



**CITY COUNCIL AGENDA**  
**April 18, 2016**

**6:00 p.m.** **Closed session as provided by Section 2.2-3712 of the Virginia Code**  
*Second Floor Conference Room*

**7:00 p.m.** **Regular Meeting**

**CALL TO ORDER** *Council Chambers*  
**PLEDGE OF ALLEGIANCE**  
**ROLL CALL** **Fenwick absent.**

**AWARDS/RECOGNITIONS** Tom Frederick; Arbor Day; Fair Housing  
**ANNOUNCEMENTS** CityGreen

**APPOINTMENTS TO BOARDS & COMMISSIONS**  
**CITY MANAGER RESPONSE TO MATTERS BY THE PUBLIC**

**MATTERS BY THE PUBLIC** Public comment provided for up to 12 speakers publicized at noon the day of the meeting (limit 3 minutes per speaker) and for an unlimited number of speakers 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.

**1. CONSENT AGENDA\*** (Items removed from consent agenda will be considered at the end of the regular agenda.)  
**Passed 4-0**

- a. Minutes for April 4
- b. **APPROPRIATION:** Department of Criminal Justice Byrne Special Fund Grant – \$9,991 (2<sup>nd</sup> of 2 readings)
- c. **APPROPRIATION:** Housing Opportunities Made Equal (HOME) - \$40,000 Appropriation of Program Income (2<sup>nd</sup> of 2 readings)
- d. **APPROPRIATION:** University of Virginia Contribution to Reward and Transfer from Citywide Reserve – \$20,000 (2<sup>nd</sup> of 2 readings)
- e. **APPROPRIATION:** \$200,000 to the Charlottesville Redevelopment & Housing Authority Marriott Proffer/Inn at Vinegar Hill and \$70,000 to the Charlottesville Affordable Housing Fund (1<sup>st</sup> of 2 readings)
- f. **RESOLUTION:** Initiate Zoning Text Amendment (consideration of changes to Telecommunications Ordinance) (1<sup>st</sup> of 1 reading)
- g. **ORDINANCE:** Lightower Fiber Networks II, LLC Telecommunications Franchise (2<sup>nd</sup> of 2 readings)
- h. **ORDINANCE:** YMCA Utility Right-of-Way Agreement (2<sup>nd</sup> of 2 readings)
- i. **ORDINANCE:** Underground Utility Right-of-Way Agreement Across City Yard (2<sup>nd</sup> of 2 readings)
- j. **ORDINANCE:** New Permit to Authorize Operation of Valet Parking within Public Rights-of-Way (2<sup>nd</sup> of 2 readings)
- k. **RESOLUTION:** Buckingham Branch Grant Funding Resolution (1<sup>st</sup> of 1 reading)

**2. RESOLUTION\*** Police Chief Appointment (1<sup>st</sup> of 1 reading) – **Passed 4-0**

**3. REPORT\*** Customer Service System Request For Proposals Update

**4. PUBLIC HEARING / RESOLUTION\*** Blue Ribbon Commission on Race, Monuments and Public Spaces (1<sup>st</sup> of 1 reading) – **no vote; further discussion at 4/28 work session**

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

\*ACTION NEEDED

Persons with disabilities may request reasonable accommodations by contacting [ada@charlottesville.org](mailto:ada@charlottesville.org) or (434)970-3182.

**APPROPRIATION**

**Department of Criminal Justice Services, Byrne Special Fund Grant  
\$9,991**

**WHEREAS**, the City of Charlottesville, through the Thomas Jefferson Area Crisis Intervention Team, has received from the Department of Criminal Justice Services, a Byrne Special Fund Grant, to be used for training.

**WHEREAS**, the grant award covers the period from period January 1, 2016 through September 30, 2016.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$9,492, received from the Department of Criminal Justice Services is hereby appropriated in the following manner:

**Revenue**

\$9,492	Fund: 209	IO: 1900261	G/L: 430120 State (Fed pass-thru)
\$ 499	Fund: 209	IO: 1900261	G/L: 498010 Transfer from Other

**Expenditure**

\$9,991	Fund: 209	IO: 1900261	G/L: 530010 Professional Service
---------	-----------	-------------	----------------------------------

**Transfer**

\$ 499	Fund: 209	IO: 1900225	G/L: 561209 Transfer to State Grant
--------	-----------	-------------	-------------------------------------

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$9,492 from the Department of Criminal Justice Services.

**APPROPRIATION**  
**Housing Opportunities Made Equal**  
**\$40,000**

**WHEREAS**, The City of Charlottesville has received \$40,000 from Charlottesville Redevelopment and Housing Authority as repayment for loans made through the HOME program in prior years;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that the sum of \$40,000 is hereby appropriated in the following manner:

**\$40,000 Revenues**

\$ 1,631.00	Fund: 210	IO: 1900167	G/L: 451070 C.D.B.G/HOME Program Income
\$33,133.34	Fund: 210	IO: 1900184	G/L: 451070 C.D.B.G/HOME Program Income
\$ 5,235.66	Fund: 210	IO: 1900249	G/L: 451070 C.D.B.G/HOME Program Income

**\$40,000 Expenditures**

\$ 1,631.00	Fund: 210	IO: 1900167	G/L: 530670 Other Contractual Services
\$33,133.34	Fund: 210	IO: 1900184	G/L: 530670 Other Contractual Services
\$ 5,235.66	Fund: 210	IO: 1900249	G/L: 530670 Other Contractual Services

**APPROPRIATION AND TRANSFER OF FUNDS.**

**University of Virginia Contribution to the Reward for the Hannah Graham Homicide Case  
and Transfer from Citywide Reserve.  
\$20,000.**

**WHEREAS**, the City of Charlottesville, through the Police Department, has received a contribution from the University of Virginia to be used for the rewards offered in the Hannah Graham Homicide Case;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville funding is hereby appropriated and a transfer made in the following manner:

**Revenue**

\$10,000                      Fund: 105      Cost Center: 3101001000                      G/L Account: 451020

**Expenditures**

\$10,000                      Fund: 105      Cost Center: 3101001000                      G/L Account: 599999

**Transfer Out**

\$10,000                      Fund: 105      Cost Center: 1631001000                      G/L Account: 599999

**Transfer In**

\$10,000                      Fund: 105      Cost Center: 3101001000                      G/L Account: 599999

**RESOLUTION**  
**TO INITIATE CONSIDERATION OF ZONING ORDINANCE TEXT AMENDMENTS**  
**TO AMEND REGULATIONS SET FORTH WITHIN THE CITY CODE, CHAPTER 34**  
**(ZONING), ARTICLE IX (GENERAL REGULATIONS), DIVISION 5**  
**(TELECOMMUNICATIONS FACILITIES)**

**WHEREAS**, upon consideration of the matters set forth within a staff report received from the City Attorney's Office, setting forth several reasons why the City's zoning regulations governing the siting and approval of wireless communications facilities should be reviewed and updated; and

**WHEREAS**, this Council believes that initiation of zoning text amendments, to commence debate and consideration within the context of a public hearing process, is advisable; and

**WHEREAS**, this Council finds that consideration of the zoning text amendments set forth within the attached Discussion Draft Zoning Text Amendments ("Discussion Draft") is required by the public necessity, convenience, general welfare or good zoning practice; now, therefore,

**BE IT RESOLVED THAT** this City Council hereby initiates amendments of the Charlottesville City Code, Chapter 34 (Zoning), as set forth within the attached Discussion Draft; and

**BE IT FURTHER RESOLVED THAT** this matter is hereby referred to the Planning Commission for its recommendations, and for an advertised joint public hearing with Council. In the interest of expediting the public hearing process by which these zoning text amendments may be considered, the Planning Commission is requested to utilize the attached Discussion Draft as a starting point for their discussions; **HOWEVER**, the Commission's consideration of zoning text amendments for communications facilities need not be limited to the specific provisions within the Discussion Draft. Based on input received during the public hearing process, and the Planning Commission's own deliberations, the Planning Commission should report back to Council its specific recommendations, within 100 days after the first regular meeting of the Commission following the adoption of this Resolution.

**AN ORDINANCE  
GRANTING A TELECOMMUNICATIONS FRANCHISE TO  
LIGHTOWER FIBER NETWORKS II, 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 Lightower Fiber Networks II, 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 conduit, cabinets, posts, poles, cables, radios, antennas, 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 Lightower Fiber Networks II, 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, 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 shall be located as shown on the attached drawing/map, subject to final approval by the Director. 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 telephone and other utility lines on the posts, poles, and other overhead apparatus upon which the Company has placed some or all of its Facilities in the City's PROWs are relocated underground, the Company will also, at such time, relocate its Facilities on those posts, poles, and other overhead apparatus underground at its expense. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

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

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

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

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

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

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

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



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

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

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

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

### **Article III**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Article IV**

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

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

### **Article V**

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

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

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

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

- (a) the number, size, depth and duration of the excavations, disruptions or damage to the Public Rights-of-Way;
- (b) the traffic volume carried by the Public Rights-of-Way; the character of the neighborhood surrounding the right-of-way;
- (c) the pre-excavation condition of the Public Rights-of-Way and its remaining life expectancy;
- (d) the relative cost of the method of restoration to the Company balanced against the prevention of an accelerated deterioration of the right-of-way resulting from the excavation, disturbance or damage to the Public Rights-of-Way; and

- (e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the Public Rights-of-Way that would otherwise take place.

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

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

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

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

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

**502.7 DAMAGE TO OTHER FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY:** The Company shall be responsible for the cost of repairing any Facilities existing within the Public

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

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

## Article VI

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

**601.1 SCOPE OF INDEMNIFICATION:** Subject to the following, the Company agrees and binds itself to indemnify, keep and hold the City council members, 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 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 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:**

Lightower Fiber Networks  
Attn: COO  
80 Central Street  
Boxborough, MA 01719

**To the City:**

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

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

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

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

**To the Company:**

Lightower NOC: 888-LT-FIBER (888-583-4237), Option #1. (Staffed by Lightower personnel 24x7x365).

**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 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 18<sup>th</sup> day of April, 2016.

  
\_\_\_\_\_  
Paige Rice, Clerk of Council

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

LIGHTOWER FIBER NETWORKS II, LLC

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

**AN ORDINANCE  
AUTHORIZING THE CONVEYANCE OF AN EASEMENT  
TO DOMINION VIRGINIA POWER  
TO PERMIT ELECTRIC UTILITY LINES  
ACROSS CITY PROPERTY WITHIN MCINTIRE PARK**

**WHEREAS**, the Virginia Electric and Power Company, a Virginia public service corporation doing business in Virginia as Dominion Virginia Power, has requested this Council to grant an easement across property owned by the City of Charlottesville within McIntire Park (Tax Map Parcel Identification No. 450001000), as described within a Right of Way Agreement (DVPIDNo(s) 80-16-0014) and accompanying Plat, for the installation and maintenance of electric utility lines and equipment; and

**WHEREAS**, on April 4, 2016, this City Council conducted a public hearing on the requested easement; now, therefore,

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia, that the Mayor is hereby authorized to execute a Right-of-Way Agreement, in a form approved by the City Attorney, granting the above-described easement to Dominion Virginia Power.



**AN ORDINANCE  
AUTHORIZING THE CONVEYANCE OF AN EASEMENT  
TO DOMINION VIRGINIA POWER  
TO PERMIT OVERHEAD AND UNDERGROUND ELECTRICAL LINES  
ACROSS CITY PROPERTY ON FOURTH STREET (“CITY YARD”)**

**WHEREAS**, the Virginia Electric and Power Company, a Virginia public service corporation doing business in Virginia as Dominion Virginia Power, has requested this Council to grant a 30-foot wide easement across property owned by the City of Charlottesville, Virginia at 305 Fourth Street, N.W., City Tax Map Parcel Identification No. 320020000 (the “City Yard”), as described within a Right-of-Way-Agreement, DVPIDNo(s) 81-16-0010, for the installation and maintenance of overhead and underground electric lines and equipment; and

**WHEREAS**, on April 4, 2016, this City Council conducted a public hearing on the requested easement; now, therefore,

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia, that the Mayor is hereby authorized to execute a Right-of-Way Agreement, in a form approved by the City Attorney, granting the above-described easement to Dominion Virginia Power.

## ORDINANCE

### TO AMEND AND RE-ORDAIN THE CODE OF THE CITY OF CHARLOTTESVILLE, CHAPTER 28 (STREETS AND SIDEWALKS), TO ADD ARTICLE VII (VALET PARKING SERVICES)

#### **Sec. 28-221. - Purpose.**

City council finds that the use of public streets and rights-of-way for valet parking, while providing a public benefit to some by making parking more convenient, also has the potential to impede travel, interfere with the rights of others using the streets and public rights-of-way, affect the public safety, and create public nuisance conditions. Therefore, valet parking may be permitted within the city as a special privilege, not as a matter of right, subject to the regulations in this article.

#### **Sec. 28-222. - Definitions.**

For purposes of this article, the following words shall have the following meanings:

*Public right-of-way* means any area dedicated for public use as a public street, pedestrian way, or other thoroughfare, including but not limited to streets, roadways, parkways, alleys, sidewalks, and pedestrian ways. For purposes of this article the term excludes (i) areas of the Downtown Mall open to motor vehicle traffic, and (ii) all brick-paved areas of any side street adjacent to the Downtown Mall.

*Valet parking* means practices associated with, and the act of, driving another person's vehicle to and from a parking location, so that the driver and any passengers originally within the vehicle may unload (drop-off) and load (return) at or near their immediate destination.

*Valet parking service* means a person engaged in the provision of valet parking, including any employees, contractors, subcontractors, or agents employed or otherwise assisting in the provision of such valet parking.

#### **Sec. 28-223. - Permit required.**

A permit is required for any valet parking service that conducts any portion of its operation (including but not limited to: drop-off, queuing, receiving, moving, or return of vehicles) upon any public right-of-way. No permit is required for a valet parking service conducted entirely upon private property solely as a service for patrons of that location.

#### **Sec. 28-224. - Process for permits and renewals.**

- (a) New applications for a permit shall be submitted to the city manager for review, and shall include the following information:
  - (1) The name, address, and telephone number of the valet parking service; the name and contact information for a responsible individual who will be immediately available during all hours of the valet parking service's operation; the type of business entity that will be conducting the valet parking service (sole proprietorship; corporation; limited liability company, etc.) and the identity and signature of the individual submitting the application on behalf of the valet parking service (for a corporate entity, an individual

who is an officer or director of the corporation; for a limited liability company, an individual who is authorized to enter into binding agreements on behalf of the company; etc.);

- (2) A letter signed by the owner/proprietor of each premises to be served by the valet parking service, confirming its intention to engage the valet parking service;
- (3) A petition describing the hours and proposed area of operation of the proposed valet parking service, and containing the signature(s) of the owner(s) and occupant(s), if different than the owner(s), of each premises located on or within the same block(s) as the right-of-way area to be served by the valet parking service, on both sides of the public right-of-way proposed to be utilized. The petition shall be in a form provided by the city manager's office, providing signature lines on which such owner(s) and occupant(s) may sign to indicate either support or opposition to the petition. The following person(s) may sign on behalf of a multifamily dwelling: the owner of the premises; a property manager authorized to act as the owner's agent; or the authorized representative of a condominium unit owner's association;
- (4) A description of the location(s): (i) where vehicles would queue while awaiting drop-off and return, (ii) where the valet parking services will receive possession of vehicles from patrons ("drop off point"), and (iii) where the valet parking service would return vehicles to patrons ("return location"). The application shall include a map or aerial photograph illustrating the proposed dimensions of each location, and shall identify any on-street parking space(s) within the desired permit location;
- (5) Identification of the location(s) where vehicles will be parked or stored by the valet parking service ("parking location"). All such locations must meet applicable zoning ordinance requirements for parking lots and other parking facilities;
- (6) A contract or other signed statement from the operator of the parking location, setting forth:
  - a. The total number of parking spaces within the parking location,
  - b. The number of parking spaces within the parking location that will be available to the valet parking service, and
  - c. An estimate of the percent usage of the parking location, taking into account use by the valet parking service;
- (7) The location, dimensions and materials of proposed signs for the valet parking service and any proposed attendant stands;
- (8) Proof of insurance required by this article;
- (9) Payment of a nonrefundable permit application fee. The permit application fee is five hundred dollars (\$500.00) per right-of-way location proposed to be utilized by the valet parking service;
- (10) A copy of the applicant's city business license, and proof of payment of all applicable taxes.

- (b) Applications for renewal of a previously-approved permit shall be submitted to the city manager, and shall include the following information:
  - (1) A cover letter signed by the valet parking service, and indicating whether or not any matters represented within the previous year's permit application have changed;
  - (2) A contract or signed statement for the parking location, (in accordance with subsection (a)(6) above), containing updated information for the period of the proposed renewal;
  - (3) Proof of insurance required by this article;
  - (4) Payment of the permit application fee specified in (a)(9) above; and
  - (5) A copy of the applicant's city business license, and proof of payment of all applicable taxes.
- (c) Not more than one (1) permit will be issued per city block. The individual to whom the permit is granted shall not operate valet parking services at any other location within a public right-of-way unless a permit has been issued for the other location.

**Sec. 28-225. - Term of permit.**

Every valet parking permit, or renewal of a permit, shall be issued by the City Manager for a specific period of time, not to exceed one year (twelve months) from the date of issuance.

**Sec. 28-226. - Operating requirements.**

- (a) The valet parking service shall only accept vehicles at, and return vehicles to, the approved drop-off and return locations. Final dimensions of proposed drop-off and return locations shall be determined by the traffic engineer or the City Manager.
- (b) The valet parking service shall provide a level of staffing adequate to receive, park, and return vehicles in a manner that traffic within the public right of way is not impeded by its activities. Vehicle queuing is allowed only within an area approved by the city's traffic engineer for vehicle queuing.
- (d) Each valet parking service shall display at each drop-off and return location within City right-of-way an "A-Frame" sign or movable podium, which may only be displayed during the approved operating hours of the valet parking service and must be removed from public property at all other times. Each location may have only one (1) sign or podium. Each A-frame sign, or the sign on a podium, shall be of dimensions and materials compliant with applicable provisions of the City's zoning ordinance Each A-Frame sign shall contain plainly visible letters and numerals stating:
  - (1) "Valet parking",
  - (2) The name of the valet parking service,
  - (3) The hours of operation of the valet parking service, and
  - (4) The valet parking fees, if any.
- (e) Each individual employed by the valet parking service in the operation of any vehicle shall possess a valid Virginia driver's license.

- (f) If the use of an on-street public parking space is necessary for the valet parking service, that parking space is only reserved during the approved hours of operation for the valet parking service and at all other times the parking space shall be available for public parking. If a permit is granted, the operator of the valet parking service shall not use the parking space for any other purpose other than receiving vehicles from and returning vehicles to customers of the valet parking service. The operator of the valet parking service shall not lease the parking space or allow any person to park a vehicle in the space if such use is not related to the operation of the valet parking service. Any permit for valet parking services along with the use of a parking space associated with the permit shall be temporarily suspended in the event a public street, in the area of the permit authorizing valet parking services, is temporarily closed to vehicular traffic because of a special event, festival or emergency, or other similar occurrence; the temporary suspension of the permit shall be lifted upon termination of the occurrence.

**Sec. 28-227. – Required insurance.**

- (a) The valet parking service shall maintain the following insurance (“required insurance”): (i) worker’s compensation, in the statutory amounts required by the Commonwealth of Virginia; (ii) commercial general liability insurance, and garage liability insurance, in such form and with such limits of coverage as established annually by the city’s director of finance.
- (b) The valet parking service’s general commercial liability and garage liability insurance policies shall be endorsed to add the city as an additional insured party, and to require (30) days’ prior written notice to the City of any change or cancellation.
- (c) Prior to the issuance of a permit, and at all times while the permit is in effect, the applicant shall maintain on file with the city’s risk manager evidence of the required insurance.
- (e) If evidence of the required insurance is not provided, or if any required insurance is cancelled for any reason, the permit issued shall automatically be deemed revoked, without the requirement for prior notice from the city.

**Sec. 28-228. - Indemnification.**

The valet parking service to which a permit is issued shall indemnify, hold harmless, release and defend the city, its officers and employees, from any and all liability, loss, suits, claims, damages, costs, judgments, and expenses (including attorney's fees and costs of litigation) which in whole or in part result from, or arise out of:

- (1) Any act or omission of its employees;
- (2) The operations of the valet parking service;
- (3) Any condition of property used in the operation;
- (4) Any negligence of the valet parking service, its officers, directors, employees, contractors and any individuals or entities engaged in the provision of valet parking services authorized by the permit.

**Sec.28-229. - Grounds for revocation and denial.**

- (a) The city manager may revoke or deny a permit for any of the following reasons:
  - (1) The valet parking service fails to cooperate with the city police department in the investigation of any crime involving the valet parking service.
  - (2) The valet parking service has made a material misrepresentation in its application.
  - (3) The valet parking service would or does substantially disrupt, impede or affect the safety of pedestrians or any vehicular traffic using the public right of way.
  - (4) The valet parking service at the specified location would be or is incompatible with other uses in the vicinity.
  - (5) The valet parking service, or the owner/ proprietor of any premises served by the valet parking service, fails to comply with any provision set forth within this article, or any condition of a permit, or has done so within the past five (5) years.
  - (6) The valet parking service, as operated or proposed to be operated, causes or would cause a loss of parking spaces during the hours of the valet parking service operations, in such number or for such period(s) of time as would adversely affect other premises located within the same block(s) as the premises served by the valet parking service.
- (b) The city manager shall notify an applicant or permittee in writing when a permit is denied or revoked. Except in circumstances when the public health, welfare, or safety requires more immediate action, revocation shall not be effective until forty-eight (48) hours after written notice is given to the permittee.
- (c) The city manager's revocation of a permit shall be in addition to, and not in lieu of, any penalty provided by Sec. 28-232.

**Sec. 28-230. - Conditions imposed on permit.**

- (a) The city manager may impose conditions upon a permit issued under this division, as reasonably necessary to protect the peace and tranquility of any residential area, to mitigate adverse traffic impacts, to protect other lawful uses of the public rights of way, or protect the health, welfare, safety or convenience of the public.
- (b) Any valet parking service operating under an approved permit, and the owner/ proprietor of any premises served by that valet parking service, shall comply with all conditions imposed upon the permit pursuant to subsection (a) of this section.
- (c) The following requirement shall be deemed a condition of every permit issued under this division, and each renewal thereof: the valet parking service operating under an approved permit shall be responsible for the cost of any public street signage required in connection with its use of the public right-of-way. The city traffic engineer shall establish the signage requirements for each permitted location.

**Sec. 28-231. – Limited privilege conferred by a permit.**

- (a) The approval of a permit under this article provides only for the nonpermanent and nonexclusive use of the public right-of-way. Valet parking services, and the owners/

proprietors/ occupants of premises benefiting from the valet parking services shall have no property interest in, or any entitlement to, the granting or continuation of any permit for the use of any public right-of-way.

- (b) Neither a valet parking service, nor the owner/proprietor of any premises benefitting from a valet parking service, shall, by virtue of any permit approved under this article, acquire any right or authority to have any vehicle(s) towed from any public right-of-way that is the subject of such permit.

**Sec. 28-232. - Penalties.**

Any person violating the provisions of this article or any condition of a permit issued pursuant to this article shall be guilty of a Class 4 misdemeanor.

## **Support of Rail Preservation Application**

### **Buckingham Branch Railroad**

WHEREAS, the Buckingham Branch Railroad desires to file an application with the Virginia Department of Rail and Public Transportation for funding assistance for the **Richmond and Alleghany Tie Replacement Project**, which will replace mainline ties, switch ties, siding ties and mainline bridge deck ties. Work will also include adding ballast, tamping, surfacing and drainage improvements on the Buckingham Branch Railroad line located between MP 85.5 in Richmond and MP 276 in Clifton Forge, VA; and

WHEREAS, the Buckingham Branch Railroad estimates that this project will cost **\$10,000,000**; and

WHEREAS, the General Assembly, through enactment of the Rail Preservation Program, provides for funding for certain improvements and procurement of railways in the Commonwealth of Virginia; and

WHEREAS, Buckingham Branch Railroad is an important element of the **City of Charlottesville** transportation system; and

WHEREAS, Buckingham Branch Railroad is instrumental in the economic development of the area, and provides relief to the highway system by transporting freight, and provides an alternate means of transportation of commodities; and

WHEREAS, the **City of Charlottesville** supports the project and the retention of the rail service; and

WHEREAS, the Commonwealth Transportation Board has established procedures for all allocation and distribution of the funds provided.

NOW, THEREFORE, BE IT RESOLVED, that the **Charlottesville City Council** does hereby request the Virginia Department of Rail and Public Transportation to give priority consideration to the **Richmond and Alleghany Tie Replacement Project** proposed by Buckingham Branch Railroad for inclusion in the projects funded in the Rail Preservation Program.



**RESOLUTION**  
**Appointment of the Chief of Police**

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Charlottesville that Alfred S. Thomas, Jr., be appointed Chief of Police effective May 23, 2016.