



**CITY COUNCIL AGENDA**  
**March 7, 2011**

**6:00 – 7:00 p.m.**

Closed session as provided by Section 2.2-3712 of the Virginia Code  
(Second Floor Conference Room)

**TYPE OF ITEM**

**SUBJECT**

**CALL TO ORDER**  
**PLEDGE OF ALLEGIANCE**  
**ROLL CALL**

**AWARDS/RECOGNITIONS**

MS Awareness Proclamation; THE BIG READ; Festival of the Book; StoryFest (Cat in the Hat Proclamation); GFOA Budget Award

**ANNOUNCEMENTS**

**MATTERS BY THE PUBLIC**

Public comment will be permitted until 7:35 p.m. (limit of 3 minutes per speaker) and at the end of the meeting on any item, including items on the agenda, provided that a public hearing is not planned or has not previously been held on the matter. Persons are asked to sign up in advance of the start of the meeting.

**COUNCIL RESPONSES TO MATTERS BY THE PUBLIC**

**1. CONSENT AGENDA\***

(Items removed from the consent agenda will be considered at the end of the regular agenda.)

- a. Minutes of February 22
- b. APPROPRIATION: \$3,177 – 2010 State Homeland Security Program Grant 3 (2<sup>nd</sup> of 2 readings)
- c. APPROPRIATION: \$18,362 – 2011 Juvenile Accountability Block Grant (JABG) (2<sup>nd</sup> of 2 readings)
- d. APPROPRIATION: \$2,500 – Charlottesville Newsplex Scholarship Program (2<sup>nd</sup> of 2 readings)
- e. APPROPRIATION: \$382,090 – Highway Safety Improvement Program (2<sup>nd</sup> of 2 readings)
- f. APPROPRIATION: \$102,576 – Aid & Localities Fire Disbursement Fund (2<sup>nd</sup> of 2 readings)
- g. APPROPRIATION: \$122,398 – U.S. Department of Housing and Urban Development Sustainable Communities Grant Funds (2<sup>nd</sup> of 2 readings)
- h. APPROPRIATION: \$250,000 – Charlottesville City Schools - Appropriation of Capital Improvement Program Large Cap Supplemental Contribution (1<sup>st</sup> of 2 readings)
- i. APPROPRIATION: \$980.45 – State Assistance for Spay and Neuter Program at SPCA (1<sup>st</sup> of 1 reading)
- j. APPROPRIATION: \$44,336 – Domestic Violence Services Coordinator Grant (1<sup>st</sup> of 2 readings)
- k. RESOLUTION: New Sidewalk Prioritization Process (1<sup>st</sup> of 1 reading)
- l. RESOLUTION: Entrance Corridor Design Guidelines (1<sup>st</sup> of 1 reading)
- m. RESOLUTION: Amend SUP for 207 14<sup>th</sup> St NW (1<sup>st</sup> of 1 reading)
- n. RESOLUTION: License Agreement with Qwest Communications (1<sup>st</sup> of 1 reading)
- o. RESOLUTION: CRHA/City Council MOU (1<sup>st</sup> of 1 reading)
- p. ORDINANCE: Changes to Café Ordinances (2<sup>nd</sup> of 2 readings)
- q. ORDINANCE: FiberLight Agreement (2<sup>nd</sup> of 2 readings)
- r. ORDINANCE: Longwood Park PUD – Exchange of Land (2<sup>nd</sup> of 2 readings)
- s. ORDINANCE: Sale of Land to Southern Development (2<sup>nd</sup> of 2 readings)

**2. REPORT**

School Board's Proposed FY 2012 Budget

**3. REPORT**

City Manager's Proposed FY 2012 Budget

**4. REPORT**

Rivanna Pumping Station

**5. REPORT**

Social Services Advisory Board Annual Report to Council

**6. APPEAL\***

Board of Architectural Review Decision re: 1328 Riverdale Drive – Renewal of Demolition Request (1<sup>st</sup> of 1 reading)

**7. REPORT**

Old Lynchburg Road Design Update

**\*ACTION NEEDED**

*Reasonable accommodations will be provided for persons with disabilities upon request.*

**APPROPRIATION**  
**2010 State Homeland Security Program Grant**  
**Grant # 11-A2287HS10**  
**\$3,177**

**WHEREAS**, the City of Charlottesville, through the Police Department, has received a 2010 State Homeland Security Program Grant from the Commonwealth of Virginia Department of Criminal Justice Services in the amount of \$3,177, to be used to pay for one year of maintenance for its LInX (Law Enforcement Information Exchange) software, as specified by the grant.

**WHEREAS**, the grant award covers the period from period January 1, 2011 through September 30, 2012,

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$3,177, received from the Commonwealth of Virginia Department of Criminal Justice Services, is hereby appropriated in the following manner:

**Revenue – \$3,177**

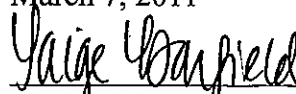
Fund: 211                      I/O: 1900159                      G/L Account: 431120

**Expenditures - \$3,177**

Fund: 211                      I/O: 1900159                      G/L Account: 530060

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$3,177 from the Commonwealth of Virginia Department of Criminal Justice Services

Approved by Council  
March 7, 2011

  
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Clerk of Council

**APPROPRIATION**

11-M3236JB09

2011 Juvenile Accountability Block Grant (JABG)

\$18,362

**WHEREAS**, the City of Charlottesville has received funds from the Virginia Department of Criminal Justice Services in the amount of \$16,526 in federal pass through funds and \$1,836 in local cash match (provided by Community Attention and Central Virginia Restorative Justice) for a total award of \$18,362; and

**WHEREAS**, the funds will be used to support programs provided by Community Attention and the Central Virginia Restorative Justice Program; and

**WHEREAS**, the grant award covers the period from July 1, 2010 through June 30th, 2011;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$18,362 is hereby appropriated in the following manner:

**Revenue – \$18,362**

\$16,526	Fund: 209	I/O: 1900160	G/L: 430120 State/Fed pass thru
\$ 1,100	Fund: 209	I/O: 1900160	G/L: 431022 Other grant funding
\$ 736	Fund: 209	I/O: 1900160	G/L: 498010 Transfer from other funds

**Expenditures - \$18,362**

\$18,362	Fund: 209	I/O: 1900160	G/L: 530550 Contracted Services
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**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$16,526 from the Virginia Department of Criminal Justice Services.

Approved by Council

March 7, 2011



Clerk of Council

**APPROPRIATION**

The First Tee of Charlottesville - \$2,500

**WHEREAS**, the City of Charlottesville, through The First Tee of Charlottesville, has received a Donation in the amount of \$2,500 from the Charlottesville Newsplex.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$2,500 received from the Charlottesville Newsplex, is hereby appropriated in the following manner:

**Revenue - \$2,500.00**

Fund: 609

Internal Order: 1800022

G/L Account: 451020

**Expenditures - \$2,500.00**


Fund: 609

Internal Order: 1800022

G/L Account: 540350

Approved by Council

March 7, 2011

  
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Clerk of Council

**APPROPRIATION**

**Highway Safety Improvement Program - \$382,090**

**WHEREAS**, a total of \$382,090 in state and federal funds for the Highway Safety Improvement Program requires appropriation;

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

**Revenues**

<b>\$343,881</b>	Fund: 426	WBS: P-00635	G/L Account: 430120
<b>\$ 38,209</b>	Fund: 426	WBS: P-00635	G/L Account: 430110

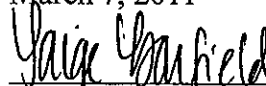
**Expenditures**

<b>\$382,090</b>	Fund: 426	WBS: P-00635	G/L Account: 599999
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**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$382,090 from the Virginia Department of Transportation.

Approved by Council

March 7, 2011

  
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Clerk of Council

**APPROPRIATION**  
**Aid & Localities Disbursement Fund**  
**\$102,576**

**WHEREAS**, the Virginia Department of Fire Programs has awarded a grant to the Fire Department, through the City of Charlottesville, specifically for fire service applications.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that a total of \$102,576 be appropriated in the following manner:

**Revenues - \$102,576**

Fund: 209                    I/O: 1900010                    G/L Account: 430110

**Expenditures - \$102,576**

Fund: 209	I/O: 1900010	G/L Account: 599999	\$90,629
Fund: 209	I/O: 1900010	G/L Account: 561302	\$20,000

**BE IT FURTHER RESOLVED** that \$20,000 will be transferred to the Debt Service Fund as an effort by the Fire Department to repay debt service on the volunteer company's fire brush truck:

**Revenues - \$20,000**

Fund: 302                    I/O: 2000059                    G/L Account: 498010

Approved by Council  
March 7, 2011

  
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Clerk of Council

**APPROPRIATION**

**U.S. Department of Housing and Urban Development Sustainable Communities Grant  
\$122,398**

**WHEREAS**, the U. S. Department of Housing and Urban Development has awarded the Thomas Jefferson Planning District Commission \$999,000 for the Sustainable Communities Grant; and

**WHEREAS**, the City of Charlottesville will be a sub-recipient of a portion of the funds, \$122,398, which will be used to hire a temporary Planner; and

**WHEREAS**, a sub-recipient agreement has not yet been approved and authorized by City Council and until that time, the City may advertise for the Planner position but not hire until such action has occurred; and

**WHEREAS**, the grant award covers the period February 1, 2011 through January 31, 2014;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that the sum of \$122,398, received from the U.S. Department of Housing and Urban Development through the Thomas Jefferson Planning District Commission is hereby appropriated in the following manner:

**Revenues**

\$122,398      Fund: 210                      Cost Center: 3901001000      G/L Account: 432170

**Expenditures - \$122,398**

\$122,398      Fund: 210                      Cost Center: 3901001000      G/L Account: 519999

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon a signed sub-recipient agreement being approved and authorized by City Council.

Approved by Council  
March 7, 2011

  
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Clerk of Council



**Appropriation**

**State Assistance for Spay and Neuter Program at SPCA  
\$980.45**

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that a total of \$980.45 is hereby appropriated to the Charlottesville/Albemarle SPCA in the following manner:

**Revenues - \$980.45**

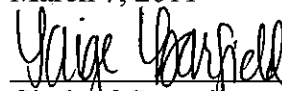
Fund: 105                      Cost Center: 9713006000                      G/L Account: 430080

**Expenditures - \$980.45**

Fund: 105                      Cost Center: 9713006000                      G/L Account: 540100

Approved by Council

March 7, 2011

  
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Clerk of Council

**RESOLUTION  
ADOPTING PROCESS TO DETERMINE PRIORITIES  
FOR SIDEWALK CONSTRUCTION**

**WHEREAS**, staff has met with citizen groups, the Planning Commission and City Council to discuss ways to improve the process for prioritizing requests for new sidewalk construction; and

**WHEREAS**, these meetings resulted in a proposed new process for sidewalk prioritization which is intended to emphasize pedestrian safety and promote the healthy habit of walking to school for local youth; and

**WHEREAS**, the proposed process involves development by Neighborhood Development Services (NDS) of the following set of priority criteria to assess the level of need for construction of a new sidewalk: Commercial and Residential Connections, Connected Streets, Functional Roadway Classification, Low Income Areas, Overlap of School Areas, Park Access, School Proximity, Existing Sidewalk on One Side of Road, and Transit Stop Access; and

**WHEREAS**, staff has considered requests from residents for new sidewalks, and using the proposed criteria, generated a list of potential sidewalk construction projects that can reasonably be expected to be completed within five (5) years, and every five (5) years NDS staff will review all new submissions for sidewalks and generate a new sidewalk priority list; now, therefore

**BE IT RESOLVED** by the Council for the City of Charlottesville, Virginia that the process described above for prioritizing sidewalk construction projects, and the attached Sidewalk Priority List, dated March 7, 2011, are hereby approved.

Approved by Council  
March 7, 2011

  
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Clerk of Council

**SIDEWALK PRIORITY LIST**  
**March 7, 2011**

Street	Side of Road	Start	End	Length	School Dist.	Sidewalk On Other Side?	Functional Classification
1 <sup>st</sup> St. SE		South St.	Garrett St.	300		No	L
250 EB Off Ramp	South	St. Charles Ave	Locust Ave	500	Burnley-Moran	No	PA
7 <sup>th</sup> Street	West	8 <sup>th</sup> Street	Page Street	300		No	L
9½ Street	East	E. Jefferson St.	High Street	135		No	L
Allen Dr.	North	Willard Dr.	Moseley Dr.	500	Jackson-Via	No	L
Bellevue Avenue	SW	#1304	River Rd.	550	Burnley-Moran	No	L
Blenheim Avenue	North	Meridian St.	Castalia St.	500	Clark	No	L
Briarcliff Ave.	North	Rockcreek Rd.	1412	880	Buford	No	L
Broad Avenue	East	#1524	Cherry Ave.	650	Johnson/Buford	No	L
Cabell Avenue	NW	Burnley Ave	#823	450	Venable	No	L
Chancellor Street	SW	#167	Rugby Road	400	Venable	No	L
East High Street	East	At Telephone Co.		150		Yes	PA
Forest Ridge Rd.	East	Briarcliff Ave	Forest Hill	300	(Forest Hills Park)	No	L
Franklin Street	West	Market St.	Carlton Ave.	365		No	L
Harris Rd.	North	121 Harris Rd.	Moseley Dr.	825	Jackson-Via	Yes	C
Kenwood Ln.	North	Concord Dr.	Galloway Dr.	100	CHS	No	C
Meadowbrook Heights	NW	#1609	#1713	840	Walker/CHS	No	C
Meridian Street	East	Montrose Ave	Monticello Ave	800	Clark	No	L
Meridian Street	West	Montrose Ave	Monticello Ave	650	Clark	No	L
Montrose Ave	North	Rialto St.	Meridian St.	450	Clark	No	L
Montrose Ave	South	Monticello Ave	Monticello Rd	450	Clark	No	L
Moore Street	East	Hazel Street	Grace Street	350	Burnley-Moran	No	L
Shamrock Road	East	Thomas Dr	Broad Ave	300	Johnson	Yes	C
Tarleton Drive	SW	Greenbrier Dr.	Banbury St.	900	Greenbrier/CHS	No	L

**RESOLUTION APPROVING  
ENTRANCE CORRIDOR GUIDELINES**

**WHEREAS**, Section 34-308 of the City Code requires the City's Entrance Corridor Review Board ("ERB") to develop and recommend to City Council design guidelines for the City's entrance corridor overlay districts ("Design Guidelines"); and

**WHEREAS**, the ERB, has developed a set of Design Guidelines and, at its meeting on February 8, 2011, voted to recommend approval of those Design Guidelines; and

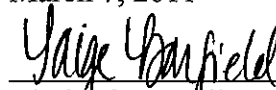
**WHEREAS**, this City Council finds and determines that:

(1)The proposed Design Guidelines are consistent with the purposes and standards set forth within Article II (Overlay Districts) of the City's Zoning Ordinance; and

(2)The Design Guidelines have been developed in consultation with the City's Director of Neighborhood Development Services, with input from business and property owners in the various entrance corridor overlay districts, as required by Section 34-308(b) of the City Code;

**NOW, THEREFORE, BE IT RESOLVED** that the Design Guidelines are hereby approved, as shown on the attached Design Guidelines (with new language being underlined and deleted language shown with strikeout).

Approved by Council  
March 7, 2011

  
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Clerk of Council

**RESOLUTION  
AMENDING A SPECIAL USE PERMIT GRANTED TO  
UNIVERSITY LIMITED PARTNERSHIP  
TO ALLOW UP TO 40 HOTEL ROOMS IN THE PROPOSED HOTEL  
AT 207 14<sup>TH</sup> STREET, N.W.**

**WHEREAS**, University Limited Partnership (“Applicant”) has requested an amendment to the Special Use Permit (SUP) granted by Council on April 5, 2010, with respect to property identified on City Tax Map 9 as Parcels 70.1 through 70.21, consisting of approximately .25 acres or 10,900 square feet (hereafter the “Subject Property”), to increase the maximum number of hotel rooms permitted from 31 to 40 rooms; and

**WHEREAS**, the Subject Property is located in the B-1 Business District with Architectural Design Control District Overlay (“B-1H”); and

**WHEREAS**, the Applicant was granted a special use permit on April 5, 2010 to allow construction of a 31-room boutique hotel with certain conditions, a copy of which is attached hereto; and

**WHEREAS**, following a joint public hearing before this Council and the Planning Commission, duly advertised and held on February 8, 2011, and based on the information presented by Neighborhood Development Services staff as well as by the Applicant, the Planning Commission recommended that the application be approved; and

**WHEREAS**, this Council finds that such amendment to the existing SUP is allowed under City Code Section 34-480 by special use permit, and will conform to the criteria applicable to special permits generally under Chapter 34 of the City Code; now, therefore

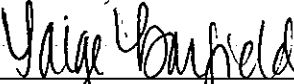
**BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that the special use permit granted to University Limited Partnership on April 5, 2010 is hereby amended to permit an increase in the maximum number of hotel rooms permitted from 31 to 40 rooms. Approval of this special use permit is conditioned upon the following:

1. A reduction in the side yard setback for the two-story addition from 23 feet to 10 feet on the north and 7 feet on the south.
2. A reduction in the required number of on-site parking spaces from 16 spaces to 3 spaces, and to provide the remaining parking spaces in the 14<sup>th</sup> Street Parking Garage.
3. The applicant shall submit a signed lease agreement verifying off-site parking to Neighborhood Development Services prior to final site plan approval.
4. Administrative approval of the Preliminary Site Plan following approval of the Certificate of Appropriateness by the BAR.
5. Twenty-four (24) hour on-site management shall be provided.

The conditions of the Special Use Permit approved by City Council on April 5, 2010 shall be and are hereby replaced by the above-listed conditions.

Approved by Council

March 7, 2011

  
Clerk of Council

## RESOLUTION

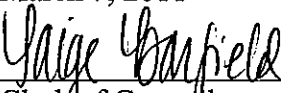
**BE IT RESOLVED** by the Council for the City of Charlottesville, Virginia that this Council hereby authorizes the City Manager, or his designee, to sign the following documents, in form approved by the City Attorney:

Underground Right-of-Way License Agreement between the City of Charlottesville and the County of Albemarle, as Licensors, and Qwest Communications Corporation, as Licensee, for the installation and maintenance of underground fiber optic cable at an agreed upon location in Darden Towe Park for a period of five years.

Underground Right-of-Way License Agreement between the City of Charlottesville, as Licensor, and Qwest Communications Corporation, as Licensee, for the installation and maintenance of underground fiber optic cable at an agreed upon location in the Meadow Creek golf course for a period of five years.

Approved by Council

March 7, 2011

  
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Clerk of Council

**Memorandum of Understanding Between  
the Charlottesville Redevelopment and Housing Authority  
and the City of Charlottesville, Virginia**

March 2011

**WHEREAS**, the City of Charlottesville and the Charlottesville Redevelopment and Housing Authority recognize the long-term, negative impacts of the Vinegar Hill Urban Renewal and are committed to a transparent and inclusive process that will be beneficial to all citizens of Charlottesville regardless of race or economic status; and

**WHEREAS**, The Charlottesville Redevelopment and Housing Authority's (CRHA) mission is to promote adequate and affordable housing, economic opportunity and a suitable living environment free from discrimination for low income families of Charlottesville, Virginia; and

**WHEREAS**, The City of Charlottesville's 2025 Vision calls for the City to be a leader in innovation, environmental sustainability, and social and economic justice; to be flexible and progressive in anticipating and responding to the needs of the citizens; and to act as the cultural and creative capital of Central Virginia. There are eight main areas of focus: economic sustainability, lifelong learning, quality housing opportunities for all, arts and culture, green city initiatives, healthy city initiatives, a connected community, and smart, citizen-focused government; and

**WHEREAS**, the City has stated that the redevelopment of public housing is one of its top priorities for the Charlottesville Housing Fund and affordable housing projects in general; and

**WHEREAS**, the CRHA Board unanimously approved a Master Plan for Redevelopment in conjunction with Resolution #1279. The resolution states that CRHA adopted the Master Plan as "a working document for all future redevelopment and rehabilitation discussions" and that the options contained in the Plan "should remain fluid so as to pursue comprehensive and holistic approaches to the redevelopment of each CRHA site"; and

**WHEREAS**, the Master Plan's process stressed resident and community input, environmentally sustainable design, and financially feasible options. The process also "inspired new discussions about issues of concentration of poverty, past racial segregation policies, density, design, child academic achievement, school population, mixed income and mixed use neighborhoods, resident services and economic opportunities"; and

**WHEREAS**, the CRHA Board and the Charlottesville City Council both unanimously approved forward-thinking guidelines for redevelopment known as the "Residents' Bill of Rights" and incorporated said guidelines into the Master Plan; and

**WHEREAS**, the master planning process highlighted the need for close coordination in planning the redevelopment and revitalization of neighborhoods where public housing sites are located in order to eliminate the stigma associated with public housing and create attractive, mixed-income neighborhoods; and

**WHEREAS**, children who reside in public housing attend all but one of the Charlottesville City Schools' elementary schools; and

**WHEREAS**, redevelopment will temporarily disrupt the lives of CRHA residents such that HUD-approved relocation plans must be developed in close coordination with residents, area school districts, social services agencies and other organizations; and

**WHEREAS**, the lessons learned from site visits to other cities, like Greenville, South Carolina, reinforce the need for full cooperation and transparency between all major City agencies involved in housing, schooling, and services for low income families; and

**WHEREAS**, the master planning process inspired new discussions that led to important, broader questions on issues including, but not limited to: concentration of poverty, past racial segregation policies, density, design, child academic achievement, school population, mixed income and mixed use neighborhoods, resident services, and economic opportunities, and that such issues deserve further community exploration as they relate to redevelopment of each CRHA site while the specific issues of density, site design (including public places such as streetscapes and parks), school population, mixed income and mixed use neighborhoods, and resident services will require resolution through additional public process and site plan development; and

**WHEREAS**, the City of Charlottesville and CRHA are committed to sustainability in all aspects of their operations and CRHA will, at minimum, design and construct buildings that are energy efficient, meet low-impact development criteria, reduce the consumption of water, and strive to meet third-party certifications for green building; and

**WHEREAS**, the Charlottesville City Council appoints the Board of Commissioners of CRHA, but CRHA remains an independent political subdivision of the Commonwealth of Virginia and is not included as a department in the City's annual budget; and

**WHEREAS**, the City of Charlottesville has appointed a Housing Advisory Committee to provide insight and recommendations to Council and CRHA has appointed a Redevelopment Committee to do the same and both Committees serve as valuable community resources and nothing in this MOU should be construed to imply otherwise; and

**WHEREAS**, the redevelopment of CRHA sites is proposed to take place in phases over many years and will require strong institutional memory and consistency of purpose while



responding to future unknowns such as shifts in housing demand and the economy at large; and

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Charlottesville and the Charlottesville Redevelopment and Housing Authority agree to the following terms:

1. The City of Charlottesville commits to realizing the vision of CRHA's Master Plan for Redevelopment as its primary focus for meeting the city's growing affordable housing needs (as outlined in the **2025 Goals for Affordable Housing Report** as adopted by City Council on 2/1/10,) within the context of holistically revitalized, mixed income neighborhoods and school districts.
  - a. As such, CRHA and the City support the use of the Master Plan and the process outlined therein. Initial areas of focus will include moving forward with the creation of detailed financing and relocation plans for the Levy Avenue and Crescent Halls sites.
2. The CRHA Board and City Council will partner to guide the redevelopment process.
  - a. The CRHA Redevelopment Director will work directly with the Housing Development Specialist and Grants Coordinator and other City staff as needed to guide the redevelopment process. This staff partnership will not serve as the final decision making body on redevelopment, and will seek input and make recommendations on the direction of redevelopment to all appropriate parties as determined by the Executive Director of CRHA and the City Manager.
  - b. This partnership will examine relocation options and the range of financing options that exist through HOPE VI and/or mixed income financing, specifically through the unique lenses of Charlottesville and the Residents' Bill of Rights.
  - c. This partnership will provide the City and CRHA with a streamlining of duplicative efforts. Priority will be placed on creation of a viable Section 3 Policy which will detail a program to be developed between the City and CRHA.
  - d. This partnership will begin with a six month initial study period. At the conclusion of this six month period, CRHA will be in a better position to move forward with implementing the Master Plan and will look to the City of Charlottesville to more aggressively commit to resources, both staff support and available affordable housing funds, or any other form deemed appropriate and agreeable to the signatories of this MOU.
3. Nothing in this MOU prohibits the inclusion of other entities, such as the University of Virginia or local non-profit organizations, in the redevelopment process. Non-signatory entities may and should be included in the process.

The signatories of this MOU agreement have the right to amend or terminate the agreement at anytime, but no modification shall be valid or enforceable unless in writing and agreed to by each of the parties hereto in the same manner and with the same formality as this agreement.

Adopted this 7<sup>th</sup> day of March, 2011.

Approved by Council  
March 7, 2011

  
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Clerk of Council

*Last updated 03/01/11*

**AN ORDINANCE  
AMENDING AND REORDAINING CHAPTER 28 (STREETS AND SIDEWALKS),  
ARTICLE VI (SIDEWALK CAFÉS), OF THE  
CODE OF THE CITY OF CHARLOTTESVILLE, 1990, AS AMENDED,  
RELATING TO RESERVATION OF SIDEWALK CAFÉ SPACES.**

**BE IT ORDAINED** by the Council for the City of Charlottesville, Virginia, that Sections 28-211, 28-212, 28-214, and 28-216 of Article VI of Chapter 28 of the Code of the City of Charlottesville, 1990, as amended, are hereby amended and reordained, as follows:

**ARTICLE VI. SIDEWALK CAFÉS  
Division 1. Generally**

**Sec. 28-186. Responsibilities of zoning administrator under article.**

The zoning administrator shall be responsible for receiving and approving applications for permits under this article and for administering the requirements of this article.

**Sec. 28-187. Compliance with state and local laws and regulations.**

(a) The operation of a café pursuant to a permit granted under this article shall comply with all provisions of state and local building codes and health laws and regulations regarding the service and preparation of food and also, where applicable, the operations of an outdoor café shall be conducted in accordance with the regulations of the state alcoholic beverage control board.

(b) No person operating a café under a permit granted under this article shall allow any café furnishings or equipment to be or remain within any fire lane, or to protrude into the airspace above any fire lane.

**Sec. 28-188. Right to limit or deny admission or service.**

Within the designated area of a café, the operator holding a permit under this article shall have the right to limit access and occupancy to only bona fide paying customers of that operator's restaurant who are behaving in a lawful manner, and shall have the same right to deny admission or service as the operator exercises on his own premises. However, no person shall be denied access or service to the café area on the basis of race, religion, national origin, sex, sexual orientation, age or disability.

**Secs. 28-189--28-210. Reserved.**

## Division 2. Permit

### Sec. 28-211. Required.

(a) No person shall operate an outdoor café on a city sidewalk or the downtown pedestrian mall referred to in section 28-212 without a permit issued pursuant to this division.

(b) The city manager shall, from time to time, approve a map identifying the locations along the downtown pedestrian mall which will be eligible for use as outdoor café areas. The locations identified on this map shall be the only areas for which any café permit(s) may be issued by the zoning administrator for space on the mall. This map shall be maintained available for public inspection within the city's department of neighborhood development services. The city reserves the right to re-define and re-designate spaces available for outdoor café use, on an annual basis. Written notice of such changes shall be provided by the city to operators at least thirty (30) days in advance of the commencement of the permit term in which the changes will take place. In the event of any such changes, an incumbent operator will be assigned a space that most closely corresponds to the location occupied during the prior permit year.

(c) For the purposes of this division a "permit term" shall refer to the period from March 2009 through the last day of February, 2010; then, commencing on March 1, ~~2009~~2010 for consecutive one-year periods thereafter.

(d) The city council will, from time to time, approve a schedule of the rents, fees and charges associated with reservation of outdoor café spaces. No space shall be reserved to any person until all applicable rents, fees and charges have been paid.

### Sec. 28-212. Application.

~~(a) The operator of any licensed restaurant in the city may, on or before the commencement of each permit term, apply to the zoning administrator for a permit to operate an outdoor café on the city sidewalk contiguous to such restaurant. The operator of any licensed restaurant in the city may, on or before the commencement of each permit term, apply to the zoning administrator for a permit to operate an outdoor café on the city sidewalk contiguous to such restaurant, or in the case of a restaurant abutting the downtown pedestrian mall on Main Street between East Seventh Street and Ridge McIntire Road, or the adjacent side streets, upon a portion of the mall or any side street located within the same block as the restaurant.~~

(b) The operator of any licensed restaurant abutting the downtown pedestrian mall on Main Street between East Seventh Street and Ridge-McIntire Road, or the adjacent side streets may, on or before the commencement of each permit term, apply to the zoning administrator for a permit to operate an outdoor café upon a portion of the mall or any side street located within the same block as the restaurant. If there is no such space available, such an operator may apply for a permit to operate café space adjacent to its restaurant provided that for its entire length, at least twelve (12) feet of sidewalk is maintained between the café space and any obstruction and/or the fire lane for pedestrian travel.

(c) A prospective operator of a restaurant shall provide, as part of its application, an executed lease for, evidence of ownership of, or a valid option agreement to lease or purchase the restaurant space. Submission of a valid option agreement in conjunction with a timely and complete qualifying application shall cause the space applied for to be reserved for the prospective operator for thirty (30) days from the date of application. Failure to submit an executed lease or purchase agreement for the restaurant space within this time period shall result in denial of the application.

~~(b)(d)~~ Any operator holding a valid permit for a particular outdoor café space shall be deemed to have re-applied for permission to use the same space for a succeeding permit term. Such operator shall pay the required application fees and rent, and shall complete all paperwork required by the zoning administrator, within thirty (30) days of the commencement of the succeeding permit term. During such thirty-day period, the café space shall not be assigned by the city to any other operator; however, if the incumbent operator fails to meet all requirements within the thirty (30) days, then the operator's permit shall expire and the city may deem that space to be unassigned. ~~Unassigned spaces (those not subject to any existing permits) shall be let to applicants on a first-come, first-served basis.~~

~~(e)(e)~~ No operator shall be assigned all the available space within a single block on the downtown mall. No space in excess of eight hundred (800) square feet will be assigned to any operator. However, any operator ~~who utilizes more than 800 square feet of café space under a permit as of the date of passage of this division (as indicated in the map referred to in section 28-211(b) currently in use at the time of passage)~~ shall be permitted to do so assigned a space in excess of eight hundred (800) square feet as of March 1, 2011 may continue to utilize that space until ownership of the restaurant changes.

~~(f)~~ Any operator assigned space on a mall corner may include space located on an adjacent numbered side street that is closed to through-traffic. If any such side street is used for parking of motor vehicles, or for one (1) or more loading zones, during certain hours of the day or evening, no outdoor café operations shall be authorized during any such hours.

(g) When a permit holder ceases operation of café space, the Zoning Administrator shall notify all owners of commercial property on the block where that café space is located. All such owners shall have thirty (30) days from the date of notice to submit a permit application for the available café space in accordance with this article. Up to fifty percent (50%) of the available space (but in no case more than four hundred (400) square feet) shall be awarded to a restaurant that will occupy the vacating restaurant space, and the remainder shall be awarded to the first other applicant (provided each submit a timely and complete qualifying application). If no additional applications are received, the entire available space shall be offered to the restaurant that will occupy the vacating space, up to the maximum allowable square footage.

### **Sec. 28-213. Grant.**

The zoning administrator shall grant a permit applied for under this division for a period of not more than one (1) permit term, provided the zoning administrator finds:

- (1) That the restaurant requesting the permit is being or will be operated as a lawful use in the zoning district in which it is located. If the proposed café will be located in an area subject to design control by the board of architectural review, once the zoning administrator has completed an initial review of the application, then the design and appearance of the café structures and furnishings shall be reviewed by the board pursuant to the standards and procedures set forth in Chapter 34 of this Code.
- (2) That the proposed café will not present a hazard to the public health, safety or welfare.
- (3) That all required rents, fees and charges have been paid.

**Sec. 28-214. Contents and conditions generally.**

(a) A permit granted by the zoning administrator under this division shall identify the permit term, or outstanding portion thereof, during which the operation of the café shall be authorized. A permit shall also require that, on or before November 20 of each year, all furniture and equipment used in connection with the café shall be removed from the sidewalk or mall; however, upon payment of additional rent (as specified within the most recent fee schedule approved by city council) an outdoor café operator may leave furniture and equipment within his assigned outdoor café area between November 20 and March 1 of the following year, subject to the following conditions: (i) the furniture and equipment must be utilized as an outdoor café at least five (5) days per month during this period, and (ii) if such furniture and equipment is not used by the operator during this period, then the furniture and equipment shall be removed within two (2) business days of a written notice issued by the zoning administrator. Such removal shall be at the expense of the café operator.

(b) Permits for cafés on the downtown pedestrian mall or city sidewalks may contain additional reasonable conditions and requirements as the zoning administrator may deem necessary. The purpose of any such conditions shall be to ensure that the operation or use of the proposed café will not present a hazard to the public health, safety or welfare.

(c) Effective for the permit term commencing in March 2009, and each permit term thereafter:

- (1) Each applicant for a café permit shall pay a permit fee upon submission of such application, in the amount specified on the most recent fee schedule approved by city council. For operators renewing an existing permit this fee shall be due and payable within thirty (30) days following the commencement of the current permit term.
- (2) Each operator shall pay rent in the amount specified on the most recent fee schedule approved by city council. Such rent shall be paid on the commencement date of the permit term. Any café permit for which the holder has not paid rent

hereunder within thirty (30) days of the due date shall expire and become null and void.

(d) No food preparation shall be performed in any area which is the subject of a café permit issued under this article. The operator of an outdoor café which is the subject of any such permit shall promptly remove all food dishes and utensils after each customer has left and shall thoroughly clean the entire café area and the sidewalk located within the café after the close of each business day. The zoning administrator shall have the authority to require any café operator, as an additional condition of a permit, to use only non-disposable dishes, utensils and napkins within the café area, upon a determination that the use of paper or plastic tableware or napkins is or has been contributing to litter problems in the area subject to the permit. Upon making such a determination, the zoning administrator shall issue thirty (30) days' advance written notice of the new requirement to each operator whose permit will be affected.

(e) An outdoor café subject to a permit required by this article shall be operated only within the area specifically assigned to an operator by a permit issued by the zoning administrator. The operator shall clearly delineate its area of operation through use of any one (1) or more of the following markers: trees, fences, planters and barriers. Where required by the Uniform Statewide Building Code, such markers shall have a detectable bottom. An outdoor café shall be in operation only during hours that the restaurant with which it is associated is open.

(f) Musical entertainment shall be allowed within any outdoor café area subject to a permit; however, such activity shall be limited to un-amplified vocal or instrumental performances and such activity shall not be conducted during the hours between 12:00 midnight and 11:00 a.m. of any day. Cafés located on the downtown pedestrian mall shall also be subject to the city's noise ordinance established for that area; however, in the event of a conflict between said noise ordinance and the requirements of this section, the stricter requirement shall govern the activities within such outdoor café.

(g) No tents or similar structures shall be erected or utilized over or within any outdoor café operating under a permit granted pursuant to this article; except that, not more than twice per year, the operator of an outdoor café, after receiving approval of the city's board of architectural review, may erect or utilize a tent over or within his outdoor café space. No such tent may be utilized or remain in place for longer than seventy-two (72) hours.

(h) Access to and use of city electricity by outdoor café operators, including, without limitation, use of any outdoor electrical outlet(s), shall be permitted for cash registers and credit card machines only to those operators that pay a monthly fee to the city as established by city council.

(i) Space heaters (other than any heaters requiring use of city electricity or electrical outlets) may be utilized by a café operator so long as the use and operation of any such heater is in compliance with all applicable building and fire codes and does not present a threat to the health, safety or welfare of the public.

(j) No café permit shall be ~~assigned~~ shared by any restaurant operator with another restaurant without the prior written approval of the zoning administrator. In the ~~event~~ case of such ~~assignment~~ sharing arrangement, (i) the original operator shall remain fully responsible for compliance with this article unless otherwise agreed in writing by the zoning administrator; and (ii) if the space that is the subject of the permit exceeds eight hundred (800) square feet under circumstances permitted by section 28-212(e)(e), approval of the ~~assignment~~ sharing arrangement shall be conditioned upon a reduction of the area reserved by the permit to not more than eight hundred (800) square feet.

(k) All tables, chairs and equipment located within an outdoor café shall be maintained in good, clean condition by the operator.

**Sec. 28-215. Conditions for indemnification of city and public liability insurance.**

As a condition of a permit granted under this division, the café operator shall indemnify the city (including, without limitation, its officers, officials and employees) and hold the city harmless from and against all claims for damages or injuries of any kind whatsoever arising out of the operator's occupancy of the public right-of-way or the operation of the café. The operator shall obtain and keep in force throughout the duration of the permit public liability insurance with coverage in the amount of at least one million dollars (\$1,000,000.00) combined single limit. The city shall be named an "additional insured" party with respect to such insurance. Prior to issuance of a permit under this division, and on the commencement date of each permit term thereafter, the café operator shall be required to provide documentation satisfactory to the city attorney demonstrating that this insurance requirement has been met.

**Sec. 28-216. Revocation.**

(a) The director of neighborhood development services may revoke any permit granted under this division, upon finding:

- (1) A violation any of the requirements or mandatory provisions set forth within this article (including, without limitation: failure to pay or delinquency in payment of rent, failure to obtain written approval prior to an assignment; failure to obtain or maintain required insurance, intrusion into a fire lane or any pedestrian walkway, failure to maintain café area free of leaves, ice and snow, etc.);
- (2) A violation of any condition of a permit imposed pursuant to section 28-214(b) of this division;
- (3) That the continued operation of the café poses a threat to the health, safety or welfare of the public or constitutes a public nuisance;
- (4) That the café has not been substantially utilized for a period of thirty (30) or more days between March 1 and Labor Day of any year. No café operator who has elected to shut down operations entirely between Labor Day and February 28 of the succeeding calendar year, and who has removed all equipment and furnishings



from the café area during that time, shall be subject to permit revocation during such time;

- (5) Violation of any federal or state law, or of any city ordinance, applicable to the café or the operation thereof.
- (6) That a café space awarded to a prospective restaurant owner has not been substantially utilized for a period of six (6) months after its issuance.

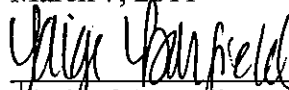
(b) A person who has been denied a permit by the zoning administrator, or whose permit has been revoked by the director of neighborhood development services, may appeal the denial or revocation to the city manager. Such appeal shall be made in writing, within five (5) business days following the decision appealed from, and shall set forth the basis on which the person contests the decision. The city manager shall consider the appeal and shall render a written decision within five (5) business days after receipt of the appeal. The decision of the city manager may be appealed by the aggrieved person to the city council, by submitting a written notice of appeal to the city manager within five (5) days of the city manager's decision. After a hearing conducted at any regular meeting of the council, provided the appealing person has been notified of such hearing by written notice delivered to the person's place of business at least five (5) days before such meeting, the council shall make a final decision on the merits of the denial or revocation.

(c) During the pendency of an appeal from a decision of the director of neighborhood development services to revoke a permit, an outdoor café may continue to operate, unless the director of neighborhood development services determines, in writing, that allowing such operations to continue would present an unreasonable risk to the health, safety or welfare of the public. Any such determination shall be provided to the café operator by hand-delivery at the café site to the agent or employee supervising café operations, and by certified mail to the mailing address provided by the operator in his application, and may require the café operator to immediately cease operation. Any such determination shall be reviewable by the city manager in connection with the operator's appeal.

(d) Any permit issued under this article may be revoked by city council at any time, upon thirty (30) days' advance written notice to a café operator, upon a determination that such revocation is necessary to serve the welfare, safety or convenience of the public.

Approved by Council

March 7, 2011

  
Clerk of Council

**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 7<sup>th</sup> day of March, 2011.

Walter Campbell  
\_\_\_\_\_, 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 \_\_\_\_\_

**February 7, 2011 Council Agenda (First Reading)**

**AN ORDINANCE  
AUTHORIZING THE CONVEYANCE OF CERTAIN CITY-OWNED PROPERTY  
ON LONGWOOD DRIVE, AND VACATION OF A PORTION  
OF THE LONGWOOD DRIVE CUL-DE-SAC.**

**WHEREAS**, Neighborhood Development, Inc. is pursuing the redevelopment of the Longwood Park subdivision, which was rezoned on July 20, 2009 as a Planned Unit Development (PUD), as shown on the attached proposed subdivision plat dated December 21, 2010 (hereinafter the "Plat"); and

**WHEREAS**, the City of Charlottesville is the owner of land which is a portion of Parcel 278 on City Real Property Tax Map 20, identified as Area X on the Plat; and

**WHEREAS**, Longwood Drive was dedicated to the City and accepted as public right of way in 1976 through recordation of the Longwood Park subdivision plat dated March 3, 1972, of record in the Charlottesville Circuit Court Clerk's Office in Deed Book 375, page 530-532; and

**WHEREAS**, Neighborhood Development, Inc. as a part of the redevelopment of the Longwood Park subdivision has offered to convey to the City two parcels of land (Parcels C and D) in exchange for the City's conveyance of Area X (pedestrian trail), and vacation of Area Y (portion of existing Longwood Drive right of way), all shown on the Plat; and

**WHEREAS**, the conveyance of the City-owned parcels will promote certain elements of City Council's Strategic Plan (Quality Housing Opportunities); and

**WHEREAS**, in accordance with Virginia Code Section 15.2-1800(B), a public hearing was held to give the public an opportunity to comment on the proposed conveyance of the City property; and,

**WHEREAS**, the Department of Neighborhood Development Services, the Public Utilities Manager, and the Parks Division have reviewed the proposed conveyance of land and the vacation of a portion of Longwood Drive, and have no objection thereto; now, therefore,

**BE IT ORDAINED** by the Council for the City of Charlottesville, Virginia that the Mayor is authorized to execute a Deed of Exchange and Vacation, in form approved by the City Attorney, to convey the above-described property, shown on the attached Plat. The City Attorney is hereby authorized to take whatever steps are necessary to effect the closing of said property conveyance.

Approved by Council

March 7, 2011

  
Clerk of Council

**January 18, 2011 Council Agenda (First Reading)**

**AN ORDINANCE  
AUTHORIZING THE CONVEYANCE OF A PORTION OF  
CITY-OWNED PROPERTY ON ELLIOTT AVENUE**

**WHEREAS**, the City of Charlottesville is the owner of property which is a portion of Parcel 266C on City Real Property Tax Map 29, identified as Lot 2 on the attached proposed subdivision plat dated October 11, 2010, revised October 20, 2010 (hereinafter the "Property"); and

**WHEREAS**, Southern Development Group, Inc. has offered to purchase the Property for \$40,000 for construction of housing; and

**WHEREAS**, the sale of the Property will fulfill certain elements of City Council's Strategic Plan (Quality Housing Opportunities); and

**WHEREAS**, in accordance with Virginia Code Section 15.2-1800(B), a public hearing was held to give the public an opportunity to comment on the proposed conveyance of the City property; and,

**WHEREAS**, the City Engineer, the Department of Neighborhood Development Services and the Public Utilities Manager have reviewed the proposed conveyance and have no objection thereto; now, therefore,

**BE IT ORDAINED** by the Council for the City of Charlottesville, Virginia that the Mayor is authorized to execute a deed, in form approved by the City Attorney, to convey said Property, designated on the attached subdivision plat as Lot 2 (a portion of existing Parcel 266C on 2010 City Tax Map 29), being approximately 8,265.79 square feet in area, to Southern Development Group, Inc. for the purchase price of \$40,000. The City Attorney is hereby authorized to take whatever steps are necessary to effect the closing of said property conveyance.

Approved by Council

March 7, 2011

  
Clerk of Council