



**CITY COUNCIL AGENDA  
June 17, 2013**

6:00 p.m. – 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  
ANNOUNCEMENTS**      Clean Air Act

**MATTERS BY THE PUBLIC**      Public comment will be permitted for the first 12 speakers who sign up in advance of the meeting (limit of 3 minutes per speaker) and at the end of the meeting on any item, provided that a public hearing is not planned or has not previously been held on the matter.

**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 for May 20, June 3 **approval of June 3 minutes deferred (DS)**
  - b. APPROPRIATION:**      Contribution from Albemarle County Service Authority for Ragged Mountain Project- \$765,000 (2<sup>nd</sup> of 2 readings) **passed**
  - c. APPROPRIATION:      Domestic Violence Services Coordinator Grant - \$44,336 (1<sup>st</sup> of 2 readings) **carried**
  - d. APPROPRIATION:      Virginia Commission of the Arts Challenge Grant - \$5,000 (1<sup>st</sup> of 2 readings) **carried**
  - e. RESOLUTION:      Acceptance of Donation of Property from KIMCO (1<sup>st</sup> of 1 reading) **passed**
  - f. RESOLUTION:      Transfer of Funds for Fontaine Fire Station Capital Project - \$6,640.59 (1<sup>st</sup> of 1 reading) **passed**
  - g. RESOLUTION:      Purchase of Land for Greenbelt Trail and Park Land (1<sup>st</sup> of 1 reading) **passed**
  - h. ORDINANCE:      Increases in Certain Parking Fines (2<sup>nd</sup> of 2 readings) **passed**
  - i. ORDINANCE:      Franchise Agreement for Teleconnect Long Distance Services and Systems Company (2<sup>nd</sup> of 2 readings) **passed; Huja requested report on franchise fee options.**
  - j. ORDINANCE:      Homeowner Tax Relief Grant – 2013 (2<sup>nd</sup> of 2 readings) **passed**
  - k. ORDINANCE:      Amendment to Retirement Ordinance (1<sup>st</sup> of 2 readings) **carried**
  - l. RESOLUTION:**      Charlottesville-Albemarle Regional Airport Runway Extension Project (1<sup>st</sup> of 1 reading) **passed**
  
- 2. PUBLIC HEARING / ORDINANCE\***      Release of Easements across 301 West Main Street (1<sup>st</sup> of 2 readings) **carried**
  
- 3. RESOLUTION\***      Adoption of the 2013 Comprehensive Plan (1<sup>st</sup> of 1 reading) **deferred until 8/19; work session scheduled for 8/1; Planning Com. Invited**
  
- 4. APPROPRIATION\* RESOLUTION**      Emmet Street and Hydraulic Road Signal Coordination (1<sup>st</sup> of 1 reading) **passed**
  
- 5. REPORT\***      Parking Fines Waiver **Council directed staff to prepare ordinance at \$20k level, with appeals for first-time offenders**
  
- 6. REPORT**      Impact of Affordable Healthcare Act
  
- OTHER BUSINESS  
MATTERS BY THE PUBLIC**

\*ACTION NEEDED

**APPROPRIATION**  
**Contribution for Parkland Replacement from ACSA for Ragged Mountain Project**  
**\$ 765,000**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Charlottesville, Virginia that the sum of \$ 765,000 is hereby appropriated in the following manner:

**Revenues**

<b>Amount</b>	<b>Fund</b>	<b>Project</b>	<b>G/L Account</b>
\$600,000	426	P-00534 – Park Land Acquisition	432080
\$100,000	426	PR-00 – Trails-Parks and Recreation	432080
\$ 65,000	425	P-00428 – Urban Tree Preservation & Planting	432080

**Expenditures**

<b>Amount</b>	<b>Fund</b>	<b>Project</b>	<b>G/L Account</b>
\$ 600,000	426	P-00534 – Park Land Acquisition	599999
\$ 100,000	426	PR-001 – Trails-Parks and Recreation	599999
\$ 65,000	425	P-00428 – Urban Tree Preservation & Planting	599999

**RESOLUTION**  
**Acceptance of Property from Kimco, L.C.**  
**Rivanna River at Free Bridge**

**WHEREAS**, Grant Cosner, Owner of KIMCO LLC, has offered to donate to the City of Charlottesville approximately 2.354 acres of land that is the property designated on City Tax Map 49 as Parcel 244.1; and

**WHEREAS**, the subject property, more particularly described in Attachment A (Property Description), is located adjacent to the Rivanna River at Free Bridge, as shown on a drawing made by the Parks & Recreation Department entitled “Proposed Property Donation - KIMCO - ~2 acres - Free Bridge”; and

**WHEREAS**, City staff have recommended acceptance of the subject property to provide increased green space, and allow for future stream restoration activity; now, therefore

**BE IT RESOLVED** by the Council for the City of Charlottesville, Virginia, that the City Attorney is hereby authorized, on behalf of the City, to accept a Deed of Gift from KIMCO, L.C., in form approved by him, for the conveyance of the property described in Attachment A.

**ATTACHMENT A**  
**Property Description – KIMCO LLC Land Donation to City**

All that certain parcel of land, containing 2.354 acres, more or less, more particularly shown as “Res. of TM 49-244” on a plat of survey made by Bryan J. Chambers, dated August 24, 2005, of record in the Charlottesville Circuit Court Clerk’s Office in Deed Book 1050, page 578; BEING a portion of the same land acquired by Kimco, L.C. by deed dated December 16, 1992 from E. Grant Cosner and Barbara H. Cosner, of record in said Clerk’s office in Deed Book 594, page 774.

**RESOLUTION**

**Transfer of Funds from the Information Technology Infrastructure Account to the Fontaine  
Ave. Fire Station Capital Project  
\$6,640.59**

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that \$6,640.59 from the Information Technology Fund Infrastructure account is hereby transferred in the following manner:

**Transfer From - \$6,640.59**

Fund: 705                      Cost Center: 2131002000                      G/L Account: 561426

**Transfer To - \$6,640.59**

Fund: 426                      Project: P-00433                      G/L Account: 498010  
Fund: 426                      Project: P-00433                      G/L Account: 599999

**RESOLUTION**  
**AUTHORIZING PURCHASE OF LAND ON MONTICELLO ROAD**  
**(CITY TAX MAP 61-49.2) FROM LINDA McDANIEL, ROGER CURRIER**  
**AND WILLARD HOLSAPPLE, JR.**  
**(Greenbelt Trail Expansion)**

**WHEREAS**, the City desires to purchase, and Linda McDaniel, Roger Currier and Willard Holsapple, Jr. (hereinafter "Owners") have agreed to sell to the City of Charlottesville, a parcel of land approximately 2.674 acres in area located on the south side of Interstate-64 near Monticello Road, more particularly identified as Parcel 49.2 on City Tax Map 61; and

**WHEREAS**, the subject property is shown on the attached plat dated October 5, 2012, revised November 28, 2012, by Draper Aden Associates; and

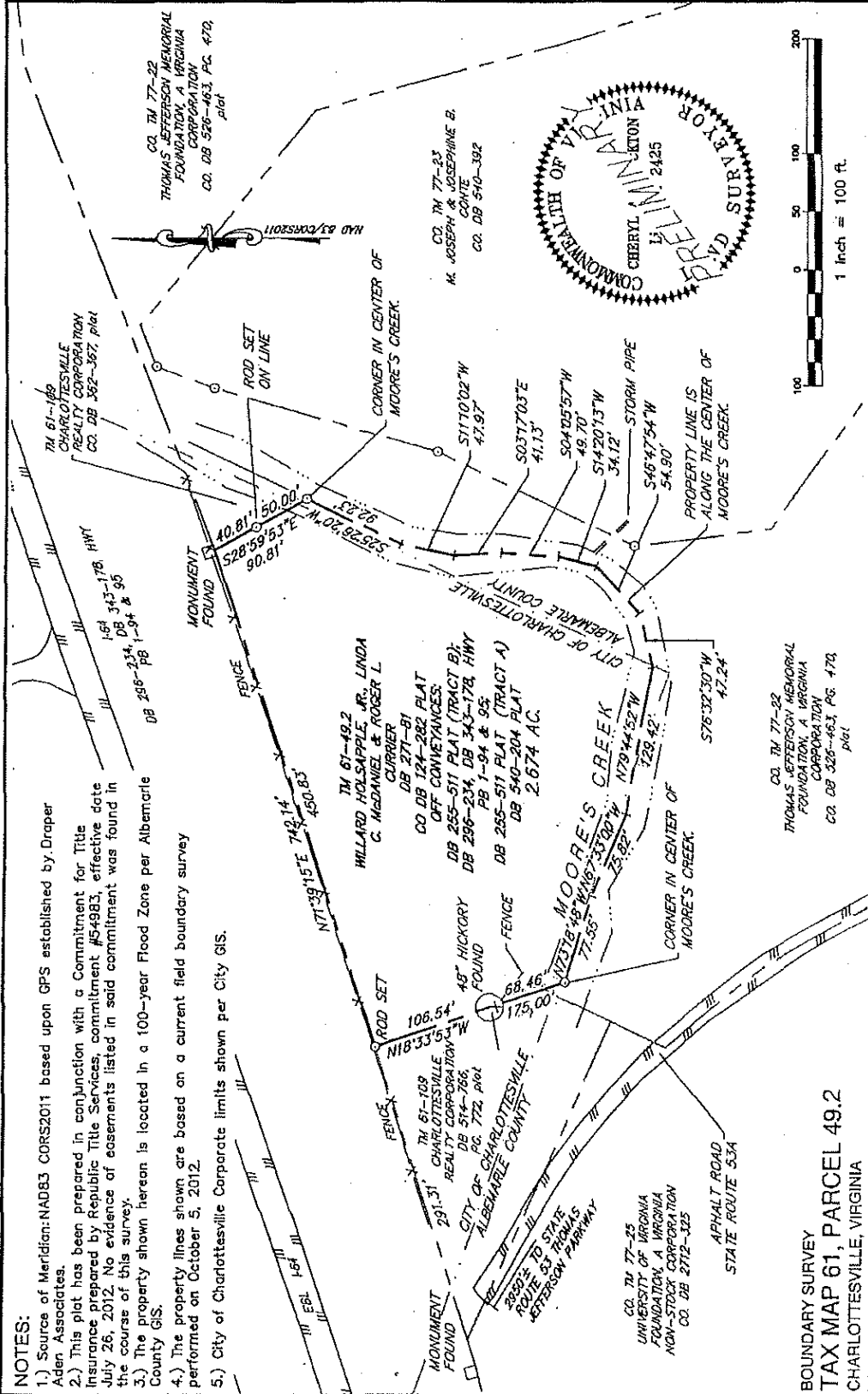
**WHEREAS**, the City and Owners have signed an agreement evidencing the terms of the sale of the subject property to the City for \$11,600.00, which funds have been appropriated and are available in Account P-00534 in the Parks and Recreation FY2013 budget; and

**WHEREAS**, City staff have recommended the purchase of the subject property to increase the supply of park land, preserve forested and riparian buffer, and provide improved greenbelt trail connectivity; now, therefore

**BE IT RESOLVED** by the Council for the City of Charlottesville, Virginia, that the City hereby authorizes the City Manager, or his designee, to sign the attached Agreement, in form approved by the City Attorney, for the purchase of approximately 2.674 acres of land from Linda McDaniel, Roger Currier, and Willard Holsapple, Jr., as shown on the attached plat. The City Attorney is hereby directed to take whatever steps are necessary to effect the closing of the conveyance of the subject property to the City.

PROJECT: C12121C-01  
 DRAWN CAS  
 CHECKED RJB  
 DATE 10-05-2012  
 SCALE 1"=100'  
 REV: 11-28-2012

**Draper Aden Associates**  
 Engineering • Surveying • Environmental Services  
 700 Harris Street, Suite E  
 Charlottesville, VA 22903  
 Charlottesville, VA  
 Harrison Road, VA  
 434-285-0700 Fax: 434-295-2105



**NOTES:**  
 1.) Source of Meridian: NAD83 CORS2011 based upon GPS established by Draper Aden Associates.  
 2.) This plat has been prepared in conjunction with a Commitment for Title Insurance prepared by Republic Title Services, commitment #54983, effective date July 26, 2012. No evidence of easements listed in said commitment was found in the course of this survey.  
 3.) The property shown hereon is located in a 100-year Flood Zone per Albemarle County GIS.  
 4.) The property lines shown are based on a current field boundary survey performed on October 5, 2012.  
 5.) City of Charlottesville Corporate limits shown per City GIS.

**BOUNDARY SURVEY  
 TAX MAP 61, PARCEL 49.2  
 CHARLOTTESVILLE, VIRGINIA**

Prepared by Charlottesville City Attorney's Office  
March 14, 2013

**AGREEMENT**  
**Sale of Land to the City of Charlottesville**  
**(City TMP 610049200)**

THIS AGREEMENT is made this 25<sup>th</sup> day of APRIL, 2013 among WILLARD HOLSAPPLE, JR. (2228 Oliver Creek Road, Troy, VA 22974), LINDA McDANIEL (829 Mallside Forest Court, Apt. 231, Charlottesville, VA 22901), and ROGER L. CURRIER (Route 1, Box 88, Troy, VA 22974), hereinafter collectively referred to as "Seller", and the CITY OF CHARLOTTESVILLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "Purchaser", or "City," whose address is P.O. Box 911, Charlottesville, Virginia, 22902.

**WITNESSETH:**

WHEREAS, Seller is the owner of certain real property, approximately 2.674 acres in area, the greater part of which is situated principally in the City of Charlottesville, Virginia, designated as Parcel 49.2 on City Real Estate Tax Map 61 (the "Property"); and

WHEREAS, Seller has agreed to sell to the City for the purchase price of Eleven Thousand Six Hundred Dollars (\$11,600.00) the Property and all improvements thereon and appurtenances thereto belonging, and Purchaser has agreed to purchase said Property from Seller, subject to the conditions outlined in Section II below;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, Seller and Purchaser do hereby set forth their agreement as follows:

**I. AGREEMENT TO CONVEY**

Seller agrees to convey by Special Warranty Deed to City, and City agrees to purchase from Seller, the real property referred to herein as the "Property," which is more particularly described as follows, to-wit:

All that certain lot or parcel of land consisting of approximately 2.674 acres, located partly in the City of Charlottesville, Virginia, and partly in Albemarle County, shown on a plat made by Draper Aden Associates, dated October 5, 2012, revised November 28, 2012, and attached to this Agreement.

## II. TERMS AND CONDITIONS

The City's obligations under this Agreement are expressly contingent upon all of the following conditions being met:

- (a) Title Examination. City's receipt of the results, satisfactory to it in its sole discretion, of a title examination to be performed by City at its own expense. Seller shall provide to City the death certificate of Peggy Holsapple, and copy of her Will and/or List of Heirs, if any, as proof of Willard Holsapple's ownership interest in the Property, and any other documents required by City's title insurer to ensure the City can obtain title insurance on the Property.

If the title examination reveals a title defect of a character that can be remedied through legal action or otherwise within a reasonable period of time, then Seller shall bear the expense of such action and shall promptly cure such defect. If the defect is not cured within 60 days after Seller receives notice of the defect, then Purchaser shall have the right to terminate this Agreement, in its sole discretion, and all such deposits, if any, shall be returned to the Purchaser and there shall be no further obligations between the parties herein. In the event that Purchaser waives the defect and proceeds to settlement there shall be no reduction in the purchase price.

- (b) Purchaser's Study Period. Purchaser shall have a reasonable period of time from the date this Agreement is executed by both parties to conduct any necessary environmental studies. Such studies include the City's receipt of the results of an environmental review by City staff, and if deemed necessary by the City, a Phase I Environmental Assessment and Report (Phase I Report) conducted and prepared by an environmental engineering and inspection company selected by City at City's expense and such other testing and reports as may be reasonably required by City or recommended in the Phase I Report. Such Phase I report may include the results of testing for any underground or aboveground storage tanks located on the Property.

Purchaser and any of its agents shall have the right to enter onto the Property at all reasonable times for the purpose of conducting such studies of the property as are permitted under the Agreement.

If during Purchaser's study period, Purchaser notifies Seller in writing that such purchase is not practicable, within the City's sole discretion, then Purchaser may terminate this Agreement and receive a refund of any deposits and the parties shall have no further liability or obligations herein.

- (c) Special Warranty Deed. Seller shall deliver (by facsimile mail, electronic mail or first-class mail) to the City a proposed Special Warranty Deed for review at least ten (10) days prior to Closing.
- (d) City Council Approval. Seller's agreement to sell the Property shall be submitted to the Charlottesville City Council for approval by resolution. If City Council rejects the terms



of the sale/purchase of this land, for whatever reason, this agreement shall be null and void and each party shall be relieved of all obligations under this agreement.

Each of the foregoing conditions is, and is intended by each of the parties to be, a condition precedent to the obligation of either party to proceed to Closing. City or Seller may elect not to proceed to Closing, without liability or penalty, if one or more of the above-referenced contingencies and/or conditions are not fulfilled to their satisfaction, which approval will not be unreasonably withheld, by delivering written notice to the other party.

### III. CLOSING

- (a) Closing will take place in the Office of the City Attorney in City Hall (605 East Main Street, City Hall, Charlottesville, Virginia) within sixty (60) days of City Council approval, or as soon thereafter as all conditions of Section II of this agreement have been met to the satisfaction of both parties.
- (b) Upon satisfaction of all of the terms and conditions of this Agreement, the Seller at Closing shall deliver and convey to City, by Special Warranty Deed in a form acceptable to City, marketable fee simple title to the Property free and clear of any and all liens and encumbrances, subject only to standard permitted exceptions and existing easements of record which do not materially and adversely affect the use of the Property for Purchaser's intended purposes or render title unmarketable. Seller shall deliver possession of the Property to the City as of the date of Closing.
- (c) At the Closing, Seller shall also deliver to City all documents reasonably requested by City, including, without limitation, FIRPTA Affidavit, Virginia Non-Resident Reporting Form (R-5E), and an Owner's Affidavit to Mechanic's Liens and Possession reasonably acceptable to City's title company. Seller shall submit a completed W-9 form (provided by City) to the City at least five (5) days prior to Closing in order to allow timely wire transfer of purchase price money, less deductions.
- (d) Seller's costs: (1) Preparation of Special Warranty Deed; (2) Fee for preparation of other Seller's documents required hereunder, and (3) Grantor's tax related to recordation of Special Warranty Deed.
- (e) City's costs: (1) Recordation cost of Special Warranty Deed, and (2) title insurance examination and premium.

### IV. OTHER TERMS

This agreement is further contingent upon the following:

- (a) Seller shall pay any and all real estate taxes accrued and/or due on the property up to and through the date of Closing. Prior to Closing, Seller shall pay all deferred taxes, penalties and interest, if any, existing, owed or outstanding with respect to the Property.

- (b) From the date of this Agreement through Closing, risk of loss or damage to the property by fire, windstorm, casualty or other caused is assumed by the Seller. From the date of this Agreement Seller shall not commit, or suffer any other person or entity to commit, any waste or damage to the Property or any appurtenances thereto, From the date of this Agreement, Seller shall not permit the manufacture, use, storage or disposal of hazardous wastes and/or toxic substances on or in the Property or in or near any adjoining waterways or drainage ditches.
- (c) No transfer or assignment of any rights or obligations hereunder shall be made by anyone having an interest herein, without the advance written consent of all other persons or entities having an interest herein. No failure on the part of Purchaser to enforce any of the terms or conditions set forth herein shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. The acceptance or payment of any sums by the Purchaser, and/or the performance of all or any part of this Agreement by the Purchaser, for or during any period(s) following a default or failure by the Seller, shall not be construed as or deemed to be a waiver by the City of any rights hereunder, including, without limitation, the Purchaser's right to terminate this Agreement.
- (d) This Agreement shall be governed and interpreted by the laws of the Commonwealth of Virginia.
- (e) This Agreement is binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- (f) This Agreement contains the final agreement between the parties hereto, and they shall not be bound by any terms, conditions, oral statements, warranties or representations not contained herein.

WITNESS the following signatures and seals:

WILLARD HOLSAPPLE, JR., Seller

See separate signature page

Date signed: \_\_\_\_\_

LINDA McDANIEL, Seller

Linda McDaniel

Date signed: April 2, 2013

ROGER L. CURRIER, Seller

Roger L. Currier

Date signed: April 25, 2013

CITY OF CHARLOTTESVILLE, VIRGINIA, Purchaser

By: \_\_\_\_\_  
Aubrey V. Watts, Jr., COO/CFO

Date signed: \_\_\_\_\_

Approved as to Form:

Funds are Available:

\_\_\_\_\_  
Allyson Davies  
Deputy City Attorney

\_\_\_\_\_  
Director of Finance

Attachment: Plat of Property

WITNESS the following signatures and seals:

**WILLARD HOLSAPPLE, JR., Seller**

Willard Holsapple Jr.

Date signed: 4-4-13

**LINDA McDANIEL, Seller**

\_\_\_\_\_  
Date signed: \_\_\_\_\_

**ROGER L. CURRIER, Seller**

\_\_\_\_\_  
Date signed: \_\_\_\_\_

**CITY OF CHARLOTTESVILLE, VIRGINIA, Purchaser**

By: \_\_\_\_\_  
Aubrey V. Watts, Jr., COO/CFO

Date signed: \_\_\_\_\_

Approved as to Form:

Funds are Available:

\_\_\_\_\_  
Allyson Davies  
Deputy City Attorney

\_\_\_\_\_  
Director of Finance

Attachment: Plat of Property

**AN ORDINANCE**  
**AMENDING AND REORDAINING SECTION 15-149 OF CHAPTER 15 (MOTOR VEHICLES) OF THE CHARLOTTESVILLE CITY CODE, 1990, AS AMENDED, TO INCREASE THE FINES FOR CERTAIN PARKING VIOLATIONS.**

**BE IT ORDAINED** by the Council for the City of Charlottesville, Virginia, that Section 15-149 of Article V (Stopping, Standing and Parking) of Chapter 15 (Motor Vehicles) of the Code of the City of Charlottesville, 1990, as amended, is hereby amended and reordained, as follows:

**Sec. 15-149. Procedure for parking violations; payment of fine without trial.**

(a) Police officers and other persons authorized by the chief of police to enforce the provisions of this article shall post a written notice of violation on the windshield of each vehicle found illegally parked on city streets or city operated parking lots. Such notice of violation shall state that the recipient of the notice may elect to waive his right to appear and be tried for the offense indicated in the notice.

(b) A person desiring to waive trial for a parking violation may do so by voluntarily remitting to the city treasurer's office the amount of the fine stipulated for each violation marked on the notice given pursuant to subsection (a) of this section. Such fine shall be levied in accordance with the schedule set forth in subsection (e) of this section. If the required amount is not received in the city treasurer's office, placed in the "courtesy box" located in the lobby of the police department or mailed and postmarked within ninety-six (96) hours after the notice of violation is issued, the amount of the applicable fine shall be doubled. Whenever a fine is paid by mail the responsibility for receipt of the payment by the treasurer's office shall lie with the registered owner of the vehicle involved. Payment may be made by personal check; provided, that if such check is returned for insufficient funds, the vehicle owner shall remain liable for the parking violation and shall likewise be subject to the service charge prescribed in section 11-8 of this Code for processing the returned check. Where the date on which a payment is due falls on a Saturday, Sunday, legal holiday or any other day on which the treasurer's office is closed, the payment shall be made on the next day that is not a Saturday, Sunday, legal holiday, or day on which the treasurer's office is closed.

(c) Any recipient of a notice of a parking violation desiring to contest the charges cited in the notice shall, on forms provided by the treasurer, file a written request for review of the charges.

- (1) The facts of the request shall be reviewed by a representative of the traffic division of the police department, who shall determine whether the request should be approved or denied. If the request is approved the violation will be dismissed.
- (2) The recipient of a parking violation notice shall indicate on the request for review whether a hearing in court is requested in the event administrative review does not resolve the violation. If a court hearing is requested, and administrative review does not result in a dismissal of the violation, then the recipient of the violation will be notified to appear in court on a specific date. If the recipient declined to request a court hearing, and the request for review was made within ninety-six (96) hours of the violation, then the recipient of the violation notice shall have an

additional ninety-six (96) hours after the administrative denial of his request to remit the fine to the treasurer before the amount thereof is doubled.

(d) In the event that the recipient of a parking violation notice fails either (i) to timely pay the fine as specified in paragraphs (b) or (c)(2), above, or (ii) to request a court hearing as part of his request for review, then the unpaid ticket will be kept on file in the city treasurer's office until paid. Any vehicle for which there are three (3) or more unsettled parking violations shall be subject to towing or immobilization as provided in City Code section 15-301 and section 15-302.

(e) The schedule of fines which may be paid under this section shall be as follows:

TABLE INSET:

	<u>Fine</u>	<u>After 96 Hours</u>
Meter violation	\$15.00	\$30.00
Overtime parking	<del>15.00</del> <u>20.00</u>	<del>30.00</del> <u>40.00</u>
Bus stop	15.00	30.00
Loading zone	15.00	30.00
Curb violation	15.00	30.00
Double parking	20.00	40.00
Fire lane	25.00	50.00
Blocking driveway	20.00	40.00
Parking permit area	25.00	50.00
Corner	15.00	30.00
No parking	25.00	50.00
Sign/markings violation	15.00	30.00
Handicapped	<del>100.00</del> <u>180.00</u>	<del>200.00</del> <u>360.00</u>
Snow emergency	30.00	60.00
Obstructing traffic	30.00	60.00
Sidewalks	70.00	140.00

**AN ORDINANCE  
GRANTING A TELECOMMUNICATIONS FRANCHISE TO  
TELECONNECT LONG DISTANCE SERVICES & SYSTEMS COMPANY, 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 Teleconnect Long Distance Services & Systems Company (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 telecommunications 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 its 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 Teleconnect Long Distance Services & Systems Company, including its successors and assigns.

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

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

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

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

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

## **ARTICLE II**

### **SECTION 201 INITIAL INSTALLATION**

The initial installation of equipment, lines, cables or other Facilities by the Company is located as shown on the attached set of drawing/map. Any additional installation of equipment, lines, cables or other Facilities shall be underground unless it shall be determined by the Director as set forth in Article III that it is not feasible to do so.

### **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 telecommunications 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 response shall be borne by the entity 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, or 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;
- (c) the character of the neighborhood surrounding the right-of-way;
- (d) the pre-excavation condition of the Public Rights-of-Way and its remaining life expectancy;
- (e) 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
- (f) 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 excavates, disturbs or damages the same area, or a portion thereof, of the Public Rights-of-Way.

**502.5 DUTY TO CORRECT DEFECTS:** The Company or its contractors shall correct defects in patching, or restoration performed by it or its contractors. 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 its Facilities damage. If the Company damages the City's Facilities within the Public Rights-of-Way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, the Company shall correct the damage within a prompt period after receiving written notification from the City. If the Company does not correct the City's damaged Facilities pursuant to the foregoing, the City may make such repairs as necessary and charge all of the reasonable costs of such repairs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within such thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such repair.

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

by this Ordinance, and the Director shall not unreasonably withhold, condition, or delay consent to such requests.

## ARTICLE VI

### SECTION 601 INDEMNIFICATION AND LIABILITY

**601.1 SCOPE OF INDEMNIFICATION:** Subject to the following, including, but not limited to, Section 604, 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 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 representatives, 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), or (c) of Section 601.1, claiming such injury, death, or damage shall be brought or threatened against the City, either independently or jointly with the Company, the Company will defend, indemnify and hold the City harmless in any such suit, at the cost of the Company, provided that the City promptly provides written notice of the commencement or threatened commencement of the action or proceeding involving a claim in respect of which the City will seek indemnification hereunder. The Company shall be entitled to have sole control over the defense through counsel of its own choosing and over settlement of such claim provided that the Company must obtain the prior written approval of City of any settlement of such claims against the City, which approval shall not be unreasonably withheld or delayed more than thirty (30) days. If, in such a suit, a final judgment is obtained against the City, either independently or jointly with the Company, the Company will pay the judgment, including all reasonable costs, and will hold the City harmless therefrom.

## **SECTION 602 WAIVER BY THE CITY**

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

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

## **SECTION 603 INSURANCE**

**603.1** The Company shall also maintain in force a comprehensive general liability policy in a form reasonably 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 authorized or permitted to do business in the Commonwealth of Virginia, or a form of self insurance reasonably 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 representatives, 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, representatives, 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 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
- (d) 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 Rights-of-Way.

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

Nothing herein contained shall be construed to render the Company liable for or obligated to indemnify the City, its agents, or employees, for the negligence or intentional acts of the City, its Council members, its 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 reasonably 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 PROW at the termination of the franchise, at the election of the City, pursuant to this Ordinance;
- (f) any loss or damage to the PROW 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 PROW.

The Company does not provide local exchange telecommunications services. In the event the Company does in the future begin providing local exchange telecommunications services, 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, and if at such time the Company is subject to the PROW Use Fee, which at present it is not, 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 this 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 which is applicable to the Company, 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 Company's 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 those given in the event of an emergency, 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:**

Teleconnect Long Distance Services  
& Systems Company  
2400 North Glenville Drive  
Richardson, Texas 75082  
Attention: Manager, Right of Way and  
Municipal Affairs

**To the City:**

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

With a copy to:

Teleconnect Long Distance Services  
& Systems Company  
2400 North Glenville Drive  
Richardson, Texas 75082  
Attention: Legal Department, Network Facilities

Unless otherwise provided for in this Ordinance, notices shall be sent by certified U.S. Mail, return receipt requested, or by commercial overnight delivery service and shall be deemed delivered: if sent by U.S. Mail, five (5) days after deposit, or if sent by commercial overnight delivery service, one (1) business day after deposit; provided, however, that upon receipt of a returned notice marked “unclaimed”, the sending Party shall make reasonable effort to contact and notify the other Party by telephone. Each Party may change its address above by like notice.

**SECTION 1202 EMERGENCY NOTIFICATION**

In the event of an emergency, notices required pursuant to Section 303.2 shall be made orally and by facsimile to the following:

**To the Company:**  
1.800.MCI.WORK  
(1.800.624.9675)

**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 sublessee or assigns, must keep on record with the City the following information:

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

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

### **ARTICLE XIII**

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

The franchise granted by this Ordinance may be terminated:

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

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

### **ARTICLE XIV**

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

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

the Company access to the Public Rights-of-Way in order to remove its telecommunications Facilities owned by the Company pursuant to this paragraph.

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

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

**ARTICLE XV**

**SECTION 1501 PRIOR WRITTEN CONSENT FOR ASSIGNMENT**

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

In addition, the City agrees that nothing in this Ordinance shall be construed to require Company to obtain approval from the City in order to lease any Facilities owned by the Company or any portion thereof in, on, or above the PROW, or grant an indefeasible right of use (“IRU”) in the Facilities owned by the Company, or any portion thereof, to any entity or person. The lease or grant of an IRU in such Facilities owned by the Company, or any portion or combination thereof, shall not be construed as the assignment or transfer of any franchise rights granted under this Ordinance.

**SECTION 1502 SUCCESSORS AND ASSIGNS**

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



## **ARTICLE XVI**

### **SECTION 1601 NONEXCLUSIVE FRANCHISE**

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

## **ARTICLE XVII**

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

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

### **SECTION 1702 NO CONSTRUCTIVE WAIVER RECOGNIZED**

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

## **ARTICLE XVIII**

### **SECTION 1801 NO DISCRIMINATION**

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

## **ARTICLE XIX**

### **SECTION 1901 FORCE MAJEURE**

Neither the Company nor the City shall be liable for any delay or failure in performance of any part of the franchise granted by this Ordinance from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations embargoes, epidemics, terrorist acts, riots insurrections, fires,

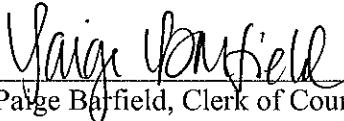
explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions.

**ARTICLE XX**

**SECTION 2001 EFFECTIVE DATE**

This Ordinance shall be effective upon its passage.

Adopted by the Council of the City of Charlottesville on the 17<sup>th</sup> day of June, 2013.

  
\_\_\_\_\_  
Paige Barfield, Clerk of Council

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

TELECONNECT LONG DISTANCE SERVICES  
& SYSTEMS COMPANY

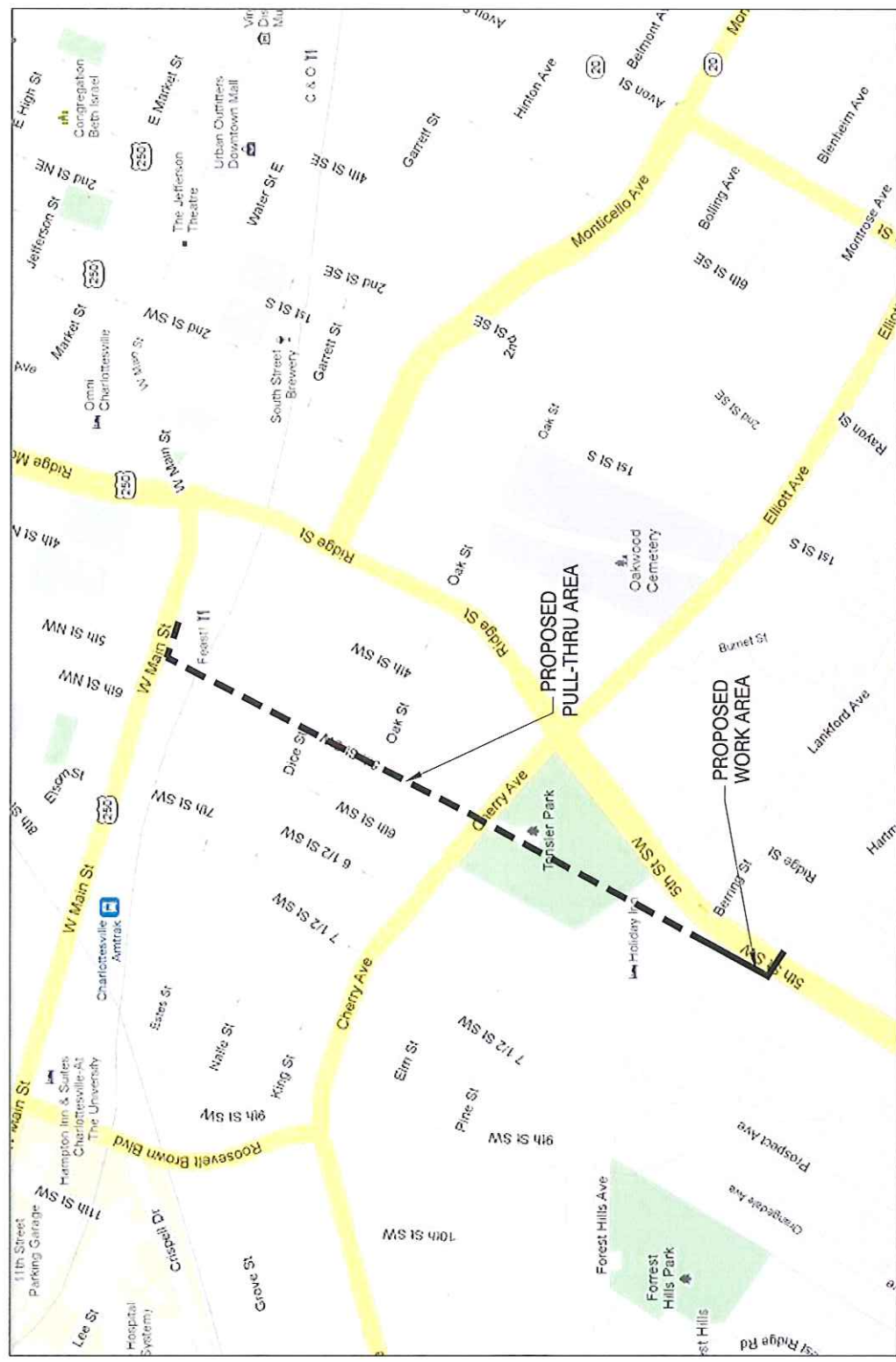
By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_



**SITE MAP**





**MCI**  
OPTIC FIBER CONSTRUCTION  
PROJECT: 060310  
CHARLOTTEVILLE VA TUSA  
DIVERSIFICATION  
CHARLOTTEVILLE, VA



TELECONNECT LONG DISTANCE  
SYSTEMS COMPANY  
CHARLOTTEVILLE VA TUSA  
CHARLOTTEVILLE, VA

DATE: 10/22/12  
ENGINEER: INTD FIBER  
DRAWN BY: INTD FIBER

DATE	DESCRIPTION	INITIAL
12/14/12	REV. COMPANY NAME	CM

REVISIONS

SCALE

HORIZONTAL: N. T. S.

VERTICAL: N. T. S.

MP TO MP

SHEET 01 OF 19

FILE: 060310 001.DWG

**AN ORDINANCE TO ESTABLISH A GRANT PROGRAM TO PROMOTE AND PRESERVE HOMEOWNERSHIP BY LOW- AND MODERATE-INCOME PERSONS WITHIN THE CITY OF CHARLOTTESVILLE**

**WHEREAS**, effective July 1, 2006, §50.7 of the Charter of the City of Charlottesville authorizes City Council to make grants and loans of funds to low- or moderate-income persons to aid in the purchase of a dwelling within the City; and

**WHEREAS**, this City Council desires to offer a monetary grant for Fiscal Year 2014, to aid low- and moderate-income citizens with one of the ongoing expenses associated with the purchase of a dwelling, *i.e.* real estate taxes; and

**WHEREAS**, public funding is available for the proposed grant;

**NOW, THEREFORE**, effective July 1, 2013 and for calendar year 2013, the Charlottesville City Council hereby ordains:

**Grant—provided.**

(a) There is hereby provided to any natural person, at such person's election, a grant in aid of payment of the taxes owed for the taxable year on real property in the city which is owned, in whole or in part, and is occupied by such person as his or her sole dwelling. The grant provided within this section shall be subject to the restrictions, limitations and conditions prescribed herein following.

(b) If, after audit and investigation, the commissioner of revenue determines that an applicant is eligible for a grant, the commissioner of revenue shall so certify to the city treasurer, who shall implement the grant as a prepayment on the applicant's real estate tax bill due on December 5, 2013.

(c) The amount of each grant made pursuant to this ordinance shall be \$525 for taxpayers with a household income of \$0-25,000, and shall be \$375 for taxpayers with a household income from \$25,001-\$50,000, to be applied against the amount of the real estate tax bill due on December 5, 2013.

**Definitions.**

The following words and phrases shall, for the purposes of this division, have the following respective meanings, except where the context clearly indicates a different meaning:

(1) *Applicant* means any natural person who applies for a grant authorized by this ordinance.

(2) *Dwelling* means a residential building, or portion such building, which is owned, at least in part, by an applicant, which is the sole residence of the applicant and which is a part of the real estate for which a grant is sought pursuant to this ordinance.

(3) *Grant* means a monetary grant in aid of payment of taxes owed for the taxable year, as provided by this ordinance.

(4) *Spouse* means the husband or wife of any applicant who resides in the applicant's dwelling.

(5)*Real estate* means a city tax map parcel containing a dwelling that is the subject of a grant application made pursuant to this ordinance.

(6)*Taxes owed for the current tax year* refers to the amount of real estate taxes levied on the dwelling for the taxable year.

(7)*Taxable year* means the calendar year beginning January 1, 2013.

(8)*Household income* means (i) the adjusted gross income, as shown on the federal income tax return as of December 31 of the calendar year immediately preceding the taxable year, or (ii) for applicants for whom no federal tax return is required to be filed, the income for the calendar year immediately preceding the taxable year: of the applicant, of the applicant's spouse, and of any other person who is an owner of and resides in the applicant's dwelling. The commissioner of revenue shall establish the household income of persons for whom no federal tax return is required through documentation satisfactory for audit purposes.

**Eligibility and restrictions, generally.**

A grant awarded pursuant to this ordinance shall be subject to the following restrictions and conditions:

(1)The household income of the applicant shall not exceed \$50,000.

(2)The assessed value of the real estate owned by the applicant shall not exceed \$365,000.

(3)The applicant shall own an interest in the real estate that is the subject of the application (either personally or by virtue of the applicant's status as a beneficiary or trustee of a trust of which the real estate is an asset) and the applicant shall not own an interest in any other real estate (either personally or by virtue of the applicant's status as a beneficiary or trustee of a trust of which the real estate is an asset).

(4)As of January 1 of the taxable year and on the date a grant application is submitted, the applicant must occupy the real estate for which the grant is sought as his or her sole residence and must intend to occupy the real estate throughout the remainder of the taxable year. An applicant who is residing in a hospital, nursing home, convalescent home or other facility for physical or mental care shall be deemed to meet this condition so long as the real estate is not being used by or leased to another for consideration.

(5)An applicant for a grant provided under this ordinance shall not participate in the real estate tax exemption or deferral program provided under Chapter 30, Article IV of the City Code (Real Estate Tax Relief for the Elderly and Disabled Persons) for the taxable year, and no grant shall be applied to real estate taxes on property subject to such program.

(6)An applicant for a grant provided under this division shall not be delinquent on any portion of the real estate taxes to which the grant is to be applied.

(7)Only one grant shall be made per household.

**Procedure for application.**

(a) Between July 1 and September 1 of the taxable year, an applicant for a grant under this ordinance shall file with the commissioner of revenue, in such manner as the commissioner shall prescribe and on forms to be supplied by the city, the following information:

- (1) the name of the applicant, the name of the applicant's spouse, and the name of any other person who is an owner of and resides in the dwelling.
- (2) the address of the real estate for which the grant is sought;
- (3) the household income;
- (4) such additional information as the commissioner of revenue reasonably determines to be necessary to determine eligibility for a grant pursuant to this ordinance.

(b) Changes in household income, ownership of property or other eligibility factors occurring after September 1, but before the end of the taxable year, shall not affect a grant once it has been certified by the commissioner of the revenue, in which case such certified grant shall be applied to the subject real estate.

(c) Any person who willfully makes any false statement in applying for a grant under this division shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$500 for each offense.

**RESOLUTION**  
**Regarding the Charlottesville-Albemarle**  
**Regional Airport Runway Extension Project**

WHEREAS, the Charlottesville-Albemarle Airport Authority ("Authority") is in the process of completing the Charlottesville-Albemarle Airport ("Airport") runway extension project to expand services to the community and bring areas of the Airport into Federal Aviation Administration ("FAA") compliance and to maintain eligibility for FAA grants; and

WHEREAS, some residents living near the Airport have expressed concern that on-site blasting for rock materials to complete the project has damaged their properties; and

WHEREAS, the Council wishes to express its concern regarding the impact of the project on property of residents living near the Airport;

NOW, THEREFORE, BE IT RESOLVED that the Council hereby directs its appointee to the Authority to support the following:

- continued direct outreach to residents living near the Airport and the completion of all home assessments that are initiated;
- continued monitoring and notification to residents that goes beyond minimum requirements;
- the Authority's previous action to hire a separate geo-technical professional to assess any long-term effects of repeated blasting;
- close coordination with all State and Federal agencies in assessing and addressing the impacts of the project;
- full investigation of all known claims attributed to the blasting and a fair resolution and settlement of such claims to compensate property owners for any damages prior to the closure of the contract for the project; and
- no future blasting at the Airport without Council's prior approval.

**RESOLUTION**  
**Emmet Street and Hydraulic Road Signal Coordination**  
**Transfer from Capital Improvement Program Contingency**  
**\$450,000**

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

**Transfer From**

**\$ 450,000**      Fund: 426                      WBS: CP-080                      G/L Account: 599999

**Transfer To**

**\$ 450,000**      Fund: 426                      WBS: P-00778                      G/L Account: 599999