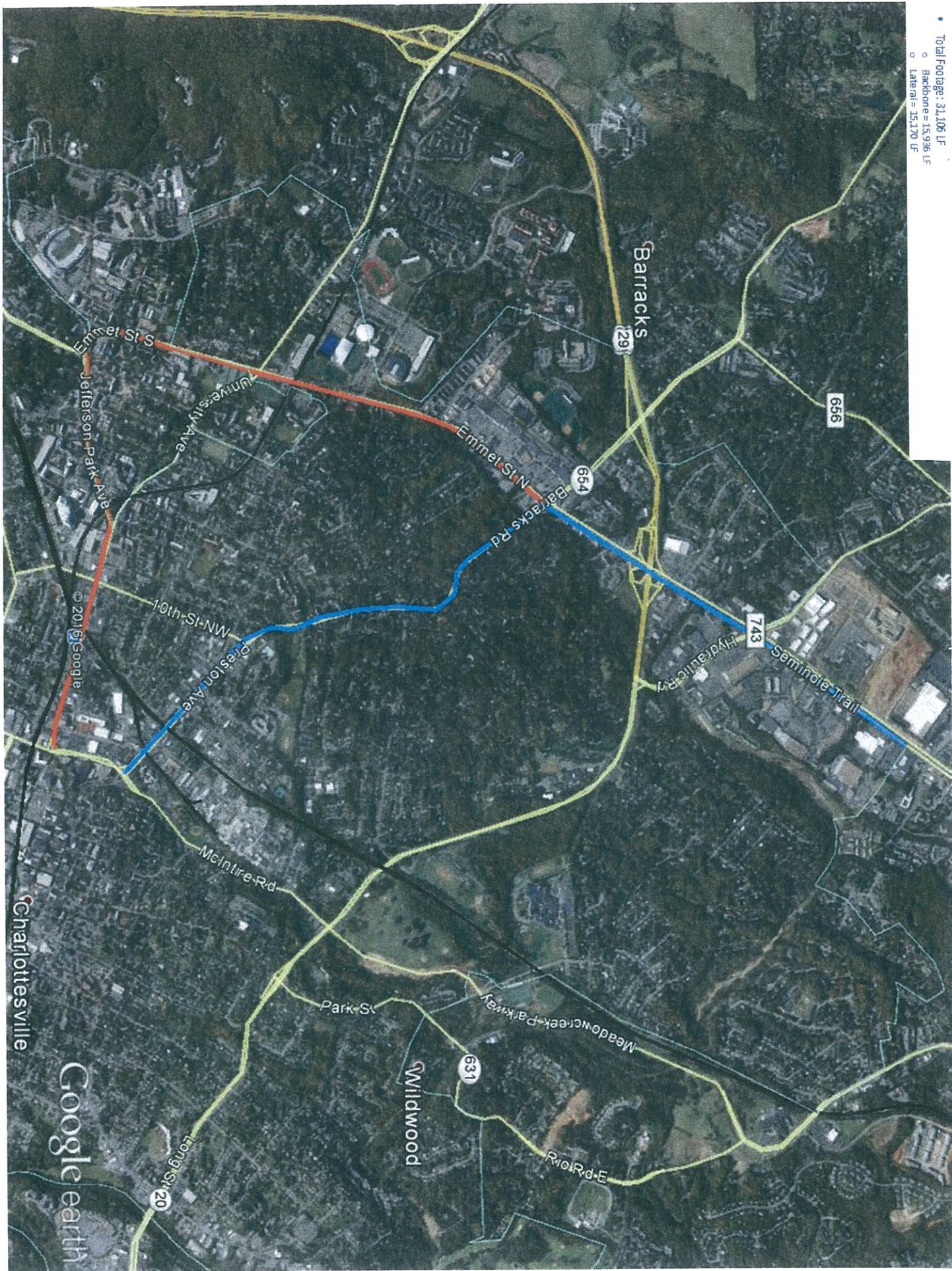
Sincerely,

A handwritten signature in blue ink, appearing to be "RC" with a long horizontal flourish extending to the right.

Randall Covard  
Corporate Counsel

RC/tm

- Total Footage: 31,106 LF
- Backbone = 15,936 LF
- Lateral = 15,170 LF



**FIBERLIGHT OF VIRGINIA, LLC  
TELECOMMUNICATIONS FRANCHISE**

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**AN ORDINANCE  
GRANTING A TELECOMMUNICATIONS FRANCHISE TO  
FIBERLIGHT OF VIRGINIA, LLC, ITS SUCCESSORS AND ASSIGNS  
TO USE THE STREETS AND OTHER PUBLIC PLACES  
OF THE CITY OF CHARLOTTESVILLE, VIRGINIA  
FOR ITS POLE, WIRES, CONDUITS, CABLES AND FIXTURES,  
FOR A PERIOD OF FIVE (5) YEARS**

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia, that **FiberLight of Virginia, LLC** (the “Company”), its successors and assigns, is hereby granted a telecommunications franchise for a period of five (5) years from the effective date hereof be and is hereby authorized and empowered to erect, maintain and operate certain telephone lines and associated equipment, including posts, poles, cables, wires and all other necessary overhead or underground apparatus and associated equipment on, over, along, in, under and through the streets, alleys, highways and other public places of the City of Charlottesville, Virginia (the “City”) as its business may from time to time require; provided that:

**ARTICLE I**

**SECTION 101 PURPOSE AND SCOPE**

To provide for the health, safety and welfare of its citizens and to ensure the integrity of its roads and streets and the appropriate use of the Public Rights-of-Way, the City strives to keep the right-of-way under its jurisdiction in a state of good repair and free from unnecessary encumbrances.

Accordingly, the City hereby enacts this Ordinance relating to a telecommunications right-of-way franchise and administration. This Ordinance imposes regulation on the placement and maintenance of Facilities and equipment owned by the Company currently within the City’s Public Rights-of-Way or to be placed therein at some future time. The Ordinance is intended to complement, and not replace, the regulatory roles of both state and federal agencies. Under this Ordinance, when excavating and obstructing the Public Rights-of-Way, the Company will bear financial responsibility for their work to the extent provided herein. Finally, this Ordinance provides for recovery of the City’s reasonable out-of-pocket costs related to the Company’s use of the Public Rights-of-Way, subject to the terms and conditions herein.

**SECTION 102 AUTHORITY TO MANAGE THE RIGHT OF WAY**

This Ordinance granting a telecommunications franchise is created to manage and regulate the Company’s use of the City’s Public Rights-of-Way along city roads pursuant to the authority granted to the City under Sections 15.2-2015, 56-460, and 56-462(A) of the Virginia Code and other applicable state and federal statutory, administrative and common law.

This Ordinance and any right, privilege or obligation of the City or Company hereunder, shall be interpreted consistently with state and federal statutory, administrative and common law, and such statutory, administrative or common law shall govern in the case of conflict. This Ordinance shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce other general ordinances necessary to protect the health, safety, and welfare of the public.

## **SECTION 103 DEFINITIONS**

**103.1 CITY** means the City of Charlottesville, Virginia, a municipal corporation.

**103.2 COMPANY** means FiberLight of Virginia, LLC, including its successors and assigns.

**103.3 DIRECTOR** means the Director of Public Works for the City of Charlottesville.

**103.4 FACILITY** means any tangible asset in the Public Rights-of-Way required to provide utility service, which includes but is not limited to; cable television, electric, natural gas, telecommunications, water, sanitary sewer and storm sewer services.

**103.5 PATCH** means a method of pavement replacement that is temporary in nature.

**103.6 PAVEMENT** means any type of improved surface that is within the Public Rights-of-Way including but not limited to any improved surface constructed with bricks, pavers, bituminous, concrete, aggregate, or gravel or some combination thereof.

**103.7 PUBLIC RIGHTS-OF-WAY or PROW** means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City, paved or otherwise. This definition does not include a state highway system regulated pursuant to the direction of the Commonwealth Transportation Board.

## **ARTICLE II**

### **SECTION 201 INITIAL INSTALLATION**

The initial installation of equipment, lines, cables or other Facilities by the Company shall be a mixture of overhead and underground in the Public Rights-of-Way as depicted in Exhibit A, attached hereto, and as may have been or may hereafter be modified, and incorporated by reference.

### **SECTION 202 SUBSEQUENT INSTALLATION**

#### **202.1 SUBSEQUENT INSTALLATION MADE PURSUANT TO AN APPROVED PROW PLAN:**

Additional Facilities installed within the PROW may be placed overhead or underground pursuant to an approved request by the Company made pursuant to Article III, and in accordance with such generally applicable ordinances or regulations governing such



installations that have been adopted by the City from time to time.

**202.2 GENERAL PREFERENCE FOR UNDERGROUND FACILITIES:** As a matter of policy, the City prefers that the installation of any Facility within the PROW occur underground. Notwithstanding this preference, the City recognizes that in some circumstances the placement of Facilities underground may not be appropriate. Any additional installation of lines, cable, equipment or other Facilities shall be underground unless it shall be determined by the Director, pursuant to Article III, that it is not feasible to do so.

**202.3 INSTALLATION OF OVERHEAD FACILITIES:** Where a subsequent PROW plan is approved for overhead installation, the Company shall use its existing Facilities, or those of another utility where available. If the PROW plan calls for overhead installation and existing Facilities cannot accommodate the proposed installation, the Company will clearly indicate in the PROW plan its intended placement of new Facilities for the Director's review and consideration pursuant to Article III.

**202.4 FUTURE ORDINANCES:** Nothing herein shall be construed to limit the authority of the city to adopt an ordinance that will restrict the placement of overhead lines for all utilities using the PROW within a defined area of the City.

**202.5 CONDITIONS FOR RELOCATING UNDERGROUND:** The Company agrees that if, at some future time, the telephone and other utility lines on the posts, poles, and other overhead apparatus upon which the Company has placed some or all of its Facilities in the City's PROWs are relocated underground, the Company will also, at such time, relocate its Facilities on those posts, poles, and other overhead apparatus underground at its expense. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

## **SECTION 203 INSPECTION BY THE CITY**

The Company shall make the work-site available to the City and to all others as authorized by law for inspection at all reasonable times, during the execution of, and upon completion of, all work conducted pursuant to this Ordinance.

## **SECTION 204 AUTHORITY OF THE CITY TO ORDER CESSATION OF EXCAVATION**

At the time of inspection, or any other time as necessary, the City may order the immediate cessation and correction of any work within the Public Rights-of-Way which poses a serious threat to the life, health, safety or well being of the public.

## **SECTION 205 LOCATION OF POSTS, POLES, CABLES AND CONDUITS**

In general, all posts, poles, wires, cables and conduits which the Company places within the Public Rights-of-Way pursuant to this Ordinance shall in no way permanently obstruct or interfere with public travel or the ordinary use of, or the safety and convenience of persons traveling through, on, or over, the Public Rights-of-Way within the City of Charlottesville.

## **SECTION 206 OBSTRUCTION OF THE PROW**

Generally, any obstruction of the PROW is limited to the manner clearly specified within an approved PROW plan.

**206.1 REMOVAL OF OBSTRUCTIONS:** Obstructions of the PROW not authorized by an approved PROW plan shall be promptly removed by the Company upon receipt of notice from the City. The City's notice of the Obstruction will include a specified reasonable amount of time determined by the Director for the Company's removal of the obstruction, given the location of the obstruction and its potential for an adverse effect on the public's safety and the public's use of the PROW. If the Company has not removed its obstruction from the PROW within the time designated within the notice, the City, at its election, will make such removal and the Company shall pay to the City its reasonable costs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the removal and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to administrative overhead, mobilization, material, labor, and equipment related to removing the obstruction.

**206.2 NO OBSTRUCTION OF WATER:** The Company shall not obstruct the PROW in a manner that interferes with the natural free and clear passage of water through the gutters, culverts, ditches tiles or other waterway.

**206.3 PARKING, LOADING AND UNLOADING OF VEHICLES SHALL NOT OBSTRUCT THE PROW:** Private vehicles of those doing work for the Company in the PROW must be parked in a manner that conforms to the City's applicable parking regulations. The loading or unloading of trucks must be done in a manner that will not obstruct normal traffic within the PROW, or jeopardize the safety of the public who use the PROW.

## **ARTICLE III**

### **SECTION 301 ADMINISTRATION OF THE PUBLIC RIGHTS OF WAY**

The Director is the principal City official responsible for the administration of this Ordinance granting a telecommunications franchise to the Company and any of its PROW Plans. The Director may delegate any or all of the duties hereunder to an authorized representative.

### **SECTION 302 SUBMISSION OF PROW PLAN**

At least thirty (30) days before beginning any installation, removal or relocation of underground or overhead Facilities, the Company shall submit detailed plans of the proposed action to the Director for his or her review and approval, which approval shall not unreasonably be withheld, conditioned, or delayed.

### **SECTION 303 GOOD CAUSE EXCEPTION**

**303.1 WAIVER:** The Director, at his or her sole judgment, is authorized to waive the thirty (30) day requirement in Section 302 for good cause shown.

**303.2 EMERGENCY WORK:** The Company shall immediately notify the Director of any event regarding its facilities that it considers to be an emergency. The Company will proceed to take whatever actions are necessary to respond to the emergency, or as directed by the Director.

If the City becomes aware of an emergency regarding the Company's facilities, the City will attempt to contact the Company's emergency representative as indicated in Section 1202. In any event, the City shall take whatever action it deemed necessary by the Director to make an appropriate and reasonable response to the emergency. The costs associated with the City's respond shall be borne by the person whose facilities occasioned the emergency.

### **SECTION 304 DECISION ON PROW PLAN BY THE DIRECTOR**

**304.1 DECISION:** The Director, or his or her authorized representative, shall, within thirty (30) days, either approve the Company's plans for proposed action as described in Section 302 or inform the Company of the reasons for disapproval. The Company shall designate a responsible contact person with whom officials of the Department of Public Works can communicate on all matters relating to equipment installation and maintenance.

**304.2 APPEAL:** Upon written request within thirty (30) days of the Director's decision, the Company may have the denial of a PROW Plan reviewed by the City Manager. The City Manager will schedule its review of the Director's decision within forty-five (45) days of receipt of such a request. A decision by the City Manager will be in writing and supported by written findings establishing the reasonableness of its decision.

## **SECTION 305 MAPPING DATA**

Upon completion of each project within the Public Rights-of-Way pursuant to this Ordinance, the Company shall provide to the City such information necessary to maintain its records, including but not limited to:

- (a) location and elevation of the mains, cables, conduits, switches, and related equipment and other Facilities owned by the Company located in the PROW, with the location based on (i) offsets from property lines, distances from the centerline of the Public Rights-of-Way, and curb lines; (ii) coordinates derived from the coordinate system being used by the City; or (iii) any other system agreed upon by the Company and the City;
- (b) the outer dimensions of such Facilities; and
- (c) a description of above ground appurtenances.

## **ARTICLE IV**

### **SECTION 401 COMPLIANCE WITH ALL LAW AND REGULATIONS**

Obtaining this telecommunications franchise shall in no way relieve the Company of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any applicable state or federal rule, law or regulation. The Company shall comply with and fulfill all generally applicable laws and regulations, including ordinances, regulations and requirements of the City, regarding excavations and any other work in or affecting the Public Rights-of-Way. The Company shall perform all work in conformance with all applicable codes and established rules and regulations, and it is responsible for all work conducted by the Company, another entity or person acting on its behalf pursuant to this Ordinance in the Public Rights-of-Way.

## **ARTICLE V**

### **SECTION 501 RELOCATION OF COMPANY FACILITIES WITHIN THE PUBLIC RIGHTS-OF WAY**

Upon written notice from the Director of a planned and authorized improvement or alteration of City sidewalks, streets or other property, or of a proposed relocation of any City-owned utilities that necessitate relocation of some or all of the Facilities owned by the Company and lines to accommodate same, the Company shall relocate at its own expense any such Facilities within one hundred eighty (180) days of receipt of the notice. At Company's request, the city may consent to a longer period, such consent not to be unreasonably or discriminatorily withheld, conditioned or delayed. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

## **SECTION 502 RIGHTS-OF WAY PATCHING AND RESTORATION**

**502.1 RESTORATION STANDARD:** Where the Company disturbs or damages the Public Rights-of-Way, the Director shall have the authority to determine the manner and extent of the restoration of the Public Rights-of-Way, and may do so in written procedures of general application or on a case-by-case basis. In exercising this authority, the Director will consult with any state or federal standards for rights-of-way restoration and shall be further guided by the following considerations:

- (a) the number, size, depth and duration of the excavations, disruptions or damage to the Public Rights-of-Way;
- (b) the traffic volume carried by the Public Rights-of-Way; the character of the neighborhood surrounding the right-of-way;
- (c) the pre-excavation condition of the Public Rights-of-Way and its remaining life expectancy;
- (d) the relative cost of the method of restoration to the Company balanced against the prevention of an accelerated deterioration of the right-of-way resulting from the excavation, disturbance or damage to the Public Rights-of-Way; and
- (e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the Public Rights-of-Way that would otherwise take place.

**502.2 TEMPORARY SURFACING:** The Company shall perform temporary surfacing patching and restoration including, backfill, compaction, and landscaping according to standards determined by, and with the materials determined by, the Director.

**502.3 TIMING:** After any excavation by the Company pursuant to this Ordinance, the patching and restoration of the Public Rights-of-Way must be completed promptly and in a manner determined by the Director.

**502.4 GUARANTEES:** The Company guarantees its restoration work and shall maintain it for twenty-four (24) months following its completion. The previous statement notwithstanding, the Company will guarantee and maintain plantings and turf for twelve (12) months. During these maintenance periods, the Company shall, upon notification by the City, correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of notice from the Director, within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure. Notwithstanding the foregoing, the Company's guarantees set forth hereunder concerning restoration and maintenance, shall not apply to the extent another company, franchisee, licensee, permittee, other entity or person, or the City disturbs or damages the same area, or a portion thereof, of the Public Rights-of-Way.

**502.5 DUTY TO CORRECT DEFECTS:** The Company shall correct defects in patching, or restoration performed by it or its agents. Upon notification from the City, the Company shall correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of the notice from the Director within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure.

**502.6 FAILURE TO RESTORE:** If the Company fails to restore the Public Rights-of-Way in the manner and to the condition required by the Director pursuant to Section 502.5, or fails to satisfactorily and timely complete all restoration required by the Director pursuant to the foregoing, the City shall notify the Company in writing of the specific alleged failure or failures and shall allow the Company at least ten (10) days from receipt of the notice to cure the failure or failures, or to respond with a plan to cure. In the event that the Company fails to cure, or fails to respond to the City's notice as provided above, the City may, at its election, perform the necessary work and the Company shall pay to the City its reasonable costs for such restoration within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative overhead, mobilization, material, labor, and equipment related to such restoration.

**502.7 DAMAGE TO OTHER FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY:** The Company shall be responsible for the cost of repairing any Facilities existing within the Public Rights-of-Way that it or the Facilities owned by the Company damage. If the Company damages the City's Facilities within the Public Rights-of-Way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, the Company shall correct the damage within a prompt period after receiving written notification from the City. If the Company does not correct the City's damaged Facilities pursuant to the foregoing, the City may make such repairs as necessary and charge all of the reasonable, actual and documented costs of such repairs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within such thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative overhead, mobilization, material, labor, and equipment related to such repair.

**502.8 DIRECTOR'S STANDARD:** All determinations to be made by the Director with respect to the manner and extent of restoration, patching, repairing and similar activities under the franchise granted by this Ordinance, shall be reasonable and shall not be unreasonably conditioned, withheld, or delayed. The Company may request additional time to complete restoration, patching, repair, or other similar work as required under the franchise granted by this Ordinance, and the Director shall not unreasonably withhold, condition, or delay consent to such requests.

## ARTICLE VI

### SECTION 601 INDEMNIFICATION AND LIABILITY

**601.1 SCOPE OF INDEMNIFICATION:** Subject to the following, the Company agrees and binds itself to indemnify, keep and hold the City council members, officials and its employees free and harmless from liability on account of injury or damage to persons, firms or corporations or property growing out of or directly or indirectly resulting from:

- (a) the Company's use of the streets, alleys, highways, sidewalks, rights-of-way and other public places of the City pursuant to the franchise granted by this Ordinance;
- (b) the acquisition, erection, installation, maintenance, repair, operation and use of any poles, wires, cables, conduits, lines, manholes, facilities and equipment by the Company, its authorized agents, subagents, employees, contractors or subcontractors; or
- (c) the exercise of any right granted by or under the franchise granted by this Ordinance or the failure, refusal or neglect of the Company to perform any duty imposed upon or assumed by the Company by or under the franchise granted by this Ordinance.

**601.2 DUTY TO INDEMNIFY, DEFEND AND HOLD HARMLESS:** If a suit arising out of subsection (a), (b), (c) of Section 601.1, claiming such injury, death, or damage shall be brought or threatened against the City, either independently or jointly with the Company, the Company will defend, indemnify and hold the City harmless in any such suit, at the cost of the Company, provided that the City promptly provides written notice of the commencement or threatened commencement of the action or proceeding involving a claim in respect of which the City will seek indemnification hereunder. The Company shall be entitled to have sole control over the defense through counsel of its own choosing and over settlement of such claim provided that the Company must obtain the prior written approval of City of any settlement of such claims against the City, which approval shall not be unreasonably withheld, conditioned or delayed more than thirty (30) days. If, in such a suit, a final judgment is obtained against the City, either independently or jointly with the Company, the Company will pay the judgment, including all reasonable costs, and will hold the City harmless therefrom.

### SECTION 602 WAIVER BY THE CITY

The City waives the applicability of these indemnification provisions in their entirety if it:

- (a) elects to conduct its own defense against such claim;

- (b) fails to give prompt notice to the Company of any such claim such that the Company's ability to defend against such claim is compromised;
- (c) denies approval of a settlement of such claim for which the Company seeks approval; or
- (d) fails to approve or deny a settlement of such claim within thirty (30) days of the Company seeking approval.

## **SECTION 603 INSURANCE**

**603.1** The Company shall also maintain in force a comprehensive general liability policy in a form satisfactory to the City Attorney, which at minimum must provide:

- (a) verification that an insurance policy has been issued to the Company by an insurance company licensed to do business in the State of Virginia, or a form of self insurance acceptable to the City Attorney;
- (b) verification that the Company is insured against claims for personal injury, including death, as well as claims for property damage arising out of (i) the use and occupancy of the Public Rights-of-Way by the Company, its agents, employees and permittees, and (ii) placement and use of Facilities owned by the Company in the Public Rights-of-Way by the Company, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;
- (c) verification that the City Attorney will be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
- (d) verification that comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City Attorney in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Ordinance; and
- (e) verification that the policy has a combined single limit coverage of not less than two million dollars (\$2,000,000).

The policy shall include the City as an additional insured party, and the Company shall provide the City Attorney with a certificate of such coverage before execution of this franchise.

**603.2** The Company shall also require similar indemnification and insurance coverage from any contractor working on its behalf in the public right-of-way.



## **SECTION 604 NEGLIGENCE AND INTENTIONAL ACTS**

Nothing herein contained shall be construed to render the Company liable for or obligated to indemnify, defend and hold harmless the City, its agents, or employees, for the negligence or intentional acts of the City, its Council members, its agents or employees, or a permittee of the City.

## **ARTICLE VII**

### **SECTION 701 GENERAL REQUIREMENT OF A PERFORMANCE BOND**

Prior to the Effective Date of this Ordinance, the Company has deposited with the City a Performance Bond made payable to the city in the amount of twenty-five thousand dollars (\$25,000). The bond shall be written by a corporate surety acceptable to the City and authorized to do business in the Commonwealth of Virginia. The Performance Bond shall be maintained at this amount through the term of this franchise.

### **SECTION 702 CHANGED AMOUNT OF THE PERFORMANCE BOND**

At any time during the Term, the City may, acting reasonably, require or permit the Company to change the amount of the Performance Bond if the City finds that new risk or other factors exist that reasonably necessitate or justify a change in the amount of the Performance Bond. Such new factors may include, but not be limited to, such matters as:

- (a) material changes in the net worth of the Company;
- (b) changes in the identity of the Company that would require the prior written consent of the City;
- (c) material changes in the amount and location of Facilities owned by the Company;
- (d) the Company's recent record of compliance with the terms and conditions of this Ordinance; and
- (e) material changes in the amount and nature of construction or other activities to be performed by the Company pursuant to this Ordinance.

### **SECTION 703 PURPOSE OF PERFORMANCE BOND**

The Performance Bond shall serve as security for:

- (a) the faithful performance by the Company of all terms, conditions and obligations of this Ordinance;

- (b) any expenditure, damage or loss incurred by the City occasioned by the Company's failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Ordinance;
- (c) payment of compensation required by this Ordinance;
- (d) the payment of premiums for the liability insurance required pursuant to this Ordinance ;
- (e) the removal of Facilities owned by the Company from the Streets at the termination of the Ordinance, at the election of the City, pursuant to this Ordinance;
- (f) any loss or damage to the Streets or any property of the City during the installation, operation, upgrade, repair or removal of Facilities by the Company;
- (g) the payment of any other amounts that become due to the City pursuant to this Ordinance or law;
- (h) the timely renewal of any letter of credit that constitutes the Performance Bond; and
- (i) any other costs, loss or damage incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Ordinance.

**SECTION 704 FEES OR PENALTIES FOR VIOLATIONS OF THE ORDINANCE**

**704.1 FEE OR PENALTY:** The Company shall be subject to a fee or a penalty for violation of this Ordinance as provided for in applicable law.

**704.2 APPEAL:** The Company may, upon written request within thirty (30) days of the City's decision to assess a fee or penalty and for reasons of good cause, ask the City to reconsider its imposition of a fee or penalty pursuant to this Ordinance unless another period is provided for in applicable law. The City shall schedule its review of such request to be held within forty-five (45) days of receipt of such request from the Company. The City's decision on the Company's appeal shall be in writing and supported by written findings establishing the reasonableness of the City's decision. During the pendency of the appeal before the City or any subsequent appeal thereafter, the Company shall place any such fee or penalty in an interest-bearing escrow account. Nothing herein shall limit the Company's right to challenge such assessment or the City's decision on appeal, in a court of competent jurisdiction.

**ARTICLE VIII**

**SECTION 801 COMPENSATION/PROW USE FEE.**

The City reserves the right to impose at any time on the Company consistent with Section 253(c) of the Communications Act of 1934, as amended:

- (a) a PROW Use Fee in accordance with Section 56-468.1(G) of the Code of Virginia, and/or
- (b) any other fee or payment that the City may lawfully impose for the occupation and use of the Streets.

The Company shall be obligated to remit the PROW Use Fee and any other lawful fee enacted by the City, so long as the City provides the Company and all other affected certificated providers of local exchange telephone service appropriate notice of the PROW Use Fee as required by Section 56-468.1(G) of the Code of Virginia. If the PROW Use Fee is eliminated, discontinued, preempted or otherwise is declared or becomes invalid, the Company and the City shall negotiate in good faith to determine fair and reasonable compensation to the City for use of the Streets by the Company for Telecommunications.

## **SECTION 802 RESERVED**

## **SECTION 803 NO CREDITS OR DEDUCTIONS**

The compensation and other payments to be made pursuant to Article VIII: (a) shall not be deemed to be in the nature of a tax, and (b) except as may be otherwise provided by Section 56-468.1 of the Code of Virginia, shall be in addition to any and all taxes or other fees or charges that the Company shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company.

## **SECTION 804 REMITTANCE OF COMPENSATION/LATE PAYMENTS, INTEREST ON LATE PAYMENTS**

(1) If any payment required by this Ordinance is not actually received by the City on or before the applicable date fixed in this Ordinance, or (2), in the event the City adopts an ordinance imposing a PROW Use Fee, if such Fee has been received by the Company from its customers, and has not been actually received by the City on or before the applicable date fixed in this Ordinance or thirty (30) days after receipt of the PROW Use Fee from its customers, whichever is later, then the Company shall pay interest thereon, to the extent permitted by law, from the due date to the date paid at a rate equal to the rate of interest then charged by the City for late payments of real estate taxes.

## **ARTICLE IX**

## **SECTION 901 RESERVATION OF ALL RIGHTS AND POWERS**

The City reserves the right by ordinance or resolution to establish any reasonable regulations for the convenience, safety, health and protection of its inhabitants under its police powers, consistent with state and federal law. The rights herein granted are subject to the exercise of such police powers as the same now are or may hereafter be conferred upon the City. Without

limitation as to the generality of the foregoing the City reserves the full scope of its power to require by ordinance substitution of underground service for overhead service, or the transfer of overhead service from the front to the rear of property whenever reasonable in all areas in the City and with such contributions or at such rates as may be allowed by law.

Notwithstanding anything herein to the contrary, nothing herein shall be construed to extend, limit or otherwise modify the authority of the City preserved under Sections 253 (b) and (c) of the Communications Act of 1934, as amended. Nothing herein shall be construed to limit, modify, abridge or extend the rights of the Company under the Communications Act of 1934, as amended.

## **SECTION 902 SEVERABILITY**

If any portion of this Ordinance is for any reason held to be invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

## **ARTICLE X**

### **SECTION 1001 MAINTENANCE OBLIGATION**

The Company will maintain the poles, wires, cable, conduits, lines, manholes, equipment and other Facilities it owns within the City's PROW in good order and operating condition throughout the term of the franchise granted by this Ordinance.

### **SECTION 1002 TREE TRIMMING**

Should the Company install any overhead lines, it shall have the authority to trim trees upon or overhanging the streets, alleys, walkways or Public Rights-of-Way to prevent the branches of such trees from interfering with its lines or other Facilities. However, all such trimmings shall be performed in a safe and orderly manner under the general direction of the Director of Public Works or his or her designee and in compliance with the pruning standards of the National Arborists Association as currently in effect.

## **ARTICLE XI**

### **SECTION 1101 INITIAL TERM OF TELECOMMUNICATIONS FRANCHISE**

The term of the franchise granted by this Ordinance shall be for a period of five (5) years from the effective date of this Ordinance.

**SECTION 1102 APPLICATION FOR NEW TELECOMMUNICATIONS FRANCHISE**

If the Company wishes to maintain its equipment within the City and to continue the operation of the system beyond the term of the franchise granted by this Ordinance, it shall give written notice to the City at least one hundred twenty (120) days before expiration of the franchise granted by this Ordinance, stating that it wishes to apply for a new franchise. Such application shall include a report of the location of the Facilities owned by the Company within the City's PROW, and a statement as to whether the Company has complied with the provisions of this Ordinance.

**SECTION 1103 OPERATION OF FACILITIES OWNED BY THE COMPANY WHILE RENEWAL IS PENDING**

Upon a timely request by the Company prior to the expiration of its initial franchise, the Company shall be permitted to continue operations of the Facilities owned by the Company within the City under the terms of the franchise granted by this Ordinance until the City acts. Nothing herein shall be construed to grant the Company a perpetual franchise interest.

**ARTICLE XII**

**SECTION 1201 NOTICE**

All notices, except for in cases of emergencies, required pursuant to the franchise granted by this Ordinance shall be in writing and shall be mailed or delivered to the following address:

**To the Company:**

FiberLight of Virginia, LLC  
Attn: General Counsel  
11700 Great Oaks Way, Suite 100  
Alpharetta, Georgia 30022

**To the City:**

City of Charlottesville  
Attn: City Manager  
605 East Main Street  
Charlottesville, VA 22902

**Copy to:** City of Charlottesville

Attn: City Attorney  
605 East Main Street  
Charlottesville, VA 22902

All correspondence shall be by registered mail, certified mail or regular mail with return receipt requested; and shall be deemed delivered when received or refused by the addressee. Each Party may change its address above by like notice.

## **SECTION 1202 EMERGENCY NOTIFICATION**

Notices required pursuant to Section 303.2 shall be made orally and by facsimile to the following:

### **To the Company:**

The duty supervisor number for after hours/weekends/holidays: Duty Supervisor - 434-973-7951

Area Plant Supervisor for weekdays 7:30 to 5PM - 434-971-4307 Cell 434-872-3263 (Wayne Scupp)

Escalations to Area Operations Manager - Office 434-971-2539 Cell 434-962-3130 (Randy Hudson)

### **To the City:**

Gas Dispatchers  
(434) 970-3800 (office)  
Emergency (434)293-9164 (leaks)  
(434) 970-3817 (facsimile)

Judith Mueller, Director of Public Works  
(434) 970-3301 (office)  
(434) 970-3817 (facsimile)

## **SECTION 1203 REGISTRATION OF DATA**

The Company, including any subleasee or assigns, must keep on record with the City the following information:

- (a) Name, address and e-mail address if applicable, and telephone and facsimile numbers;
- (b) Name, address and e-mail address if applicable, and telephone and facsimile numbers of a local representative that is available for consultation at all times. This information must include how to contact the local representative in an emergency; and
- (c) A certificate of insurance as required under Article VI, Section 603 of this telecommunications franchise, and upon prior request a copy of the insurance policy.

The Company shall update all of the above information with the City within fifteen (15) days following its knowledge of any change.

## **ARTICLE XIII**

### **SECTION 1301 TERMINATION OF TELECOMMUNICATIONS FRANCHISE**

The franchise granted by this Ordinance may be terminated:

- (a) by the Company, at its election and without cause, by written notice to the City at least sixty (60) days prior to the effective date of such termination; or
- (b) by either the Company or the City, after thirty (30) days written notice to the other party of the occurrence or existence of a default of the franchise granted by this Ordinance, if the defaulting party fails to cure or commence good faith efforts to cure, such default within sixty (60) days after delivery of such notice.

Notwithstanding the provisions of this Section, the terms and conditions of the franchise granted by this Ordinance pertaining to indemnification shall survive a termination under this Section.

## **ARTICLE XIV**

### **SECTION 1401 REMOVAL OF FACILITIES FROM THE PUBLIC RIGHTS-OF-WAY**

The Company shall remove all Facilities owned by the Company from the streets, alleys and public places of the City at the expense of the Company within six (6) months after the termination, abandonment, or expiration of this franchise granted by this Ordinance, or by such reasonable time to be prescribed by the City Council, whichever is later. No such removal will be required while any renewal requests as provided for in Section 1102 and Section 1103, are pending before the City. If such renewal request is denied, the six (6) month period provided above shall commence on the date of denial or expiration, whichever is later. The City reserves the right to waive this requirement, as provided for in Section 1402 herein. The City shall grant the Company access to the Public Rights-of-Way in order to remove its telecommunications Facilities owned by the Company pursuant to this paragraph.

### **SECTION 1402 ABANDONMENT OF FACILITIES OWNED BY THE COMPANY IN THE PUBLIC RIGHTS-OF-WAY**

The telecommunications Facilities owned by the Company may be abandoned without removal upon request by the Company and approval by the City. This Section survives the expiration or termination of this franchise granted by this Ordinance.

## **ARTICLE XV**

### **SECTION 1501 PRIOR WRITTEN CONSENT FOR ASSIGNMENT**

The franchise granted by this Ordinance shall not be assigned or transferred without the expressed written approval of the City, which shall not be unreasonably or discriminatorily conditioned, withheld or delayed.

In addition, the City agrees that nothing in this Ordinance shall be construed to require Company

to obtain approval from the City in order to lease any Facilities owned by the Company or any portion thereof in, on, or above the PROW, or grant an indefeasible right of use (“IRU”) in the Facilities owned by the Company, or any portion thereof, to any entity or person. The lease or grant of an IRU in such Facilities owned by the Company, or any portion or combination thereof, shall not be construed as the assignment or transfer of any franchise rights granted under this Ordinance.

**SECTION 1502 SUCCESSORS AND ASSIGNS**

Notwithstanding Section 1501, the Company may assign, transfer, or sublet its rights, without the consent of the City, to any person or entity that controls, is controlled by or is under common control with the Company, any company or entity with which or into which the Company may merge or consolidate, to any lender of the Company provided the City is advised of the action prior to enactment. Any successor(s) of the Company shall be entitled to all rights and privileges of this franchise granted by this Ordinance and shall be subject to all the provisions, obligations, stipulations and penalties herein prescribed.

**ARTICLE XVI**

**SECTION 1601 NONEXCLUSIVE FRANCHISE**

Nothing in the franchise granted by this Ordinance shall be construed to mean that this is an exclusive franchise, as the City Council reserves the right to grant additional telecommunications franchises to other parties.

**ARTICLE XVII**

**SECTION 1701 ALL WAIVERS IN WRITING AND EXECUTED BY THE PARTIES**

Subject to the foregoing, any waiver of the franchise granted by this Ordinance or any of its provisions shall be effective and binding upon the Parties only if it is made in writing and duly signed by the Parties.

**SECTION 1702 NO CONSTRUCTIVE WAIVER RECOGNIZED**

If either Party fails to enforce any right or remedy available under the franchise granted by this Ordinance, that failure shall not be construed as a waiver of any right or remedy with respect to any breach or failure by the other Party. Nothing herein shall be construed as a waiver of any rights, privileges or obligations of the City or the Company, nor constitute a waiver of any remedies available at equity or at law.



**ARTICLE XVIII**

**SECTION 1801 NO DISCRIMINATION**

The Company’s rights, privileges and obligations under the franchise granted by this Ordinance shall be no less favorable than those granted by the City to and shall not be interpreted by the City in a less favorable manner with respect to any other similarly situated entity or person or user of the City’s Public Rights-of-Way.

**ARTICLE XIX**

**SECTION 1901 FORCE MAJEURE**

Neither the Company nor the City shall be liable for any delay or failure in performance of any part of the franchise granted by this Ordinance from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions.

**ARTICLE XX**

**SECTION 2001 EFFECTIVE DATE**

This Ordinance shall be effective upon its passage.

Adopted by the Council of the City of Charlottesville on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

ACCEPTED: This franchise is accepted, and we agree to be bound by its terms and conditions.

FIBERLIGHT OF VIRGINIA, LLC

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

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**CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA**



Agenda Date:	February 21, 2017
Action Required:	Public Hearing/1 <sup>st</sup> Reading of Ordinance
Presenter:	Allyson Manson Davies, Deputy City Attorney
Staff Contacts:	Allyson Manson Davies, Deputy City Attorney Miriam Dickler, Director of Communications
<b>Title:</b>	<b>Comcast Cable Franchise Renewal Ordinance</b>

**Background:**

Comcast seeks a renewal of their Cable Franchise with the City of Charlottesville. The current franchise agreement between Comcast and Charlottesville has been in place since 2006 when Comcast assumed Adelphia's franchise. This franchise agreement expired in December of 2013 and has been subject to two extensions and ongoing renewal discussions. Negotiations for a renewal between the City and Comcast occurred over thirty-six months. After many hours of work and discussion, the City and Comcast negotiated the attached renewal agreement for Council's consideration.

The City's current cable system is owned and operated entirely by Comcast. This system was acquired from Adelphia in July of 2006. Comcast has provided cable services within the City since that time. The attached negotiated renewal reflects both federal and state law requirements as well as the specific interest of the City of Charlottesville. It is heavily influenced by Title 15.2, Chapter 21 of the Code of Virginia and the Communications Act of 1934, 47 U.S.C. §§ 521 *et seq.*

Charlottesville City Council's ability to engage in a cable franchise renewal derives from Virginia Code Section § 15.2-2108.20 *et seq.* Under state law the City has the following authority:

1. To enforce customer service standards in accordance with federal law;
2. To enforce standards as agreed upon by the cable operator through the terms of a negotiated cable franchise; and
3. To review basic tier cable charges and associated equipment and installation charges.

Rates for all other services are deregulated by federal law and the City does not have legal control over rate setting beyond review of basic tier rates. Further, Virginia Code § 15.2-2108.30 exempts cable franchise agreements from the requirement of advertisement and receipt of bids for renewals that do not exceed a combined 40 year term. In this circumstance, the City and Comcast are able to negotiate a franchise renewal. Since the federal communications laws require that all franchise agreements be non-exclusive, the City cannot deny renewal to an existing cable operator except for very specific criteria set forth under federal law and subject to judicial review.

The attached negotiated franchise does provide the City with several benefits. The agreement

provides Charlottesville's citizens with guarantees as to Comcast's service obligations, the provision of public, education and government (PEG) access channels, customer services standards (including a local office within the Charlottesville/Albemarle area), compliance with the City's local ordinances (such as the City's tree conservation requirements), and customer privacy rights. The most significant provisions of the agreement are enumerated in the discussion section below.

**Discussion:**

The cable franchise renewal agreement's most significant provisions are as follows:

**GRANT OF AUTHORITY & TERM:**

This franchise is non-exclusive, meaning that other cable companies can obtain a franchise to serve Charlottesville should they elect to enter the market. The term of this renewal is ten (10) years.

**CONSTRUCTION AND MAINTENANCE:**

Comcast is required to do all of the following: (1) to obtain, at its own cost and expense, all permits, licenses, or other forms of City approval or authorization for system maintenance; (2) to underground cable at their own expense where other utilities are underground; (3) to seek approval from the City for the installation of any new poles; and (3) to engage in tree trimming under the direction of the City Manager and in accordance with the City's tree conservation ordinance. Comcast is also required to provide two weeks' notice to the public of any construction that will significantly disturb or disrupt public property.

**SERVICE OBLIGATIONS & PUBLIC ACCESS CHANNELS:**

Under this agreement, cable service must be provided to residential dwelling units within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and to new homes within 150 feet of their distribution line. Comcast must also continue to offer service to those homes already subject to service within the Franchise Area.

Comcast agrees to provide at least three public access channels on the most basic tier of service. Comcast shall also continue to collect a "PEG Access Support Fee" of thirty-five cents (0.35) per subscriber per month which shall be remitted to the City. This will result in budgeted income to the City to fund capital expenses related to public access station equipment.

**FEES & CHARGES**

Under this agreement, Comcast is required to provide notice of changes to any fees, charges, deposits, terms or conditions for subscribers at least thirty (30) days prior to the effective date. Comcast may charge a reasonable administrative fee for a downgrade or disconnection of services under the agreement but Comcast cannot charge any expense beyond the reasonable cost of disconnection to City subscribers for disconnection of service without contracting to do so in advance.

**CUSTOMER SERVICE STANDARDS & PRIVACY:**

Pursuant to this agreement, Comcast is required to have a convenient local customer service and bill payment location for receiving payments, handling billing questions and providing for equipment replacement which shall be open during regular business hours.

Comcast agrees to maintain a local, toll-free or collect call telephone access line which will be available to City Subscribers twenty-four (24) hours a day, seven (7) days a week and under normal conditions the answer time shall not exceed thirty (30) seconds.

Under Normal Operating Conditions, Comcast is required by this agreement to complete standard installations within seven (7) business days after an order has been placed. Comcast will promptly work on service calls within twenty-four (24) hours after the interruption becomes known to Comcast. Comcast will set appointments with specificity within a time frame not to exceed four hours.

The Agreement requires fair billing and collection practices, allowing for a twenty day period before a delinquency is applied. In addition, the agreement requires Comcast to give subscribers additional time to fix the delinquency before a late fee is applied. The agreement also limits the amount of such late fee to no more than 10% of the billing amount as a one-time late fee.

### **SYSTEM CAPACITY & PROVISION OF SERVICE:**

The Franchise agreement requires Comcast to provide free cable services to several municipal and City school buildings, allowing for citizens to participate in activities at those locations without cost for access to cable services. Specifically the public buildings to be provided with cable services include all state accredited K-12 public school buildings, several City Hall locations, Tonsler Park Community Center, Carver Recreation Center, Key Recreation Center, Smith Aquatics & Fitness Center, The Jefferson-Madison Regional Library Main branch, The Jefferson-Madison Regional Library Gordon Avenue branch, and Meadow Creek Golf Course Club House. This section of the agreement also requires Comcast to provide signal quality services that are consistent with FCC's quality standards during the life of this agreement.

### **ENFORCEMENT:**

The City may impose penalties on Comcast for violations of the franchise, pursuant to a public hearing and an opportunity for Comcast to cure any violations.

The attached franchise agreement is comprehensive and affords the citizens of Charlottesville the opportunity to have several customer service amenities such as a local office, public, education and government access channels, protection for our tree conservation efforts, free cable services in our libraries and community centers, and toll free customer service access with prompt response requirements. Further, with this agreement in place, any new cable operator that enters the market will have to meet all of these requirements as well.

### **Alignment with Council Vision Areas and Strategic Plan:**

The cable franchise agreement promotes Council's vision for a Smart, Citizen-Focused Government.

The attached franchise places several customer service requirements on Comcast to ensure the delivery of quality services to the Citizens of Charlottesville. Comcast must comply with City codes and maintain the City's public rights of way and the tree canopy which enhances the City's neighborhoods.

Negotiating for free access to cable services in all of our schools allows the schools to provide cost effective access to appropriate television programming. The opportunity to access public, government

and educational access channels through Comcast creates additional opportunities for city students and all citizens to stay informed about government meetings and to engage in original programming. This franchise agreement promotes opportunities for effective communication and active citizen involvement through the guaranteed public access channels.

Council's strategic plan to foster strong connections is advanced by a franchise agreement that provides public access channels to inform the public and promote community engagement.

**Community Engagement:**

The original draft franchise agreement was posted on the City's web site over three years ago and the final draft was posted on February 15, 2017 and has been available for public comment. This item is before the City Council for a public hearing allowing for additional feedback on this proposed agreement. Further, the new franchise provides for ongoing public access, educational and government channels to promote ongoing community participation.

**Budgetary Impact:**

The new agreement requires Comcast to continue to collect and provide to City a "PEG Access Support Fee" of thirty five cents (\$0.35) per subscriber per month. The PEG Access Support Fee may be used by City solely to fund public, educational and government access-related capital expenditures. Currently this provides an annual budgeted payment to the City of \$47,500.

Comcast has also agreed to pay a one-time monetary grant to the City ("Community Interest Grant"). This Community Interest Grant shall be in the amount of fifteen thousand dollars (\$15,000) and shall be paid to the City within sixty days (60) of the effective date of the Franchise Agreement. The Community Interest Grant shall not be offset against the Virginia Communications Tax paid to the City and Comcast agrees not to pass the cost of this grant through to customers.

**Recommendation:**

It is staff's recommendation to approve this franchise agreement.

**Alternatives:**

1. City Council may postpone adopting this negotiated agreement and continuing operating with an expired franchise agreement.
2. Pursuant to 47 USCS § 546, City Council could issue a preliminary assessment that the franchise should not be renewed and comply with all of the administrative findings and requirements necessary to decline renewal. This course of action would require significant time and cost to the City up to and including protracted litigation.

**Attachments:**

Proposed Franchise Agreement

2017 CABLE FRANCHISE RENEWAL

By and between

City of Charlottesville, Virginia

And

Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia,  
LLC

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

**AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF CALIFORNIA/MARYLAND/PENNSYLVANIA/VIRGINIA/WEST VIRGINIA, LLC TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF CHARLOTTESVILLE, SETTING FORTH THE TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHT OF WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS OF THIS ORDINANCE.**

THIS CABLE FRANCHISE AGREEMENT (the “Franchise Agreement”) is entered into by and between the City of Charlottesville, Virginia (“City”), and Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC (“Comcast”) as of \_\_\_\_\_ (the “Effective Date”).

WHEREAS, Comcast requested to renew their nonexclusive Franchise (the “Prior Franchise”) with the City to own, construct, reconstruct, install, maintain, operate, dismantle, test, upgrade, repair, use, and/or remove a Cable System (as hereinafter defined) in the City; and

WHEREAS, the construction, installation, reconstruction, maintenance, operation, testing, upgrade, repair, use, and/or removal of such a system involves the occupation and placement of private commercial facilities along, under, over, above, through or across the Public Rights-of-Way or public land within the City; and

WHEREAS, the City has considered Comcast’s performance under the Prior Franchise, and the quality of service during the term of the Prior Franchise, has identified and negotiated for the future needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of Comcast, and Comcast’s plans for ongoing construction, operation and maintenance of the Cable System; and

WHEREAS, the City has determined such to be adequate, and to meet the foregoing requirements of 47 U.S.C. § 546 and

WHEREAS, the City held a full public hearing affording due process to all parties to discuss and consider the terms and conditions of the negotiated agreement between the City and Comcast set forth herein; and

WHEREAS, based on Comcast’s representations in this Franchise Agreement and subject to the terms and conditions set forth herein and the provisions of the Charlottesville City Code Chapter 6, the grant of a new nonexclusive Franchise to Comcast, to supersede the Prior Franchise, is consistent with the public interest; and

NOW, THEREFORE, in consideration of the City’s authority to grant a new Cable Franchise Agreement:

The City of Charlottesville does hereby ordain that it is in the public interest to permit the use of Public Right of Ways and easements for the construction, maintenance, and operation of a cable television system under the terms and conditions of this Franchise and that the public purpose of enhancement of the communication within the City, the expansion of communication opportunities outside the City, and the provisions programming of a truly local interest are achieved by the Franchise Agreement and the Agreement is hereby adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

## SECTION 1 - Definitions

For the purpose of this Franchise Agreement, all terms used herein shall have the meanings ascribed to them in Title 15.2, Chapter 21 of the Code of Virginia and the Communications Act of 1934, 47 U.S.C. §§ 521 et seq., as amended from time to time unless otherwise defined herein.

- 1.1. “**Act**” means the Communications Act of 1934.
- 1.2. “**Affiliate**” in relation to any person, means any person who owns or controls, is owned or controlled by, or is under common ownership or control with the Grantee, excluding any entity related to the operations of NBC Universal.
- 1.3. “**Applicable Laws**” means any applicable lawful federal, state or local law.
- 1.4. “**Basic Cable Service**” means any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §§ 522(3) or 543(b)(7).
- 1.5. “**Cable Act**” means the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§521 - 631.
- 1.6. “**Cable Operator**” means any Person or group of Persons that (i) provides Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or (ii) otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System.
- 1.7. “**Cable Service**” means the one-way transmission to Customers of (i) Video Programming or (ii) other programming service, and Customer interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Cable Service does not include any Video Programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).
- 1.8. “**Cable System or System**” means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Customers within the Franchise Area, except that such definition shall not include: a facility that serves only to retransmit the television signals of one or more television broadcast stations; a facility that serves only Customers without using any Public Right-of-Way; a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 USC 201 et seq., except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of Video Programming directly to Customers, unless the extent of such use is solely to provide Interactive On-demand Services; any facilities of any electric utility used solely for operating its electric systems; or an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.
- 1.9. “**Channel**” or “**Cable Channel**” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the FCC.
- 1.10. “**City**” means City of Charlottesville, a municipal corporation, in the State of Virginia, acting by and through its City Council, or its lawfully appointed designee.
- 1.11. “**City Council**” means the governing body of the City of Charlottesville, Virginia.
- 1.12. “**Complaint**” means any verbal or written inquiry, allegation or assertion made by a Subscriber to Grantee which raises an objection to Grantee’s performance under the Franchise. Notwithstanding the forgoing, an inquiry shall not be deemed a Complaint if it is resolved between the Grantee and a subscriber in one

conversation, phone call or other interface or if the inquiry is related solely and specifically to Grantee's rates or programming decisions (unless the inquiry alleges some malfeasance or negligent act).

- 1.13. "**Converter**" means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the Service.
- 1.14. "**Customer(s)**" means the City or any Person who is lawfully receiving, for any purpose or reason, Cable Service via the Grantee's Cable System, whether or not a fee is paid for such service.
- 1.15. "**Drop**" means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.
- 1.16. "**Effective Date**" means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the "Term of Franchise" Section herein.
- 1.17. "**FCC**" means the Federal Communications Commission or successor governmental entity thereto.
- 1.18. "**Force majeure**" means an event or events reasonably beyond the ability of Grantee to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Grantee's facilities are attached or to be attached or conduits in which Grantee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.
- 1.19. "**Franchise**" means an initial authorization, or renewal thereof, issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction or operation of a cable system, a telecommunications system, or other facility in the public rights-of-way, including either a negotiated cable franchise or an ordinance cable franchise.
- 1.20. "**Franchise Agreement**" or "**Agreement**" means this Agreement and any amendments or modifications hereto.
- 1.21. "**Franchise Area**" means the territorial boundary of the City, and shall also include any subsequent additions thereto, by annexation or other legal means. This shall not include certain of the property within the territorial boundary of the City belonging to the Rector and Visitors of the University of Virginia, over which, by law, the County of Albemarle retains jurisdiction.
- 1.22. "**Franchising Authority**" means the City of Charlottesville.
- 1.23. "**Franchise Fee**" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17.
- 1.24. "**Grantee**" means Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC.
- 1.25. "**Gross Revenue**" means all revenue, as determined in accordance with generally accepted accounting principles, that is actually received by the Grantee and derived from the operation of its Cable System to provide Cable Service in the Franchise Area; however, "Gross Revenue" shall not include:

- (i) refunds or rebates made to Customers or other third parties;
- (ii) any revenue which is received from the sale of merchandise over home shopping channels carried on the Cable System, but not including revenue received from home shopping channels for the use of the Cable Service to sell merchandise;
- (iii) any tax, fee, or charge collected by the Grantee and remitted to a governmental entity or its agent or designee, including without limitation a local public access or education group;
- (iv) program launch fees;
- (v) directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing;
- (vi) a sale of Cable Service for resale or for use as a component part of or for the integration into Cable Service to be resold in the ordinary course of business, when the reseller is required to pay or collect Franchise fees or similar fees on the resale of the Cable Service;
- (vii) revenues received by any Affiliate or any other Person in exchange for supplying goods or services used by the Grantee to provide Cable Service; and
- (viii) revenue derived from services classified as Noncable Service under federal law, including, without limitation, revenue derived from telecommunications services and information services, and any other revenues attributed by the Grantee to Noncable Service in accordance with rules, regulations, standards, or orders of the Federal Communications Commission.

- 1.26. “**Installation**” means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.
- 1.27. “**Interactive On-Demand Services**” means a service providing Video Programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing Video Programming prescheduled by the programming provider.
- 1.28. “**Normal Business Hours**” means those hours during which most similar businesses in the community are open to serve Customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.
- 1.29. “**Normal Operating Conditions**” means those service conditions which are within the control of the Cable Operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Cable Operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.
- 1.30. “**Other Programming Service**” means information that a cable operator makes available to all Subscribers generally.
- 1.31. “**Person(s)**” means any natural person(s) or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.
- 1.32. “**Public Right-of-Way(s)**” or “**Public Way(s)**” mean the surface of, and the space above and below, any public street, avenue, highway, boulevard, concourse, driveway, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, alley, right-of-way, including, but not limited to easements dedicated for compatible use
- 1.33. “**Public Property**” means any real property, other than a Street, owned by any governmental unit.
- 1.34. “**Franchise Area**” means the entire geographic area within the City as it is now constituted or may in the future be constituted.

- 1.35. “**Service Interruption**” means the loss of picture or sound on one or more cable channels.
- 1.36. “**Standard Installation**” means any residential Installation which can be completed using a Drop of one hundred fifty (150) feet or less.
- 1.37. “**Street**” means the surface of and the space above and below any public Street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or right-of-way now or hereafter held by the City which shall entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.
- 1.38. “**Subscriber**” means any Person who lawfully receives Cable Service via the System. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.
- 1.39. “**Transfer**” means any transaction in which (i) an ownership or other interest in the Grantee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that majority control of the Grantee is transferred; or (ii) the rights and obligations held by the Grantee under the Franchise are transferred or assigned to another Person or group of Persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the Franchise shall not include (a) transfer of an ownership or other interest in the Grantee to the parent of the Grantee or to another Affiliate of the Grantee; (b) transfer of an interest in the Franchise or the rights held by the Grantee under the Franchise to the parent of the Grantee or to another Affiliate of the Grantee; (c) any action that is the result of a merger of the parent of the Grantee; (d) any action that is the result of a merger of another Affiliate of the Grantee; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Grantee in the Franchise or the System used to provide Cable Service in order to secure indebtedness.
- 1.40. “**Video Programming**” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## **SECTION 2 - Grant of Authority**

- 2.1. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise, subject to the terms and conditions of this Franchise Agreement, the Code of Virginia, the City Code, the Cable Act, and all other Applicable Law. The Franchise will be for the period specified in Section 2.2 below, during which time the Grantee will receive the right and obligation to construct, reconstruct, operate and maintain a Cable System within the Public Ways within the Franchise Area to provide Cable Service. This Franchise Agreement neither authorizes the Grantee to use the Public Ways for purposes of providing any service other than Cable Service, nor prohibits the Grantee from doing so. The Grantee’s authority to provide noncable service shall be subject to Applicable Law. No privilege or power of eminent domain is bestowed by this grant, nor by the Agreement.
- 2.2. **Term of Franchise.**
- The term of the Franchise granted hereunder shall be no more than ten (10) years, and shall commence upon the Effective Date of \_\_\_\_\_ and shall expire on \_\_\_\_\_, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act.
- 2.3. **Reservation of Authority.**

Grantee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power.

Nothing in this Franchise Agreement shall:

- A. abrogate the right of the Franchising Authority to perform any public works or public improvements of any description,
- B. be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority, or
- C. be construed as a waiver or release of the rights of the Franchising Authority in and to the Public Ways.

All rights and privileges granted herein are subject to the police powers of the City and its rights under Applicable Laws and regulations to exercise its governmental powers to their full extent. The City reserves the right to exercise its governmental powers over Cable Systems granted by the Cable Act.

**2.4. Grant Not Exclusive.**

The Franchise and the right it grants to use and occupy Public Ways shall not be exclusive. The City specifically reserves the right to grant, at any time, additional franchises for a System in accordance with Applicable Laws, and other Franchises for similar uses or for other uses of Public Ways, or any portions thereof, to any Person. The City reserves the public right of ways for its own purposes.

**2.5. Additional Franchises.**

The City shall at all times abide by all Applicable Laws with respect to the granting of any additional cable television franchises within the City.

**2.6. Nature of Franchise.**

Upon acceptance, the Grantee's nonexclusive Franchise for the occupation and use of the Streets and Public Right-of-Ways within the City for the construction, operation, maintenance, upgrade, repair and removal of the System in accordance with the provisions of this Franchise shall be deemed to have been renewed. This Franchise shall authorize the Grantee to provide Cable Services as defined in this Franchise Agreement and as authorized by the Cable Act and to lease excess capacity upon its System to other third parties as it may contemplate from time to time.

**2.7. Authority for Use of Streets.**

- A. For the purpose of constructing, operating, and maintaining a System in the City, Grantee may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the Streets and Public Right-of-Ways within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.
- B. Thirty (30) days in advance of any reconstruction or rebuild of the System, Grantee shall, in each case, file plans with the City and receive written approval of such plans, which approval shall not be unreasonably withheld. Failure of City to take action on such plans within thirty (30) days of receipt of such plans shall be deemed approval of such plans.
- C. Grantee shall construct and maintain the System so as not to interfere with other uses of Streets. Grantee shall endeavor to make use of existing poles and other facilities available to Grantee where feasible.

Grantee shall widely publicize proposed construction work prior to commencement of that work. Except in cases of an emergency, Grantee shall individually notify in writing all residents reasonably affected by proposed underground work not less than forty-eight (48) hours prior to commencement of that work. Such notice shall include the Grantee's telephone number and the department to call regarding questions about the construction.

- D. Notwithstanding the above grant to use the Streets, no Street shall be used by Grantee if the City, reasonably determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used.

## **2.8. Competitive Equity.**

**2.8.1. Purposes.** The Grantee and the Franchising Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to residents of the Franchise Area; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to residents of the Franchise Area; promote local communications infrastructure investments and economic opportunities in the Franchise Area; and provide flexibility in the event of subsequent changes in the law, the Grantee and the Franchising Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

**2.8.2. New Video Service Provider.** Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider ("VSP") (i.) enters into any agreement with the Franchising Authority to provide video services to subscribers in the Franchise Area, or (ii.) otherwise begins to provide video services to subscribers in the Franchise Area (with or without entering into an agreement with the Franchising Authority), the Franchising Authority, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to subscribers in the Franchise Area under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the Franchising Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the Franchising Authority. If there is no written agreement or other authorization between the new VSP and the Franchising Authority, the Grantee and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the Franchise Area.

**2.8.3. Subsequent Change in Law.** If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to provide video services to Subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Franchising Authority may request from or impose on a VSP providing video services to subscribers in the Franchise Area, the Franchising Authority agrees that, notwithstanding any other provision of law, upon Grantee's written request the Franchising Authority shall: (i) permit the Grantee to provide video services to subscribers in the Franchise Area on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity between the Grantee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to Subscribers in the Franchise Area. The Franchising Authority and the Grantee shall implement the provisions of this Section within sixty (60) days after the Grantee submits a written request to the Franchising Authority. Notwithstanding any provision of law that imposes a time or

other limitation on the Grantee's ability to take advantage of the changed law's provisions, the Grantee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

**2.8.4. Effect on This Agreement.** Any agreement, authorization, right or determination to provide video services to subscribers under Section 2.8 herein shall supersede this Agreement, and the Grantee, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

**2.8.5. Video Service Provider.** The term "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple Video Programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multi-channel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

### **SECTION 3 - Construction and Maintenance of the Cable System**

#### **3.1. Permits and General Obligations.**

The Grantee shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. The Grantee shall comply with all Applicable Law regarding its construction and maintenance of the Cable System.

##### **3.1.1. Construction Code and Permits.**

- A. Grantee shall obtain all required permits from the City before commencing any work requiring a permit, including the opening or disturbance of any Street, Public Property or public easement within the City. Grantee shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in the City.
- B. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise and to make such tests it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of Applicable Laws.
- C. Nothing contained in this Franchise shall be construed to give or to withhold from Grantee the authority to enter upon or work on private property in areas not encumbered with public easements without the permission of the property owner.

**3.1.2. Repair of Streets and Property.** Any and all Streets or Public Property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly repaired by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's construction.

**3.1.3. Use of Existing Poles.** Grantee shall not erect, for any reason, any pole on or along any Street in an existing aerial utility System without the advance written approval the City. Grantee shall exercise its best efforts to negotiate the lease of pole space and facilities from the exiting owners for all aerial construction.

**3.1.4. Undergrounding of Cable.** Cable shall be installed underground at Grantee's expense where both the existing telephone and electrical utilities are already underground. Grantee may place cable underground in newly platted areas in concert with both the telephone and electrical utilities. In the event that telephone or electric utilities are reimbursed by the City or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as the telephone or electric utilities. In the event that the Grantee is required to place existing aerial plan underground, the



Grantee reserves its right to pass those costs through to Customers if and to the extent allowed by applicable law.

**3.1.5. Reservation of Street Rights.**

- A. Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating or repairing any sidewalk or other public work.
- B. All such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Grantee.
- C. If any such property of Grantee shall interfere with the construction or relocation, maintenance or repair of any Street or public improvement, whether it be construction, repair, maintenance, removal or relocation of a sewer, public sidewalk or water main, street or any other public improvement, thirty (30) days' notice shall be given to Grantee by the City and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by Grantee in such manner as shall be directed by the City so that the same shall not interfere with the said public work of the City, as determined by the City, and such removal or replacement shall be at the expense of Grantee herein. Should, however, any utility company, pursuant to any contract dated after the date of acceptance of this Franchise, be reimbursed for relocation of its facilities as part of the same work that requires Grantee to remove its facilities, Grantee shall be reimbursed upon the same terms and conditions as such utility.
- D. Nothing contained in this Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing any work connected with grading, re-grading or changing the line of any Street or public place or with the construction or reconstruction of any sewer or water System.

**3.1.6. Trimming of Trees.** Grantee shall have the authority to trim trees upon and hanging over Streets, Public Rights-of-Way, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee; provided, however, all trimming shall be done, at the expense of Grantee, in a safe and orderly manner and in accordance with the pruning standards currently in effect for heritage trees, as referenced in the City's Tree Preservation Ordinance, and all local ordinances which may, from time to time, be amended, including the City Zoning Ordinance and Charlottesville City Code Chapter 18, Article II, Sections 18.5 through 18.20, notwithstanding anything to the contrary.

**3.1.7. Street Vacation or Abandonment.** In the event any Street or portion thereof used by Grantee shall be vacated by the City or the use thereof discontinued by Grantee, during the term of this Franchise, Grantee shall, at Grantee's expense, forthwith remove its facilities therefrom unless specifically permitted by the City to continue the same, and on the removal thereof restore, repair or reconstruct the Street area where such removal has occurred, and place the Street area where such removal has occurred to a condition similar to that existing before such removal took place. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by the City to remove the facilities or to repair, restore, reconstruct, improve or maintain such Street portion, the City may do such work or cause it to be done, and the cost thereof as found and declared by the City shall be paid by Grantee as directed by the City and collection may be made by any available remedy.

**3.1.8. Movement of Facilities.** In the event it is necessary temporarily to move or remove any of Grantee's wires, cables, poles or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the Streets of the City, upon two (2) weeks' notice by the City to Grantee, Grantee shall move at the expense of the Person requesting the temporary removal such of his facilities as may be required to facilitate such movements. Any Service disruption provisions of this Franchise shall not apply in the event that the removal of Grantee's wires, cables, poles or other facilities results in temporary Service disruptions.

**3.2. Cable System Infrastructure Tests and Inspections.**

- A. The Grantee shall perform all tests necessary to demonstrate compliance with the requirements of the FCC and this Franchise Agreement, and to ensure that the Cable System components are operating as expected.
- B. In the event there is a consistent pattern demonstrated by Subscriber Complaints that evidences a potential problem with the Cable System, upon the City's request, Grantee shall conduct tests upon the City's request to ensure that its Cable System is functioning in compliance with applicable federal and state laws and regulations, and make the results of such test available to the City to verify such compliance. If any such test indicates that any part or component of the System fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from City, shall take corrective action, retest the locations and advise the City of the action taken and results achieved.
- C. The City may conduct inspections of construction areas and customer installations for the purpose of assessing compliance with the Grantee's construction and installation requirements, this Agreement and applicable law generally. Inspection does not relieve the Grantee of its obligation to build in compliance with all provisions of the Franchise.
- D. Specific testing and inspection requirements in this Agreement, including but not limited to those of Sections 3.2(A) through 3.2(C), shall not be read to preclude the City from exercising its general rights to inspect and require information.

**3.3. Publicizing Proposed Construction Work.**

The Grantee shall notify the public prior to commencing any proposed construction that will significantly disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally. The Grantee shall publicize proposed construction work at least two (2) weeks prior to commencement of any proposed non-emergency construction work by causing written notice of such construction work to be delivered to the Franchising Authority and by notifying those Persons most likely to be affected by the work in at least one (1) of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, or by publication in local newspapers.

**SECTION 4 - Service Obligations**

**4.1. General Service Obligations.**

The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile when measured from the nearest technically feasible connection point of the existing Cable System. Subject to this density requirement, Grantee shall offer Cable Service to all new homes or previously un-served homes located within 150 feet of the Grantee's distribution cable. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee shall continue to provide Cable Service to those homes

currently being served within the Franchise Area. The Grantee may impose an additional charge in excess of its regular installation charge for any Service installation requiring a drop or line extension in excess of the above standards. Such additional charge shall be paid by the developer or landowner or Customer requesting Cable Service in an area that does not meet the density and distance standards.

#### **4.2. Public, Educational and Governmental Access Channels.**

Use of channel capacity for public, educational and governmental (“PEG”) access shall be provided on the most basic tier of service offered by Grantee in accordance with the Cable Act, § 611, and as further set forth below. Grantee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use. Grantee shall not exercise editorial control over any public, educational, or governmental use of channel capacity, except Grantee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity.

**4.2.1. Public Access.** A “Public Access Channel” is a channel designated for noncommercial use by the public on a first-come, first-served, nondiscriminatory basis. A Public Access Channel may not be used to cablecast programs for profit, nonpolitical or commercial fundraising in any fashion.

**4.2.2. Educational Access.** An “Educational Access Channel” is a channel designated for noncommercial use by educational institutions such as public or private schools, community colleges, and universities, but not “home schools.”

**4.2.3. Government Access.** A “Governmental Access Channel” is a channel designated for noncommercial use by the Franchising Authority.

**4.2.4. Maintenance of Upstream Link for PEG.** Grantee shall maintain existing upstream link connecting the PEG origination building, located at City Hall 605 E. Main Street, Charlottesville Virginia, with the Grantee’s head-end for the transmission of programming on the public, educational, and government access channels. After construction of the link, the City shall bear the cost of any maintenance or relocation of the facility.

#### **4.2.5. SD PEG Channels.**

- A. The Grantee shall continue to make available for use by the City without charge, a minimum of one (1) activated Channel for non-commercial Governmental programming (hereinafter government access channel) and shall make available, without charge, a minimum of one (1) activated Channel for non-commercial public access programming (hereinafter community access channel) and shall make available a minimum of one (1) activated Channel for non-commercial educational programming for educational institutions within the Franchise Area, including Piedmont Virginia Community College and the University of Virginia (hereinafter educational access channel). Additionally, at such time as one (1) of the current PEG access channels is programmed with original and first repeat, non-character generated, non-alphanumeric, locally produced programming for a minimum of eight (8) hours per day for five (5) days per week for eight (8) consecutive weeks, Grantee shall provide the City with one (1) additional PEG access channel for government, community and/or education access. At such time as a second current access channel is programmed with original and first repeat, non-character generated, non-alphanumeric, locally produced programming for a minimum of eight (8) hours per day for five (5) days per week for eight (8) consecutive weeks Grantee shall provide the City with one (1) additional PEG access channel for government, community and/or education access. Grantee

shall be given one hundred eighty (180) days advance written notice before such channel must be made available.

- B. Grantee shall also provide Channel capacity on the System available for lease in accordance with 47 U.S.C. § 532.
- C. Grantor shall establish rules pertaining to the administration of the specially designated access Channels required in this section.
- D. The City may, at its choosing, provide staff to promote the access channels and access programming and provide, on a regular basis, technical assistance and guidance to access users who may require help and support in utilizing the access equipment and facilities.
- E. The Grantee shall monitor the PEG Access Channels for technical quality consistent with applicable FCC technical standards for standard definition broadcast and shall ensure that they are maintained at standards commensurate with those which apply to the Cable System's commercial channels for standard definition broadcast.

#### **4.2.6 Access Equipment and Facilities.**

- A. Any and all payments, costs and expenses made by Grantee pursuant to this Section shall not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542) and such payments shall not be deemed to be: (i) "payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the City by Grantee pursuant to Section 7 hereof, or (ii) part of the compensation to be paid to the City by Grantee pursuant to Section 7 hereof.
- B. The City shall also have the unilateral right to create, support, assist, or otherwise help to establish a non-profit separate access organization to provide non-commercial access programming. Nothing in this Section shall prohibit a private Person or entity from creating an independent non-profit access organization nor prohibit the City from providing funding in support of such access organization.
- C. All existing public access equipment, including but not limited to all equipment located at current and former public access centers and studios located at 1000 Rio Road and City Hall 605 East Main Street, is hereby deemed the property of the City of Charlottesville, notwithstanding any other documentation or agreement to the contrary.

#### **4.2.7 PEG Access Support Fee.**

- A. Grantee shall continue to provide to City a "PEG Access Support Fee" of thirty five cents (\$0.35) per subscriber per month. The PEG Access Support Fee may be used by City solely to fund public, educational and Government Access-related capital expenditures, unless and until changes to federal and State law allow for the PEG Access fee to be used for other expenditures, in which case the City may use such fees in accordance with changes in the law. Any and all payments by Grantee to City used for capital needs to support PEG access shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act 47 U.S.C. § 542).
- B. The PEG Access Support Fee shall be paid by the Grantee to City on a quarterly basis, together with a brief report from Grantee evidencing the amount remitted. City shall use the PEG Access Support Fee only for PEG Access costs as permitted by Applicable Laws and shall not use the fee

for any other purposes. Grantee has the right to collect this fee from Subscribers as permitted by law.

- C. City may, at any time, discontinue the imposition of the PEG Access Support Fee or reduce the amount of the fee to be paid by Grantee.
- D. The City acknowledges that, pursuant to Applicable Laws, certain franchise related costs, such as PEG contributions, are entitled to be passed through by the Grantee to the subscribers. The City will not challenge such pass-through so long as it is done in accordance with Applicable Laws.

**4.3. Emergency Alert System.**

Grantee shall maintain compliance with the Emergency Alert System requirements of the FCC and, the Virginia Emergency Alert System where applicable, in order that emergency messages may be distributed over the System.

**4.4. No Discrimination.**

Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Grantee are satisfied, unless such Person has engaged in theft of Grantee's Cable Services, vandalism of its property or harassment of its representatives. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

**4.5. Prohibition Against Reselling Service.**

No Person shall resell, without the express prior written consent of the Grantee, any Cable Service, program or signal transmitted over the Cable System by the Grantee.

**4.6. Technical Standards.**

The Cable System design, construction, and operation shall meet or exceed the technical standards set forth in 47 C.F.R. Part 76, as may from time to time be amended, and any other applicable technical standards. The results of grantee's tests required to be performed by the FCC shall be delivered to the City upon request.

**4.7. Leased Access Channels.**

The Grantee shall provide leased access channels as required by federal law.

**4.8. Home Wiring.**

The Grantee shall comply with 47 C.F.R. §§ 76.800-806 regarding cable inside wiring.

**4.9. Programming.**

The Grantee shall offer to all Customers a diversity of video programming services in accordance with federal law and in accordance with the meaning of 47 USC § 544(b)(2)(B).

**4.10. Programming Decisions.**

All programming decisions not related to PEG channels or broad diverse categories of programming shall be at the sole discretion of Grantee. In all cases Grantee shall provide a minimum of thirty (30) days advance written notice of any programming changes to all Subscribers and to the City.

## **SECTION 5 - Fees and Charges to Customers**

### **5.1. Notice of Changes.**

Not less than thirty (30) days prior to the effective date of any change in any fee, charge, deposit, term or condition (or such shorter period as may, upon a showing of good cause, be approved by the City), the Grantee shall provide written notice of the change to the Grantor and each affected Subscriber and other person utilizing the affected service. The Grantee shall not make any change in any rate unless it has provided the notice required in Section 5.2 of this Franchise.

Notwithstanding the foregoing, the City reserves the right to regulate the rates for Basic Service if provided the authority to do so under any change to federal and state law, after affording Grantee due process. Grantee shall maintain on file with the City at all times a current schedule of all rates and charges.

### **5.2. Non-Regulated Rates.**

Prior to implementing any rate increase for Cable Service not requiring City approval, Grantee shall give the following notice:

- A. At least thirty (30) days advance written notice to the City; and
- B. At least thirty (30) days advance written notice to Subscribers of said Service.

### **5.3. Charges for Disconnection or Downgrading of Service.**

- A. Grantee may only impose a charge for the downgrade or disconnection of Service to any Subscriber that is not prohibited by federal law and that is reasonably related to the cost incurred for a downgrade or disconnection of Service or is limited to a fee where the Subscriber has agreed to the fee by contract with Grantee to such charges. Grantee agrees that it will not impose any fee that has the effect of discouraging a downgrade in service unless such fee is reasonably related to Grantee's costs associated with providing the downgrade.
- B. If a Subscriber requests disconnection from Service prior to the effective date of an increase in rates, the Subscriber shall not be charged the increased rate if Grantee fails to disconnect Service prior to the effective date. Any Subscriber who has paid in advance for the next billing period and who requests disconnection from Service shall receive a prorated refund of any amounts paid in advance.

## **SECTION 6 - Customer Protection Standards; Customer Bills; and Privacy Protection**

### **6.1. Consumer Protection and Service Standards.**

In accordance with applicable law, Grantee shall maintain a convenient local customer service and bill payment location for receiving Subscriber payments, handling billing questions and equipment replacement. Grantee shall also provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under Normal Operating Conditions:

#### **6.1.1. Cable System office hours and telephone availability.**

- A. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
  - i. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
  - ii. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.
- B. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
- C. Both parties agree that the Grantee's equipment that measures compliance with this service obligation commingles data from other local Franchise Areas. Both parties acknowledge and agree that such commingled data shall be deemed valid as to the City.
- D. Under Normal Operating Conditions, the Customer will receive a busy signal less than three percent (3%) of the time.
- E. The customer service center and bill payment locations will be open at least during Normal Business Hours.
- F. Grantee shall provide the City with current contact information for a Director of Government and Community Affairs or similar representative and update such contact information regularly to handle customer service concerns that are referred by the City.

**6.1.2. Installations, Outages and Service Calls.** Under Normal Operating Conditions, each of the following four (4) standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

- A. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred fifty (150) feet from the existing distribution system.
- B. Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem. Grantee shall resolve all Service Interruptions within forty-eight (48) hours (or within the timeframe agreed upon by the Customer) under Normal Operating Conditions.
- C. The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the Customer).
- D. Absent extraordinary circumstances, Grantee may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment.

- E. If Grantee's representative is running late for an appointment with a Customer and will not be able to keep the appointment as scheduled, the Customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the Customer.

**6.2. Subscriber Service Information.**

Pursuant to FCC rules, Grantee shall provide to the City, all new Customers, and, at least once a year, to existing Customers, written subscriber service information, which shall include, but not be limited to, the following:

- A. Products and services offered;
- B. Prices and options for programming services and conditions of subscription to programming and other services;
- C. Installation and service maintenance policies;
- D. Instructions on how to use the cable service;
- E. Channel positions of programming carried on the system; and
- F. Billing and complaint procedures, including the address and telephone number of the local cable office.

**6.3. Subscriber Billing Practices.**

- A. Grantee shall notify each of its Subscribers, through the written service information, of its billing practices. The service information shall describe Grantee's billing practices including, but not limited to, the following: frequency of billing; time periods upon which billing is based; advance billing practices; security deposit requirements; charges for late payments or returned checks; payments required necessary to avoid account delinquency; availability of credits for Service outages; procedures to be followed to request Service deletions including the notice period a Subscriber must give to avoid liability for such Services and procedures to be followed in the event of a billing dispute.
- B. Grantee shall notify all affected Subscribers not less than thirty (30) days prior to any change in the billing practices and such notice shall include a description of the changed practice.
- C. The Subscriber bill shall contain the following information presented in plain language and format:
  - i. Name and address of Grantee;
  - ii. The period of time over which each chargeable Service is billed including prorated periods as a result of the establishment and termination of Service;
  - iii. Each rate of charge levied;
  - iv. The amount of the bill for the current billing period, separate from any balance;
  - v. Grantee's telephone number and a statement that the Subscriber may call this number with any questions or Complaints about the bill; and
  - vi. A specific due date for Subscribers whose accounts are current which shall be at least twenty (20) days from the mailing of the bill. The due date for delinquent accounts may be listed as "upon receipt" for payments that are past due.



- D. The account of a Subscriber shall not be considered delinquent until at least twenty (20) days after the mailing of the bill. In no event shall Grantee issue a statement that a first time bill is due upon receipt. The following provisions shall apply to the imposition of late charges on Subscribers:
- i. Grantee shall not impose a late charge on a Subscriber unless a Subscriber is delinquent, Grantee has given the Subscriber written notice of the delinquency in a clear and conspicuous manner, and the Subscriber has been given at least eight (8) days from time of mailing of the notice to pay the balance due.
  - ii. A charge of not more than 10% of the bill may be imposed as a one-time late charge. This amount shall be exclusive of any interest that may be charged.
  - iii. No late charge may be assessed on the amount of a bill in dispute where a Subscriber has notified Grantee within thirty (30) days of receipt of original bill unless the disputed charged has been deemed reasonable by the Grantee.
  - iv. Any charge for returned checks shall be reasonably related to the costs incurred by Grantee in processing such checks.
  - v. Any collection fee for funds collected at a Subscriber's residence upon Service disconnection shall not be considered a late fee.

**6.4. Parental Control Option.**

Grantee shall provide parental control devices to all Subscribers who wish to be able to cut out any objectionable Channel(s) of programming from the Cable Service entering the Subscriber's home.

**6.5. Subscriber Complaints.**

Grantee shall maintain and provide at least annually upon request to the City a log of all subscriber Complaints indicating the action taken by Grantee.

**6.6. Rights of Individuals Protected.**

Grantee shall comply with all privacy provisions of Section 631 of the Cable Act, 47 U.S.C. § 543.

**SECTION 7 - COMMUNICATIONS TAX AND FRANCHISE FEE**

**7.1. Communications Tax.**

Grantee shall comply with the provisions of Section 58.1-645 *et seq.* of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax, as amended (the "Communications Tax"). Sections 7.2 through 7.8 of this Agreement shall not have any effect, for so long as the Communications Tax or a successor state or local tax that would constitute a Franchise Fee for purposes of 47 U.S.C. § 542 / 641 as amended, is imposed on the sale of Cable Services by the Grantee to Customers in the City.

**7.2. Payment of Franchise Fee to City.**

**7.2.1.** In the event that the Communications Tax is repealed and no successor state or local tax is enacted that would constitute a Franchise Fee for purposes of 47 U.S.C. § 542/ 641, as amended, Grantee shall pay to the City a Franchise Fee of five percent (5%) of annual Gross Revenue, beginning on the effective date of the repeal of such tax (the "Repeal Date"). Beginning on the Repeal Date, the terms of Sections 7.2 through 7.8 of this Agreement shall take effect. Payments due the City under this provision shall be computed at the end of each quarter year for that quarter year. Payments shall be due and payable for each quarter or a portion of a quarter year on January 15, April 15, July 15 and October 15.

**7.2.2. Not Franchise Fees.**

- A. Unless expressly stated herein, Grantee acknowledges and agrees that no payment or contribution shall offset the Franchise Fee.
- B. Grantee expressly acknowledges and agrees that, as applicable, except for the compensation payments expressly required by Section 7.2.1 hereof, and consistent with the requirements of Section 4.2.7A of this Agreement, each of the payments or contributions made by, or the Services, equipment, facilities, support, resources, or other activities to be provided by the Grantee, are within the exclusions from the term “Franchise fee” set forth in Section 622(g)(2) of the Cable Act (47 U.S.C. § 542(g)(2)).

**7.3. Supporting Information.**

Each payment shall be accompanied by a brief report showing the basis for the computation, a breakdown by major revenue categories (such as basic service, premium service, etc.), and such other relevant facts as may be reasonably required by the City, including the completion of a Franchise Fee Payment Worksheet, subject to the proprietary information provisions of Section 8.8. The brief report and Franchise Fee Payment Worksheet shall be submitted to the City with information and statistics for only the System serving the City of Charlottesville and shall not include any statistics which reflect a larger scope of operations that include the County of Albemarle or other similarly situated regions.

**7.4. Limitation on Franchise Fee Actions.**

No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Franchise where the City gives the Grantee notice in writing contesting any amount paid within five (5) years of the receipt of the disputed payment. All amounts shall be subject to audit and recomputation by the City.

**7.5. Bundled Services.**

If Cable Services subject to a Franchise Fee, or any other fee determined by a percentage of the Cable Operator’s Gross Revenues in a locality, are provided to Customers in conjunction with other services: the Franchise Fee shall be applied only to the value of these Cable Services, as reflected on the books and records of the Cable Operator in accordance with rules, regulations, standards, or orders of the Federal Communications Commission or the State Corporation Commission, or generally accepted accounting principles. Any discounts resulting from purchasing the services as a bundle shall be reasonably allocated between the respective services that constitute the bundled transaction.

**7.6. Audit.**

**7.6.1.** Subject to the proprietary information provisions of Section 8.8 of this Franchise Agreement, the City, or such Person or Persons designated by the City, shall have the right to inspect and copy records and the right to audit and to recompute any amounts determined to be payable under this Franchise, without regard to by whom they are held. If an audit discloses an overpayment or underpayment of Franchise Fees, the City shall notify the Grantee of such overpayment or underpayment within ninety (90) days of the date the audit was completed. The City, in its sole discretion, shall determine the completion date for any audit conducted hereunder. Audit completion is not to be unreasonably delayed by either party.

**7.6.2.** Subject to the proprietary information provisions of **Section 8.8** of this Franchise Agreement, the Grantee shall be responsible for providing to the City all records necessary to confirm the accurate payment of Franchise Fees. The Grantee shall maintain such records for five (5) years. To the extent the City hires an

independent auditor to verify the accuracy of Grantee's Franchise Fee payments and finds the payments accurate to within five percent (5%) of funds due the City or in all cases in which the discrepancy favors Grantee, the City shall pay the auditor's full costs and expenses. To the extent it is reasonably necessary for the City to send an auditor to a location outside of the City or Albemarle County to inspect Grantee's books and records, Grantee shall be responsible for all travel costs incurred by such auditor. Such costs may not exceed five thousand dollars (\$5,000). In the event the independent auditor determines that a discrepancy which favors City in excess of five percent (5%) exists, Grantee shall pay the auditor's full costs and expenses. within thirty (30) days following written notice to the Grantee by the City of the underpayment, which notice shall include a copy of the audit report. In all cases, Grantee shall promptly pay all outstanding Franchise Fees subject to the terms and conditions of this Franchise. The auditor shall not be compensated on a success based formula, e.g., payment based on a percentage of any underpayment, if any.

No acceptance of any payment by the City shall be construed to as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under this Franchise where the City gives Grantee notice of in writing contesting any amount paid within five years of receipt of the disputed payment. All amounts paid shall be subject to audit and recomputation by the City.

- 7.7.** With each Annual Report required pursuant to **Section 8.9**, Grantee shall provide the City with a certification of the Gross Revenues for the preceding year prepared by a responsible financial representative of the Company. This certification shall be used to determine the exact amount of payments due the City and to correct any overpayments or underpayments by Grantee. This certification shall include statistics for only the System serving the City of Charlottesville and not any statistics which reflect a larger scope of operations that include the County of Albemarle or other similarly situated regions. To the extent it is reasonably necessary for City to send representatives to a location outside of the City or Albemarle County to inspect Grantee's books and records, Grantee shall be responsible for all travel costs incurred by City representatives; such costs not to exceed a maximum of five thousand dollars (\$5,000).
- 7.8.** In the event any payment is not made on the due date, simple interest on the amount due shall accrue from such date at the annual rate of six percent (6%).
- 7.9. No Limitation on Taxing Authority.**
- A. Nothing in this Agreement shall be construed to limit any authority of the City to impose any tax, fee, or assessment of general applicability. By way of illustration and not limitation, to the extent permitted by Applicable Law, the City may impose a tax, fee, or other assessment on any Person (other than the Grantee) with respect to Cable Service or other communications service provided by such Person over a Cable System for which charges are assessed to Customers but not received by the Grantee.
  - B. The Franchise Fee payments required by this Section shall be in addition to any and all taxes, fees or charges which the Grantee shall be required to pay to the City or to any state or federal agency or authority, except to the extent that such taxes, fees or charges must be considered Franchise Fees pursuant to 47 U.S.C. § 542 (g).
  - C. Grantee expressly acknowledges and agrees that the compensation and other payments to be made pursuant to this Section 7.2 of this Franchise shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability or other fees or charges which the Grantee shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Grantee.
  - D. Grantee shall not have or make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made pursuant to this Franchise from or against any

City or other governmental taxes of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers or income taxes) or other fees or charges which the Grantee is required to pay to the City or other governmental agencies.

## **SECTION 8 - Oversight and Regulation by Franchising Authority**

### **8.1 Open Books and Records.**

The City shall have the right to inspect, seven (7) days after Grantee's receipt of written notice at any time during Normal Business Hours at the System office all books, records, maps, plans, financial statements, Complaint logs, performance test results, record of requests for Service and other like materials of Grantee which are reasonably necessary to monitor compliance with the terms of this Franchise. To the extent it is reasonably necessary for City to send representatives to a location outside of the City of Charlottesville or Albemarle County to inspect Grantee's books and records, Grantee shall be responsible for all travel costs incurred by City representatives. Such costs may not exceed five thousand dollars (\$5,000).

### **8.2. Technical Standards.**

The Grantee shall comply with all applicable technical standards of the FCC regulations in 47 CFR Part 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards as provided by Applicable Law. The Franchising Authority shall have the right to obtain, upon written request, a copy of the tests and records pursuant to the FCC's rules.

### **8.3. Operational Records.**

The Grantee shall maintain the records required to compute all operational and customer service compliance measures outlined in this Franchise to demonstrate that the measures are being met. Failure to maintain the records as required herein shall subject the Grantee to the penalties established in this Franchise Agreement.

### **8.4. Records Required.**

Grantee shall at all times maintain and upon written request provide the following:

- A. Records of all written complaints for a period of one year after receipt by Grantee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Grantee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;
- B. Records of outages and-Service Interruptions for a period of one year after occurrence, indicating date, duration, area, and the number of Customers affected, type of outage, and cause;
- C. Records of service calls for repair and maintenance for a period of one year after resolution by Grantee;
- D. Records of installation/reconnection for a period of one year after the request was fulfilled by Grantee.

### **8.5. Federal Communications (FCC) Testing:**

Within fourteen (14) days of a written request by the City, Grantee shall make available the results of its FCC proof of performance tests required by the FCC's rules.

**8.6. File for Public Inspection.**

Throughout the term of this Franchise Agreement, the Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

**8.7. Periodic Inspection.**

The City and Grantee shall, at the request of the City, undertake an inspection of the System to ascertain the System performance at randomly selected Subscriber Drops selected by the City for the purposes of determining compliance with the terms and conditions of this Franchise Agreement and applicable law. The request for such an inspection will be made on the basis of Complaints received or other evidence indicating non-compliance with the terms and conditions of this Franchise or applicable law.

- A. The City shall give written notice to Grantee of the City's intention to undertake an inspection of the System and the name of that Person who will participate for the City.
- B. Grantee shall, within two (2) days of receipt of the City notice, select one Person who will participate for Grantee and so notify the City.
- C. The representatives of the City and Grantee shall, within three (3) days of the selection of the Grantee representative, select a third representative, who shall be subject to a confidentiality agreement.
- D. The representatives shall commence the inspection of the System at the head-end by viewing all programmed Channels or a representative portion thereof and, by a decision of the majority, determine whether the quality of the signals meets all applicable technical standards outlined within this Franchise and Applicable Laws.
- E. The representatives shall then view the System performance at appropriate Subscriber Drops. The representatives shall view all or a representative portion of the program Channels at each location and, by a decision of the majority, determine whether the quality of the signals meets all applicable technical standards outlined within this Franchise and Applicable Laws.
- F. The representatives shall prepare and submit to the City and Grantee a written report of its findings any appropriate recommendation.
- G. Grantee shall report to the City, at a regular or specially scheduled meet of the City, its findings as to the status of the System, and whether it agrees with the findings of the representatives. Should Grantee agree that corrective action is required, it will report as to the status of corrective measures planned and undertaken currently. Should the representatives find that Grantee has operated the System properly and no legitimate basis for the Complaints exists within the control of Grantee, then the City shall provide Grantee with written notice that it has investigated the matter and that the Grantee is absolved from any wrongdoing in that matter. Nothing herein shall prevent Grantee from providing City with such additional evidence or information as Grantee deems relevant.

**8.8. Proprietary Information.**

**8.8.1.** Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to submit information to the City that it reasonably deems to be proprietary or confidential in nature, nor submit to the City any of its or an affiliate's books and records not relating to the provision of Cable Service in the Franchise Area, except as provided herein. Such confidential information shall be subject to the following, to be applied as is most practicable for the purposes of this Agreement:

- A. To the extent an exemption under the Virginia Freedom of Information Act permits the City to maintain the confidentiality of submitted information and the Grantee submits such information to the City, the City shall maintain the confidentiality of such information and not disclose it to any public request;
- B. To the extent the information provided to an accountant, attorney, consultant, or any other agent of the City (“City Consultant”) would not be subject to public disclosure under the Virginia Freedom of Information Act and the City instructs the Grantee to provide such information to the City Consultant as may be required by this Agreement, the Grantee shall provide such information to the City Consultant and the City shall not take possession of the information nor engage in any act that would jeopardize the confidentiality of such information; or
- C. Grantee must provide the following documentation to the City:
  - i. Specific identification of the information;
  - ii. Statement attesting to the reason(s) the Grantee believes the information is confidential; and
  - iii. Statement that the documents are available at the Grantee’s designated offices for inspection by the City.

**8.8.2.** At all times, the City shall take reasonable steps to protect the proprietary and confidential nature of any books, records, maps, plans, or other City-requested documents that are provided pursuant to this Franchise Agreement to the extent they are designated as such by the Grantee. Nothing in this Section shall be read to require the Grantee to violate Federal or State Law protecting Customer privacy.

**8.9. Annual Reports.**

Upon written request at least ninety (90) days in advance, Grantee shall file with the City a copy of the following information regarding the System, in such a format as can be specifically allocated to the Franchise Area that is legally included within the City of Charlottesville:

**8.9.1. Service Availability Report.** Upon written request, and subject to federal law, after the end of the calendar year, Grantee shall submit a written report to the City which lists the addresses where cable service was made available during the preceding year, and a description of the Services then being offered at the end of the fiscal year.

**8.9.2. Customer Service Reports.** A compilation summarizing the Complaints received during the reported year, by category, and a discussion of any unresolved Complaints which shall include:

- A. A report showing the number of services calls received by type;
- B. A report showing the number of outages that exceed one hour in duration.
- C. A report showing the grantee’s performance with respect to Section 6 of this franchise agreement, signed by an officer or employee certifying its performance with these customer service standards. Included in this report will be the following information;
  - i. Percentage of telephone calls that were answered within thirty (30) seconds;
  - ii. Percentage of telephone calls received that were abandoned before being answered by a live operator;
  - iii. Average hold time for telephone calls received;
  - iv. Percentage of time when all incoming trunk lines were in a busy condition;
  - v. Percentage of standard installations performed within seven (7) business days; and

vi. Percentage of repair calls for Service Interruptions responded to within 24 hours.

**8.9.3. Communications with Regulatory Agencies.** Copies of all petitions, applications, communications and reports submitted by Grantee or on behalf of or relating to Grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the System authorized pursuant to this Franchise shall be available for City inspection. Copies of responses from the regulatory agencies to Grantee shall likewise be made available.

**8.9.4. Financial Statement.** A financial statement including an income statement, statement of operating expenses in detail, a cash flow statement and a balance sheet prepared in accordance with generally accepted accounting principles and certified by a financial representative of Grantee. Grantee's SEC Form 10-K shall suffice for such purposes.

**8.9.5. Subscriber Service information.** A current copy of the Subscriber Service information required in accordance with Section 6.2. hereof.

**8.9.6. Principals.** A current list of names and addresses of each principal. For the purposes of this requirement the term "principal" means any Person, firm, corporation, partnership or joint venture, or other entity who or which owns or controls five percent (5%) or more of the voting stock (or any equivalent interest of a partnership or joint venture of Grantee).

**8.10. Additional Reports.**

Grantee shall prepare and furnish to the City, within a reasonable time, such additional reports with respect to its operation, affairs, transactions or property, which are reasonably necessary for the administration and enforcement of this Franchise.

**8.11. Maps.**

Grantee shall maintain at all times a current map or set of maps drawn to scale showing the Grantee's System in the streets and other public places, and upon written request and contingent upon the City's agreement to hold this information confidential, will provide the City with access to such maps, during Normal Business Hours, at the local office defined under Section 6.1.

**8.12. Periodic Evaluation and Renegotiation Sessions.**

The field of cable communications is a rapidly changing one which may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for a maximum degree of communication between the parties, and to help achieve a continued advanced and modern System, the following evaluation provisions will apply:

- A. The City and Grantee, upon request of the City, shall hold annual evaluation sessions during the term of this Franchise.
- B. Topics which may be discussed at any evaluation and session include, but are not limited to, Channel capacity, the System performance, programming, access, municipal uses of cable, Complaints, customer service, telephone answering performance, judicial rulings, FCC rulings and any other topics the City or Grantee deem relevant.
- C. During an evaluation session, Grantee shall fully cooperate with the City and shall provide without unreasonable cost such information and documents, including, but not limited to, telephone response information, as the City may request.

## **SECTION 9 - Transfer or Change of Control of Cable System or Franchise**

### **9.1. Removal After Revocation or Expiration.**

- A. At the expiration of the present and all subsequent renewal terms for which the Franchise is granted, or upon its revocation, as provided for, the City shall have the right, consistent, however, with Grantee's rights under Section 12.6 of this Agreement, to require Grantee to remove, at Grantee's expense, all or any portion of the System from all Streets and Public Property within the City. In so removing the System, Grantee shall refill and compact at its own expense, any excavation that shall be made and shall leave all Streets, Public Property and private property in as good a condition as that prevailing prior to Grantee's removal of the System, and without affecting, altering or disturbing in any way electric, telephone or utility, cables wires or attachments. The City, or its delegation, shall have the right to inspect and approve the condition of such Streets and Public Property after removal. The performance bond, insurance, indemnity and penalty provision of the Franchise shall remain in full force and effect during the entire term of removal.
- B. If, in the sole discretion of the City, Grantee has failed to commence removal of the System, or such part thereof as was designated within thirty (30) days after written notice of the City's demand for removal is given, or if Grantee has failed to complete such removal within one (1) year after written notice of the City's demand for removal is given, the City shall have the right to exercise the following option:
  - i. Cause the System, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the security fund, indemnity and penalty section provided for in the Franchise or from Grantee directly.
- C. Notwithstanding any other provision of the franchise, subject to Grantee's rights under applicable federal law (47 U.S.C. §541) upon the lawful termination of this cable Franchise, the Grantee may continue to operate other services on its System, and shall not be required to remove facilities necessary to provide these other services not related to the provision of cable services.

### **9.2. Sale or Transfer of Franchise.**

- A. This Franchise shall not be sold, assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or properly therein, pass to or vest in any Person without full compliance with the procedure set forth in this section.
- B. The provisions of this section shall only apply to the sale or transfer of all or a majority of Grantee's assets, merger (including any parent and its subsidiary corporation), consolidation, or sale or transfer of stock in Grantee so as to create a new controlling interest. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer. No transfer of this shall occur without the prior written consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned. No transfer to the parties to the sale shall be made to a Person, group of Persons, or Affiliate that is not legally, technically, and financially qualified to operate the Cable System and satisfy the obligations hereunder.
- C. In accordance with applicable federal law, in reviewing a request for sale or transfer pursuant to paragraph (A) above, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party, and Grantee shall assist the City in so inquiring. The City shall not unreasonably delay or withhold its approval. In no event shall a transfer or assignment of ownership or control of the franchise be approved without the transferee becoming a signator to this Franchise. For purposes of this section 9.2, no assignment, transfer, or sale shall occur when the Franchise is transferred



or sold to a company owned, managed, or controlled by fifty-one percent (51%) of the stock of Grantee, or any of its subsidiaries, or the assets or stock of the company are transferred to a financial institution as security for refinancing purposes.

- D. The City hereby reserves all rights under Applicable Laws to seek reimbursement of reasonable costs and expenses incurred (including, but not limited to, attorneys and other consultants), up to five thousand dollars (\$5,000), in connection with any sale or transfer of the System and/or Franchise. Such reimbursements, if found to be consistent with Applicable Law, shall not be deemed to be “Franchise Fees” within the meaning of the Cable Act (47 U.S.C. § 542). Grantee also hereby reserves its rights under Applicable Laws with respect to this issue.
- E. In the event of a transfer, the City reserves the right to require a Corporate Guarantee in the form of Exhibit A upon a subsequent grantee.
- F. The City shall comply with lawful statutes and regulations in effect at the time of sale or transfer regarding time limits applicable to consideration of a transfer application. (Currently 47 CFR §76.502 and Va. Code §15.2-2108.28)

## **SECTION 10 - Insurance and Indemnity**

### **10.1. Liability Insurance.**

- A. Grantee shall maintain, throughout the term of the Franchise, the following types of insurance for any liability with regards to damages outlined in Section 10.2:
  - i. **Statutory Workers’ Compensation** coverage or Employer’s Liability coverage, as required by the laws of the Commonwealth of Virginia. The Grantee shall indemnify and hold harmless the Franchising Authority from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.
  - ii. **Commercial General Liability insurance** with a coverage limit no less than two (2) million dollars per occurrence and four (4) million dollars aggregate per accident.
    - a. This insurance will include coverage for claims of Bodily Injury, Property Damage, Personal and Advertising Injury, and Products and Completed Operations, which may arise from operations under the agreement, whether such operations are performed by the Grantee or by any subcontractor or independent contractor on behalf of the Grantee.
    - b. The Commercial General Liability insurance shall name the City and its officials, officers, employees, and agents as “additional insured” by endorsement, and shall be primary and non-contributory.
- B. At the time of acceptance, Grantee shall furnish the City with a certificate evidencing that the insurance policies have been obtained in accordance with the requirements above. The Grantee shall also provide the endorsement page(s) evidencing that the City, its officials, officers, employees, and agents have been included as additional insured parties on the General Liability policy. In addition, it shall be the obligation of the Grantee promptly to notify the City of any pending or threatened litigation that would be likely to affect its insurance coverage.

### **10.2. Indemnification, Damages, and Defense.**

Grantee shall indemnify the City, its officers, boards, committees, commissions, elected officials, employees and agents for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of the Cable System or as to any other action of Grantee with respect to this Franchise Agreement. The City shall give the Grantee timely written notice of its obligations to indemnify and defend the City within ten (10) days of receipt of a claim or action pursuant to this section.

## **SECTION 11 - System Description and Service**

### **11.1. System Capacity.**

Grantee shall continue to own, operate, maintain, and make available a System providing a minimum of 860 MHz capacity. During the term of this Agreement, the Grantee's Cable System shall make Video Programming available to its Customers in the Franchise Area and shall meet all FCC technical standards as established in 47 CFR Part 76.

Grantee agrees that it shall not enter into a franchise with another locality within the franchise area which contains terms and provisions regarding PEG access or the System upgrade/rebuild that when compared to the City Franchise are more favorable to the other locality. In the event Grantee enters into such a franchise which contains terms that are more favorable to the other locality than those available to the City under this Franchise, the City shall have the option to substitute the more favorable provisions franchise with those in the City Franchise. Grantee shall have the right to appear before City Council to present any information Grantee deems relevant to the City's consideration of the provisions in question. When considering such issues the City shall weigh the overall requirements of each franchise and the respective benefits and burdens of each. If Grantee disagrees with the determination of the City Council, Grantee shall have the right to appeal to a court having competent jurisdiction in the City of Charlottesville.

#### **11.1.1. Interconnection.**

- A. The System shall be designed so that it may be interconnected with other Cable Systems.
- B. The City may request Grantee to negotiate interconnecting the System with other adjacent Systems in the general area. Grantee shall keep the City informed of the progress of any negotiations.

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### **11.2. Provision of Service.**

- A. After Service has been established for any area, Grantee shall provide Service to any household requesting Service within that are in a reasonable and timely manner.
- B. The Grantee shall continue to provide, at no cost to the Franchising Authority, basic Cable Service and Standard Installation at one outlet to each public building identified below and, upon written request from the City, one additional public building location per year, located in the Franchise Area within one hundred twenty five feet of the Grantee's distribution cable. It is the intent of the parties that the Grantee shall continue to provide the same general quality and quantity of programing to the free service drops as was made available on the Effective date of this Franchise. Each of these Installations shall include a signal Drop, one outlet, and one Converter (or such other terminal equipment as may be necessary to provide an electronic interface with a television receiver). The public buildings to be provided this Service shall include the following:

- i. All state accredited K-12 public school buildings;
  - ii. The following locations in the City Hall complex, located at 605 East Main Street, Charlottesville, VA 22902, or other City owned buildings:
    - (a) City Hall – General Registrar;
    - (b) City Hall – Neighborhood Development Services;
    - (c) City Hall – City Manager’s Office (four connections);
    - (d) City Hall – Police Department (two connections);
    - (e) City Hall – Mayor’s Office;
    - (f) City Hall – Sheriff;
    - (g) City Hall – Information Technology;
    - (h) City Hall – City Attorney Library;
    - (i) City Hall – Basement Conference Room;
    - (j) Tonsler Park Community Center, 501 5th Street, SW;
    - (k) Carver Recreation Center, 233 4th Street, NW;
    - (l) Public Works Admin. Bldg., 305 4th Street, NW, (three connections);
    - (m) Key Recreation Center, 800 E. Market Street;
    - (n) City of Charlottesville Parks and Recreation Smith Aquatics & Fitness, 100-A Cherry Ave;
  - iii. City of Charlottesville Community Attention Homes, 907 E. Jefferson Street & 414 4th Street, NE;
  - iv. The Jefferson-Madison Regional Library Main branch, 201 East Market Street ;
  - v. The Jefferson-Madison Regional Library Gordon Avenue branch, 1500 Gordon Ave;
  - vi. The City police department and substations located at 724G Prospect Ave., 531 2d St. S.E. Suite 12A, Frank Ix Bldg. (NSB); and Forrest Avenue 705 Dale Avenue; and
  - vii. City of Charlottesville Parks and Recreation Meadow Creek Golf Course Club House, 1400 Pen Park Road.
- C. Should City construct or move any of the aforementioned facilities beyond three hundred (300) feet of the existing System, as upgraded, Grantee shall not be required to absorb the Installation costs for such facilities until such time as Grantee extends its System to accommodate same.

**11.3. Technical Standards.**

The System shall be designed, constructed and operated so as to meet those technical standards promulgated by the FCC relating to Cable Systems contained in Part 76 of the FCC’s rules and regulations as may, from time to time, be amended. Upon written request, the results of tests required by the FCC will be delivered to the City within thirty (30) days of the completion of testing.

**11.4. Special Testing.**

- A. The City shall have the right to inspect all construction and installation work performed pursuant to the provisions of the Franchise in order to ensure compliance with the terms and conditions of the franchise agreement and all other applicable laws. Any such inspection shall not interfere with the Grantee’s operations, except in emergency situations. Except for emergency situations, the City shall provide the Grantee with timely notice of any such inspection(s). The Grantee shall have the right to have a representative present at any such inspection. Both parties shall make a good faith effort to work with each other to schedule any such inspections at a mutually convenient time.
- B. Before ordering such tests, Grantee shall be afforded thirty (30) days advance written notice. City shall meet with Grantee prior to requiring inspection to discuss the need for such and, if possible, visually inspect those locations which may be the focus of concern. If, after such meetings and inspections, City wishes to commence inspection, the tests shall be conducted at City’s expense by a qualified engineer selected by City. Grantee shall participate and cooperate in such testing and shall not assess City or

Subscribers any fees or costs associated with time or labor Grantee may incur as a result of its participation in such testing.

**11.5. Signal Quality.**

The System shall produce a picture and signal quality that is consistent with FCC rules contained in Part 76 of the Code of Federal Regulations as may, from time to time, be amended.

**11.6. Semi-Annual Testing.**

Grantee shall conduct semi-annual technical performance tests in compliance with FCC requirements and upon request the City shall be provided with copies of test results. If a test fails to meet the performance standards, Grantee shall restore the system to the FCC requirements at Grantee's expense within a reasonable period of time

**11.7. Standby Power.**

The head-end and all hubs serving the City shall employ a back-up generator and Uninterruptible Power Supply (UPS) with sufficient capacity to provide twenty four (24) hours power in the event of a commercial power outage or other primary power system failure. The distribution system shall employ standby power at all power supply locations capable of providing up to two hours power to the distribution system in the event of a commercial power outage or other primary power failure.

**SECTION 12 - Enforcement of and Termination of Franchise; Foreclosure, Receivership, and Abandonment**

**12.1. Notice of Violation or Default.**

In the event the Franchising Authority believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the nature of the alleged non-compliance or default.

**12.2. Grantee's Right to Cure or Respond.**

The Grantee shall have the right to respond to written notice of a violation. The Grantee shall have forty-five (45) days from the receipt of the Franchising Authority's written notice: (A.) to respond to the Franchising Authority, contesting the assertion of non-compliance or default; or (B.) to cure such default; or (C.) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that the cure will be completed.

**12.3. Public Hearing.**

In the event the Grantee fails to respond to the Franchising Authority's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the Franchising Authority shall schedule a public hearing to evaluate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority at a time that is no less than ten (10) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

**12.4. Enforcement.**

**12.4.1.** Subject to applicable federal and state law, in the event the Franchising Authority determines after a public hearing, that the Grantee has violated any material provision of the Franchise, the Franchising Authority may:

- A. Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief;
- B. Seek penalties in accordance with Section 12.9 hereof; or

**12.4.2 Revocation.** In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, in the event of a substantial default that:

- A. Grantee breaches any material provision of this Franchise; or
- B. Grantee is adjudicated guilty of practicing fraud or deceit upon the City; or
- C. Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt and the Grantee's creditors or Trustee in Bankruptcy do not agree to fulfill and be bound by all requirements of this Franchise by the City; or
- D. Grantee materially misrepresents a material fact in the application for or negotiation of, or renegotiation of, or renewal of, the Franchise and such misrepresentation was relied upon by the City to its detriment.
- E. In the case of a substantial default as found in 12.4.3, the Franchising Authority must initiate revocation proceedings in accordance with the revocation procedures established in Section 12.4.4.

**12.4.3. Revocation Procedures.**

- A. The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of non-compliance by the Grantee, including but not limited to the grounds listed in Section 12.4.2 or two or more instances of substantial non-compliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the non-compliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response from the Grantee or upon receipt of the response does not agree that the allegations of non-compliance have been or will be resolved, it may then seek revocation of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request revocation of the Franchise.
- B. At the designated public hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Virginia, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days.
- C. Upon completion of the public hearing if the Franchising Authority determines there is a violation, breach, failure, refusal or neglect by Grantee, the Franchising Authority may direct

Grantee to correct or remedy the same within such reasonable additional time, in such manner and upon such reasonable terms and conditions as City may direct. The issue of revocation shall automatically be placed upon the City Council agenda at the expiration of the time set by it for compliance. The City then may terminate Franchise forthwith upon finding that Grantee has failed to achieve compliance or may further extend the period, in its discretion. Or, at Grantee's option, after the full public proceeding is held and the City determines there was a violation, breach, failure, refusal or neglect, then the City may declare, by resolution, the Franchise revoked and cancelled and of no further force and effect.

- D. The decision of the Franchising Authority shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to the courts having jurisdiction over the City of Charlottesville, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reverse such decision as applicable laws and/or this agreement may require.

#### **12.5. Technical Violation.**

The Franchising Authority agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

- A. in instances or for matters where a violation or a breach of the Franchise by the Grantee was a good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or
- B. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

#### **12.6 No Removal of System.**

Grantee shall not be required to remove its Cable System or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Grantee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act, or any portion thereof in accordance with 47 U.S.C. §621 (b).

#### **12.7 Security Fund**

- A. At the time this Franchise is accepted, Grantee agrees to provide and deposit with the City, and maintain through the term of this Franchise, a performance bond in the form of a performance bond with a company which is qualified to write bonds in the Commonwealth of Virginia established in favor of the City in the amount of Fifty Thousand Dollars (\$50,000.00) for the faithful performance by it of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the System. Such security fund whether a letter of credit or performance bond shall be subject to the approval of the City and such approval shall not be unreasonably withheld.
- B. The performance bond shall be effective throughout the term of the Franchise, including the time for removal of all of the facilities provided for herein, and shall be conditioned that in the event that the Grantee shall fail to comply with any one or more provisions of the Franchise, the City shall recover from the surety of such bond all damages suffered by the City as a result thereof. Said bond shall be a continuing obligation of the Franchise, and thereafter until the Grantee has satisfied all of its obligations to the City that may have arisen from the grant of the Franchise or from the exercise of any privilege herein granted. In the event that the City recovers from said surety, the Grantee shall

take immediate steps to reinstate the performance bond to the appropriate amount required herein. Neither this section, any bond accepted pursuant thereto, nor any damages recovered thereunder shall limit the liability of the Grantee under the Franchise Agreement.

- C. The performance bond shall contain the following endorsement (or the substantive equivalent thereto): “It is hereby understood and agreed that this performance bond may not be cancelled by the issuer, nor may the intention not to renew be stated by the issuer, until thirty (30) days after receipt by the City of a written notice stating such intention to cancel or not to renew.”

## **12.8. Penalties.**

**12.8.1. Penalties from Security Fund.** In addition to any other remedies provided herein, penalties for violations of this Franchise are set forth below. As a result of any acts or omissions by Grantee pursuant to the Franchise, the City may charge to and collect the following penalties:

- A. For failure to complete or commence construction in accordance with the Franchise unless the City approves the delay, the penalty shall be Two Hundred Dollars (200.00) per day for each day, or part thereof, such failure occurs or continues.
- B. For failure to provide data, documents, reports or relevant information to the City during a renewal process or the System review, the penalty shall Two Hundred and No/100 Dollars (\$200.00) per day.
- C. For failure to comply with any material provision of this Franchise, for which a penalty is not otherwise specifically provided, the penalty shall be Two Hundred and No/100 Dollars (\$200.00) per day.
- D. For failure to test, analyze and report on the performance of the System following a request by the City, the penalty shall be Two Hundred and No/100 Dollars (\$200.00) per day.
- E. For failure of Grantee to comply with operation or maintenance standards, the penalty shall be Two Hundred and No/100 Dollars (\$200.00) per day.
- F. For failure to comply with all conditions of the City permits to disturb Streets, fix Streets, or other terms or conditions of the City, the penalty shall be Two Hundred and No/100 Dollars (\$200.00) per day. This penalty shall be offset by any penalties collected by the City for the violation of any such City Code provisions.

## **12.8.2. Procedure for Imposition of Penalties.**

- A. Whenever the City finds that Grantee has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have twenty (20) days subsequent to receipt of the notice in which to correct the violation. Grantee may, within ten (10) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to the City shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time.
  - i. The City shall hear Grantee’s dispute at a regularly or specially scheduled meeting. Grantee shall have the right to subpoena and cross-examine witnesses. The City shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Grantee may petition for reconsideration.

- ii. If after hearing the dispute the claim is upheld by the City, Grantee shall have ten (10) days from such a determination to remedy the violation or failure. At any time after that ten (10) day period, the City may assess penalties.
  - iii. Upon receipt of written notice from Grantee that the violation has been corrected or remedied, the City's right to assess penalties shall be suspended. Following receipt of such notice, the City shall have the right to conduct an independent investigation of any alleged violations and should it find, in its sole determination, that such violations have not been completely corrected, it shall have the right to collect penalties as described herein.
- B. The time for Grantee to correct any alleged violation may be extended by the City if the necessary action to correct the alleged violation is of such a nature or character to require more than ten (10) days within which to perform provided Grantee commences the corrective action within the ten (10) day period and thereafter uses reasonable diligence to correct the violation.
  - C. The City shall stay or waive the imposition of any penalties set forth above for any failure or delay that is a result of an act of God or upon a finding that the failure or delay is due to circumstances beyond the reasonable control of Grantee.

**12.9. Rights Cumulative.**

The rights reserved to the City herein are in addition to all other rights of the City, whether reserved herein or authorized by Applicable Law. The receipt of any damages recovered by the City thereunder, shall not be construed to excuse the faithful performance by the Grantee or limit the liability of the Grantee under the terms of its Franchise for damages.

**12.10. Foreclosure.**

Upon the foreclosure or other judicial sale of the System, Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

**12.11. Receivership.**

The City shall have the right to cancel this Franchise subject to any applicable provisions of state law, including the Bankruptcy Act, one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- A. Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and
- B. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

**12.13. Abandonment.**

Grantee may not abandon any portion of the System thereof without having first given three (3) months written notice to the City. Grantee may not abandon any portion of the System without compensating the City for damages actually sustained by the City resulting from the abandonment.



## **SECTION 13 - Miscellaneous Provisions**

### **13.1. Compliance with Laws.**

Grantee and the City shall conform to all Applicable Laws and rules regarding cable television as they become effective, unless otherwise stated. Grantee shall also conform with all the generally applicable City ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. Any such City Ordinances, resolutions, rules or regulations that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement. This Franchise Agreement reflects the entire agreement of the parties and subsequent City rules and regulations that are in conflict with this Franchise Agreement cannot amend or change the obligations of Grantee herein without the mutual agreement of the parties pursuant to a formal amendment to the Franchise Agreement.

### **13.2. Compliance with Federal State and Local Laws.**

- A. If any federal or state law or regulation requires or permits Grantee to perform any Service or act or shall prohibit Grantee from performing any Service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, Grantee will use its best efforts where appropriate to notify the City of the point of conflict believed to exist between such law or regulation.
- B. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and the City.
- C. Notwithstanding anything to the contrary, in the event that any court, agency, commission, legislative body or other authority of competent jurisdiction (i) declares Sections 4.2.5 or 4.2.6 invalid, in whole or in part, or (ii) requires Grantee either to (a) perform any act which is inconsistent with any of the said sections or (b) cease performing any act required by said sections, Grantee shall immediately notify the City. Such notice shall state whether Grantee intends to exercise its rights pursuant to such declaration or requirement.

### **13.3. Franchise Renewal.**

This Franchise may be renewed in accordance with Applicable Laws.

### **13.4. Continuity of Service Mandatory.**

Upon expiration or termination of this Franchise, the City may require Grantee to continue to operate the system for an extended period of time not to exceed six months. Grantee shall, as trustee for its successor in interest, continue to operate the System under the terms and conditions of this Franchise. In the event that Grantee does not operate the System, the city may take such steps as it deems necessary to assure continued service to Subscribers.

### **13.5. Work Performed by Other for Grantee.**

- A. All provisions of this Franchise shall remain the responsibility of Grantee, and Grantee shall be responsible for and hold the City harmless for any claims or liability arising out of work performed by subcontractors of the Grantee.
- B. All provisions of this Franchise shall apply to any subcontractor or others performing any work or Services pursuant to the provisions of this Franchise.

**13.6. Nonenforcement by City.**

Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance within a reasonable period of time not to exceed three (3) years.

- 13.7. No Evasion and Time of Essence.** Unless specifically referenced herein, in determining whether Grantee has substantially complied with this Franchise, the parties agree that time is of the essence. Grantee's failure to meet the obligations herein including providing information requested by Grantor in a timely manner shall constitute a material breach.

The Grantee shall not take any action to evade any provision of this Agreement. This provision shall be read to prohibit, among other things, the Grantee from requiring any Customer to waive any right (including without limitation privacy rights) as a condition of obtaining Cable Service.

**13.8. Force Majeure.**

The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation, or revocation of the Franchise), provided that the Grantee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Agreement without unduly endangering the health, safety, and integrity of the Grantee's employees or property, or the health and integrity of the public, Public Way, public property, or private property, where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative, or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary where such unavailability is reasonably beyond the Grantee's ability to anticipate or control.

**13.9. Each Party Bears Its Own Cost.**

Unless otherwise expressly provided in this Agreement, all acts that the Grantee is required to perform must be performed at Grantee's own expense. Unless otherwise expressly provided in this Agreement, all acts that the City is required to perform must be performed at the City's own expense.

**13.10. Governing Law.**

This Franchise Agreement shall be deemed to be executed in the Commonwealth of Virginia, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the Commonwealth of Virginia, as applicable to contracts entered into and performed entirely within the Commonwealth and the venue for any litigation with respect thereto shall be in the Circuit Court for Charlottesville, Virginia, or the Federal District Court with jurisdiction over Charlottesville.

**13.11. No Third-Party Beneficiaries.**

Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

**13.12. No Waiver of Rights.**

Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, either party may have under federal or state law unless such waiver is expressly stated herein.

**13.13. Captions and References.**

The captions and headings of Sections throughout this Agreement are intended solely to facilitate reading and reference to the Sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

**13.14. Calculation of Time.**

Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

**13.15. Entire Agreement.**

This Franchise Agreement, including any Exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.

**13.16. Severability.**

If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If the Grantee believes that the terms of the Franchise Agreement or any City law or regulation conflict with any state or federal law or regulation, the Grantee shall notify the Franchise Authority immediately upon learning of the conflict.

**13.17. Modification.**

No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Grantee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by Applicable Law.

**13.18. Binding Acceptance.**

This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, and the promises and obligations herein shall survive the expiration date hereof.

**13.19. Time of Acceptance.**

- A. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein. Grantee shall provide all Services and offerings specifically set forth herein to provide Cable Services within the City.
- B. With its acceptance, Grantee shall also deliver any security deposit, insurance certificates, performance bonds and the Guaranty.

**13.20. Publication; Effective Date.** This Franchise shall be signed by the City Manager or acting City Manager and attested by the City Clerk. The Franchise shall be published in accordance with the requirements of City and state law and shall take effect upon acceptance by Grantee.

**13.21. Notice.** All notices, reports or demands required to be given in writing under this Franchise shall be deemed to be given when delivered Personally to the Person designated below, or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

**To the Franchising Authority:**

City Manager  
 City of Charlottesville  
 Room 214, City Hall  
 605 E. Main St.  
 Charlottesville, VA 22902

With a copy to:  
 City Attorney  
 City Hall  
 605 E. Main St.  
 Charlottesville, VA 22902

**To the Grantee:**

Comcast  
 5401 Staples Mill Road  
 Richmond VA 23228  
 Attn: Director, Government Affairs

And to:  
 Comcast Cable Communications, Inc.  
 7850 Walker Drive, 2<sup>nd</sup> Floor  
 Greenbelt, MD 20770  
 Attn.: VP, Government Affairs

And to:  
 Comcast Cable Northeast Division  
 676 Island Pond Rd.  
 Manchester, NH 03109  
 Attention: Government Affairs Department

Such addresses may be changed by either party upon notice to the other party given as provided in this section. The Grantee shall at all times keep the City advised as to which individual(s) are authorized to act on behalf of the Grantee and whose acts will be considered to bind the Grantee.

REMAINDER OF PAGE LEFT BLANK UNTIL SIGNATURE PAGE.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the last date set forth below:

City of Charlottesville:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC:

By: \_\_\_\_\_

Print Name: Mary McLaughlin

Title: Regional Senior Vice President

Date: \_\_\_\_\_

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**CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA**



**Agenda Date:** February 21, 2017

**Action Required:** Direction

**Presenter:** Chris Engel, Director of Economic Development

**Staff Contacts:** Maurice Jones, City Manager  
Craig Brown, City Attorney  
Chris Engel, Director of Economic Development

**Title:** **Potential Assistance for Hotel Project at 201 E. Main St.**

**Background:**

In 2008, construction commenced on a project, that was to be known as the Landmark Hotel, at 201 East Main Street in a former bank building fronting the downtown mall. In 2009, amid the recession the project's financing was called into question ultimately resulting in work ceasing and leaving the building unfinished. Subsequently, in 2012, ownership of the property transferred to Deerfield Square Associates II, LLC following a court sanctioned auction process. Since that time various City staff have interacted with representatives of Dewberry Capital (manager for Deerfield Square Associates II, LLC) and its principal, Mr. John Dewberry, to ensure the safety and security of the structure; but no additional progress has been made to complete the construction.

**Discussion:**

Over the past eight years the City has heard growing concern from residents, businesses and visitors regarding the eyesore and safety concern this long-delayed project has created in the downtown area. Given the unique set of circumstances surrounding this project, members of the City Council, key City staff and representatives of Dewberry Capital have recently engaged in discussions to identify the best options available to move the project to completion as quickly as possible. Ultimately, these conversations resulted in a request from Dewberry Capital for assistance from the City.

After discussion and considerable negotiation City staff and Dewberry Capital are in basic agreement on the following components.

**City agrees to:**

1. City agrees to lease 75 City owned parking spaces in the Water Street Parking Garage for an initial term of 5 years. (If desired, an additional 75 spaces can be leased for a second five year period or the City can conduct a request for proposal process in which terms greater than five years are possible). In year one, the lease shall be structured so that rent will be equal to 25% of the parking revenue generated by the hotel from the use of the 75 spaces, but not less than \$40,000. In year two, the minimum is increased to \$60,000. In subsequent years, the rent will be

equal to 25% of the parking revenue generated by the hotel from the use of the 75 spaces, but not less than \$80,000 annually. The effective date of the lease will coincide with the issuance of a certificate of occupancy for the hotel. The lease will terminate by mutual agreement of both parties or if the hotel ceases to operate for more than 90 days.

2. The City in conjunction with the Charlottesville Economic Development Authority agrees to provide a performance grant to the developer, equal to 50% of the incremental real estate tax generated by the project (above the base value) for ten years to assist in retiring the debt service. Base value as of 2017 is \$6,642,500. The actual amount of the grant will be determined annually by the assessed value beginning the year following the completion date. The initial estimated annual grant amount is approximately \$110,000, although that may increase or decrease depending on the annual assessment and tax rate.

In order to trigger the performance grant the project must receive a certificate of occupancy and generate in year one a minimum of \$150,000 in lodging tax receipts. In year two the minimum is increased to \$225,000 and in years three – ten to \$300,000. The developer must also make a minimum capital investment of \$20 million in the construction of the project.

**Dewberry Capital (as Developer) agrees to:**

1. Developer agrees to immediately (1) retain a qualified and professional consultant who can confirm the structural integrity of the building, and (2) make a reasonable good faith effort to improve the structure's current appearance.
2. Developer agrees to provide the City with an official project *pro forma* showing all sources and uses of funds, construction costs, upfit costs and anticipated operating costs.
3. Developer agrees to expeditiously pursue all necessary City permits and approvals needed to construct the hotel and will not request any reduction in fees related to such.
4. Prior to the execution of the agreement, a mutually agreed upon completion date will be set. If a certificate of occupancy has not been issued by the completion date the total grant amount allowable will be reduced by 1% per month.
5. Developer agrees to remit all required City taxes in a timely manner during the grant period, and agrees not to contest any increase in assessed value for the property during the grant period.

With respect to the aforementioned performance agreement, the City has entered similar agreements in the past for projects that induce significant capital investment and job creation in the City. These are considered on a case by case basis and approved by the council. The threshold for consideration has been a minimum investment of \$20 million dollars and the creation of 200 or more jobs.

This project is expected to exceed \$20 million dollars in capital investment and create approximately 100 jobs. An additional requirement to generate a significant amount of lodging tax revenue was added in this case. Once completed and operational the hotel project is expected to generate \$800,000 – \$950,000 in annual City tax revenue. This includes real property taxes, personal property taxes, sales taxes, meals taxes, lodging taxes, BPOL and utility taxes.

From a policy standpoint, it is important to remember that the implementation of a tax increment based performance agreement does not negatively impact the City budget as the grant is generated



solely from the increase in real estate revenue received from the project. If the project is stalled or never completed for any reason the increase in taxes is not realized and therefore CEDA is not obligated to make the grant.

Specifically what is being proposed is that 50% of the incremental increase in real property taxes attributable to the development be granted to the developer, for a period of ten years, as an incentive to complete the project. The City will receive the other 50% of the increase during the ten year period and the full amount of real property taxes from the project thereafter.

If the City Council indicates their agreement with this approach, staff will proceed to draft the necessary agreements and schedule for future Council action.

**Alignment with City Council's Vision and Strategic Plan:**

This agenda item aligns with Council's vision for Economic Sustainability. It also addresses one of the goals in the City's Strategic Plan that were recently adopted by Council: Goal 3: Have a Strong, Diversified Economy.

**Community Engagement:**

No engagement specific to this item.

**Budgetary Impact:**

The City operating budget will be minimally impacted by these contemplated agreements. Funds for the performance grant will come from the incremental increase in real estate taxes generated by the project once it has received a certificate of occupancy and the taxes have been realized for a full year. With respect to parking, the City will likely lose some revenue from the 75 spaces in year one, but as hotel operations stabilize and the minimum payment amount is triggered in year 2-10 that amount is expected to be recouped.

**Recommendation/Alternatives:**

Staff seeks direction from council as to whether to pursue this or not to entertain this request further.

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**CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA**



<b>Agenda Date:</b>	February 21, 2017
<b>Action Required:</b>	Direction from Council
<b>Presenter:</b>	Maurice Jones, City Manager
<b>Staff Contacts:</b>	Maurice Jones, City Manager Mike Murphy, Assistant City Manager
<b>Title:</b>	Arts Director Position

**Background:**

The City Council has directed the City Manager and his staff to research whether the City should consider creating two new positions – an Arts Director and a City Architect. This evening the staff is bringing forth the Arts Director position for consideration. The City Architect position will be discussed at the Council’s first meeting in March.

There has been a concern in the community about the lack of coordination between the arts organizations and lack of clear vision for the future of arts in our City. Despite the creation of the Piedmont Council for the Arts’ 2013 “Create Charlottesville/Albemarle Cultural Plan”, which was conceptually approved by both the City Council and Albemarle County Board of Supervisors, there has been little movement to advance the recommendations of the plan, which can be found at this link:

<http://s3.amazonaws.com/cville/cm%2Fmutlimedia%2F20140113-PCA-Cultural-Plan.pdf>

The FY17 Agency Budget Review Team (ABRT) received an application from the Piedmont Council of the Arts for continued funding for their arts planning and coordination activities. The application was rated as “weak”. However, the Team recognized that arts planning and coordination are needed in the City. Therefore, the Team recommended that City Council appropriate \$45,000 for this purpose to be awarded as a philanthropic donation to an appropriate organization.

City Council accepted the recommendation and added \$12,000 for a total of \$57,000 in available funds. In June, 2016, the City released a solicitation for application for a contribution to be utilized by a charitable organization to update, prioritize and implement appropriate parts of the 2013 Cultural Plan or an equivalent alternative plan and develop formal partnerships in the arts community. The City demonstrated an interest in supporting a charitable organization that would coordinate all aspects of the plan, bringing together diverse partners in the arts sector to embrace the Council’s Vision 2025 that:

*Our community has world-class performing, visual, and literary arts reflective of the unique character, culture, and diversity of Charlottesville. Charlottesville*

*cherishes and builds programming around the evolving research and interpretation of our historic heritage and resources. Through City partnerships and promotion of festivals, venues, and events, all have an opportunity to be a part of this thriving arts, cultural, and entertainment scene.*

The City received four applications; however, the review team had concerns about each application and decided against funding any of them. Since then members of the City Council have asked whether the City should fund its own Arts Director position to serve as a liaison between the City and local arts organizations in an effort to advance the recommendations of the Cultural Arts Plan.

The staff spent time researching several localities around the Commonwealth of Virginia including Richmond, Alexandria, Arlington, Virginia Beach and Williamsburg. The missions of these organizations are located below along with links to their respective web sites. One common feature in each of the localities was the presence of an arts council or commission. Although the work of each council varied in scope, there were similar themes such as the presence of a City office to staff the commissions while serving as liaisons to arts organizations; the dispersal of grant funding through an application process; and the general promotion of the arts.

### **Richmond, VA**

“In 1991, the Planning Commission, on the recommendation of City Council, appointed a Public Art Commission (PAC) to administer a Public Art Program. In January of 1997, City Council passed an ordinance formalizing the Percent-for-the-Arts Process and mandating its funding through the Capital Improvements budget. The Public Art Commission and the Public Art Office are administered by the Department of Planning and Development Review.”

<http://www.richmondgov.com/CommissionPublicArt/index.aspx>

### **Alexandria, VA**

“The Office of The Arts promotes the value of arts and culture in Alexandria by nurturing, investing in and celebrating the creative contributions of artists and arts organizations. Through engaging the community, encouraging participation, and facilitating access to the arts, the Office of the Arts works with local artists and arts organizations to build a vibrant community for all of the City's residents, workers and visitors.

The office—which administers the City's Art Grants—works in partnership with the Alexandria Commission for the Arts to invite and review applications from organizations and individuals. Support is awarded through a competitive grant evaluation process.”

<https://www.alexandriava.gov/recreation/arts/default.aspx?id=69612>

### **Arlington, VA**

“The Arlington Commission for the Arts advises the County on policy and program development, oversees the grants and public art programs, advocates for the arts in Arlington and acts as a liaison between the arts community and the County. Arts Commission members are appointed by the County Board.

In its capacity the Commission, may make studies, develop recommendations, conduct public meetings and educational programs, hold hearings, prepare reports and appear before public bodies in furthering its objectives. The Commission is comprised of fifteen (15) members,

including the Chairman who is appointed annually by the County Board.”

<https://commissions.arlingtonva.us/commission-arts/>

### **Virginia Beach, VA**

“Since 1979, the Virginia Beach Arts and Humanities Commission has developed and promoted local cultural organizations and activities as part of its mission to enrich the quality of life of the citizens of Virginia Beach. In partnership with the community, the Commission promotes excellence in the arts by initiating and supporting programs, activities and policies that inspire, nurture and reflect the cultural diversity of the City.”

<https://www.vbgov.com/government/departments/cultural-affairs/arts-commission/Pages/default.aspx>

### **Williamsburg, VA**

“The purpose of the Williamsburg Area Arts Commission (WAAC) shall be to assist Williamsburg City Council and James City County Board of Supervisors and other appropriate bodies and organizations in supporting and stimulating excellence in the arts and in creating an atmosphere which encourages the growth, development, and accessibility of cultural amenities for the benefit of citizens and visitors.”

<http://www.williamsburgva.gov/government/departments-a-h/city-council/boards-commissions/williamsburg-area-arts-commission>

### **Discussion:**

There are several options for the City Council to consider as we move forward.

- The creation of the Charlottesville Cultural Arts Commission, whose primary charge would be to work closely with our community’s vast network of arts organizations to assist with improving coordination, promoting Charlottesville/Albemarle as a regional hub for the arts, and offering grant funding for eligible organizations involved with advancing the recommendations in the Cultural Arts Plan. This would include the creation of at least one position for a newly formed Office of Cultural Arts which would be housed initially in the City Manager’s Office.
- The creation of one position within the City government to serve as a liaison to the arts organizations as they attempt to implement the Cultural Arts Plan.
- The designation of a current staff member to work closely with arts organizations to advance the Plan.
- Simply do nothing and keep the status quo.

### **Alignment with City Council’s Vision and Strategic Plan:**

#### **Vision:**

#### **C’ville Arts and Culture**

Our community has world-class performing, visual, and literary arts reflective of the unique character, culture, and diversity of Charlottesville. Charlottesville cherishes and builds

programming around the evolving research and interpretation of our historic heritage and resources. Through City partnerships and promotion of festivals, venues, and events, all have an opportunity to be a part of this thriving arts, cultural, and entertainment scene.

**Strategic Plan:**

Goal #2 to **Be a Safe, Equitable, Beautiful and Thriving Community.**

**Recommendations:**

If there is sufficient interest by the Council in creating a Cultural Arts Commission and an Office of Cultural Arts, then the next steps would be to direct staff to fully develop the concept and bring it back for Council discussions as part of the FY 2017-2018 budget process.

**Community Engagement:**

There has been no community engagement on this subject.

**Budgetary Impact:**

Budgetary impact would be determined based on any future action taken by the Council. The staff estimates that an Arts Director position within the City organization would initially cost between \$80,000 - \$100,000, accounting for salary, benefits and office support.

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**CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA**



Agenda Date:	February 21, 2017
Action Requested:	Information only
Presenter:	Chip Boyles, Executive Director, Thomas Jefferson Planning District Commission
Staff Contacts:	N/A
<b>Title:</b>	<b>Thomas Jefferson Planning District Commission FY18 Presentation</b>

**Background:**

The City of Charlottesville is a governing member of and provides annual funding to the Thomas Jefferson Planning District Commission. The TJPDC provides both regional and local services to its six member governments. The TJPDC asks the City to provide input toward the TJPDC's regional and Charlottesville specific tasks for FY18.

**Discussion:**

The TJPDC has begun with FY18 budget requests, to ask member local governments to assist with identifying regional and member specific initiatives. The TJPDC Commissioners provide regional direction but are in need of localized input for government specific needs.

**Budgetary Impact:**

The TJPDC makes an annual per capita request to the City of Charlottesville. In addition to the per capita request, specific regional requests are made for Rivanna River Basin Commission, Legislative Liaison, Rideshare and Regional Solid Waste services.

**Recommendation:**

This presentation is informational only.

**Attachments:** Power Point presentation attached.



# FY17 Overview

## FY18 Local Government Inquiries

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Charlottesville  
February 21, 2017



# Thomas Jefferson Planning District Commission

## Mission Statement

The mission of the Thomas Jefferson Planning District Commission is to serve our local governments by providing regional vision, collaborative leadership and professional service to develop effective solutions.

- Regional Vision: TJPDC will facilitate the creation of a shared vision by bringing the six governments together to understand the contribution of each to the region and the role each will play in serving the region's needs.
- Collaborative Leadership: TJPDC will lead the development of solutions for the region's issues by helping member governments identify the critical issues facing the region and find collaborative approaches to address those issues.
- Professional Service: TJPDC will serve our members by providing cost effective, high quality technical assistance that focuses on their most important issues.

# Thomas Jefferson Planning District Commission

- Planning District Commissions were established by the General Assembly in 1969. Presently, there are 21 PDCs and Regional Commissions in Virginia. They are made up of elected officials and citizens appointed by local governments.
- The purpose of Planning District Commissions is to encourage and facilitate regional solutions to problems of area-wide significance. This cooperation recognizes regional opportunities and the importance of regional influences in planning and implementing public policies and services.

# Thomas Jefferson Planning District Commission

- The Thomas Jefferson PDC was formed in 1972 and is guided by a locally appointed, twelve member Commission, of which at least 51% are local elected officials. Member localities include the City of Charlottesville and the Counties of Albemarle, Fluvanna, Greene, Louisa, and Nelson.
- Funding sources include annual contributions from our member local governments, state appropriations, grants from federal and state governments, contract services and private foundations.
- Services provided to member localities and the public include planning, technical assistance, data, and information gathering.

# Thomas Jefferson Planning District Commission

## FY 17 Budget

- Total revenues of \$2,006,204
  - Federal revenues = 58%
  - State revenues = 18%
  - Local contracts = 16%
  - Local member per capita = 7.5%
  - Rent & Interest = .5%
  
- Expenses
  - 11 Employees = 37%
  - Rent = 4%
  - Contracts = 3%
  - Pass Through Payments = 46%
  - Other operating = 10%

# TJPDC Services

**FY17**

**Direct**

- ❑ Nelson Rockfish Valley Small Area Plan
- ❑ Nelson Route 29 Econ Dev Study
- ❑ Albemarle Plan Review Services
- ❑ Nelson BOS Strategic Planning Facilitation
- ❑ Fluvanna FEMA Mitigation Grant
- ❑ Fluvanna Econ Dev Brochure
- ❑ Albemarle Broadband Plan Grant
- ❑ Smart Scale Transp. Applications
- ❑ Stanardsville TAP Grant
- ❑ 5<sup>th</sup> Street Station TAP Grant
- ❑ Charlottesville Better Block Demo Project

# TJPDC Services

**FY17**

**Regional**

- ❑ Legislative Forum
- ❑ GO Virginia Assistance to CVPED
- ❑ Regional Broadband Facilitation
- ❑ MPO Route 29 Coordination
- ❑ MPO Regional Transit Study
- ❑ MPO I-64 Corridor Study
- ❑ Federal Intergovernmental Reviews

# TJPDC Services

**FY17**  
**Regional**

- ❑ Regional Solid Waste Plan
- ❑ Regional Hazard Mitigation Plan
- ❑ Rivanna River Corridor Facilitation
- ❑ Regional Social Services Hub
- ❑ Regional VTRANS State Transp. Plan
- ❑ Housing Preservation Grant
- ❑ HOME Affordable Housing Consortium
- ❑ Rideshare Coordination & Inventories



# Regional

**FY18**

New in FY18, TJPDC calculates each local government's per capita contributions and subtracts out payments required for regional matches and for the administrative loss in the legislative liaison program. 75% of the balance is used for regional programs and 25% is available for direct local government services.

# Regional

**FY18**

- ❑ Regional programs include assistance in areas of:
  - ❑ GO Virginia
  - ❑ Regional Broadband Coordination
  - ❑ Regional Rural Transportation Planning
  - ❑ Regional Educational and Training Presentations
  - ❑ Regional Quality of Life Report
  - ❑ Regional staff & program facilitation
  - ❑ MPO LRTP
  - ❑ Rural Long Range Transportation Plan
  - ❑ Lunch & Learn Series

# Charlottesville

**FY18**

- ❑ Charlottesville's 25% of TJPDC per capita for local assistance offers approximately 50 hours of direct staff assistance to the City.
- ❑ Direct service examples include:
  - ❑ Contract offsets to assist with planning studies, land use planning, comp planning, plan review assistance, etc.
  - ❑ Strategic Planning facilitation
  - ❑ Grant writing
  - ❑ Attending meetings
  - ❑ Small planning studies
  - ❑ Use of TJPDC / WSC Meeting Spaces

# Charlottesville

**FY18**

**Fund**

**Request**

Per capita request = \$ 29,890 (pop 48,210)

MPO Match = (\$11,586)

Leg Liaison Deficit = (\$4,657)

Balance = \$13,647

Regional 75% = \$10,235

Charlottesville 25% = **\$3,412**

# Charlottesville

**FY18**

The TJPDC is asking for your assistance in developing regional and especially your local needs for FY 2018.

You may work with us directly, or through your staff, or especially through your representatives on our commission, to identify your recommended regional needs and to request any direct assistance that we may provide in FY2018.

# Thomas Jefferson Planning District Commission

## QUESTIONS

**Chip Boyles**

**Executive Director**

**[cboyles@tipdc.org](mailto:cboyles@tipdc.org)**

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