

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



Agenda Date:	December 21, 2020
Action Required:	Approval of Franchise Ordinance
Presenter:	John Blair, Acting City Manager
Staff Contacts:	Lisa Robertson, Acting City Attorney
Title:	Proposed Extension of Franchise Agreement

Background:

Eagle Real Estate, LLC has occupied public right of way within the City pursuant to a franchise agreement last approved by the City in 2015. Eagle has requested a new 5-year franchise term.

Discussion:

Eagle's existing Facilities have been in place since at least 2015. Eagle is not requesting additional Facilities and staff is not aware of any instances of noncompliance with the previously-granted franchise terms and conditions. Eagle is requesting a reduction of their Bond from \$25,000 to \$10,000. We recommend approval of this request, since Eagle has demonstrated its ability to comply with the franchise terms, and no new Facilities are proposed (the reduced bond amount is programmed into the proposed franchise ordinance).

Alignment with Council Vision Areas and Strategic Plan:

Communications infrastructure promotes economic sustainability and quality education.

Community Engagement: N/A

Budgetary Impact: N/A

Recommendation: Approval

Alternatives: None

Attachments:

- (1) Proposed 2020 Franchise Agreement (5-year Term)
- (2) Correspondence, Insurance Certificate, Bond Renewal

Attorneys Office

EAGLE CORPORATION
P. O. Box 1648
CHARLOTTESVILLE, VIRGINIA 22902
TELEPHONE (434) 971-2686

City of Charlottesville
Department of Neighborhood Development Services
605 E Main St
Charlottesville, VA 22902

Date: September 1, 2020

RE: Renewal of Telecommunications Franchise Agreement by Eagle Real Estate, LLC

Eagle Real Estate, LLC is requesting a renewal of the existing Telecommunications Franchise agreement for five (5) additional years to run through 2025. The company has complied with the terms of the existing agreement and wishes to extend the same terms with this renewal. A copy of the existing agreement is attached for your ease of reference.

Based on recent email communications with Lisa A. Robertson, Chief Deputy City Attorney, we are submitting this request along with the following information to support this renewal request.

It is our understanding that the mapping data referenced in section 305 of the agreement was provided previously and has not changed in the past 5 years.

An attached copy of our proof of insurance is included with this letter.

The company's account is in good standing with the City of Charlottesville and as of this letter has paid invoices that were presented to the company by the City.

Eagle Real Estate, LLC remains an operating business and legal entity at the same address as associated with the company for the original franchise agreement which is 1020 Harris St, Charlottesville VA 22903

The company would request a reduction to \$10,000.00 for the amount of the performance bond required in section 701 of the agreement. The company and its related business entities of Eagle Corporation and Allied Concrete Company continue to operate within the city contributing strongly to the tax revenues of the city. The company has complied with the matters of this agreement. There is no plans for any changes or additional installations of additional telecommunication facilities beyond what was installed 5 years ago. Given such considerations we requesting the above reduction.

If you have any questions regarding this renewal you may contact Larion Hostetler via email me L.Hostetler@EagleCorpUSA.com or by phone at (434) 971-2686.

We thank you for your consideration of this renewal.



David T. Paulson, President

Eagle Real Estate, LLC



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/1/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Scott Insurance 3900 Westerre Parkway Suite 200 Richmond VA 23233	CONTACT NAME: Stacey Hall PHONE (A/C, No, Ext): 804-545-2216 E-MAIL ADDRESS: shall@scottins.com	FAX (A/C, No): 434-455-8938
	INSURER(S) AFFORDING COVERAGE	
INSURED Eagle Real Estate Amy Ezell 1020 Harris Street Charlottesville VA 22903	EAGL-COR-01	INSURER A: Hartford Fire Ins Company (A+) NAIC # 19682
		INSURER B: Twin City Fire Insurance Company (A+) 29459
		INSURER C: Property & Casualty Insurance Company of Hartford 34690
		INSURER D:
		INSURER E:
		INSURER F:

COVERAGES **CERTIFICATE NUMBER:** 2006315351 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	SUBR VVVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:			14 CSE S47401	12/1/2019	12/1/2020	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Each occurrence)	\$ 300,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	X AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY X HIRED AUTOS ONLY SCHEDULED AUTOS X NON-OWNED AUTOS ONLY			14 CSE S47403	12/1/2019	12/1/2020	COMBINED SINGLE LIMIT (Per accident)	\$ 3,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
B	X UMBRELLA LIAB X EXCESS LIAB DEF: RETENTIONS			14 XS ON 1216	12/1/2019	12/1/2020	EACH OCCURRENCE	\$ 5,000,000
							AGGREGATE	\$ 5,000,000
								\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under: DESCRIPTION OF OPERATIONS below	Y/N N	N/A	14 WNS47400	12/1/2019	12/1/2020	X PER STATUTE OTH-ER	E.L. EACH ACCIDENT \$ 1,000,000
								E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
								E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 City of Charlottesville is included as additional insured as respects to General Liability if required by written contract. 30 day notice of cancellation will be provided to the certificate holder except for nonpayment of premium.

CERTIFICATE HOLDER City of Charlottesville Attn: City Manager 605 E. Main St Charlottesville VA 22902	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Stacey W. Hall</i>

Continuation Certificate

The Hartford Insurance Group

Surety - Miscellaneous



The Hartford Fire Insurance Company, (hereinafter called the Company), hereby continues in force its Bond No. 14BSBHF2794 in the sum of Twenty-Five Thousand (\$25,000.00) Dollars on behalf of Eagle Real Estate, LLC 1020 Harris Street, Charlottesville, VA 22903 in favor of City of Charlottesville for the (extended) term beginning on September 28, 2020 and ending on September 28, 2021. subject to all the covenants and conditions of said Bond, said Bond and this and all continuations thereof being one continuous contract.

This Continuation is executed upon the express condition that the Company's liability under said Bond and this and all continuations thereof shall not be cumulative and shall in no event exceed the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

IN WITNESS THEREOF, the Company has caused this instrument to be signed by its officers proper for the purpose and its corporate seal to be hereto affixed on August 30, 2020.

Hartford Fire Insurance Company

By: Joelle L. LaPierre
Joelle L. LaPierre, Attorney in Fact



Attest: Shelby Wiggins

POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD

BOND, T-11

One Hartford Plaza

Hartford, Connecticut 06155

Bond.Claims@thehartford.com

call: 888-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Name: JAMES A SCOTT & SON INC

Agency Code: 14-730214

- Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint Joelle L LaPierre of Lake Mary, Florida, its true and lawful Attorney-in-Fact, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge the following bond, undertaking, contract or written instrument:

Bond No. 14BSBHF2794

Naming Eagle Real Estate, LLC as Principal, and City of Charlottesville as Obligee,

in the amount of See Bond Form(s) on behalf of Company in its business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on May 23, 2016 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Shelby Wiggins

Shelby Wiggins, Assistant Secretary

Joelle L. LaPierre

Joelle L. LaPierre, Assistant Vice President

STATE OF FLORIDA

COUNTY OF SEMINOLE

ss. Lake Mary

On this 13th day of February, 2020, before me personally came Joelle LaPierre, to me known, who being by me duly sworn, did depose and say: that (s)he resides in Seminole County, State of Florida; that (s)he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that (s)he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that (s)he signed his/her name thereto by like authority.



Jessica Ciccone

Jessica Noelle Ciccone
My Commission #FP029702
Expires June 20, 2021

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of August 30, 2020.

Signed and sealed in Lake Mary, Florida.



Keith D. Dozois

Keith D. Dozois, Assistant Vice President

Eagle Real Estate, LLC Franchise Agreement

FRANCHISE

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**AN ORDINANCE
GRANTING A 5-YEAR FRANCHISE TO
EAGLE REAL ESTATE, LLC
TO USE THE STREETS AND OTHER PUBLIC PLACES
OF THE CITY OF CHARLOTTESVILLE, VIRGINIA
TO INSTALL POLES, WIRES, CONDUITS, CABLES AND FIXTURES WITHIN
PUBLIC STREET RIGHTS OF WAY**

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia, that **EAGLE REAL ESTATE, LLC**, (“Company”), its successors and assigns, is hereby granted a franchise for a period of five (5) years from the effective date hereof and is hereby authorized and empowered to erect, maintain and operate certain facilities and equipment within public rights of way owned by the City of Charlottesville, Virginia (the “City”) as further set forth within this franchise 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 authorize use of the City’s public right-of-way by the Company for communications infrastructure. This Ordinance imposes regulations on the placement and maintenance of Company’s Facilities within the City’s PROW and requires the Company to bear financial responsibility for their Facilities. This Ordinance is intended to complement, and not replace, the regulatory roles of state and federal agencies.

SECTION 102 AUTHORITY TO MANAGE THE RIGHT OF WAY

This Ordinance is enacted pursuant to the authority granted to the City under its Charter as well as the authority conferred within Virginia Code Sections 15.2-2015, 15.2-2100, 56-460, 56-462(A), and other applicable federal and state statutory and administrative law provisions.

This Ordinance and any right, privilege or obligation of the City or Company hereunder, shall be interpreted consistently with federal and state 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 Eagle Real Estate, LLC, including its successors and assigns.

103.3 DIRECTOR means the Charlottesville City Manager, including any public officials or City employees to whom the City Manager delegates any responsibilities for administration or enforcement of this Ordinance.

103.4 FACILITY means any infrastructure, equipment or other tangible asset required to provide a utility service, which includes but is not limited to: cable television, electric, natural gas, communications, 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 PROWincluding 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 entire width between the boundary lines of land owned by the City of Charlottesville, or in which the City has a property interest, that is used or dedicated for use for purposes of vehicular, bicycle, or pedestrian travel, regardless of whether such area is paved or unpaved, including airspace above and ground below such land. This definition does not include any state highway system owned or regulated by the Commonwealth Transportation Board.

ARTICLE II

SECTION 201 INITIAL INSTALLATION

The initial installation of Company's Facilities shall be in the locations shown on a PROW Drawing approved by the Director. Any additional installation of equipment, lines, cables or other Facilities shall be underground unless it shall be determined by the Director that it is not feasible to do so, in accordance with Article III.

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.

202.2 GENERAL PREFERENCE FOR UNDERGROUND FACILITIES: Company's Facilities shall be installed underground; however, the City recognizes that in some circumstances the placement of Facilities underground may not be feasible. In appropriate circumstances the Director may, in accordance with Article III, approve an above-ground installation.

202.3 INSTALLATION OF OVERHEAD FACILITIES: Whenever Company proposes new above ground Facilities, those Facilities shall be attached to or otherwise incorporated into existing above-ground Facilities, either the Company's or those of another utility. 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 above-ground Facilities, and explanation of why undergrounding is not appropriate or feasible, in accordance with 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: 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 state law.

SECTION 203 INSPECTION BY THE CITY

The Company shall make work within the PROW available to the City and other government authorities for inspection at all reasonable times.

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 PROW 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

Company's Facilities shall be placed in a manner that will not interfere with other utilities, public or privately-owned, and that will not adversely affect the safety and convenience of persons traveling through, on, or over, the City's Public Rights-of-Way.

SECTION 206 OBSTRUCTION OF THE PROW

The nature and placement of all Facilities within the PROW shall be limited to the details and information clearly specified within an approved PROW plan.

206.1 REMOVAL OF OBSTRUCTIONS: Any use or occupancy of the PROW that is not in accordance with an approved PROW plan shall be deemed an Obstruction that 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 the 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 in and through natural waterways, or through any gutters, culverts, ditches tiles or other conveyance.

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 City Manager is the public official charged with general supervision and control of City streets and PROW. The City Manager may delegate to appropriate public officials and personnel responsibility for administration and enforcement of this Ordinance.

SECTION 302 SUBMISSION OF PROW PLAN

At least thirty (30) days before beginning any installation, removal or relocation of its Facilities, the Company shall submit detailed construction plans to the Director for 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 response 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 shall, within thirty (30) days, either approve the Company's construction plans or inform the Company of the reasons for disapproval. The Company shall designate a responsible contact person with whom the Director can communicate on all matters relating to the Company's Facilities.

SECTION 305 MAPPING DATA

Within thirty (30) days of the installation, relocation or removal of its Facilities within the PROW, Company shall provide to the City such geographic information as the City may deem necessary for 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 all appurtenances.

ARTICLE IV

SECTION 401 COMPLIANCE WITH ALL LAW AND REGULATIONS

This Ordinance shall in no way relieve the Company of its duty to obtain all other necessary permits, licenses, and permissions, or to pay all fees required by any applicable state or federal rule, law or regulation. Company shall comply with and fulfill all applicable federal, state and local laws and regulations, including ordinances, regulations and requirements of the City, regarding excavations and any other work in or affecting the PROW. The Company shall

perform all work in conformance with all applicable safety codes and regulations of governmental authorities having jurisdiction over the Facilities. By installing its Facilities within the PROW Company assumes responsibility for all work conducted by the Company, or any entity or person acting on its behalf.

ARTICLE V

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

Upon written notice from the Director of a planned improvement or alteration of the PROW, including, without limitation, any proposed relocation of City-owned utilities that will necessitate relocation of Company's Facilities, the Company shall relocate its Facilities, at its own expense, and shall complete the required relocation 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 PROW, the Director shall have the authority to determine the manner and extent of the restoration of the PROW. In exercising this authority, the Director shall be guided by the following considerations:

- (a) the number, size, depth and duration of the excavations, disruptions or damage to the PROW;
- (b) the traffic volume carried by the PROW; the character of the neighborhood surrounding the PROW;
- (c) the pre-excavation condition of the PROW 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 PROW; and
- (e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the PROW 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 PROW must be completed promptly. Unless otherwise specified by the Director, patching and restoration shall be performed in accordance with requirements of the City's Standards and Design Manual.
- 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 PROW.
- 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 Director, 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 PROW 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, the Director shall notify the Company in writing of the deficiency and shall allow the Company at least ten (10) days from receipt of the notice to cure the deficiency, or to respond with a plan to cure. In the event that the Company fails to cure, or fails to respond to the Director'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 Director may bring an action in the name of the City for the recovery of 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 damage to land or improvement within the ROW caused by its actions or Facilities. If the Company damages City-owned facilities or improvements (such as, but not limited to: culverts, road surfaces, curbs and gutters, or tile lines) the Company shall correct the damage promptly after receiving

written notification from the Director. If the Company does not promptly correct the damage to the satisfaction of the Director, the Director may make such repairs as necessary and may charge all of the reasonable costs of such repairs to the Company. The Director shall provide the Company with an itemized statement of the City's reasonable costs incurred to repair the damage and a demand for payment. If payment is not received from the Company within thirty (30) days after sending the itemized statement and demand for payment, 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, City Council members, City officials and 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 City's PROW pursuant to 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 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 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, its officers, or employees, either independently or jointly with the Company, the Company will defend, indemnify and hold the City harmless from and against any liability, cost, expense or judgment, of any nature whatsoever, resulting from

or in connection with 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 defend the suit through counsel of its own choosing 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, its officers, or employees, 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 Director and 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 Commonwealth 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 PROW by the Company, its agents, employees and permittees, and (ii) placement and use of Facilities owned by the Company in the PROW 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 in a form acceptable to the City Attorney.

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 gross negligence or intentional acts of the City, its Council members, its agents or employees, or another franchisee or 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 ten thousand dollars (\$10,000). 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 may be subject to a fee or a penalty for violation of this Ordinance as provided for in applicable law. In addition, the City hereby reserves the right to bring suit for specific performance of Company's obligations hereunder, or other civil remedies as may be available to the City at law or in equity.

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, to the extent said Act applies to Company's Facilities):

- (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 right herein conferred upon Company allowing it to use and occupy the City's PROW.

The Company shall be obligated to remit the PROW Use Fee and/or 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, as required by Section 56-468.1(G) of the Code of Virginia) appropriate notice of the PROW Use Fee. 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 Company's use of the PROW.

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 all of its Facilities 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 PROW 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 and in compliance with the pruning standards of the National Arborists Association, as currently in effect, or other standard required by the Director.

ARTICLE XI

SECTION 1101 INITIAL TERM OF 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 FRANCHISE

If the Company wishes to maintain its equipment within the City and to continue the operation of the system beyond the term referenced in Section 1101, then Company shall give written notice to the Director at least one hundred twenty (120) days before expiration of the term. Such written notice shall include a report verifying the location of all of the Facilities owned by the Company within the City's PROW, and shall contain sufficient information necessary to allow the Director to verify the financial responsibility of the Company at the time of said request.

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

While an application pursuant to Section 1102 is pending the Company may continue operations of its existing Facilities under this franchise Ordinance, until such time as final action is taken by City Council upon the application. Nothing herein shall be construed to grant the Company a perpetual franchise.

ARTICLE XII

SECTION 1201 NOTICE

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

To the Company:
Eagle Real Estate, LLC
1020 Harris Street
Charlottesville, VA 22903

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

All correspondences shall be by U.S. 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 written notice given in accordance with this Ordinance.

SECTION 1202 EMERGENCY NOTIFICATION

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

To the Company:
Amy Ezell or David Paulson
(434) 971-2686 (office)

To the City:
Gas Dispatchers
(434) 970-3800 (office)
Emergency (434)293-9164 (leaks)
(434) 970-3817 (facsimile)

Paul Oberdorfer
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 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 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 PROW

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 the franchise granted by this Ordinance, or by such other reasonable time prescribed by the Director, whichever is later. No such removal will be required while any application provided for in Section 1102 is pending. If an application pursuant to Section 1102 is denied, the six (6) month period provided above shall commence on the date of denial or the expiration of the term of this franchise, whichever date 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 PROW for the purpose of removing its Facilities pursuant to this paragraph.

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

The Facilities owned by the Company may be abandoned in place, without removal, upon request by the Company and approval by the City. The City's approval may be granted subject to conditions deemed by the Director to be in the best interests of 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 advance 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 the 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. Notwithstanding the foregoing, Company shall grant no lease or right of use that is in conflict with the terms of 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 franchises to other parties.

ARTICLE XVII

SECTION 1701 ALL WAIVERS IN WRITING AND EXECUTED BY THE PARTIES

Subject to the foregoing, no waiver of any provisions of the franchise granted by this Ordinance shall be effective and binding only if it is made in writing and signed by duly authorized representatives of the City and the Company.

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.

EAGLE REAL ESTATE, LLC

By: _____

Its Member/ Managing Member

Date _____