



**CITY COUNCIL AGENDA  
September 21, 2015**

**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* (Boards & Commissions appointments; Acquisition of property on Rock Creek Road)  
*Council Chambers*

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

**AWARDS/RECOGNITIONS  
ANNOUNCEMENTS  
MATTERS BY THE PUBLIC**

Public comment permitted for the first 12 speakers who sign up before the meeting (limit 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 RESPONSE TO MATTERS BY THE PUBLIC**

- 1. CONSENT AGENDA\*** (Items removed from consent agenda will be considered at the end of the regular agenda.)
  - a. Minutes for September 3 (Mayor's Round Table), September 8 and September 10 (Joint BOS/Council meeting)
  - b. APPROPRIATION: Enhanced Police Coverage Donation - \$84,194 (2<sup>nd</sup> of 2 readings)
  - c. APPROPRIATION: Fire Programs Aid to Localities - \$137,789 (2<sup>nd</sup> of 2 readings)
  - d. APPROPRIATION: Grant for Belmont Historic Survey - \$33,000 (2<sup>nd</sup> of 2 readings)
  - e. RESOLUTION: Purchase of Old Lynchburg Road (Fornes) Property and Hiring Outside Counsel to Represent City as Purchaser (1<sup>st</sup> of 1 reading)
  - f. ORDINANCE: Reduce Emmet Street Speed Limit from Arlington Blvd to Hydraulic Road (2<sup>nd</sup> of 2 readings)
  - g. ORDINANCE: Franchise Agreement for Overhead Fiber optic Cable on Harris Street (1<sup>st</sup> of 2 readings)
  
- 2. PUBLIC HEARING RESOLUTION\*** CDBG/HOME Funding Priorities for FY2017 (1<sup>st</sup> of 1 reading)
  
- 3. PUBLIC HEARING RESOLUTION\*** Art in Place License Agreement (1<sup>st</sup> of 1 reading)
  
- 4. PUBLIC HEARING APPROPRIATION\*** Hillsdale Drive Funding - \$15,309,596 (1<sup>st</sup> of 2 readings)
  
- 5. PUBLIC HEARING ORDINANCE\*** Amendment to YMCA Ground Lease (2<sup>nd</sup> of 2 readings)
  
- 6. REPORT** YMCA Financial Plan Update
  
- 7. REPORT** Market Plaza Update
  
- 8. RESOLUTION\*** Blight Remediation Plan for 610 Ridge Street and Allocation of Funds - \$125,000 (1<sup>st</sup> of 1 reading)
  
- 9. ORDINANCE\*** Development Code Changes for Application Review Process (1<sup>st</sup> of 2 readings)

**OTHER BUSINESS  
MATTERS BY THE PUBLIC  
COUNCIL RESPONSE TO MATTERS BY THE PUBLIC**

\*ACTION NEEDED

CITY OF CHARLOTTESVILLE, VIRGINIA.  
CITY COUNCIL AGENDA.



Agenda Date:	September 8, 2015
Action Required:	Approve Appropriation
Presenter:	Lieutenant C. S. Sandridge, Police Department
Staff Contacts:	Lieutenant C. S. Sandridge, Police Department
Title:	<b>Greenstone on 5th Corporation Sponsorship Agreement for Enhanced Police Coverage - \$84,194</b>

**Background:** Greenstone on 5th Corporation would like to enter into a Sponsorship Agreement whereby a donation will be made to the Charlottesville Police Department for \$84,194 to support enhanced police coverage within and adjacent to Greenstone on 5th Apartments. This donation will be received in four equal quarterly installments to be received during F.Y.16. The installments to be received at the beginning of the months: July, October, January, and April.

**Discussion:** Enhanced coverage involves police officers being assigned to public patrol duties in the sponsored coverage area in addition to those officers who could be assigned within normal budgetary constraints. Acceptance of the donation under this arrangement will not require officers to be pulled away from other areas of coverage within the City. Even in these circumstances the Chief will have full authority to deploy the officers elsewhere to meet operational necessities.

**Alignment with Council Vision Areas and Strategic Plan:** This agreement supports **Goal 2** of the Strategic Plan: **Be a safe, equitable, thriving and beautiful community**. It provides for extra Police presence in the agreed upon area, increasing visibility and response times. It also supports **Goal 5: Foster Strong Connections**, by allowing additional time in this neighborhood for Officers and the Community to interact.

**Community Engagement:** N/A

**Budgetary Impact:** This Sponsorship agreement is a donation that will cover all costs associated with the added security, with no cost to the City.

**Recommendation:** Staff recommends approval and appropriation funds.

**Alternatives:** The alternative is not to approve this appropriation, which would result in the inability to provide enhanced coverage to the sponsored coverage area.

**Attachments:** None

**APPROPRIATION.**  
**Greenstone on 5th Sponsorship Agreement for Enhanced Police Coverage**  
**\$84,194.**

**WHEREAS**, the City of Charlottesville has entered into an agreement with Greenstone on 5<sup>th</sup> Corporation to fund enhanced police coverage for the area of Greenstone on 5<sup>th</sup> Apartments, including salary, equipment, technology and related administrative expenses associated with provisions of such enhanced coverage.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$84,194, to be received as a donation from Greenstone on 5<sup>th</sup> Corporation.

**Revenues**

\$84,194	Fund: 105	Internal Order: 2000113	G/L Account: 451999
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**Expenditures - \$84,194**

\$75,775	Fund: 105	Internal Order: 2000113	G/L Account: 510060
\$8,419	Fund: 105	Internal Order: 2000113	G/L Account: 599999

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CITY OF CHARLOTTESVILLE, VIRGINIA.  
CITY COUNCIL AGENDA.



Agenda Date:	September 8, 2015
Action Required:	Appropriation
Presenter:	Mike Rogers, Battalion Chief – Training/Special Operations, Charlottesville Fire Department
Staff Contacts:	Mike Rogers, Battalion Chief – Training/Special Operations, Charlottesville Fire Department
Title:	<b>Fiscal Year 2016 Fire Programs Aid to Locality Funding (Firefund) Appropriation - \$137,789</b>

**Background:** The Code of Virginia provides for the collection of an annual levy each fiscal period from the insurance industry. Such levy is collected by the State Corporation Commission, and the amounts collected are then transferred into the Fire Program Fund (Firefund). These aid to locality monies are then distributed to the jurisdictions to supplement the localities funding for fire service based training, training supplies, training equipment, prevention activities, and some response equipment. This is an annual allotment of funding. All usage and any carryovers are reported out to the Department of Fire Programs at the end of the fiscal period before the next fiscal period monies are granted. The City of Charlottesville has been awarded \$137,789 in these funds for F.Y. 2016.

**Discussion:** The Aid to Locality monies are distributed annually to aid departments in their training, prevention, and equipment efforts. While the monies cannot be used to directly/indirectly supplant or replace other locality funds, they help us to provide for additional firefighting training resources, logistics, courses, and equipment as outlined in the Aid to Locality allowable uses chart.

**Alignment with Council Vision Areas and Strategic Plan:** The Aid to Locality/Firefund allocation supports the City’s mission “To provide services and facilities that promote an excellent quality of life for everyone in the community” by providing supplemental funding for firefighting, hazardous materials, and technical rescue training and equipment. With the additional funding being put towards these purposes we are better able to prepare our responders to deliver these various emergency services to the citizens, students, business community members, and guests of the City.

The annual funding allotment also aligns with Goal 1 of the Strategic Goals and Objectives – 1.1 Promote Education and Training, as well as 2.1 Provide an effective and equitable public safety system.

**Community Engagement:** N/A

**Budgetary Impact:** The Aid to Locality/Firefund money is provided to supplement the budgeted fire service based training, prevention, and equipment allowances for the locality. The funds are electronically transferred at given intervals based upon annual report submission deadlines. The initial F.Y. 2016 disbursement at 90% was slated to transfer no later than September 25, 2015, with the remaining 10% transferred later in the given fiscal year. This should have no impact on the General Fund.

**Recommendation:** Staff recommends approval and appropriation of grant funds.

**Alternatives:** If Aid to Locality funding is not appropriated, the Fire Department will not be able to utilize this supplemental funding to help support its training, prevention, and equipment efforts.

**Attachments:** N/A

**APPROPRIATION.**

**Fiscal Year 2016 Fire Programs Aid to Locality Funding (Firefund) Appropriation  
\$137,789.**

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

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that a total of \$137,789.00 be appropriated in the following manner:

**Revenues - \$137,789**

\$137,789.00 Fund: 209 I/O: 1900010 G/L Account: 430110

**Expenditures - \$137,789**

\$137,789 Fund: 209 I/O: 1900010 G/L Account: 599999

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$137,789 from the Virginia Department of Fire Programs.

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CITY OF CHARLOTTESVILLE, VIRGINIA.  
CITY COUNCIL AGENDA.



Agenda Date:	September 8, 2015
Action Required:	Appropriation of Funds
Presenter:	Mary Joy Scala, Preservation & Design Planner, Neighborhood Development Services
Staff Contacts:	Mary Joy Scala, Preservation & Design Planner, Neighborhood Development Services Missy Creasy, Planning Manager, Neighborhood Development Services
Title:	<b>Virginia Department of Historic Resources (D.H.R.) 2015-2016 Certified Local Government (C.L.G.) grant funding for Belmont historic survey - \$33,000</b>

**Background:**

The City of Charlottesville through the Department of Neighborhood Development Services has been awarded \$33,000 from the Virginia Department of Historic Resources' 2015-2016 Certified Local Government Subgrant program to have a historic survey completed of approximately 250 buildings in Belmont Neighborhood. There needs to be a local match requirement, which will be \$16,500 in addition to the grant of \$16,500 from D.H.R.

**Discussion:**

This funding will provide a comprehensive, reconnaissance-level survey of approximately 250 buildings, most of which have never been surveyed; and it will provide an updated Preliminary Information Form (P.I.F.) based on the survey results, to determine the most appropriate area of the neighborhood for a potential National Register district.

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

Appropriation of this item aligns with Council's Vision 2025 by supporting Charlottesville Arts and Culture: **Charlottesville cherishes and builds programming around the evolving research and interpretation of our historic heritage and resources.**

This appropriation also supports **Goal 2** of the Strategic Plan: **Be a safe, equitable, thriving and beautiful community**, including: **2.5. Provide natural and historic resources stewardship**, **2.6. Engage in robust and context sensitive urban planning**, and **Goal 3: Have a strong diversified economy**, including: **3.4. Promote diverse cultural tourism.**

**Community Engagement:**

A letter of support from the Belmont Carlton Neighborhood Association is attached.

**Budgetary Impact:**

This grant was approved with a 50/50 match, which is currently available in Neighborhood Development Services project for New Historic Surveys P-00484, in the amount of \$16,500.

**Recommendation:**

Staff recommends approval and appropriation of funds.

**Alternatives:**

The alternative is to not approve this project, which would be contrary to Comprehensive Plan Historic Preservation Goal 4 Resource Inventory, 4.1 *Work with the following neighborhoods to develop interest and participation in documentation of neighborhood buildings and history through architectural and historic surveys: 10<sup>th</sup> & Page, Starr Hill, and North Belmont.*

**Attachments:**

April 20, 2015 letter of support from Belmont-Carlton Neighborhood Association

June 29, 2015 letter of agreement from Virginia Department of Historic Resources (D.H.R.)

**APPROPRIATION.**

**Virginia Department of Historic Resources (D.H.R.)  
2015-2016 Certified Local Government (C.L.G.) grant funding  
for Belmont historic survey  
\$33,000.**

**WHEREAS**, the City of Charlottesville, through the Department of Neighborhood Development Services, has received from the Virginia Department of Historic Resources (D.H.R.), funding to support a historic survey of Belmont neighborhood,

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$33,000 for the fiscal year 2015-2016 received from the Virginia Department of Historic Resources (D.H.R.) is hereby appropriated in the following manner:

**Revenue**

\$ 16,500	Fund: 209	IO: 1900253	G/L: 430120 (State/Fed Pass Thru)
\$ 16,500	Fund 209	IO: 1900253	G/L 498010 (Transfer from C.I.P.)

**Expenditure**

\$ 33,000	Fund: 209	IO: 1900253	G/L: 530670 (Other contractual services)
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**Transfer**

\$ 16,500	Fund: 426	WBS: P-00484	G/L: 461209 (Transfer to grants)
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**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$16,500 for the fiscal year 2015-2016 from the Virginia Department of Historic Resources (D.H.R.).

**ATTACHMENT 1  
PROJECT DESCRIPTION**

**Letter from Belmont-Carlton  
Neighborhood Association**



**April 20, 2015**

**Mary Joy Scala, AICP  
Preservation and Design Planner  
City of Charlottesville  
Department of Neighborhood Development Services**

**Dear Mary Joy,**

**We are writing to state our support of an historical survey of the Belmont area in the city of Charlottesville.**

**At a previous meeting, on August 12, 2013, members of the previous board and attendees (20) voted unanimously to have the survey conducted.**

**We, the current Executive Board of the Belmont-Carlton Neighborhood Association, also confirm our support of this survey. As we understand from previous correspondence, the boundaries of the survey will include most of the north Belmont area, including some blocks west of Avon Street.**

**Please do not hesitate to contact us if you need anything else.**

**Thank you,**

**Members of the Executive Board, Belmont Neighborhood Association  
Lena Seville, President  
Eugenio Schettini, Vice President  
John Miller, Treasurer  
Christine Palazzolo, Secretary  
Erin Hannegan, Communications Officer  
Will Van der Linde, Member at Large  
Deb Jackson, Member at Large**



# COMMONWEALTH of VIRGINIA

## Department of Historic Resources

2801 Kensington Avenue, Richmond, Virginia 23221

Molly Joseph Ward  
*Secretary of Natural Resources*

Julie V. Langan  
*Director*

Tel: (804) 367-2323  
Fax: (804) 367-2391  
[www.dhr.virginia.gov](http://www.dhr.virginia.gov)

June 29, 2015

Mary Joy Scala  
Preservation & Design Planner  
P.O. Box 911  
Charlottesville, Virginia 22902

RE: 2015-16 CLG Grant Agreement

Dear Ms. Scala:

I am pleased to enclose an agreement for your 2015-16 CLG Grant for \$16,500 for the Belmont Neighborhood Survey. Congratulations and we look forward to working with you on this project.

Please sign this agreement and return it to **Aubrey Von Lindern, Northern Regional Preservation Office, Department of Historic Resources, P.O. Box 519** in the next ten days. If you have any questions, you are welcome to contact Aubrey at (540) 868-7029.

Sincerely,

A handwritten signature in cursive script that reads "Julie V. Langan".

Julie V. Langan  
Director  
Virginia Department of Historic Resources

Administrative Services  
10 Courthouse Ave.  
Petersburg, VA 23803  
Tel: (804) 862-6408  
Fax: (804) 862-6196

Eastern Region Office  
2801 Kensington Avenue  
Richmond, VA 23221  
Tel: (804) 367-2323  
Fax: (804) 367-2391

Western Region Office  
962 Kime Lane  
Salem, VA 24153  
Tel: (540) 387-5443  
Fax: (540) 387-5446

Northern Region Office  
5357 Main Street  
PO Box 519  
Stephens City, VA 22655  
Tel: (540) 868-7029  
Fax: (540) 868-7033

**Certified Local Government Grant Agreement  
2015-2016**

This agreement entered into this 29th day of June, 2015, by the Commonwealth of Virginia, Department of Historic Resources (DHR), and the City of Charlottesville, the Certified Local Government (CLG), WITNESS that DHR and the CLG, in consideration of the mutual covenants, promises, and agreements herein contained, agree that the grant awarded by DHR to the CLG shall be described below:

**Project Title: Belmont Neighborhood Survey**

**Grant Amount: \$16,500 Matching Share: \$16,500 Total Project Costs: \$33,000  
Grant Period: June 15, 2015,\* through June 15, 2016.**

\*Actual start date is the date of full execution of agreement.

**This grant agreement incorporates the following documents:**

- (1) **This signed form;**
- (2) **DHR Request for Applications – 2015-2016 CLG Subgrant Program, dated March 20, 2015;**
- (3) **Grant Application from the City of Charlottesville, dated May 15, 2015;**
- (4) **Any negotiated modifications thereto, all of which are referenced below:**
  - a. **Any publications produced with grant funds must include the language concerning NPS financial assistance and nondiscrimination as shown below:**

This publication has been financed in part with Federal funds from the National Park Service, U.S. Department of the Interior. However, the contents and opinions do not necessarily reflect the view or policies of the U.S. Department of the Interior. This program receives Federal financial assistance for identification and protection of historic properties. Under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, as amended, the U.S. Department of the Interior prohibits discrimination on the basis of race, color, national origin, disability or age in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described above, or if you desire further information, please write to: Office of Equal Opportunity, National Park Service, 1849 C Street, NW, Washington, D.C. 20240.

Administrative Services  
10 Courthouse Ave.  
Petersburg, VA 23803  
Tel: (804) 862-6408  
Fax: (804) 862-6196

Eastern Region Office  
2801 Kensington Avenue  
Richmond, VA 23221  
Tel: (804) 367-2323  
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Western Region Office  
962 Kime Lane  
Salem, VA 24153  
Tel: (540) 387-5443  
Fax: (540) 387-3446

Northern Region Office  
5357 Main Street  
PO Box 519  
Stephens City, VA 22655  
Tel: (540) 868-7029  
Fax: (540) 868-7033

Page 2, Charlottesville  
June 29, 2015

IN WITNESS WHEREOF, the parties have caused this Grant Agreement to be duly executed, intending to be bound thereby.

**CERTIFIED LOCAL GOVERNMENT**

Signature: Maria Joy Scala  
Name: ~~Mary Joy Scala~~ Maria Joy Scala  
Title: ~~Preservation & Design Planner~~ City manager  
Date: 7-08-15

**COMMONWEALTH OF VIRGINIA  
DEPT. OF HISTORIC RESOURCES**

Signature: Julie V. Langan  
Name: Julie V. Langan  
Title: Director  
Date: 6/29/15

Administrative Services  
10 Courthouse Ave.  
Petersburg, VA 23803  
Tel: (804) 862-6408  
Fax: (804) 862-6196

Eastern Region Office  
2801 Kensington Avenue  
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CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	September 21, 2015
Action Required:	Approval to purchase property for Parkland
Presenter:	Brian Daly, Director, Parks and Recreation
Staff Contacts:	Chris Gensic, Trails Planner, Parks and Recreation
<b>Title:</b>	<b>Fornes Property Acquisition – Old Lynchburg Road</b>

**Background:**

The City of Charlottesville has been working to acquire approximately thirty (30) acres near Azalea Park on Old Lynchburg Road. The property includes large forested areas for park use, both banks of Moore’s Creek, and a sewer corridor that is intended to become a multi-use commuter trail from Azalea Park to the Sunset Avenue bridge (in conjunction with a trail easement about to be acquired from a neighboring property). The Moore’s Creek Interceptor (RWSA) runs through the property, on the County side, and the City has a 12-inch line that ties into the Interceptor on one of the parcels located in the City.

Staff have reached a point where we are ready to bring the acquisition to finality. In presenting this matter to you, we are seeking approval of a resolution: **(1)** authorizing staff to proceed with the acquisition of the property, in accordance with the terms and conditions described below, and **(2)** authorizing the City Attorney to engage outside counsel.

**Discussion:**

(1) **The Proposed Terms of Acquisition.** The property includes two smaller parcels on the City side of Moore’s Creek, and a larger parcel on the Albemarle County side of the creek, as shown on the attached map. The parcels are designated on Albemarle County Tax Map 76 as Parcel 45, and on Charlottesville City Tax Map 19, as Parcels 10.1 and 35.39. This parkland acquisition is being supported by a large donation from a donor who wishes to remain anonymous.

Each of the three parcels is owned by three Trusts, each of which holds an undivided one-third ownership interest. After discussions with the property owners, we believe that we could acquire the one-third interest of one Trust, for the amount of \$350,000. An anonymous donor would pay the other two Trusts for their individual one-third interests, and then the anonymous donor would transfer those ownership interests to the City, which would then own the entire property.

In August 2014 an Albemarle County zoning official provided the following information, as to the property that is located in the County:

*“The current zoning of this portion of the parcel (R-15) allows use for public parkland by right. Additionally, the proposed use will require a Site Development Plan review and approval in accordance with Albemarle County Zoning Ordinance Section 32 and review for compliance with the Comprehensive Plan in accordance with Virginia Code § 15.2-2232 and Albemarle County Zoning Ordinance § 31.7”*

(2) **Outside Legal Counsel:** The City Attorney’s office has requested that we utilize outside legal counsel for the acquisition/ closing process, because the transaction is likely to be more complicated than those that the City Attorney’s office handles on a day-to-day basis. As mentioned above, the three ownership interests are held by three separate Trusts. The sale of property by a Trust can have significant tax consequences to the sellers, and to date there has been no indication that the Trusts have engaged legal counsel of their own. The City Attorney’s Office is not experienced in transactions involving trusts, and feels the City’s interests will best be protected by outside counsel with specific knowledge and experience as to the legal title and tax implications of the sale of land by a Trust.

#### **Alignment with City Council’s Vision and Priority Areas:**

The project supports both City Council’s “Green City” and “Healthy City” visions by creating an outstanding recreational amenity for many users while preserving and enhancing a natural and forested area of the City. It contributes to Goal 2 of the Strategic Plan, to be a safe, equitable, thriving and beautiful community, and objective 2.5, to provide natural and historic resources stewardship, 2.6, engage in robust and context sensitive urban design, as well as objective 5.3 supporting community engagement. This acquisition would also support the City’s Master Plan goals for Azalea Park.

#### **Community Engagement:**

Charlottesville Parks and Recreation has provided multiple opportunities for the public to provide input into this acquisition. It is included in the Azalea Park Master Plan as well as the Bicycle and Pedestrian Plan, and is supported by the Frys Spring Neighborhood Association.

#### **Budgetary Impact:**

This purchase will require \$350,000 from the CIP fund for Parkland Acquisitions, and will also require operational funds for ongoing annual trail maintenance. In addition to the City’s purchase price (\$350,000) we anticipate the following additional categories of expenses associated with the acquisition and establishment of the park/ trail: **(i)** Phase I environmental assessment, prior to Closing; **(ii)** removal of some accumulated rubbish located on the property; **(iii)** legal fees (see discussion in #2, above), **(iv)** costs of preparing and obtaining County approval of a Site Development Plan, and **(v)** construction of a vehicle parking lot and access to the new park using the existing entry driveway. Although we do not have specific costs estimates for these categories of expenses, we are confident that our current year Parks & Rec Budget is adequate to cover all of them.

**Recommendation:**

Staff recommends approval of the parkland acquisition.

**Alternatives:**

Council could decide to not purchase the property for park use.

**Attachment:**

Proposed Resolution

## **RESOLUTION**

### **APPROVING THE ACQUISITION OF LAND WITHIN ALBEMARLE COUNTY AND WITHIN THE CITY OF CHARLOTTESVILLE, FOR A NEW PARK AND EXTENSION OF THE CITY TRAIL SYSTEM**

**WHEREAS**, the owners of three parcels of land (one, located in Albemarle County, identified on Alb. County Tax Map 76 as Parcel 45; two, located within the City of Charlottesville, identified on City Tax Map 19 as Parcels 10.1 and 35.39) have indicated a willingness to convey their ownership interests (collectively, the “Subject Property”); and

**WHEREAS**, a representative of the City’s Parks and Recreation Department has been working with representatives of an anonymous third party, to leverage private funding to support acquisition of the Subject Property; and

**WHEREAS**, the City’s Parks and Recreation Department seeks the endorsement of this City Council to proceed with acquisition of the Subject Property;

#### **NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The City’s Department of Parks and Recreation is authorized to proceed with acquisition of the Subject Property for public use, in accordance with the terms and details set forth within the Council Agenda Memo dated September 21, 2015; and
2. The City Manager is authorized to execute any and all contracts and other documents necessary for acquisition of the Subject Property; and
3. The City Attorney is authorized to select and engage outside legal counsel to assist the City Manager and the Department of Parks and Recreation with the proposed acquisition of this land, including legal work and activities necessary to accomplish one or more real estate closings, as may be necessary for the City to acquire a one-hundred percent (100%) ownership interest in the Subject Property.

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

<b>Agenda Date:</b>	September 8, 2015
<b>Action Required:</b>	Yes (Adoption of Ordinance)
<b>Presenter:</b>	Jeanette Janiczek, Urban Construction Initiative Program Manager
<b>Staff Contacts:</b>	Jeanette Janiczek, Urban Construction Initiative Program Manager
<b>Title:</b>	<b>Emmet Street Speed Limits</b>

**Background:** State law requires that changes in speed limits by a locality be supported by a traffic engineering analysis.

**Discussion:** An engineering and traffic investigation was conducted by the Virginia Department of Transportation to determine the appropriate speed limits for the Route 29/250 project's lane alterations within the City limits. Due to the high traffic volume of Route 29, it is pertinent to maintain the existing number of lanes in both directions. In order to complete the proposed improvements in as safe a manner as possible to both the traveling public and the workers, a lower speed limit accompanied with a lane shift was the most logical and beneficial solution. The lowered speed limit allows safe passage through the transition areas and the narrowed lanes. The narrowed lanes allow for adequate room to safely construct the proposed improvements.

**Budgetary Impact:** Costs to install and/or replace speed limit signs is included within the State's project budget.

**Community Engagement:** N/A

**Alignment with City Council's Vision and Priority Areas:**

The Route 29/250 Improvement project is a large component in the transportation system within the City. The adjustment of speed limits within the construction area allows for the project to continue safely and efficiently. The improvement in safe and efficient traffic flow throughout the City after construction aligns with City Council's vision of having a Connected Community.

**Recommendation:** Staff recommends adoption of the proposed ordinance, based on the recommendation supported by an Engineering and Traffic Investigation provided by the Virginia Department of Transportation.

**Attachments:**

Engineering and Traffic Investigation (7/28/2015)

Proposed Ordinance

**AN ORDINANCE  
 AMENDING AND REORDAINING SECTION 15-99  
 OF CHAPTER 15 (MOTOR VEHICLES AND TRAFFIC)  
 OF THE CODE OF THE CITY OF CHARLOTTESVILLE, 1990, AS AMENDED,  
 RELATED TO SPEED LIMITS ON SPECIFIC STREETS.**

**WHEREAS**, the Virginia Department of Transportation submitted the report entitled “Engineering and Traffic Investigation Work Zone Speed Analysis”, dated July 28, 2015, to the City Traffic Engineer, who concurs with the recommendations made by the Virginia Department of Transportation for appropriate speed limits (from an engineering and safety standpoint) on Emmet Street;

**WHEREAS**, subsequent to the submission of the speed study, construction of the Route 29/250 Interchange project commenced. The Virginia Department of Transportation noted that the ongoing construction has altered the road significantly in terms of width, geometry and proximity to workers, resulting in the need to reduce speed limits in the construction zone for the duration of the project. Now, therefore

**BE IT ORDAINED** by the Council for the City of Charlottesville, Virginia, that Section 15-99 of Article IV (Speed Limits) of Chapter 15 (Motor Vehicles and Traffic) of the Charlottesville City Code, 1990, as amended, is hereby amended and reordained as follows:

**Sec. 15-99. Maximum limits on specific streets.**

Pursuant to a traffic engineering and traffic survey as required by Code of Virginia, section 46.2-1300, the following speed limits are imposed as hereinafter set forth and no person shall drive a vehicle at a speed in excess of such limits:

**CURRENT SPEED LIMITS**

<b>Street</b>	<b>From</b>	<b>To</b>	<b>Speed Limit (MPH)</b>
<del>Emmet Street</del>	<del>Arlington Boulevard</del>	<del>Hydraulic Road</del>	<del>40</del>

**NEW SPEED LIMITS**

<b>Street</b>	<b>From</b>	<b>To</b>	<b>Speed Limit (MPH)</b>
<u>Emmet Street</u>	<u>Arlington Boulevard</u>	<u>Barracks Road</u>	<u>40</u>
<u>Emmet Street</u>	<u>Barracks Road</u>	<u>Hydraulic Road</u>	<u>35</u>




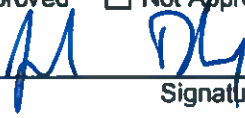
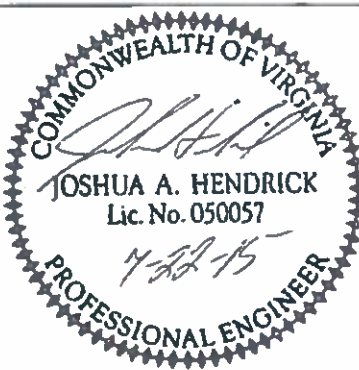

**ENGINEERING AND TRAFFIC INVESTIGATION  
WORK ZONE SPEED ANALYSIS  
SECTION A**

(To Be Completed By the Requesting Entity)

Project/Permit/Route No.: (NFO) 0029-104-248, C501 - Route 29	Project's TMP Category: B
Review Requested By: Joshua Hendrick, P.E.	Date of Request: 07/22/2015
Project Scope: Add additional inside lane on Route 29 South, install Drainage, utilities, signals, MSE and noise walls, curb and gutter	Starting MP: 0.349 mi S of Rt 250
	Ending MP: 0.881mi N of Rt 250
VDOT Project/Contract Manager: David Cubbage, PE	Date of Review:

**SECTION B - TRAFFIC ENGINEERING INVESTIGATION RESULTS**

(To Be Completed By the Regional Traffic Engineering Section)

Work Zone Safety Coordinator's Recommendation Work Zone Speed Limit Reduction <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  _____ Signature <span style="float: right;">7 28 15</span> Date	
Proposed Work Zone Speed Limit: <u>35</u>	
Daytime/Active Work Zone Only: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Regional Traffic Engineer Work Zone Speed Limit Reduction <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Not Approved  _____ Signature <u>7/28/15</u> Date	
Comments: Proposed Date of Posting Speed Limit Reduction: Proposed Date of Removal of Speed Limit Reduction:	Responsible Charge  VDOT Traffic Engineering (Office Location) Traffic Engineer

**FIELD IMPLEMENTATION (If Applicable)**

(To Be Completed By the Project Manager)

Date Speed Limit Reduced: 22 July 2015 or when approved	Date Original Speed Limit Re-established: 21 May 2016
VDOT Project/Contract Manager	
_____ Signature	_____ Date

**C: Regional Traffic Engineer's File, Project File, State Traffic Engineer (if approved)**

### SECTION C - EXISTING ROADWAY CONDITIONS

(To Be Completed By the Project Manager and/or the Regional Traffic Engineering Section)

Reviewer(s):	
Posted Speed Limit: 40 mph	ADT: 52000 (2014)
Number of Thru Lanes: 2 + 1 turn lane	Lane Widths: 12 ft
Lane Surface Material: <input checked="" type="checkbox"/> Asphalt <input type="checkbox"/> Concrete <input type="checkbox"/> Gravel <input type="checkbox"/> Other	
Lane Surface Condition: <input type="checkbox"/> Distressed <input type="checkbox"/> Spalling <input type="checkbox"/> Roughness <input type="checkbox"/> Faulting <input type="checkbox"/> Punchouts <input type="checkbox"/> Raveling <input type="checkbox"/> Potholes <input type="checkbox"/> Other	
Right Shoulder Width: None	Material/Condition: Concrete curb
Left Shoulder Width: 3 foot	Material/Condition: Asphalt
Number of Private/Commercial Entrances: 12	
Number of Intersections/Interchanges: 4	
Crash Rate: (Attach HTRIS Report)	Crash Frequency:                      Crash Density:
Crash Rate:	Prevalant Collision Type:

### SECTION D - PROPOSED WORK ZONE ROADWAY/CONSTRUCTION CONDITIONS

(To Be Completed By the Project Manager and/or the Regional Traffic Engineering Section)

Number of Thru Lanes: 2 + 1 turn lane	Lane Widths: 10 foot (through) + 11 foot (turn lane)
Right Shoulder Width: No Change	Left Shoulder Width: <1'
Barrier Installed for Lane Closure: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Barrier Installed for Shoulder Closure: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Temporary Crossover Installed: <input type="checkbox"/> Yes, Design Speed: <input checked="" type="checkbox"/> No	Temporary Signal Installed: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Lane Closure Time Restrictions: <input checked="" type="checkbox"/> Yes, Time(s)	See attached plan sheet <span style="float: right;"><input type="checkbox"/> No</span>
Work Activity Times: <input checked="" type="checkbox"/> Day <input checked="" type="checkbox"/> Night	Number of Construction Entrances: 12
Construction activities outside of the shoulder (activity may be within the clear zone): <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Construction activities on the shoulder-no lane encroachment (activity within the shoulder): <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Construction activities on the shoulder-minor lane encroachment (lane width reduction): <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Construction activities within the median: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Construction activities encroach on the travel way (lane closure): <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Construction activities encroach on 2 or more lanes of the travel way (multi-lane closure) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Will Police Patrols be provided: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Will enhanced enforcement be provided during lane closures: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Partial Day Work Zone Speed Limit Reduced: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Proposed Work Zone Speed Limit: 35

Additional Mitigating Roadway Work Zone Conditions: Construction (pipe work, gas work, additional lane construction, utilities, etc.), heavy traffic and limited sight distance possible due to construction equipment, continual day work at this location and also construction on adjacent hotels ongoing

## EXPLANATION SHEET

**Project/Permit/Route No.:** Circle the applicable title and list the corresponding number.

**Project's TMP Category:** List the appropriate Transportation Management Plan Category per the instructions in IIM-241/TED-343. All roadway construction work will fall in one of three categories:

Category A: Typical Projects are No-Plan, Minimum Plan, Maintenance Projects, Utility and Permit Work.

Category B: Projects with moderate level of construction activity and the primary traffic impact limited to the roadway containing the work zone.

Category C: Long duration construction or maintenance projects on Interstate and freeway projects that occupy a location for more than three days with intermittent or continuous lane closures within the following Transportation Management Areas; Northern Virginia (including the counties of Arlington, Fairfax, Loudoun, Prince William, Spotsylvania and Stafford), Richmond (including the City of Richmond, Chesterfield and Henrico Counties), and Hampton Roads (including the Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth and Virginia Beach as well as James City and York Counties). Also includes Interstate and Principle Arterial Roadways with complex multi-phase construction, high accident rates, full closures, or multiple work zones (two or more) within two miles of each other.

**Lane Surface Conditions:** Surface conditions followed by an asterisk may be considered as a mitigating condition.

*Distressed* – Pavement cracking that may or may not be filled with sealant.

*Spalling* – Pavement that is chipping or fragmented.

*Roughness\** – Pavement surface with inequalities, ridges or projections caused by cracking or spalling with sufficient concentration to possibly affect vehicle stability, especially motorcycles.

*Faulting\** – Uneven pavement at the pavement joints.

*Punchouts\** – Full depth/through holes in the pavement.

*Raveling\** – Pavement is breaking apart, typically occurring at the edge of the pavement.

*Potholes\** – Partial depth holes in the pavement.

**Construction activities outside of the shoulder:** Work activities such as landscaping work, utility work, cleaning ditches and fencing work that is more than 10 feet from the travel lane (beyond the shoulders, but within the right-of-way) that may or may not be within the clear zone. Generally speed reduction is not warranted where work is confined to an area outside of the clear zone values published in Appendix A of the Virginia Work Area Protection Manual. However, there may be work activities (mitigating conditions) that create distracting situations for motorists, such as vehicles parked on the shoulder, vehicles accessing the work site via the highway, and equipment traveling on or crossing the roadway to perform the work operations in conjunction with other mitigating conditions that may warrant consideration of a reduced speed limit.

**Construction activities on the shoulder-no lane encroachment:** Work activities such as culvert extensions, guardrail installations, utility work and sign installations that are within 10 feet but no closer than 2 feet to the travel lane (within the shoulders, but does not encroach on the travel lane). Speed reduction may be warranted for long term stationary operations. Speed reduction may also be warranted when other mitigating conditions exist such as workers/equipment present for extended periods of time within 10 feet of the travel lane or horizontal curvature that may increase vehicle encroachments.

**Construction activities on the shoulder-minor lane encroachment:** Work activities such as shoulder paving, guardrail installations, utility work and sign installations that encroach on an area from the edge of the travel lane to 2 feet into the travel lane (reduced travel lane width). When work takes up part of a

lane, motor vehicle traffic volumes, vehicle mix (buses, trucks, and cars), speed, and capacity, should be analyzed to determine whether speed reduction may be warranted. Truck off-tracking should be considered when determining whether the minimum lane width is adequate or the affected lane should be closed. Speed reduction may be warranted when one or more of the following mitigating conditions exist: Workers/equipment present for extended periods of time within 2 feet of the travel lane.

- Lane width reductions resulting in a lane width less than 11 feet.
- Concrete barrier encroaching on a lane open to traffic or concrete barrier within 2 feet of the edge of the travel lane.
- Horizontal curvature that may increase vehicle encroachments.
- Pavement edge drop-off within 2 feet of the travel lane.
- Reduced stopping sight distances.

**Construction activities within the median:** Work activities such as lane widening, lane additions, shoulder repair and utility work in the median. When work takes up part of a lane, motor vehicle traffic volumes, vehicle mix (buses, trucks, and cars), speed, and capacity, should be analyzed to determine whether speed reduction may be warranted. Truck off-tracking should be considered when determining whether the minimum lane width is adequate or the affected lane should be closed. Speed reduction may be warranted when one or more of the following mitigating conditions exist:

- Workers/equipment present for extended periods of time within 2 feet of the travel lane.
- Lane width reductions resulting in a lane width less than 11 feet.
- Concrete barrier encroaching on a lane open to traffic or concrete barrier within 2 feet of the edge of the travel lane.
- Horizontal curvature that may increase vehicle encroachments.
- Pavement edge drop-off within 2 feet of the travel lane.
- Reduced stopping sight distances.
- Traffic congestion created by a lane closure.

**Construction activities encroach on the travel way:** Work activities such as pavement repair, lane widening, lane additions, shoulder repair and utility work that require a lane closure. Speed reduction may be warranted when one or more of the following mitigating conditions exist:

- Workers/equipment present for extended periods of time within 2 feet of the travel lane.
- Lane width reductions resulting in a lane width less than 11 feet.
- Concrete barrier encroaching on a lane open to traffic or concrete barrier within 2 feet of the edge of the travel lane.
- Horizontal curvature that may increase vehicle encroachments.
- Pavement edge drop-off within 2 feet of the travel lane.
- Reduced stopping sight distances.
- Lane shifts.
- Reduced design speeds for temporary cross-over.
- Traffic congestion created by a lane closure.

**Construction activities encroaching on 2 or lanes on the travel way:** Work activities such as pavement repair, lane widening, lane additions, bridge repair and utility work that require multilane closure on both sides of the centerline or one side of a multilane highway (4 or more lanes). Speed reduction may be warranted when one or more of the following mitigating conditions exist:

- Workers/equipment present for extended periods of time within 2 feet of the travel lane.
- Lane width reductions resulting in a lane width less than 11 feet.
- Concrete barrier encroaching on a lane open to traffic or concrete barrier within 2 feet of the edge of the travel lane.
- Horizontal curvature that may increase vehicle encroachments.
- Pavement edge drop-off within 2 feet of the travel lane.
- Reduced stopping sight distances.
- Lane shifts.
- Reduced design speeds for temporary cross-over.
- Traffic congestion created by a lane closure.

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



Agenda Date:	September 21, 2015
Action Required:	Approval of Ordinance (1 <sup>st</sup> reading)
Presenter:	Chris Turner, Project Manager, Piedmont Telesystems Inc.
Staff Contacts:	Marty Silman, City Engineer, Neighborhood Development Services
<b>Title:</b>	<b>Franchise Agreement to Allow Installation of Fiberoptic Cable Over Harris Street</b>

**Background:**

Piedmont Telesystems Inc., on behalf of Eagle Real Estate LLC, has requested to install a single 12 strand fiber optic line across the City's right of way between 603 Rivanna Avenue and 1000 Harris Street. Installation of the fiber optic will require setting a new utility pole on the property at 603 Rivanna Avenue and extending the cable via aerial route across Harris Street to the building located at 1000 Harris St.

**Discussion:**

Neighborhood Development Services has worked with the applicant to ensure that there are no obvious conflicts with the installation. Miss Utility has confirmed that the new utility pole (to be located on the property at 603 Rivanna Ave.) will not conflict with any existing City utilities. Staff has also required that the fiber optic line be installed at a minimum height of 16.5', which meets VDOT's requirements for urban roads. The project is not expected to conflict with any current or future City projects. Miss Utility will be called again prior to installation of the utility pole.

Land disturbance associated with the project will be limited to the installation of the utility pole and does not trigger the need for Erosion & Sediment Control or Stormwater Management Plans. It is expected that installation of the fiber optic line will commence immediately after Council approval.

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

This item aligns with the City Council Vision of Economic Sustainability by supporting the ability of a local business to utilize current technological infrastructure to maintain productivity under today's expectations of prompt services.

This item aligns with the following objectives of the City's Strategic Plan:

- Goal 2.3 Provide reliable and high quality infrastructure - Installation of fiber optic line is one of the highest quality types of communication infrastructure on the market today.
- Goal 3.3 Grow and retain viable businesses - Installation of the fiber optic lines will support the existing business.

**Community Engagement:**

Community engagement required as a result of this project will be limited to coordination with the private utility owners of the adjoining utility poles that this fiber optic line will be attached to. No additional community engagement is anticipated.

**Budgetary Impact:**

It is not anticipated that this project will have any impact on the City's budget.

**Recommendation:**

It is staff's recommendation to approve the request.

**Alternatives:**

Alternatives to installation of the fiber optic line would be to continue operations with existing communication infrastructure.

**Attachments:**

Request Letter from Eagle Corporation

Description of aerial fiber installation (provided by Piedmont Telesystems Inc.).

Plat of properties with locations of existing utilities (provided by Piedmont Telesystems Inc.).

Proposed Franchise Agreement



**EAGLE CORPORATION**  
P. O. Box 164B  
CHARLOTTESVILLE, VIRGINIA 22902  
TELEPHONE (434) 971-2686

To: City of Charlottesville

From: Eagle Corporation

Date: July 9, 2015

We are requesting to add a utility pole to our property that will allow us to run fiber from 1020 Harris Street to 603 Rivanna Avenue.

Please let us know if you have additional questions,



Leatha Harlow

IT Coordinator

Eagle Corporation

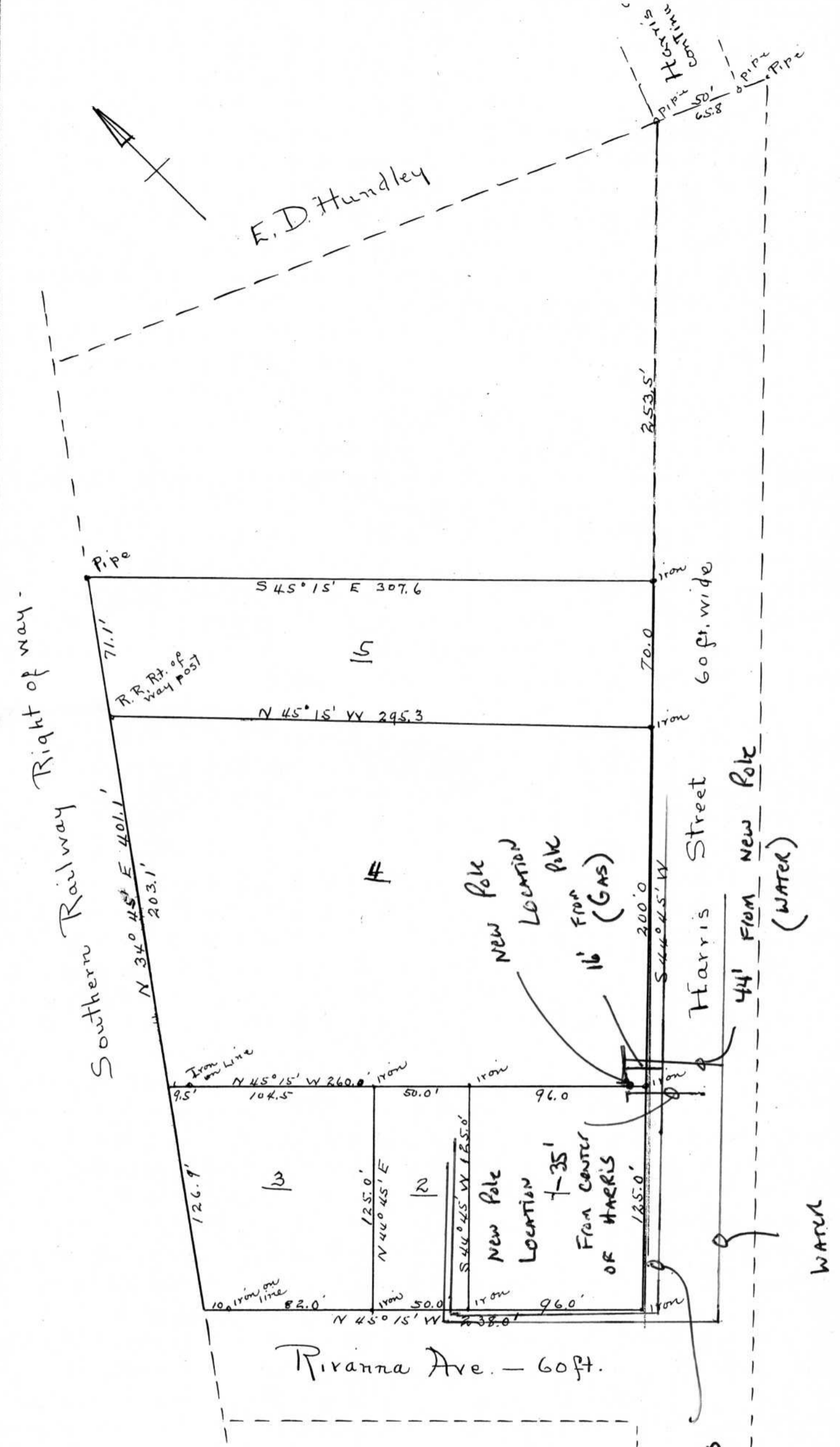
1020 Harris Street

Charlottesville VA 22903

434-971-2686

**Description of Aerial Fiber installation  
from Bldg. 603 to Bldg. 1000 on Harris Street  
Allied Concrete**

1. Set new pole on property 603 Rivanna Ave. (Eagle Corp.) 35 feet from center of Harris Street and 5 feet from edge of sidewalk.
2. Attach 12 Strand fiber and 12 pair copper to 603 building to new pole across Harris Street and attach to 1000 building (Allied)
3. Cables on 603 Rivanna Avenue side will travel over existing telecommunication and under power lines and on the 1000 Harris street side cables will travel under existing telecommunications lines. Cable heights will meet Federal and City height requirements.
4. There will be no road closure or lane closure for the work performed.
5. Utilities have been located and they are as follows in relation to new pole location.
  - a. Gas 16 feet from new pole location in Harris Street
  - b. Water and Sewer 44 feet from new pole location in Harris Street
  - c. Power and Telecommunications are all overhead
6. Miss Utility will be contacted again before any construction begins.



Deed Book reference  
 D.B. 29 - Page 137  
 D.B. 94 - Page 341

PLAT  
 PROPERTY OF  
 D.M. LENDING and N. E. STOWELL  
 Charlottesville, Va.  
 Scale 1" = 60' Oct. 9, 1944  
 O. R. RANDOLPH, Engineer  
 Charlottesville, Va.

VIRGINIA:- In the Clerk's Office of the Corporation Court of the City of Charlottesville.

The foregoing instrument of writing, together with certificate of acknowledgment thereto annexed, was presented and admitted to record on the 11th day of October, 1944, at 3:30 o'clock, P.M., and recorded in Deed Book No. 118, page 133.

Teste:-

Approved by City Council on \_\_\_\_\_

**EAGLE REAL ESTATE, LLC  
TELECOMMUNICATIONS FRANCHISE**

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**AN ORDINANCE  
GRANTING A TELECOMMUNICATIONS FRANCHISE TO  
EAGLE REAL ESTATE, 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 EAGLE REAL ESTATE, 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 fiberoptic lines and associated equipment, including posts, poles, cables, wires and all other necessary overhead 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 Eagle Real Estate, 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 a mixture of overhead and underground in Public Rights-of-Way as depicted in Exhibit A, attached hereto, and as may have been or may hereafter be modified, and incorporated by reference.

### **SECTION 202 SUBSEQUENT INSTALLATION**

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

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

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

**202.2 GENERAL PREFERENCE FOR UNDERGROUND FACILITIES:** As a matter of policy, the City prefers that the installation of any Facility within the PROW occur underground. Notwithstanding this preference, the City recognizes that in some circumstances the placement of Facilities underground may not be appropriate.

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

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

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

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

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

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

In general, all posts, poles, wires, cables and conduits which the Company places within the Public Rights-of-Way pursuant to this Ordinance shall in no way permanently obstruct or



interfere with public travel or the ordinary use of, or the safety and convenience of persons traveling through, on, or over, the Public Rights-of-Way within the City of Charlottesville.

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

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

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

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

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

## **ARTICLE III**

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

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

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

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

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

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

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

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

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

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

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

### **SECTION 305 MAPPING DATA**

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

- (a) location and elevation of the mains, cables, conduits, switches, and related equipment and other Facilities owned by the Company located in the PROW, with

the location based on (i) offsets from property lines, distances from the centerline of the Public Rights-of-Way, and curb lines; (ii) coordinates derived from the coordinate system being used by the City; or (iii) any other system agreed upon by the Company and the City;

- (b) the outer dimensions of such Facilities; and
- (c) a description of above ground appurtenances.

## **ARTICLE IV**

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

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

## **ARTICLE V**

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

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

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

**502.1 RESTORATION STANDARD:** Where the Company disturbs or damages the Public Rights-of-Way, the Director shall have the authority to determine the manner and extent of the restoration of the Public Rights-of-Way, and may do so in written procedures of general application or on a case-by-case basis. In exercising this authority, the Director will

consult with any state or federal standards for rights-of-way restoration and shall be further guided by the following considerations:

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

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

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

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

**502.5 DUTY TO CORRECT DEFECTS:** The Company shall correct defects in patching, or restoration performed by it or its agents. Upon notification from the City, the Company shall correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of the notice from the Director

within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure.

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

**502.7 DAMAGE TO OTHER FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY:** The Company shall be responsible for the cost of repairing any Facilities existing within the Public Rights-of-Way that it or the Facilities owned by the Company damage. If the Company damages the City's Facilities within the Public Rights-of-Way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, the Company shall correct the damage within a prompt period after receiving written notification from the City. If the Company does not correct the City's damaged Facilities pursuant to the foregoing, the City may make such repairs as necessary and charge all of the reasonable 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, and its employees free and harmless from liability on account of injury or damage to persons, firms or corporations or property growing out of or directly or indirectly resulting from:

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

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

### SECTION 602 WAIVER BY THE CITY

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

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

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

## **SECTION 603 INSURANCE**

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

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

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

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

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

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

## **ARTICLE VII**

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

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

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

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

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

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

The Performance Bond shall serve as security for:

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



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

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

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

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

## **ARTICLE VIII**

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

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

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

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

### **SECTION 802 FRANCHISING COSTS**

Prior to the execution of this Ordinance, the City incurred costs for the services of third parties (including, without limitation, attorneys and other consultants) in connection with the award of this telecommunications Franchise. Within thirty (30) days after receipt from the City of an invoice for such costs, the Company shall pay at such time and in such manner as the City shall specify to the City or, at the direction of the City, to third parties an amount equal to the costs the City incurs for the services of such third parties. Payment by Company of such franchising costs shall not in any way be offset nor deducted from applicable PROW use fees required pursuant to Section 801 herein. In the event of any renewal, renegotiations, transfer, amendment or other modification of this Ordinance or the Franchise, the Company will reimburse the City in the same manner for such third party costs, if any are incurred. The Company's obligations under this Section shall not exceed two thousand five hundred dollars (\$2500.00).

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

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

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

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

## **ARTICLE IX**

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

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

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

### **SECTION 902 SEVERABILITY**

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

## **ARTICLE X**

### **SECTION 1001 MAINTENANCE OBLIGATION**

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

### **SECTION 1002 TREE TRIMMING**

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

## **ARTICLE XI**

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

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

### **SECTION 1102 APPLICATION FOR NEW TELECOMMUNICATIONS FRANCHISE**

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

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

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

## ARTICLE XII

### SECTION 1201 NOTICE

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

**To the Company:**

Eagle Real Estate, LLC  
Attn: President  
1020 Harris Street  
Charlottesville, VA 22902

**To the City:**

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

**With a copy to:**

M.E. (Dick) Gibson, Jr.  
Tremblay & Smith, PLLC  
105 – 109 East High Street  
Charlottesville, VA 22902

**With a copy to:**

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

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

### SECTION 1202 EMERGENCY NOTIFICATION

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

**To the Company:**  
Eagle Real Estate, LLC  
Attn: President  
1020 Harris Street  
Charlottesville, VA 22902  
(434) 971-2686

**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)  
(434) 971-6645 (home)

### **SECTION 1203 REGISTRATION OF DATA**

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

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

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

## **ARTICLE XIII**

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

The franchise granted by this Ordinance may be terminated:

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

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

#### **ARTICLE XIV**

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

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

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

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

#### **ARTICLE XV**

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

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

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

## **SECTION 1502 SUCCESSORS AND ASSIGNS**

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

## **ARTICLE XVI**

### **SECTION 1601 NONEXCLUSIVE FRANCHISE**

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

## **ARTICLE XVII**

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

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

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

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

## **ARTICLE XVIII**

### **SECTION 1801 NO DISCRIMINATION**

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



**ARTICLE XIX**

**SECTION 1901 FORCE MAJEURE**

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

**ARTICLE XX**

**SECTION 2001 EFFECTIVE DATE**

This Ordinance shall be effective upon its passage.

Adopted by the Council of the City of Charlottesville on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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

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

EAGLE REAL ESTATE, LLC

Date: \_\_\_\_\_, 2015

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

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

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CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



<b>Agenda Date:</b>	September 21, 2015
<b>Action Required:</b>	Approval
<b>Staff Contacts:</b>	Melissa Thackston, Grants Coordinator
<b>Presenter:</b>	Melissa Thackston, Grants Coordinator
<b>Title:</b>	Setting Priorities for Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) funds for Program Year 16-17 (Public Hearing)

**Background:**

This public hearing is intended to aid City Council and staff in gathering information about the City's needs. Goals and priorities determined as a result of this public hearing will be the framework for funding recommendations made by the CDBG Task Force. Based on current projections, the City can expect CDBG funding amounts similar to or less than that received in FY 15-16 or \$375,000. HOME funds are expected to be dramatically cut, and the HOME Consortium will likely receive \$0 in funding in FY 16-17. More information on the proposed cuts to the HOME program can be read [here](#).

**Current Year's Plan:** The priorities set by Council for the 2015-2016 fiscal year, as determined at the August 18 2014 public hearing, were workforce development, neighborhood stabilization (homeowner rehabilitation and rental rehabilitation, homeownership and code compliance), economic development, and access to quality childcare. For 2015-2016, 20% of the CDBG entitlement was allocated to Administration and Planning, which pays for the Grants Coordinator position, and 15% of the balance was devoted to social programs. In FY 14-15, CDBG and HOME funds benefited 334 people, 15 existing microenterprises, 24 entrepreneurs, 1 early learning center, rehabbed 9 homes, and improved pedestrian safety and accessibility along Cherry Ave.

FY 2016-2017 is the fourth of five years of the Consolidated Plan (FY 2013 – 2017). This plan was approved in May 2013. The Consolidated Plan sets forth plans for CDBG and HOME funding. This document provides information to encourage communities to look at housing and community development comprehensively, so that projects undertaken have a good fit with the community's needs.

## **Discussion:**

This fiscal year's adopted budget is attached to show how funding has been allocated to the different funding categories.

Following the public hearing, staff is asking Council to make the following decisions:

- 1. Set priorities for CDBG & HOME Programs** – Council is asked to determine what its priorities are for FY 16-17. Having specific priorities helps the CDBG Task Force ensure that the diminishing funds are targeted towards projects that meet the goals of Council, the Consolidated Plan and the Growing Opportunities Report. An emphasis on workforce development and access to educational childcare helps meet these goals.
- 2. Determine if a Priority Neighborhood should be designated** – 10<sup>th</sup> and Page has been the Priority Neighborhood for the past two fiscal years. Historically, Priority Neighborhoods receive three fiscal years of funding. FY 16-17 would be 10<sup>th</sup> and Page's third year. In the past, priority neighborhood funds were set at \$200,000, however, reduced entitlement amounts would make this amount more than 50% of the anticipated budget. Last year, the Priority Neighborhood budget was set as 32.5% of the total entitlement amount or about \$130,000. As a result of program income received and reprogramming of funds from closed projects, more funds were able to be applied to the Priority Neighborhood this fiscal year. The 10<sup>th</sup> and Page Task force has identified projects whose cost far outweigh available funding.

Council normally names only one Priority Neighborhood at a time. In order to ensure plenty of time for citizen engagement and coordination with the various City committees, it would be helpful for staff to begin working on the next Priority Neighborhood funding recommendations for FYs 17-18, 18-19, and 19-20. Based on the past rotation of funding through eligible neighborhoods, Belmont is the next neighborhood in the cycle.

- 3. Determine if CDBG funds should be set aside for Economic Development** – Last year, the Economic Development budget was set as 32.5% of the total entitlement amount or about \$130,000; however, only \$62,700 in eligible projects was recommended for funding. These funds are being used to help qualified entrepreneurs start businesses as well as help existing businesses improve their capacity.
- 4. Determine the percentage for Public Service Projects** – The maximum amount of our budget that can be allocated towards Public Service Programs is 15% as determined by HUD. Council can decide to keep allocation at 15% or designate a lower percentage. The current budget for Public Service projects is about \$55,000.
- 5. Administration and Planning** – This amount is capped by HUD at 20% of the total CDBG budget. The current budget for admin and planning is just over \$75,000.
- 6. Additional Guidelines** - Any other guidelines or directions Council may wish to give in determining how CDBG and HOME funds should be spent.

### **Community Engagement:**

The CDBG Task Force will meet over the winter to review Housing (if funding is available) and Public Service projects and make recommendations for funding to Council in spring 2015. The City's Strategic Action Team will review Economic Development applications. A 10<sup>th</sup> and Page Priority Neighborhood Task Force was formed and made recommendations that could use all funding available. Notice of this public hearing was advertised in the newspaper.

### **Alignment with City Council's Vision and Strategic Plan**

This agenda item aligns directly with Council's vision for Charlottesville to have **Economic Sustainability** and **Quality Housing Opportunities for All**. Projects also have the potential to meet many of the objectives listed in the first three goals of the City's Strategic Plan: Enhance the self-sufficiency of our residents; be a safe, equitable, thriving and beautiful city; and, have a strong, diversified economy.

### **Budgetary Impact:**

If HOME funds do become available, they will require a 25% local match. In previous years, this match came from the Charlottesville Affordable Housing Fund. There is no impact to the general fund regarding CDBG funds.

### **Recommendations:**

Staff Recommends:

- Approving the 15% maximum allocation allowed for Public Service Projects and approving the 20% maximum allocation allowed for Admin and Planning.
- Public Service funds remain citywide, but that non-profit partners are made aware of the Priority Neighborhood and encouraged to recruit beneficiaries from that area.
- \$45,000 be set aside for Economic Development Activities.
- The remaining estimated CDBG budget, \$200,000, goes towards Priority Neighborhood funding.
- Staff recommends 10<sup>th</sup> and Page be named FY 16-17 Priority Neighborhood and Belmont be the next Priority Neighborhood in the rotation.
- Staff recommends that any Public Service, Housing or Economic Development activity must meet the goals and recommendations of the Growing Opportunities report in addition to the Consolidated Plan.
- Staff recommends that if HOME funds are available and if there is any Program Income or Reprogramming available, those funds go towards Housing activities to support downpayment assistance.

**Alternatives:**

Alternatives include funding the Priority Neighborhood, Economic Development, Public Service, and Housing programs at different percentages or restricting beneficiaries to specific areas of the City. Specifically, Council could choose to fund the Priority Neighborhood at less than the recommended \$200,000. This would allow more funding available for Economic Development and Housing projects.

**Attachments:**

Proposed Budget  
Resolution  
Current Budget

### Proposed FY 16-17 Budget

	FY 15-16 Funding	Proposed FY 16-17 Funding	Approx. Percent Change
Priority Neighborhood	\$258,879.82	\$200,000 (or remaining EN available)	-25%
Economic Development	\$62,700	\$45,000	-30%
Public Service	\$56,410 (15% EN)	15% EN	0
Admin	\$75,219 (20% EN)	20% EN	0
Housing	\$126,000	\$20,000	-85%
CDBG Entitlement (EN)	\$376,098	\$376,098	0
HOME Entitlement (plus match)	\$73,895	\$0	-100%
Program Income and Reprogramming	\$92,239	\$20,000	-75%

Note: As proposed, if CDBG funds are decreased, Priority Neighborhood funding would be decreased. Also, there is no way to predict how much program income will be received during the fiscal year; \$20,000 is a conservative guess based on prior years.

**A RESOLUTION  
COUNCIL PRIORITIES  
FOR CDBG and HOME FUNDS  
FY 16-17**

**WHEREAS**, the City of Charlottesville is a U.S. Department of Housing and Urban Development (HUD) Entitlement Community for the Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) programs and as such expects to receive an award of funding July 1, 2016; and

**WHEREAS**, in accordance with the City of Charlottesville's Citizen Participation Plan for HUD funding, the CDBG Task Force composed of citizen and community representatives will need to review potential projects and make recommendations for funding in Spring 2016;

**BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that the priorities and spending allowances for FY 2016-2017 shall be as follows:

- Council's priorities for the CDBG and HOME program for FY 16-17 shall be \_\_\_\_\_
- For FY 16-17, \$\_\_\_\_\_ CDBG entitlement shall be set aside for Economic Development
- For FY 16-17, the Priority Neighborhood shall be \_\_\_ and the allocation shall be \$\_\_\_\_\_ of the total CDBG entitlement. The next Priority Neighborhood shall be \_\_\_\_\_
- The CDBG Admin and Planning budget shall be set at 20% of the total CDBG entitlement.
- The Social Programs budget shall be set at 15% of the total CDBG entitlement.



**RECOMMENDED BY CDBG TASK FORCE and SAT: 1/23/15, 2/7/15, and 2/23/15**  
**RECOMMENDED BY PLANNING COMMISSION: 3/10/15**  
**APPROVED BY CITY COUNCIL: 4/20/15**

**2015-2016 CDBG BUDGET ALLOCATIONS**

<b>I.</b>	<b>PRIORITY NEIGHBORHOOD</b>		
	A. 10 <sup>th</sup> and Page –		<b>\$258,879.82*</b>
<b>II.</b>	<b>ECONOMIC DEVELOPMENT</b>		
	A. Community Investment Collaborative Scholarships		\$12,500
	B. Seedplanters Women Entrepreneur Academy		\$25,000
	C. Office of Economic Development Small Business Development		\$25,200
	<b>ECONOMIC DEVELOPMENT TOTAL:</b>		<b>\$62,700</b>
<b>III.</b>	<b>PUBLIC SERVICE PROJECTS</b>		
	A. City of Promise – Dual Generation		\$ 6,890
	B. OAR – Reentry Services		\$ 6,890
	C. Office Economic Development – GO CNA		\$ 6,890
	D. Department of Social Services – PACE		\$ 6,890
	E. United Way – Child Care Subsidies		\$28,850
	<b>PUBLIC SERVICE TOTAL:</b>	<b>\$56,410</b>	(15% EN)
<b>IV.</b>	<b>ADMINISTRATION AND PLANNING:</b>		
	A. Admin and Planning		<b>\$75,219</b> (20% EN)
<b>V.</b>	<b>BONUS REPAYMENT SURPLUS</b>		
	A. MACAA- Hope House		\$200,000
	B. On Our Own- Facility Improvements		\$ 26,850
	C. ReadyKids- Facility Improvements		\$ 72,300
	D. ARC of the Piedmont- Facility Improvements		\$ 76,900
	E. TJCLT- Existing Home Land Acquisition		\$ 54,801
	<b>SURPLUS TOTAL</b>		<b>\$430,851</b>
	<b>GRAND TOTAL:</b>	<b>\$884,059.82</b>	
	<b>NEW ENTITLEMENT AMOUNT:</b>	<b>\$376,098.00</b>	
	<b>EN AVAILABLE AFTER PI APPLIED:</b>	<b>\$ 72,748.32</b>	
	<b>REPROGRAMMING:</b>	<b>\$ 4,362.50</b>	
	<b>REPAYMENT OF PROJECTS:</b>	<b>\$430,851.00</b>	

**2015-2016 HOME BUDGET ALLOCATIONS**

A.	AHIP – Homeowner Rehabs	\$55,645.91*
B.	Habitat for Humanity – Downpayment Assistance	\$34,060
C.	PHA – Downpayment Assistance	\$34,060
	<b>GRAND TOTAL:</b>	<b>\$126,449.91</b>
	<b>NEW ENTITLEMENT AMOUNT:</b>	<b>\$ 59,652.00</b>
	<b>EN AVAILABLE AFTER PI APPLIED:</b>	<b>\$ 6,182.00</b>
	<b>REPROGRAMMING:</b>	<b>\$ 8,947.91</b>
	<b>REPAYMENT OF PROJECTS:</b>	<b>\$ 37,425.00</b>
	<b>LOCAL MATCH:</b>	<b>\$ 14,243.00**</b>

\* Funding includes program income/reprogrammed funds  
 \*\* Only Entitlement funds require local match

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CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	September 21, 2015
Action Required:	Action
Presenter:	Brian Daly, Director, Parks and Recreation
Staff Contacts:	Brian Daly, Director, Parks and Recreation
<b>Title:</b>	<b>Art In Place License Agreement with Piedmont Council of the Arts</b>

**Background:**

The non-profit foundation, ArtInPlace, with the City's cooperation, has established sites around the City of Charlottesville to make art accessible to the general public. The City has purchased several of the sculptures to be permanently displayed in certain locations. The outdoor sculptures selected for exhibition provide the community with a wide range of artistic styles, themes and media which enhance our concepts of space and place and enliven our sense that art has the power to move us.

ArtIn Place has managed this program in the City for many years. In the last year, ArtInPlace has worked directly with the Piedmont Council of the Arts (PCA) to transition the management of the annual show to PCA; who will administer the program and conduct the annual jurying of sculpture to be placed on display throughout the City.

**Discussion:**

The ArtInPlace program was established through a license agreement dated October 1, 2003, whereby the City allowed the sculptures and artwork approved by the ArtInPlace Foundation to be located on public rights of way. This license agreement was renewed by City Council on September 21, 2009 for the period of October 1, 2009 through September 30, 2012. Additionally, Council renewed the license agreement with the ArtInPlace Foundation for the period of October 1, 2012 through September 30, 2015. New action is required by Council to establish the new license agreement with the Piedmont Council of the Arts.

PCA shall select the artwork to be displayed, installs and maintains the art, promotes the program through its website and other media, and submits an annual budget to the City. The City Manager appoints one person to Award Review Committee the City's representative. Under the proposed agreement, the City would contribute \$27,500 each year from the City budget to support the program.

The following is a list of locations being sought for the renewal of the three year license agreement. If requested by PCA, the License Agreement authorizes the City Manager to add or delete sites from the list of approved locations.

1. U.S. 250 Bypass median near Fire Station
2. 5<sup>th</sup> Street and Cleveland Ave – in the median
3. 5<sup>th</sup> Street near Ridge Street and Cherry Avenue in the median
4. Emmet Street in front of Carruthers Hall
5. Market Street and High Street (northeast corner)
6. Meadowbrook Heights Road/U.S. 250 Bypass green space
7. Preston Avenue – triangle in front of Monticello Dairy Building (currently McGrady's Pub)
8. Preston Avenue median at Rose Hill Drive
9. St. Charles Avenue entrance to U.S. 250 Bypass
10. Washington Park at Preston Avenue – upper level at 10<sup>th</sup> Street
11. Monticello Road Median at Gleason Street
12. 8<sup>th</sup> Street and Page Street (City of Promise)
13. Stadium Road at Jefferson Park Avenue

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

The ArtInPlace program aligns directly with The City Council Vision Element entitled Charlottesville Arts and Culture; and aligns with the Strategic Plan under Goal 2: Be a safe, equitable, thriving and beautiful community.

**Community Engagement:**

No specific community engagement was conducted prior to the recommendation to establish this license agreement with PCA. However, the community has consistently supported the annual public art show for many years and it has become a very much anticipated yearly event.

**Budgetary Impact:**

The City expects to support the program through the Percent for Art program at \$27,500 annually during the term of the license agreement. Currently, the Percent for Art capital fund (P-00180) has a balance of \$27,309. These funds are already appropriated. Additionally, funding was included in the FY16 budget to continue to support this program.

**Recommendation:**

Staff recommends City Council approve the license agreement between the City and the Piedmont Council for the Arts for a three (3) year period beginning October 1, 2015 and ending September 30, 2018.

**Alternatives:**

Council may choose not to fund this program.

**Attachments:**

Draft License Agreement between the City of Charlottesville and the Piedmont Council of the Arts

**RESOLUTION**  
**LICENSE AGREEMENT WITH PIEDMONT COUNCIL FOR THE ARTS**  
**ART IN PLACE SCULPTURES**

**BE IT RESOLVED** by the Council for the City of Charlottesville, Virginia that the City Manager is hereby authorized to execute on behalf of the City the following document, in form approved by the City Attorney:

License Agreement dated October 1, 2015, between the City and Piedmont Council for the Arts for the Art in Place program.

**LICENSE AGREEMENT BETWEEN THE CITY OF CHARLOTTESVILLE  
AND  
THE PIEDMONT COUNCIL OF THE ARTS  
Private-Public Sculpture**

**THIS LICENSE AGREEMENT** is made and entered into this 1<sup>st</sup> day of October, 2015, by and between the **CITY OF CHARLOTTESVILLE, VIRGINIA**, hereinafter referred to as “the City”, and **THE PIEDMONT COUNCIL FOR THE ARTS**, a private non-profit Virginia corporation, hereinafter referred to as “PCA”.

**WITNESSETH:**

**Whereas**, City Council has expressed approval of a program whereby sculpture will be placed around the City for the benefit of the citizens of Charlottesville, and in which such art will be made accessible to the general public through a changing exhibition of a wide range of artistic styles, themes and media;

**Whereas**, PCA is organized exclusively for charitable and educational purposes which qualify PCA as an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, and

**Whereas**, PCA wishes to continue its association with the City to accomplish the expressed desire of that governing body for the presence of public sculpture;

**NOW, THEREFORE**, in consideration of the mutual benefits and premises contained herein, the City and PCA agree as follows:

**I. Recitals**

PCA agrees to install and maintain private art pieces, primarily sculptures or “statuary”, at certain public locations within the City of Charlottesville rights of way. Each piece of art so located will remain in place for approximately one year unless sooner removed.

**II. Term of the License Agreement**

The term of this license shall be for a period of three (3) years beginning October 1, 2015, and ending September 30, 2018.

**III. The Licensed Sites**

A. During the term of this License, the City hereby agrees to allow PCA to use one or more of the following sites for its art displays:

14. U.S. 250 Bypass median near Fire Station
15. 5<sup>th</sup> Street and Cleveland Ave – in the median
16. 5<sup>th</sup> Street near Ridge Street and Cherry Avenue in the median
17. Emmet Street in front of Carruthers Hall
18. Market Street and High Street (northeast corner)
19. Meadowbrook Heights Road/U.S. 250 Bypass green space
20. Preston Avenue – triangle in front of Monticello Dairy Building (currently McGrady's Pub)
21. Preston Avenue median at Rose Hill Drive
22. St. Charles Avenue entrance to U.S. 250 Bypass
23. Washington Park at Preston Avenue – upper level at 10<sup>th</sup> Street
24. Monticello Road Median at Gleason Street
25. 8<sup>th</sup> Street and Page Street (City of Promise)
26. Stadium Road at Jefferson Park Avenue

By letter addendum during the term of the License, upon request from PCA, the City Manager will have discretion to add sites to or delete sites from the above list.

B. Each installation by A shall cover an area with a diameter of no more than eight feet (8') and may be installed only after the Director of Parks and Recreation or their designee has approved the exact location of the sculpture and foundation.

#### **IV. Annual Payments**

The Foundation shall owe a license fee of \$1.00 for the term payable at the beginning of the term.

#### **V. Grant of Authority by City**

PCA is hereby granted a revocable license to construct and maintain art statuary on the above list of sites for the term hereof subject to the obligations and conditions set forth in this agreement.

#### **VI. Obligations of the Foundation**

PCA agrees to:

A. Operate the ArtInPlace program, including an annual sculpture contest which would seek applications from artists in and outside of the community;

B. Contribute free of charge to the City the efforts of its board of directors and officers in establishing, maintaining, and promoting the ArtInPlace program for community benefit, including selection of the individual art pieces appropriate for use in the program;

C. Bear the sole responsibility for ongoing maintenance of each piece of art and its related foundation, and site, whether that maintenance consists of regular cleaning, removal of flyers or posters, or extraordinary maintenance or repair of the art or its components such as painting, repairing, or other maintenance akin to reconstruction;

D. On or before December 31st of each year, or sooner if requested by the City Manager, provide a full and complete accounting to the City of both gross and net revenues and expenses of the program, along with all appropriate supporting documentation;

E. Obtain and file with the City policies of public liability and property damage insurance satisfactory to the City and in compliance with the law, and in form and amount sufficient to protect the City as well as the art being displayed. Each policy shall carry the provision that the insurance shall not be canceled or reduced, terminate, lapse or otherwise expire prior to thirty (30) days written notice to that effect given by the insurance carrier to the City. All insurance required by this paragraph of the Agreement shall remain in full force and effect for the entire contract year, and THE CITY SHALL BE NAMED AS AN ADDITIONAL INSURED UNDER SUCH INSURANCE CONTRACTS.

The Minimum Limits of Liability Coverage shall be as follows:

Comprehensive General Liability limits \$1,000,000/\$2,000,000 (per occurrence/annual aggregate).

F. Cooperate and make available at its office at all reasonable times all records, books, and accounts related to this Agreement for inspection, audit or reproduction by an authorized representative of the City.

G. Establish an appropriate Internet web page or site and telephone number designed to facilitate, promote, and enhance the ArtInPlace program and, in the process, provide citizens a right to express themselves about this art program and how it might be improved to better serve the community;



H. When this license agreement is terminated or otherwise ends, unless there is a written waiver by the City, promptly remove each foundation and remaining pieces of art from each site and return each site to its original condition;

I. Comply with all federal, state, and local laws and regulations applicable to activities of the Foundation in implementing this program, including any regulations or ordinances requiring a permit for any particular art installation; and

J. Promptly remove or correct any obstruction, damage, or defect in any public right of way or island caused by the Foundation in implementing the ArtInPlace program.

## **VII. Funding by the City**

A. The City will reimburse PCA up to a maximum annual amount of \$ 27,500 for actual expenditures made by the PCA on this art program. Of the \$27,500, \$5,000 shall be paid to PCA for the administrative oversight required to conduct the annual art show; and \$22,500 shall be paid to PCA to cover the costs of the annual show. Payment shall be further conditioned upon:

1. The City's receipt of a written request for funds supported by adequate documentation, and
2. Ongoing compliance by PCA with all other terms of this license agreement.

B. Funding requests hereunder shall be presented no more often than quarterly.

## **VIII. Confirmation by the City**

Although PCA will be solely responsible for the choice of art works to be displayed, during the duration of this contract, PCA and the City will coordinate their activities through the following arrangements:

1. One member of the Award Review Committee will be appointed by the City Manager. This person shall be designated as the "City Representative".
2. PCA will coordinate with the City's Parks and Recreation Department the exact locations within the public right of way of each proposed sculpture so as to eliminate any hazard to public safety by the presence of such sculpture on public property.

## **IX. Termination**

For good cause, including failure of PCA to comply with its obligations hereunder, and after reasonable opportunity to cure, the City may terminate this license by a forty-five (45) day written notice.

**Piedmont Council for the Arts**

**City of Charlottesville**

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

***Funds are available:***

***Approved as to Form:***

\_\_\_\_\_

\_\_\_\_\_

Department of Finance

City Attorney

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



<b>Agenda Date:</b>	September 21, 2015
<b>Action Required:</b>	Appropriation
<b>Presenter:</b>	Jeanette Janiczek, U.C.I. Program Manager
<b>Staff Contacts:</b>	Jeanette Janiczek, U.C.I. Program Manager Tony Edwards, Development Services Manager
<b>Title:</b>	Hillsdale Drive Extension - \$15,309,596

**Background:** On May 16, 2005, the City entered into an agreement with the Virginia Department of Transportation to participate in the Urban Construction Initiative (“First Cities”) Program (U.C.I.). Through this program, the City is responsible for administering its urban system construction program – design, right-of-way acquisition, utility relocation, and construction. In addition, accounting of the U.C.I. program funds must reconcile with the V.D.O.T. six-year plan. This appropriation involves the state and federal funds necessary to fund the City’s projects as outlined in the V.D.O.T. six-year plan.

State funds are received upfront from the state each year as they are allocated. Federal funding, however, must be spent first by the City and is later reimbursed by Federal Highway Administration (F.H.W.A.) through V.D.O.T. Reimbursement requests are submitted to V.D.O.T./F.H.W.A. quarterly.

**Discussion:** Preliminary Engineering (P.E.) is the phase of the roadway project “that includes all project initiation and development activities undertaken after its inclusion in the approved State Transportation Improvement Program through the completion of (construction bid submittal). It may include preliminary Right of Way engineering and investigations necessary to complete the environmental document.” Activities include design, plan development, environmental evaluation and public participation process. Right of Way is the phase of the roadway project that “includes the work necessary to appraise and acquire project right of way, relocate individuals or businesses, and revise or relocate utilities.” Currently this project is in the Preliminary Engineering and Right of Way phases, with the construction phase to follow.

An appropriation of \$15,309,596 in federal and state funds is needed to appropriate the awarded funding of the Hillsdale Drive Extended project as noted:

**State and Federal Funding Sources:**

Total State/Federal Appropriated Amount	\$	19,982,271
<u>Previously Appropriated</u>		<u>(4,672,675)</u>
<b>Remaining Amount to be Appropriated</b>	<b>\$</b>	<b>15,309,596</b>

\$11.2 million is budgeted for the construction phase, of which \$9.0 million in funding is remaining to be appropriated by the State. The remaining funds necessary for the construction phase will be appropriated by the City closer to the beginning of that phase and upon confirmation/appropriation by V.D.O.T. for the final construction funding amounts.

**Alignment with City Council’s Vision Areas and Strategic Plan:** Approval of this agenda item upholds the City’s commitment to create “a connected community” by improving upon our existing transportation infrastructure. In addition, it would contribute to Goal 2 of the Strategic Plan, Be a safe, equitable, thriving, and beautiful community; Objectives 2.3. Provide reliable and high quality infrastructure and 2.6. Engage in robust and context sensitive urban planning.

**Community Engagement:** A public hearing on this appropriation of funds is being held, as required by Va. Code Sec. 15.2-2507, because the amount of the appropriation exceeds 1% of current budgeted expenditures. Though no community engagement has been held specific to the right of way process, there has been significant engagement throughout project planning.

**Budgetary Impact:** None. Appropriation is composed of state allocations that are received quarterly and federal allocations that are reimbursed once expended. Local share of projects are funded through the C.I.P. budget process.

**Recommendation:** Staff recommends approval and appropriation of the funds.

**Alternatives:** If state/federal funds are not appropriated, the Hillsdale Drive Extension cannot advance or acquire right of way.

**Attachments:** Appropriation  
Six Year Improvement Program

**APPROPRIATION.**

**Hillsdale Drive Extension - \$15,309,596.**

**WHEREAS**, a total of \$15,309,596 in state and federal funds for the Urban Construction Initiative requires appropriation;

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

**Revenues**

**\$3,973,218** Fund: 426 WBS: P-00216 (Hillsdale) G/L Account: 430120 Federal

**\$11,336,378** Fund: 426 WBS: P-00216 G/L Account: 430080 State

**Expenditures**

**\$15,309,596** Fund: 426 WBS: P-00216 (Hillsdale) G/L Account: 599999



# Six-Year Improvement Program

Home User's Guide About

All Projects Major Projects MPO Fund Reports

## Line Item Details

### Project Summary

UPC 60233  
 Project HILLSDALE DRIVE EXTENDED (3 LANES)  
 Scope of Work New Construction Roadway  
 Description FROM: GREENBRIER DRIVE TO: HYDRAULIC ROAD  
 Report Note Urban Construction Initiative Project. State matching funds included in quarterly payment.  
 Fund Source STP

### Project Location

District Culpeper Jurisdiction Charlottesville  
 Road System Urban Length 0.8500 MI  
 Route Street HILLSDALE DRIVE  
 MPO Area Charlottesville  
 Zip Code 22901

### Estimates & Schedule

	Estimated Cost (Thousands)	Schedule
Prelim. Eng. (PE)	\$3,500	Complete
Right of Way (RW)	\$14,972	Underway
Construction (CN)	\$11,198	FY2016
<b>Total Estimate</b>	<b>\$29,670</b>	

### Required Allocations

Fund Sources	Previous Allocations	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	Required After FY2021
	Values in Thousands of Dollars							
(X)Local Project Contributions: State Match	\$168	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Bond Match: State Bond Match	\$37	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Bond Proceeds: CPR Bonds	\$12,518	\$0	\$0	\$0	\$0	\$0	\$0	\$0
CTB Formula: High Priority - State	\$0	\$0	\$160	\$5,335	\$0	\$0	\$0	\$0
Federal Formula STP: Federal	\$1,019	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Local Project Contributions: Local	\$16	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Local Project Contributions: Urban - Local Match	\$3	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Minimum Guarantee: Federal	\$1,200	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Revenue Sharing Funds: Local Match	\$500	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Revenue Sharing Funds: State Match	\$500	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Soft Match: Federal	\$263	\$0	\$0	\$0	\$0	\$0	\$0	\$0
STP: NHPP Statewide - Soft Match	\$36	\$0	\$0	\$0	\$102	\$0	\$0	\$0
STP: Statewide - Federal	\$1,865	\$0	\$0	\$0	\$2,400	\$0	\$0	\$0
STP: Statewide - Federal	\$143	\$0	\$0	\$0	\$407	\$0	\$0	\$0
STP: Statewide - Soft Match	\$466	\$0	\$0	\$0	\$600	\$0	\$0	\$0
Urban Formula: Federal	\$862	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Urban Formula: Federal	\$1,071	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Funding</b>	<b>\$20,666</b>	<b>\$0</b>	<b>\$160</b>	<b>\$5,335</b>	<b>\$3,509</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	September 8, 2015
Action Required:	Yes (Adoption of Ordinance – first of two readings)
Presenter:	Kurt Krueger, Piedmont Family YMCA Chair
Staff Contacts:	Craig Brown, City Attorney
Title:	Amendment of the YMCA – City of Charlottesville Ground Lease for Property in McIntire Park

**Background:**

In January 2008 the City of Charlottesville and the Piedmont Family YMCA entered into a 40 year Ground Lease for a site in McIntire Park, where the YMCA would construct and operate a family fitness and recreation center. As contemplated by **Sections 1 and 4** of the Ground Lease, the exact boundaries of the leased property were established by City Council in May 2008 when Council approved a Master Plan for McIntire Park.

**Section 14** of the Ground Lease provides that title to the ground shall remain in the City throughout the term of the Lease, and that the building constructed by the YMCA shall be titled in the name of the YMCA. That section also provides that neither the ground nor the building shall be encumbered by any mortgage, lien, pledge or other encumbrance during the term of the Lease.

The Ground Lease also describes the circumstances under which the City will be required to pay the YMCA for the building. Under **Section 31**, the City will be required to pay the YMCA 90% of the building's fair market value if the City elects not to renew the Lease, or enter into a new lease with substantially the same terms, at the end of the 40 year term. There has been some concern expressed, however, that the Ground Lease might require the payment if the YMCA abandons the building (**section 33**) or defaults in the performance of its obligations under the Lease (**section 29**).

**Discussion:**

The YMCA has now proposed the following amendments to sections 1, 4, 14, 29 and 33 of the Ground Lease:

Section 1: The proposed amendment makes specific reference to the boundaries of the Leased Property that were approved by City Council on May 19, 2008, and that have been used by the YMCA in preparing its site plan. A note on the Ground Lease, as initially approved in January 2008, stated that the Leased Property would not include the existing picnic shelters in that part of McIntire Park. In establishing the boundaries in May 2008 City Council ultimately did include that area, as recommended by the McIntire Park Advisory Review Team, the Parks and Recreation Advisory Board and the City Department of Parks and Recreation, and as shown on the approved McIntire Park Master Plan. This proposed amendment to section 1 does not change the approved boundaries of the Leased Property.

Section 4: The proposed amendment deletes the last two sentences of this section, which established a “default” location for the Leased Property if the City did not approve a Master Plan for McIntire Park by May 20, 2008. Since the Master Plan was approved prior to that date these two sentences are no longer relevant.

Section 14: The proposed amendment to this section is, in my opinion, the most substantive of the requested amendments to the Ground Lease. As noted above, the existing Ground Lease does not allow the YMCA to place a mortgage or lien against the City-owned land. That does not change under the amendment – a lender will not be able to foreclose on or otherwise acquire ownership of the City’s land that has been leased to the YMCA, even if the YMCA defaults on its loan. However, the proposed amendment would allow the YMCA to make its building and its leasehold interest subject to a deed of trust granted to a lender that provides financing for the building. The existing Ground Lease does not allow the YMCA to grant such a deed of trust.

In order to obtain financing the YMCA’s lender is requiring a leasehold deed of trust as security for its loan. What rights does a leasehold deed of trust give a lender? If the YMCA is unable to make its loan payments to its lender and defaults under the terms of the loan, the lender can effectively become the lessee, or more likely can try to find someone else to be the lessee. Any new lessee would have to operate the facility under the same terms and conditions in the Ground Lease and the Use Agreement as the YMCA. If the YMCA defaults under its loan, any entity taking its place can have no greater or different rights under the Lease than the YMCA.

Sections 29 and 33: These two sections govern default by the YMCA under the Ground Lease (section 29) and a failure of the YMCA to construct the building, or an abandonment of the facility by the YMCA after construction (section 33). The City and the YMCA agree that the current Ground Lease does not require the City to pay the YMCA for the building in the event of a default, failure to construct or abandonment. This proposed amendment will make that explicit by adding language that states that the building will be surrendered to the City without any payment to the YMCA if there is a default, abandonment or failure to construct.

**Alignment with City Council’s Vision and Strategic Plan:**

***America’s Healthiest City***

*All residents have access to high-quality health care services. We have a community-wide*

*commitment to personal fitness and wellness, and all residents enjoy our outstanding recreational facilities, walking trails, and safe routes to schools. We have a strong support system in place. Our emergency response system is among the nation's best.*

**Community Engagement:**

There has been no direct community engagement on these proposed revisions to the Ground Lease. Due to time constraints with regard to their financing and the need to begin construction, the YMCA is requesting approval of these lease amendments in September. If City Council wants to consider these amendments, staff recommends a first reading of the attached ordinance on September 8, and a second reading (final vote) following an advertised public hearing on September 21. There was not adequate time to publish notice for a public hearing at the City Council meeting on September 8.

**Budgetary Impact:**

The proposed amendments to the Ground Lease do not result in any additional budgetary impact on the City. The City previously committed to providing the Leased Property to the YMCA for a 40 year term, and to making a capital contribution to the YMCA of \$1,250,000 for construction of the building.

**Recommendation:**

Staff recommends that City Council have a first reading of the ordinance, and direct staff to advertise a public hearing on the amendments at the September 21<sup>st</sup> City Council meeting.

**Alternatives:**

City Council can decline to approve any or all of the amendments requested by the YMCA.

**Attachments:**

Ordinance  
Amendment No. 1 to Ground Lease

**AN ORDINANCE  
APPROVING AMENDMENT NO. 1 TO THE GROUND LEASE BETWEEN  
THE CITY OF CHARLOTTESVILLE AND THE PIEDMONT FAMILY YMCA  
FOR PROPERTY WITHIN MCINTIRE PARK TO BE USED FOR THE  
CONSTRUCTION AND OPERATION OF A FAMILY FITNESS AND RECREATION  
CENTER**

**WHEREAS**, in January 2008 the City of Charlottesville and the Piedmont Family YMCA entered into a Ground Lease for City-owned property within McIntire Park, for the construction and operation of a family fitness and recreation center; and,

**WHEREAS**, the YMCA wants to begin construction of the facility in 2015, and has submitted a Capital Financial Plan & Five-Year Operational Plan and Budget for review by the City; and,

**WHEREAS**, the YMCA has proposed certain amendments to the Ground Lease, specifically to:

- Section 1, to add a reference to the exact boundaries of the Leased Property as approved by City Council in May 2008;
- Section 4, to delete two sentences which have become obsolete;
- Section 14, to allow the YMCA to grant a leasehold deed of trust to a lender that will provide financing for construction of the facility;
- Section 29, to expressly state that the City does not have to pay the YMCA for the facility if the YMCA defaults under the Ground Lease; and,
- Section 33, to expressly state that the City does not have to pay the YMCA for the facility if the YMCA fails to construct or abandons the facility.

**WHEREAS**, the City Council has considered each of the requested amendments and finds that they are in the best interest of the City and are reasonable in that they provide clarification of the Ground Lease and enable the YMCA to be approved for the financing needed for construction of the facility.

**NOW, THEREFORE, BE IT ORDAINED** by the Council for the City of Charlottesville, Virginia that the City Manager is hereby authorized to execute the "Amendment No. 1 to Ground Lease", in substantially the same form as attached hereto, which will amend the existing Ground Lease between the City of Charlottesville and the Piedmont Family YMCA for property within McIntire Park. Said amendment shall be approved as to form by the City Attorney prior to execution by the City Manager.

## AMENDMENT NO. 1 TO GROUND LEASE

THIS AMENDMENT NO. 1 TO GROUND LEASE (this "Amendment No. 1") is made and entered into as of September \_\_, 2015, by and among the CITY OF CHARLOTTESVILLE, a municipal corporation (the "City"), and the PIEDMONT FAMILY YMCA, INC. a charitable non-profit organization authorized to do business in the Commonwealth of Virginia (the "Lessee"), parties to the Ground Lease dated as of January 15, 2008 (the "Ground Lease").

### RECITALS:

Pursuant to the Ground Lease the City has leased certain real property in McIntire Park to the Lessee to allow the Lessee to construct and operate a fitness and recreational center. Capitalized terms used herein but not expressly defined herein shall have the meanings ascribed to them in the Ground Lease. The parties hereto desire to modify and clarify certain provisions of the Ground Lease as set forth below.

### AGREEMENT:

NOW, THEREFORE, the parties hereto agree to amend the Ground Lease as follows:

1. Amendment of Section 1. Section 1 of the Ground Lease is hereby amended and restated as follows:

**1. Lease Property.** The City, as the title holder of the subject property, in consideration of the rents and covenants to be paid and performed by the Lessee, leases to the Lessee and the Lessee leases a portion of the property commonly known as McIntire Park in the City of Charlottesville as shown on Exhibit A attached hereto and incorporated herein by reference, entitled "McIntire Park Master Plan Update" and dated May 9, 2008, which Exhibit shows the exact boundaries of the Lessee's leasehold interest as approved by City Council on May 19, 2008 in accordance with this Ground Lease as originally approved and executed (hereinafter, the "Leased Property").

A copy of Exhibit A is attached to this Amendment No. 1.

2. Amendment of Section 4. Section 4 of the Ground Lease is hereby amended by deleting the last two sentences of such section.

3. Amendment of Section 14. Section 14 of the Ground Lease is hereby amended and restated as follows:

**14. Title, Liens.** Title to the ground shall remain in the name of the City. Title to the Facility constructed by the Lessee shall be titled in the name of the Lessee, except as otherwise provided herein. The Lessee agrees that the fee simple ownership interest of the City in the Leased Property shall not be encumbered by any mortgage, lien (mechanic's lien, materialmen's lien or other

lien), pledge or other encumbrance during the term of this Lease. If any such lien or notice of lien rights shall be filed with respect to the fee simple ownership interest of the City in the Leased Property, the Lessee shall immediately take such steps as may be necessary to have such lien released, and shall permit not further work to be performed on the Leased Property until such release has been accomplished. Lessee shall be permitted to grant to its lender for the construction of the Facility a lien on its leasehold interest in the Leased Property pursuant to a leasehold deed of trust or similar instrument.

4. Amendment of Section of 29. The last sentence of Section 29 of the Ground Lease is hereby amended and restated as follows:

In the event of default as defined in this paragraph, title to the Facility shall revert automatically to the City, and the Lessee shall surrender the Facility as provided in Paragraph 32 without any payment by the City to the Lessee of any amount required under Paragraph 31 (unless such event results from the City's failure to renew this Lease as provided in such section) and execute all documents deemed necessary by the City to convey title to the Facility to the City.

5. Amendment of Section of 33. The second sentence of Section 33 of the Ground Lease is hereby amended and restated as follows:

In such event, the Lessee shall surrender the Facility as provided in Paragraph 32 without any payment by the City to the Lessee of any amount required under Paragraph 31 (unless such event results from the City's failure to renew this Lease as provided in such section) and transfer title to the City at Lease termination, and execute all documents deemed necessary by the City to convey title to the Facility to the City.

6. Effective Date. This Amendment No. 1 shall be effective upon the approval and execution by all parties hereto.

7. Miscellaneous. Except as expressly amended hereby, the Ground Lease shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 1 as of the date first above written.

LESSOR:  
CITY OF CHARLOTTESVILLE

LESSEE:  
PIEDMONT FAMILY YMCA, INC.

By \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
President and Chair

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

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

# McIntire Park

## Master Plan Update

City of Charlottesville, Virginia

### Legend

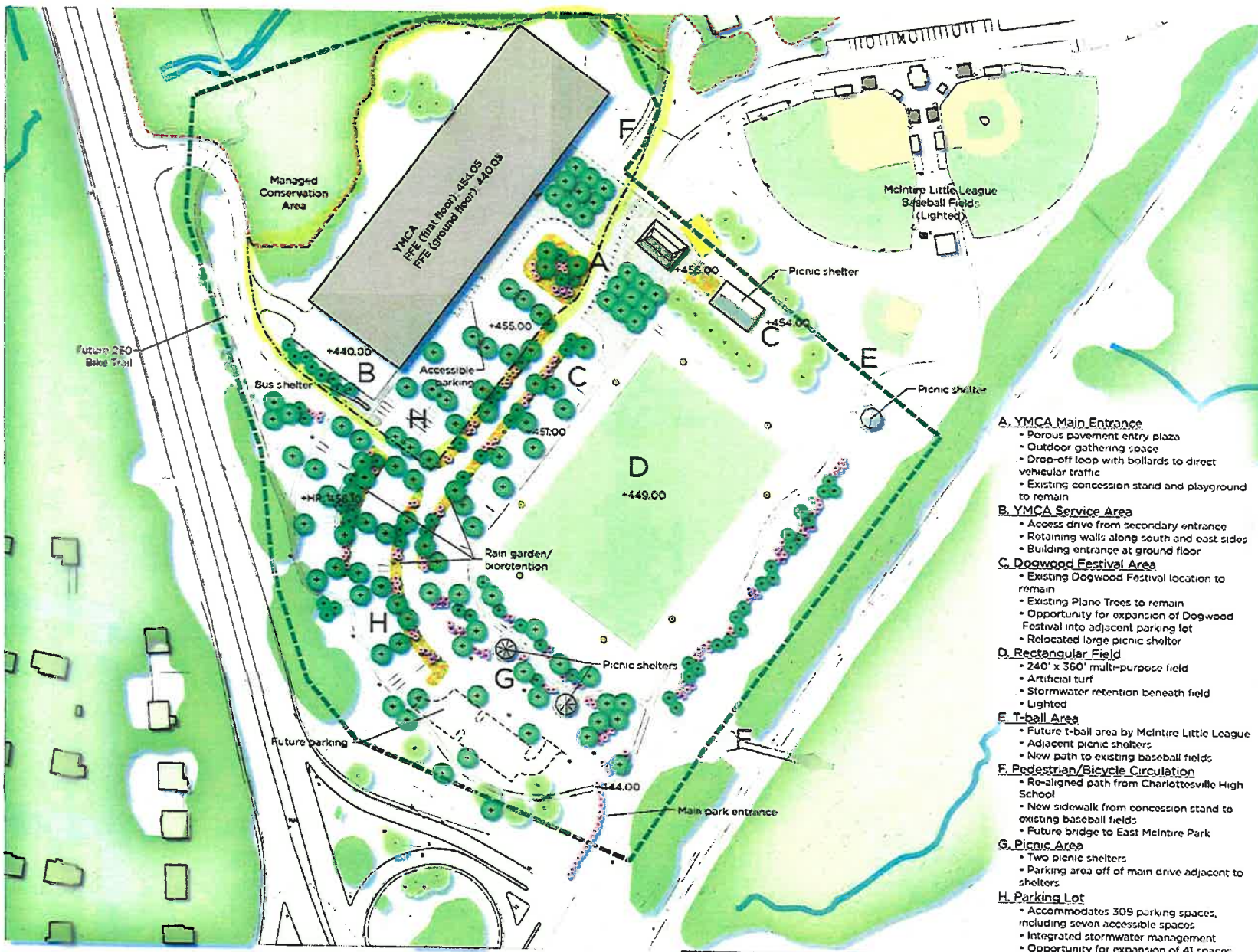
- Project Area
- Proposed YMCA Ground Lease Area
- Contour Line (2')
- Topographic Elevation
- Managed Conservation Area
- Grass/Turf
- Field Area
- Tree Cover
- Existing Trees
- Proposed Trees
- Shrubs/Grasses
- River/Stream
- Road
- Sidewalk
- Railroad
- Play Area
- Building
- Site Lighting

### Notes

1. Building footprint by VMDO Architects.

## Recommended Plan

9 May 2008



#### A. YMCA Main Entrance

- Porous pavement entry plaza
- Outdoor gathering space
- Drop-off loop with bollards to direct vehicular traffic
- Existing concession stand and playground to remain

#### B. YMCA Service Area

- Access drive from secondary entrance
- Retaining walls along south and east sides
- Building entrance at ground floor

#### C. Dogwood Festival Area

- Existing Dogwood Festival location to remain
- Existing Plane Trees to remain
- Opportunity for expansion of Dogwood Festival into adjacent parking lot
- Relocated large picnic shelter

#### D. Rectangular Field

- 240' x 360' multi-purpose field
- Artificial turf
- Stormwater retention beneath field
- Lighted

#### E. T-ball Area

- Future t-ball area by McIntire Little League
- Adjacent picnic shelters
- New path to existing baseball fields

#### F. Pedestrian/Bicycle Circulation

- Re-aligned path from Charlottesville High School
- New sidewalk from concession stand to existing baseball fields
- Future bridge to East McIntire Park

#### G. Picnic Area

- Two picnic shelters
- Parking area off of main drive adjacent to shelters

#### H. Parking Lot

- Accommodates 309 parking spaces, including seven accessible spaces
- Integrated stormwater management
- Opportunity for expansion of 41 spaces

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CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	September 8, 2015
Action Required:	Information
Presenter:	Kurt Krueger, Piedmont YMCA Chair
Staff Contacts:	Maurice Jones, City Manager Brian Daly, Director of Parks and Recreation
<b>Title:</b>	<b>YMCA Financial Plan</b>

**Background/Discussion:**

The Piedmont Family YMCA and City of Charlottesville entered into a lease agreement in January of 2008 that will enable the YMCA to construct a community fitness and recreation center within McIntire Park. As part of the agreement the YMCA is required to provide the City Manager with a comprehensive Financial Plan for review. After a series of legal proceedings the YMCA is prepared to break ground on the facility and has provided the City Manager with a copy of its Capital Financial Plan and five year Operation Plan and Budget. Tonight's presentation is informational in nature and will provide the Council with the opportunity to ask questions about the plan.

**Alignment with City Council's Vision and Strategic Plan:**

***America's Healthiest City***

*All residents have access to high-quality health care services. We have a community-wide commitment to personal fitness and wellness, and all residents enjoy our outstanding recreational facilities, walking trails, and safe routes to schools. We have a strong support system in place. Our emergency response system is among the nation's best.*

**Community Engagement:**

The City has held a series of public meetings on this issue dating back to 2006.

**Budgetary Impact:**

The City has provided the leased property for the cost of \$1.00 per year to the Piedmont Family YMCA. The City has also made a commitment of \$1,250,000 toward the capital costs of the new facility.

**Attachments:**

YMCA Capital Financial Plan and Five-Year Operation Plan and Budget

Use Agreement between the City of Charlottesville, the County of Albemarle and the Piedmont Family YMCA

Ground Lease between the City of Charlottesville and the Piedmont Family YMCA



**FOR YOUTH DEVELOPMENT®  
FOR HEALTHY LIVING  
FOR SOCIAL RESPONSIBILITY**

September 11, 2015

Mr. Maurice Jones  
Charlottesville City Manager  
605 East Market Street  
Charlottesville, VA 22902

RE: Piedmont Family YMCA  
Response to City Staff Observations to Financial Plan

Dear Mr. Jones:

In response to an e-mail dated September 4, 2015 from City staff, although not formally asked for a response, we wanted to address observations in a spirit of collaboration and cooperation, and offer a time to meet to discuss further if desired. We have not changed our operating plan and stand behind those numbers and our ability to work within the overall budget. We have copied and pasted the email observations and included the Y's responses.

**After a quick look at their staffing plan, specifically on their life guarding staffing we believe their numbers/staff levels are low.**

**If they are going to be open 90+ hours weekly, it is important to understand that to meet American Red Cross standards for back boarding, three (3) guards are required to meet the protocols. They are showing at least 34.5 hours per week where only one guard is on duty.**

We teach American Red Cross lifeguard certification, instructing two (2) guards how to backboard effectively. In addition to our lifeguards on duty, our Aquatics Director and Assistant Aquatics Director are both lifeguard certified and can guard as needed. We also require all of our professional staff in the building to have their lifeguard certification so they can help out in an emergency. We will ensure that the pool is safely guarded at all time.

**One scenario would be if the pool is full: all lap lanes being used, the rec pool open and features/slides operating we would staff it with a minimum of seven, possibly eight all up guards. Our guard rotations also rotate guards 'down' (meaning off the stand or out of the water) for a break. Our guard rotation occurs every fifteen minutes.**

During peak times as outline above, we will have similar coverage.

**There are also some wage rates they are proposing that are below the living wage standard mandated by the City: \$10.25 for lifeguards and fitness room supervisor and some others, \$10.00 for pool maintenance and fitness attendants.**

We will look into this and have the ability to reallocate from other departments as necessary.

**PIEDMONT FAMILY YMCA**

233 4<sup>th</sup> Street NW, Charlottesville VA 22903  
P 434 974 9622 F 434 974 4651 [www.piedmontymca.org](http://www.piedmontymca.org)

**There are not enough hours budgeted for pool maintenance: only 20 hours a week or less than three hours per day.**

While 20-hours a week is dedicated solely to pool maintenance this is something that is done in conjunction with the Facility Maintenance, Aquatics Directors and the lifeguard team. We ask our staff to wear many hats and work to cross-train them.

**There are only 24 hours a week budgeted for swim instructors. Depending on how many classes are offered, 24 hours could be expended in a couple of days.**

Swim instructor hours are currently budgeted for 4 hours of instruction on a 6 day a week program cycle. In addition to swim instructors, our full-time, salaried staff also teach lessons. Swim classes are funded by tuition, grant money or scholarship funds. If the demand for swim lessons exceeds our budgeted projections we will respond accordingly.

**The YMCA's Crozet experience is not an ideal comparison. They took over management of the Crozet Park Pool in 2012 along with creating the small fitness facility there. Those individuals and families who had joined the Crozet Park Pool in prior years were then joining the YMCA. There was a large base of families that had been members of the Crozet Pool for many years and continued in 2012.**

We were handed a list of 300 previous summer-only pool pass holders when we took over operation, but we quickly grew this to 500 year-round memberships by the end of the calendar year and currently have over 900 units. Furthermore, similar to the Crozet experience, we have a CYAC swim team of over 240 swimmers that are required to have a YMCA membership to swim in Y-sanctioned meets, so we will have a comparable built in membership base when we open.

**The anticipated membership of over 3,000 at time of opening seems high given the City's experience and the local market, namely that customers move around from facility to facility looking for the best value for the dollar.**

We are anticipating 1,000 membership units in year 1, 2,115 in year 2 and 3,202 in year 3, so we are showing it build up over time.

**They are showing a gross profit of 50% which is probably overly optimistic. Staff's understanding of the market is that 25-35 % would be more realistic.**

We have treated capital campaign contributions as operating revenue in the year received, and those dollars are part of the 50% gross profit calculation.

**It looks like their scholarship formula assumes customers will pay 40% of the membership fee. That seems high given the City's experience with scholarships discounts.**

This was a number derived as an average. The Y's policy is that no one is turned away for inability to pay, so if we need to decrease this percentage, we will increase our annual campaign support.

**They assume that 10% of their membership base will be scholarship customers which seems a little low. For reference, scholarship customers account for 21% of the City's total pass holders.**

Our membership base is Charlottesville, Albemarle and surrounding Counties. This percentage is in line with what we currently see for our existing programs in our service area as a whole, but similar to above, if we need to increase this percentage, we will increase our annual campaign support.

**For pledges which have not been received yet, it is unclear how the YMCA has or will secure these. It is also unclear what the YMCA's contingency plans are if these pledges are not received.**

All existing pledges have been confirmed in writing within the last 3-months with a pledge payment history outlined. In addition, we have had verbal conversations with many of them who have indicated that they would move up their

pledge if needed. Many of these are YMCA Board members and/or prominent philanthropists in the community. We have worked with our auditors, Hantzmon-Wiebel to write off certain pledges and these are not accounted for in our outstanding confirmed pledges number. Furthermore, this assumes no more fundraising dollars raised. We have an internal goal to raise an additional \$3+ million.

**The annual debt service payments will comprise approximately 20% of operating revenues over the projected first 8 years of operations which is high.**

High relative to what? All revenues received from the new and perpetual capital campaign will be used to pay down the debt balance over and above what we show for debt service in our forecast. Once the Y is open and operating we fully believe we can pay off the debt in five to seven years due to additional capital campaign dollars.

**The YMCA will need an average of at least 900 memberships each year of the first 8 years of operations in order to make its annual debt service payments; this is approximately 24% of projected number of memberships.**

I don't understand this question/calculations. The Danville Y opened in September 2014, less than a year ago, and currently has between 3700 and 3800 membership units. The Lynchburg Y has over 5,200 units. We are confident in these membership projections.

**The projected debt service coverage ratios are high although they are not secured or restricted. The funds for coverage are predicated upon the availability of annual surpluses. These annual surpluses are then projected to be spent within that year (i.e. they do not roll over to the following year). This approach assumes the ability to generate annual surpluses on an on-going basis to provide the debt service coverage.**

There may be some misunderstanding. The surplus ("Excess Revenue after DS") we show for 2018, for example, is \$420,864. These funds support working capital and provide for a reserve that can be established for future contingencies. The Y plans to accumulate cash surplus in a contingency reserve account in the amount of at least \$1.5 million, or two years of projected debt service payments. Please note that the surplus from one year does not enter the pro forma as a source of revenue in the next year. It is strictly a balance sheet item.

**The projected debt service plan utilizes a conservative approach of level annual principal and interest payments rather than more costly and risky approach such as interest only payments or large balloon payments.**

The projected debt service terms were negotiated with the bank with your thoughts in mind about conservatism. It is interest only for the first three years after we begin to borrow against the \$12 million approved line; and after 36 months it converts to a note that is like a conventional mortgage. The note will be amortized over 25 years. There are no balloons but the interest rate is re-set every five years in accordance with a fixed formula we have already accepted (5-year U.S. Treasury rate plus 3.00%). We expect to have the mortgage repaid in full long before 25 years is up.

**The YMCA provided 9 years of financial projections while expecting to repay 25 years of debt. Long-term projections are predicated upon a series of general assumptions which may average out over time but be volatile in any one given year or short periods of time. The YMCA will need to continuously assess its memberships and operations to ensure it has the financial and operational flexibility to make its annual debt payments and deal with any changes or uncertainties. For example, it is reasonable to assume that the building will need some degree of renovation/rehabilitation in the next 25 years. The YMCA will need to develop sufficient reserves or contingencies to fund these while still making its annual debt service payment. Another example is that 25 years ago (1990), the X Games and related extreme sports were not a regular offering of parks and recreation departments. The City has responded to this demand by investing in a skate park. Like the City, the YMCA will need to assess the changing recreation landscape and adjust their programming to retain their membership base and ability to generate revenue.**

Understood. It is our commitment to (a) raising more capital funds on a perpetual basis, (2) creating a \$1.5 million cash reserve equal to two years of debt service, (3) accelerating the debt repayment after the reserve has been funded, and

(4) the combination of these three programs should have the debt repaid well before any serious maintenance, renovation, or expansion are required.

We appreciate the thoughtful questions and are happy to expand on any of these observations. Again, we would welcome the opportunity to sit down with City staff to answer any additional questions and ask that if this is City staff's desire, we do so prior to the September 21, 2015 City Council meeting where we will be presenting the financial plan and five-year operating plan.

Yours Truly,



Jessica Maslaney  
CEO  
Piedmont Family YMCA



# Brooks Family YMCA

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## Capital Financial Plan & Five-Year Operational Plan and Budget



### YMCA Multi-Purpose Community Aquatics, Fitness & Family Recreation Center at McIntire Park

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September 11, 2015

Prepared by:  
Piedmont Family YMCA  
Davenport & Company, LLC



September 11, 2015

Mr. Maurice Jones  
Charlottesville City Manager  
605 East Market Street  
Charlottesville, VA 22902

Dear Mr. Jones:

On January 15, 2008, the Piedmont Family YMCA entered into a ground lease with the City of Charlottesville for construction and operation on a full-service YMCA on approximately five-acres of land in McIntire Park.

Paragraph 15 of the Ground Lease stipulates that the YMCA shall “present to the City Manager for his review and concurrence (i) a capital financial plan containing adequate assurance of the Lessee’s ability to finance the construction of the Facility and (ii) a five-year operational plan and budget that demonstrates adequate assurance that the Lessee will have available funds to support the operational plan for use and maintenance of the facility.” Pursuant to this agreement, we are pleased to submit the attached documents for your review. Included is an Executive Summary followed by a detailed financial pro forma.

This financial plan updates the financial plan we presented to you on August 25. We received an updated construction price from our contractor, Loughridge & Company, on the afternoon of September 8 with numbers higher than we were expecting. Bill Loughridge also alerted us to the fact that a number of the subcontractors who have previously submitted competitive bids for the project were unable for a variety of reasons to get an updated bid into him and he had some unanswered questions on a some of the bids that he had to include in the calculation of the construction price. We wanted to give Mr. Loughridge the opportunity to get these bids and get answers to his questions from those subcontractors. That process, while not yet complete, has already resulted in a significant reduction in the construction price he gave us on the afternoon of the 8<sup>th</sup>, and Mr. Loughridge is expecting additional reductions in price that will be passed along to the YMCA as that process is completed. However, this plan is based on the construction price we have at this point, and it will not go higher, but may go lower. Loughridge is also estimating that the construction period, since we are starting site work in the winter, will be closer to 18 months as opposed to 16 months. Although the footnote on our revenue projection in the August 25 plan indicated commencement of operations in April, 2017, the revenue numbers were

**PIEDMONT FAMILY YMCA**

233 4<sup>th</sup> Street NW, Suite Y  
Charlottesville VA 22903

P 434 974 9622 F 434 974 4651 [www.piedmontymca.org](http://www.piedmontymca.org)

in fact based upon a June, 2017 opening and therefore these revenue projections have not changed in the revised plan..

We have built the new price into our spreadsheets, which also drove an increase in our construction contingency amount, the amount we have to borrow under our construction loan and therefore the interest we have to pay under that loan. We have kept our revenue projections and our operating expenses identical to the plan we submitted to you on August 25, since we do not believe these will change, and therefore we believe you and your financial review team will be able to review this revised plan fairly quickly, since most of the plan remains the same as that presented on August 25. It probably goes without saying, but our August 25 plan and this revised plan assume that the YMCA will not raise any additional capital campaign funds. The reality is that we, like every non-profit, never stop raising funds, and we have functions planned for the remainder of the fall before we start construction to do so, and will continue to raise funds during construction and even after construction.

The YMCA remains poised to move forward with this project. We appreciate our collaborative relationship with the City of Charlottesville and we thank you for the opportunity to serve and strengthen the community through youth development, healthy living and social responsibility.

We are happy to answer any questions you may have.

Sincerely,



Jessica Maslaney  
CEO



Kurt Krueger  
Board Chair

**PIEDMONT FAMILY YMCA**

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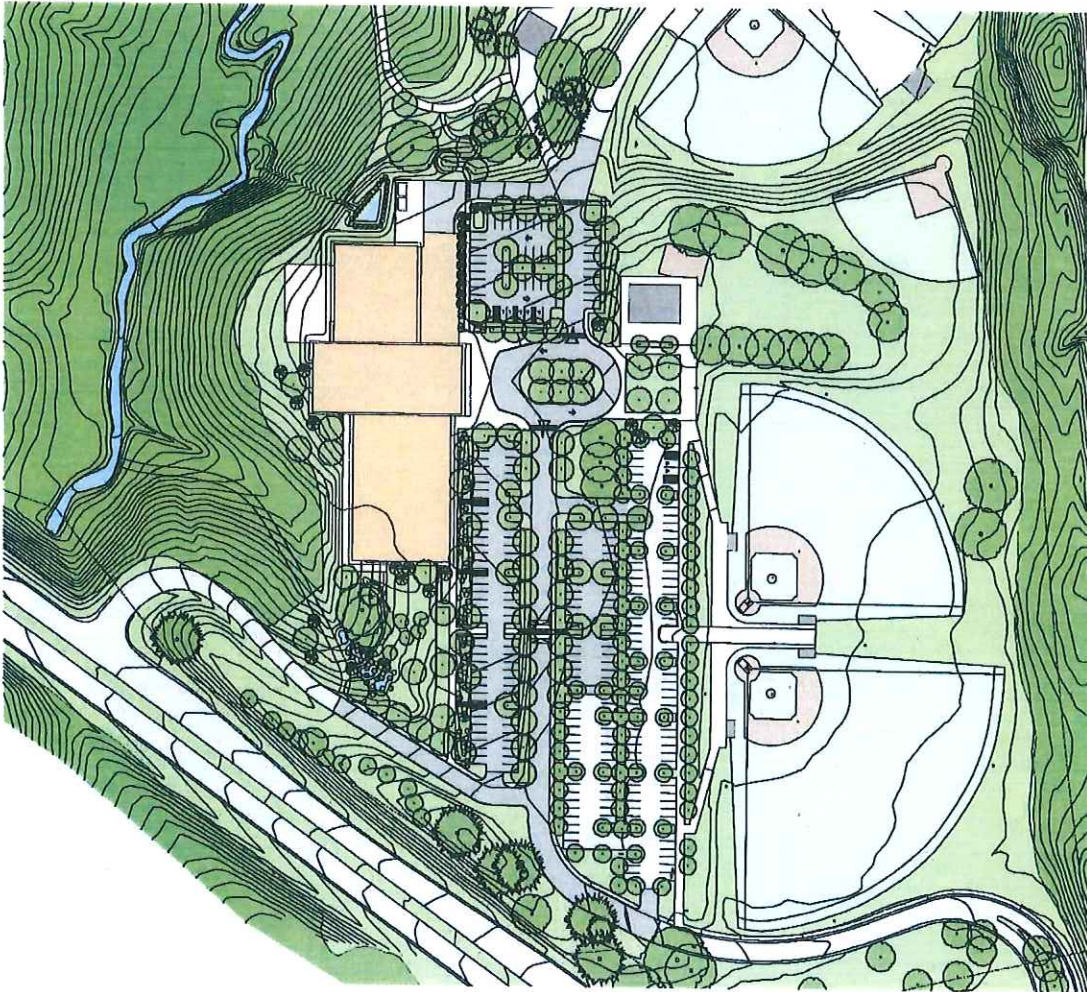


## Paul McIntire's View of the Y (November 26, 1923 Minutes)

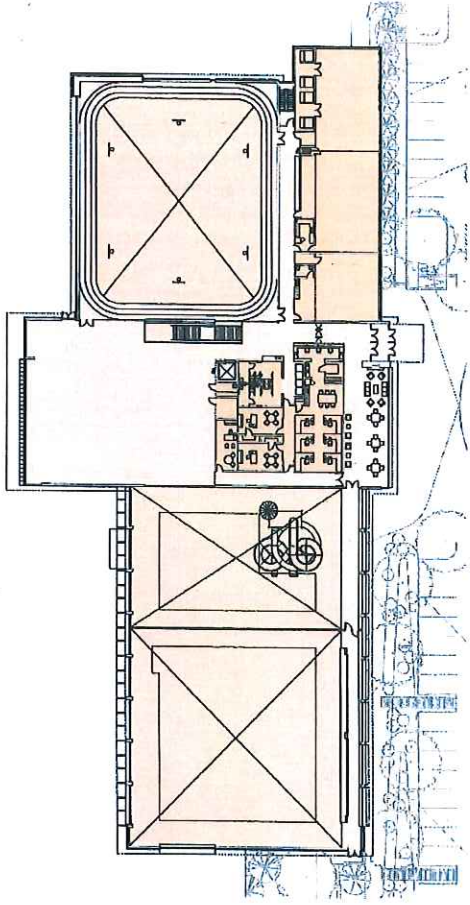


Piedmont Family YMCA

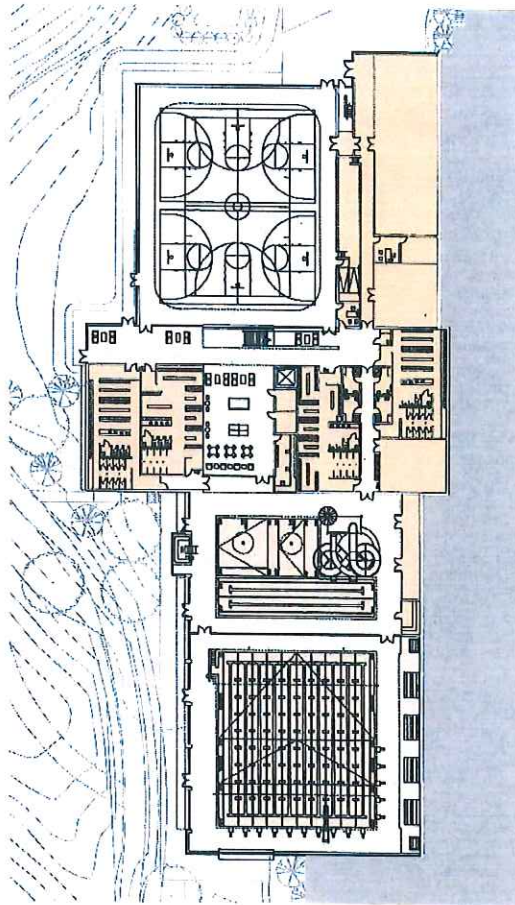
- “a Y.M.C.A. was a necessity to a City of this size”
- “a Committee be appointed... to put the Y.M.C.A. on a sound and fitting basis as the Community Center of Charlottesville”
- “resolution was unanimously carried and Messrs. Paul G. McIntire, E. I. Carruthers, Guy F. Via, B. F. Dickerson, T. E. Powers, Professor F. F. Dunnington, G. F. Spitzer and the General Secretary were named on said Committee”



site plan



entrance level | upper level plan



pool and gym level | lower level plan

# BROOKS FAMILY YMCA

## McIntire Park Multi-Purpose Community and Recreational Complex

### Capital Financial Plan and Five-Year Operational Plan and Budget

#### Executive Summary

The Piedmont Family YMCA, Inc. entered into a Ground Lease dated January 15, 2008 with the City of Charlottesville and a separate Use Agreement dated January 15, 2008 with the City and the County of Albemarle. The Ground Lease provides for the lease of approximately 5 acres of land in McIntire Park to the YMCA to allow it to construct and operate an approximately 77,000 square foot multi-purpose community and recreational complex. Paragraph 8 of the Ground Lease required the YMCA to commence construction within 60 months of the execution of the Ground Lease. As a result of litigation brought against the City and County by certain private fitness clubs challenging the City's approval of the Ground Lease and the City's and County's approval of the Use Agreement, the YMCA was unable to meet that deadline. On January 10, 2013, the Virginia Supreme Court dismissed the appeals filed by the private fitness club owners against the City and the County. City Council approved extensions of the deadline for commencement of construction until January 15, 2016.

Since being granted the last extension, the YMCA has (i) secured an additional \$2.5M in pledges including the granting of naming rights to the facility and naming rights to the warm water family recreational pool; (ii) been in communication with several banks, ultimately negotiating a loan term sheet and obtaining a commitment letter for a \$12,000,000 credit facility from Sonabank, a Virginia state chartered bank; (iii) worked with our architects, VMDO, on certain interior modifications to the facility to ensure it will meet our current programmatic goals, including the creation of 5,300 sq. ft. of additional revenue producing program space and repurposing of 2,400 sq. ft. into multi-generational, teen center and pre-teen adventure space; (iv) built into our proformas a revised construction price with our contractor, Loughridge & Company, LLC and (v) updated our financial plan and five-year operational plan and budget.

Paragraph 15 of the Ground Lease requires the YMCA, prior to commencement of construction of the facility, to *"present to the City Manager for his review and concurrence (a) a capital financial plan containing adequate assurance of the Lessee's ability to finance the construction of the Facility and (b) a five-year operational plan and budget that demonstrates adequate assurance that the Lessee will have available funds to support the operational plan for use and maintenance of the Facility."* We are pleased to present these capital and operational financial plans. The financial projections have been prepared by the YMCA, with the assistance of its financial advisor, Davenport & Company, LLC and updated through the YMCA's finance committee. It is important to note that these projections cover only the new facility and do not include the YMCA's child care operations at the Jefferson School or the Crozet YMCA at Claudius Crozet Park. Portions of existing program-based activities, such as youth sports,

senior aerobics and family programs are included, to the extent these activities would be operated at the new facility.

Construction of the facility is estimated to take approximately 18 months. The YMCA expects to start construction in mid to late November 2015 and finish construction in the Spring of 2017. Sonabank is providing a construction and permanent credit facility of \$12,000,000 and requires personal guarantees in the aggregate amount of \$6,000,000. As of the date of this plan, the YMCA has secured \$4,100,000 of these guarantees. Sonabank's proposed financing terms provide for a 36-month, interest-only construction and rate stabilization period followed by permanent financing with principal and interest payments based on a 25-year amortization schedule, with payments funded from operations.

The attached projections are based upon these loan terms, and assume opening of the facility and the start of operations by June 2017 and thereafter cover a five-year operational period. The attached projections demonstrate the Piedmont Family YMCA's capability to use its' capital campaign funds and pledges, together with the loan proceeds, to construct the facility, and then secure memberships and conduct program activities that will generate sufficient revenues to cover the debt service on the entire \$12,000,000 credit facility as well as the ongoing operational and maintenance costs of the YMCA facility.

### **Revenues and Expenses**

Revenue and Expense projections cover an eight-year time frame. In the attached Financial Projections, "through October 2015" is shown to establish the baseline for the existing capital campaign fund. During the Fall of 2015, the YMCA will negotiate and close the bank loan, collect outstanding pledge receipts from current donors, and continue to pursue additional fundraising. Our contractor, Loughridge & Company, based in Richmond, Virginia, has extensive experience building YMCA facilities and recently constructed the *Ivy Road Rehabilitation Hospital* for the University of Virginia and is currently constructing *Colonial Auto's* new showroom on Route 29. The YMCA received bid quotes from twelve (12) regional firms in 2011, with the bid from Loughridge being the lowest at \$13,992,000. The nearly three years of unforeseen delays, including the litigation by the private fitness club owners against the City and County, resulted in escalated material and labor costs increasing the cost of construction to \$14,506,544 in August, 2014. Our updated bid from Loughridge is now \$15,507,004, and we intend to enter into a guaranteed maximum price construction contract with Loughridge. The total project cost, excluding monies spent-to-date for architectural, engineering and other consultant services, is now estimated to be \$18,828,174. Although our construction cost is higher than we had in August, 2014, the total project cost remaining unpaid is lower than that anticipated in our August, 2014 plan due to a combination of payment of certain project costs since August, 2014, additional pledges raised, and payments on existing pledges, all resulting in lower interest costs plus over \$1,000,000 saved as a result of Sonabank not requiring the funding of an interest and operating reserve. Sonabank has indicated that it would provide the YMCA with a \$500,000 line of credit in addition to the \$12,000,000 credit facility for the YMCA to use, if necessary, in lieu of an operating reserve, and we will be operating a brand new facility with the typical equipment warranties. The facility should be completed and allow for commencement of operations on or about June, 2017.

The program revenue and expense projections cover an additional eight-year period following commencement of operations, from 2017 through 2025, including debt service during the construction and stabilization period of the loan and the first five years of the 25 year permanent loan period. These projections demonstrate that the YMCA has the ability to generate sufficient operating revenue to cover projected operating expenses and the debt service coverage requirements of the \$12,000,000 credit facility. The YMCA plans to begin the pre-sale of memberships during the 60-90 day period prior to opening of the facility, with the goal of 3,202 member units by the end of the 36 month construction loan and stabilization period in December, 2019. The projected membership revenue for program year 2017 assumes that the YMCA has sold 1,000 member-units prior to the end of this first partial calendar year of operation, and is included in the projected membership revenue from 2,115 memberships units in 2018. The total membership revenue also includes joining fees beginning in program year 2018.

Expense projections are based on historical and statistical data from our 3½ years of operations at the Crozet YMCA and operational comparisons from regional YMCA's with similar-sized facilities, design layouts and member programs; as well as from national operational reports and facility consultants provided by the National YMCA of the USA ("Y-USA"). Operational costs for the primary program areas have been expressed in terms of "Occupancy Costs" which include utilities, maintenance, upkeep and payroll expenses, including all applicable wages, taxes, benefits and training costs.

The pro-forma also includes an expense item referred to as "National Dues" at 2% of revenue. The Piedmont Family YMCA together with 3,800 other locally-based and operated YMCA's throughout the United States is a member of Y-USA. Each year, all YMCA affiliates contribute 2% of their membership and program revenue to Y-USA. In return, the Piedmont Family YMCA and these affiliates receive benefits in the form of reduced group insurance rates, marketing and advertising, consulting/resource services, and access to statistical operations and census data which was used, along with other data sources, to prepare this plan and the attached financial projections.

### **Capital Campaign**

As shown in the chart below, the YMCA's Capital Campaign Drive began in in 2005 and continued through 2010. The lawsuits filed by ACAC against the City and the County in May, 2010, followed by the lengthy appeals process of those cases to the Virginia Supreme Court, which did not render its decision dismissing the cases until January, 2013, necessitated a temporary deferment of all active fundraising efforts during the last half of 2010, 2011 and 2012 and required the YMCA to re-establish its capital campaign efforts in 2013. The YMCA has outstanding pledges totaling \$7,364,818 from 136 individuals, several private foundations, the City of Charlottesville and Albemarle County. The City of Charlottesville pledged \$1,250,000 to the project pursuant to the Use Agreement on the condition that the facility contain at least a 6-lane competition pool and 1-meter diving well (the facility will have a 10-lane competition pool and the 1-meter diving well). Albemarle County pledged \$2,030,000 for the project pursuant to the Use Agreement on the condition that the facility will be available to County residents, as required under the Use Agreement. In addition, the Capital Campaign has received \$170,070 in commitments for "in-kind services" which has helped off-set costs for architectural design and

marketing expenses for the campaign. Additionally, a local business has pledged \$50,000 to be applied towards the furnishing of the facility when completed.

<b>Piedmont Family YMCA Capital Campaign Drive: 2005-2015</b>				
<b>Pledge Year</b>	<b># Pledges</b>	<b>Pledge Amount</b>	<b>Payments Received</b>	<b>Amount Pending</b>
2005	10	\$2,360,000	\$1,765,696	\$594,303
2006	69	\$4,207,396	\$2,854,576	\$2,182,750
2007	14	\$1,424,540	\$125,940	\$1,298,600
2008	15	\$323,596	\$22,931	\$300,665
2009	6	\$22,091	\$22,091	\$0
2010	1	\$500,000	\$0	\$500,000
2011	2	\$35,250	\$17,250	\$18,000
2012				
2013				
2014	4	\$245,000	\$25,000	\$220,000
2015	15	\$2,454,750	\$102,250	\$2,250,500
	<b>136</b>	<b>\$11,572,623</b>	<b>\$3,935,735</b>	<b>\$7,464,818</b>

The next chart titled "Confirmed Capital Campaign Payment Forecast" identifies the donors and the amount(s) of their pledges to be collected in years 2015-2020. The forecast of pledge receipts is based on individual donor agreements, individual letters of intent, and the analysis of payment histories and reviewed by the independent auditing firm of Hantzmon-Wiebel. The Capital Campaign pledge balance of \$7,300,493 (\$164,325 still needs to be confirmed to match the above amount pending of \$7,464,818) includes the combined commitments of the City of Charlottesville at \$1,250,000 and Albemarle County at \$2,030,000, or approximately forty-five percent (45%) of the remaining pledge balance.

<b>Confirmed Capital Campaign Payment Forecast: 2015-2020</b>					
<b>Pledge Name</b>	<b>Pledge Balance</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018-2020</b>
<b>&gt;\$200,000</b>					
County of Albemarle	\$2,030,000	\$2,030,000			
Private Donor	\$1,484,661	\$494,887	\$494,887	\$494,887	
City of Charlottesville	\$1,250,000	\$1,250,000			
Private Donor	\$550,000	\$50,000	\$50,000	\$50,000	\$400,000
Private Donor	\$500,000	\$125,000	\$250,000	\$125,000	
Perry Foundation	\$500,000	\$125,000	\$125,000	\$125,000	\$125,000
Private Donor	\$250,000	\$100,000	\$50,000	\$100,000	
<b>&lt;\$200,000</b>					
Private Donors	\$635,832	\$184,166	\$114,116	\$106,337	\$223,333
<b>Tot. Pledge Balance</b>	<b>\$7,300,493</b>	<b>\$4,359,053</b>	<b>\$1,184,053</b>	<b>\$1,009,054</b>	<b>\$748,333</b>

The “Confirmed Capital Campaign Payment Forecast” shows a pledge balance of \$7,300,493 which includes the City and County pledges of \$3,280,000 and other pledges of \$4,020,493 that are to be collected in 2015 thru 2020.

**Operating Revenue and Membership Projections**

Operating Revenue for the YMCA consists primarily of memberships and revenue generated by program participation fees. Revenue from memberships will be the primary source of operating revenue for the Brooks Family YMCA. Revenues from program participation fees will help offset the costs of programs which are also included in operating expense. In addition, the Y will conduct an annual campaign to subsidize scholarships and generate continuing community support to ensure that the facility is affordable and accessible to all.

The membership revenue shown in the Financial Projections is detailed in the chart below. These projections were developed from census data for the City of Charlottesville and Albemarle County as well as conclusions drawn from various studies, including separate Recreational Needs Assessments done by the City and the County, and phone surveys conducted by City. In addition to these sources, the projections were also developed based upon program and operational data from approximately 3,800 YMCA’s throughout the United States; data collected by Y-USA.

<b>Five-Year Membership Projections</b>					
	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>Membership Units</b>	2,115	3,202	3,436	3,636	3,671
<b>Revenue</b>	\$1,696,916	\$2,574,413	\$2,704,621	\$2,878,643	\$2,945,773

The Y-USA advises communities considering building a full-service community recreational facility to have a least 18,000 households located within its primary service area. The census data provided by Y-USA shows that 55,935 households are located in the City of Charlottesville and Albemarle County. Using a twelve-minute drive time analysis and a five-mile radius around McIntire Park, the YMCA has determined that more than a sufficient number of households reside in the service area to support the facility at McIntire Park.

Review of the Y-USA’s census research, separate City and County Recreational Needs Assessments Surveys, the Winfield Group Recreation Study, and telephone surveys conducted in 2006 by Leisure Vision, leads to the following conclusions: 13,424 households indicated “no interest” in recreation activities; and approximately 12,000 households (or 30,000 individuals) already belong to existing recreational facilities, private clubs, or use private instruction. After taking into consideration those households who either (i) are not interested in recreation of any type and (ii) belong to existing facilities, there are approximately 30,511 households who have expressed a desire or need for recreational facilities and who do not currently belong to an existing facility. These 30,511 households located within the City and County clearly exceeds the 18,000 household threshold recommended by Y-USA to support a full-service YMCA.

## **Conclusion**

This project has been 10-years in the making. The YMCA has secured pledges, guarantors, bank financing, and an experienced contractor to move forward with the construction of a multi-purpose community and recreation complex in McIntire Park. Based upon the YMCA's three years of operational experience at the Crozet YMCA and its' extensive research and using best available data, the attached financial projections show that the YMCA can successfully construct the Brooks Family YMCA, service the debt of the construction loan, and cover operating and maintenance expenses for the facility.



Due to the length, complexity and technical nature of the next eight pages, they are not being posted on the City website in an accessible format, but a screen reader accessible version of the Manual will be made available within 48 hours on request by calling (434) 970-3182 or emailing [ada@charlottesville.org](mailto:ada@charlottesville.org).

Revenues and Expenses Summary

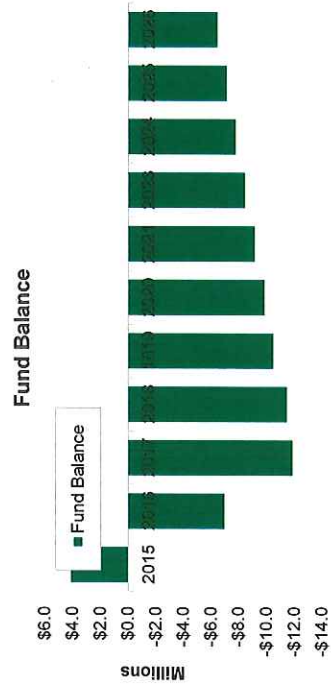
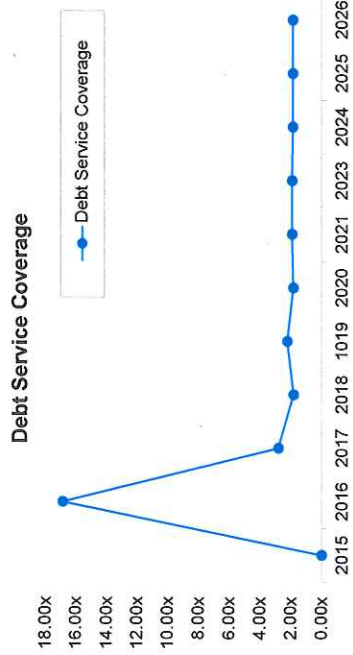
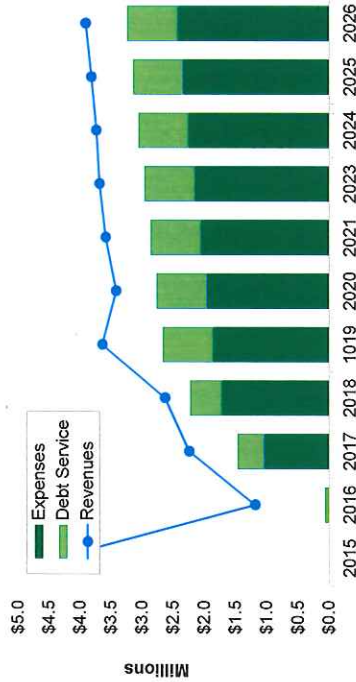
	1	2	3	4	5	6	7	8	9	10	11	12
	Dec-15	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	
<b>OPERATING REVENUE</b>												
Membership Revenue	\$ -	\$ -	\$ 830,004	\$ 1,696,916	\$ 2,574,413	\$ 2,704,621	\$ 2,878,643	\$ 2,945,773	\$ 3,001,999	\$ 3,062,039	\$ 3,123,279	
Annual Giving	-	-	20,000	74,025	80,038	85,888	90,911	95,447	97,283	99,118	100,954	
Interest Income	-	-	-	-	-	12,836	13,831	22,399	-	1,384	9,393	
Program Income	-	-	330,000	550,000	566,500	583,495	601,000	619,030	637,601	656,729	676,431	
Capital Campaign Fund	\$ 4,546,539	\$ 1,184,053	\$ 1,059,054	\$ 306,366	\$ 416,996	\$ 25,000	\$ -	\$ -	\$ -	\$ -	\$ -	
Minus loan and reserve costs	\$ (167,500)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
<b>TOTAL NET REVENUE</b>	<b>\$ 4,379,059</b>	<b>\$ 1,184,053</b>	<b>\$ 2,239,058</b>	<b>\$ 2,627,307</b>	<b>\$ 3,637,947</b>	<b>\$ 3,411,840</b>	<b>\$ 3,584,386</b>	<b>\$ 3,682,648</b>	<b>\$ 3,736,882</b>	<b>\$ 3,819,269</b>	<b>\$ 3,910,057</b>	
<b>OPERATING EXPENSES</b>												
National Dues	\$ -	\$ -	\$ 16,600	\$ 33,938	\$ 51,488	\$ 54,092	\$ 57,573	\$ 58,915	\$ 60,040	\$ 61,241	\$ 62,466	
Payroll Expense	-	-	477,994	796,656	832,235	869,404	908,235	948,801	991,180	1,035,454	1,081,707	
Program Supplies	-	-	40,989	68,315	71,366	74,553	77,883	81,362	84,996	88,792	92,758	
Occupancy Costs	-	-	173,400	289,000	300,560	312,582	325,086	338,089	351,613	365,677	380,304	
Equipment	-	-	60,024	100,040	101,042	102,083	103,167	104,293	105,465	106,684	107,951	
Insurance	-	-	11,520	19,200	19,968	20,767	21,597	22,461	23,360	24,294	25,266	
Training	-	-	13,800	23,920	23,920	24,877	25,872	26,907	27,983	29,102	30,266	
Administrative/Management	-	-	149,456	249,094	259,058	269,420	280,197	291,405	303,061	315,183	327,791	
Other Expenses	-	-	1,020	1,700	1,768	1,839	1,912	1,989	2,068	2,151	2,237	
Community Support	-	-	45,000	50,000	100,000	120,000	140,000	160,000	180,000	180,000	180,000	
Promotion and Marketing	-	-	11,800	23,209	32,210	33,740	35,706	36,602	37,369	38,179	39,007	
YMCA Benefits	-	-	42,000	70,000	74,200	78,652	83,371	88,373	93,676	99,296	105,254	
<b>TOTAL OPERATING EXPENSES</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,043,603</b>	<b>\$ 1,724,153</b>	<b>\$ 1,867,814</b>	<b>\$ 1,962,010</b>	<b>\$ 2,060,598</b>	<b>\$ 2,159,198</b>	<b>\$ 2,260,810</b>	<b>\$ 2,346,054</b>	<b>\$ 2,435,007</b>	
<b>Revenue Available for D.S.</b>	<b>\$ 4,379,059</b>	<b>\$ 1,184,053</b>	<b>\$ 1,195,454</b>	<b>\$ 903,154</b>	<b>\$ 1,770,133</b>	<b>\$ 1,449,830</b>	<b>\$ 1,523,788</b>	<b>\$ 1,523,451</b>	<b>\$ 1,476,072</b>	<b>\$ 1,473,216</b>	<b>\$ 1,475,050</b>	
Excess Revenue After D.S.	\$ 4,379,059	\$ 1,113,792	\$ 767,673	\$ 399,814	\$ 968,212	\$ 647,910	\$ 721,868	\$ 721,531	\$ 674,152	\$ 671,295	\$ 673,129	
Construction Draw Down	\$ (410,546)	\$ (12,224,432)	\$ (5,672,197)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
<b>Remaining Fund Balance</b>	<b>\$ 4,136,013</b>	<b>\$ (6,974,627)</b>	<b>\$ (11,879,151)</b>	<b>\$ (11,479,337)</b>	<b>\$ (10,511,125)</b>	<b>\$ (9,876,051)</b>	<b>\$ (9,168,015)</b>	<b>\$ (8,468,883)</b>	<b>\$ (7,794,731)</b>	<b>\$ (7,124,820)</b>	<b>\$ (6,461,083)</b>	
Debt Service	\$ -	\$ 70,261	\$ 427,781	\$ 503,340	\$ 801,920	\$ 801,920	\$ 801,920	\$ 801,920	\$ 801,920	\$ 801,920	\$ 801,920	
Debt Service Coverage	N/A	N/A	2.79	1.79x	2.21x	1.79x	1.88x	1.87x	1.84x	1.84x	1.83x	

Debt Service through construction will be capitalized and paid from the bank loan to the extent that cash cannot pay down construction costs and debt servicing. Assumes operational revenues and expenses can be straight-lined across months for first two years. Uses confirmed pledges.

Assumes that monthly net income from Y operations will be reinvested back into the loan, until the loan is amortized at 36-months. Construction period assumed to be 18 months so far as cash outflow is concerned.

Operational revenues assumed to start June 2017

# Summary of Operations



Year	Revenues	Expenses	Revenues Available for D.S.	Debt Service	Surplus	Debt Service Coverage
2015	4,379,059	-	4,379,059	-	4,379,059	N/A
2016	1,184,053	-	1,184,053	70,261	1,113,792	16.85x
2017	2,239,058	1,043,603	1,195,454	427,781	767,673	2.79x
2018	2,627,307	1,724,153	903,154	503,340	399,814	1.79x
2019	3,637,947	1,867,814	1,770,133	801,920	968,212	2.21x
2020	3,411,840	1,962,010	1,449,830	801,920	647,910	1.81x
2021	3,584,386	2,060,598	1,523,788	801,920	721,868	1.90x
2022	3,682,648	2,159,198	1,523,451	801,920	721,531	1.90x
2023	3,736,882	2,260,810	1,476,072	801,920	674,152	1.84x
2024	3,819,269	2,346,054	1,473,216	801,920	671,295	1.84x
2025	3,910,057	2,435,007	1,475,050	801,920	673,129	1.84x
2026	-	-	-	-	-	-

Year	Fund Balance
2015	4,136,013
2016	(6,974,627)
2017	(11,879,151)
2018	(11,479,337)
2019	(10,511,125)
2020	(9,876,051)
2021	(9,168,015)
2023	(8,468,883)
2024	(7,794,731)
2025	(7,124,820)
2026	(6,461,083)



Detailed Fund Activity

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
<b>Fund Balance</b>											
Beginning Balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Plus: Deposits (Excess Revenue After DS)	4,546,559	1,113,792	767,673	399,814	968,212	635,074	708,037	699,132	674,152	669,911	663,736
Less: Transfer to Maintenance Reserve	-	-	-	-	-	-	-	-	-	-	-
Less: Transfer to Operating Reserve	4,546,559	1,113,792	767,672.94	399,814	968,212	635,074	708,037	699,132	674,152	669,911	663,736
<b>Total Fund Balance</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Fund Balance</b>											
Maintenance Reserve	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Beginning Balance	-	-	-	-	-	-	-	-	-	-	-
Plus: Deposits	-	-	-	-	-	-	-	-	-	-	-
Less: Capital Outlay	0	0	0	0	0	0	0	0	0	0	0
<b>Ending Balance</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Reserve	\$ -	\$ 4,136,013	\$ (6,974,627)	\$ (11,879,151)	\$ (11,479,337)	\$ (10,511,125)	\$ (9,876,051)	\$ (9,168,015)	\$ (8,468,883)	\$ (7,794,731)	\$ (7,124,820)
Beginning Balance	-	4,136,013	(6,974,627)	(11,879,151)	(11,479,337)	(10,511,125)	(9,876,051)	(9,168,015)	(8,468,883)	(7,794,731)	(7,124,820)
Plus: Deposits (Withdrawal)	4,546,559	1,113,792	767,673	399,814	968,212	635,074	708,037	699,132	674,152	669,911	663,736
Plus: D.S. Reserve Contribution (1)	0	0	0	0	0	0	0	0	0	0	0
Plus: Operating Reserve Contribution (2)	0	0	0	0	0	0	0	0	0	0	0
Less: Expenditure	0	0	0	0	0	0	0	0	0	0	0
Less: Pay Down Existing Debt	0	0	0	0	0	0	0	0	0	0	0
Less: Construction Draw Down	(410,546)	(12,224,432)	(5,672,197)	-	-	-	-	-	-	-	-
<b>Ending Balance</b>	4,136,013	(6,974,627)	(11,879,151)	(11,479,337)	(10,511,125)	(9,876,051)	(9,168,015)	(8,468,883)	(7,794,731)	(7,124,820)	(6,461,083)
<b>Ending Total Fund Balance</b>	4,136,013	(6,974,627)	(11,879,151.25)	(11,479,337)	(10,511,125)	(9,876,051)	(9,168,015)	(8,468,883)	(7,794,731)	(7,124,820)	(6,461,083)
Interest Income @ 0.75%	-	-	-	-	-	-	-	-	-	-	-
<b>Capital Campaign</b>											
Beginning Balance	-	4,136,013	(6,904,366)	(11,517,509)	788,857	1,205,853	1,230,853	1,230,853	1,230,853	1,230,853	1,230,853
Capital Campaign Fund Balance	187,506	-	-	-	-	-	-	-	-	-	-
Pledges in Hand	4,359,053	1,184,053	1,009,054	306,366	416,996	25,000	-	-	-	-	-
Pledge Receipts	-	-	-	-	-	-	-	-	-	-	-
Better Living - In-Kind Pledges (3)	-	-	50,000	-	-	-	-	-	-	-	-
Repayment of Long-Term Debt	-	-	-	-	-	-	-	-	-	-	-
Less: Equity Contribution for Construction	(410,546)	(12,224,432)	(5,672,197)	12,000,000	-	-	-	-	-	-	-
<b>Ending Balance</b>	4,136,013	(6,904,366)	(11,517,509)	788,857	1,205,853	1,230,853	1,230,853	1,230,853	1,230,853	1,230,853	1,230,853

(1) Required by Union; not required by Sonabank  
 (2) Required by Union; not required by Sonabank - YMCA set up as line of credit  
 (3) Better Living - In-kind Pledge for FF&E



Revenues Detail - Membership Profile

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
<b>Join Fee</b>											
Family	-	-	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100
Adult Individual	-	-	\$75	\$75	\$75	\$75	\$75	\$75	\$75	\$75	\$75
Seniors (60+)	-	-	\$75	\$75	\$75	\$75	\$75	\$75	\$75	\$75	\$75
Young Adult (14-20)	-	-	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25
Youth (13 and under)	-	-	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25
<b>% Growth in Fee</b>											
			0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

**Membership Units**

<b>Membership Units</b>											
Family	-	-	461	975	1,463	1,523	1,532	1,537	1,537	1,537	1,537
Adult Individual	-	-	225	475	713	741	784	798	798	798	798
Seniors (60+)	-	-	217	460	782	912	1,049	1,059	1,059	1,059	1,059
Young Adult (18-20)	-	-	38	80	112	120	128	133	133	133	133
Youth (17 and under)	-	-	59	125	133	139	143	145	145	145	145
<b>Total Membership Units</b>			<b>1,000</b>	<b>2,115</b>	<b>3,202</b>	<b>3,436</b>	<b>3,636</b>	<b>3,671</b>	<b>3,671</b>	<b>3,671</b>	<b>3,671</b>

**Scholarship Units (1)**

Percentage of Membership Units											
Family	-	-	10%	10%	10%	10%	10%	10%	10%	10%	10%
Adult Individual	-	-	46	98	146	152	153	154	154	154	154
Seniors (60+)	-	-	23	48	71	74	78	80	80	80	80
Young Adult (14-20)	-	-	22	46	78	91	105	106	106	106	106
Youth (13 and under)	-	-	4	8	11	12	13	13	13	13	13
<b>Total Scholarship Units</b>			<b>100</b>	<b>212</b>	<b>320</b>	<b>344</b>	<b>364</b>	<b>367</b>	<b>367</b>	<b>367</b>	<b>367</b>

**% Growth in Membership Units**

Family											
Adult Individual			50.00%	4.14%	4.00%	0.60%	0.28%	0.00%	0.00%	0.00%	0.00%
Seniors (60+)			50.00%	5.77%	15.00%	5.77%	1.82%	0.00%	0.00%	0.00%	0.00%
Young Adult (14-20)			40.00%	7.14%	6.87%	6.87%	3.33%	0.00%	0.00%	0.00%	0.00%
Youth (13 and under)			6.00%	5.00%	2.86%	2.86%	1.39%	0.00%	0.00%	0.00%	0.00%

Total Membership Revenue			830,004	1,696,916	2,574,413	2,519,621	2,878,643	2,945,773	3,001,999	3,062,039	3,123,279
Scholarship Expense			779,784	1,643,201	2,468,523	2,392,740	2,733,500	2,781,180	2,816,180	2,876,180	2,936,186
Total Membership Revenue Less Unknown Variat	\$	\$	\$ 50,220	\$ 53,715	\$ 105,890	\$ 126,881	\$ 145,143	\$ 164,593	\$ 185,819	\$ 185,859	\$ 187,093
<b>For Community Support Expense:</b>			<b>45,000</b>	<b>50,000</b>	<b>100,000</b>	<b>120,000</b>	<b>140,000</b>	<b>160,000</b>	<b>180,000</b>	<b>180,000</b>	<b>180,000</b>

**Expenses Detail**

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
<b>National Dues</b>	-	-	16,600	33,938	51,488	54,092	57,573	58,915	60,040	61,241	62,466
<b>Pool Expenses</b>											
Payroll Expense	-	-	137,485	229,142	239,369	250,054	261,216	272,877	285,059	297,785	311,080
Program Supplies	-	-	13,748	22,914	23,937	25,005	26,122	27,288	28,506	29,779	31,108
Occupancy Costs	-	-	111,600	186,000	193,440	201,178	209,225	217,594	226,297	235,349	244,763
Equipment	-	-	2,064	3,440	3,578	3,721	4,024	4,185	4,185	4,353	4,527
Insurance	-	-	8,640	14,400	14,976	15,575	16,198	16,846	17,520	18,221	18,949
Training	-	-	3,600	6,000	6,240	6,490	6,749	7,019	7,300	7,592	7,896
Other Expenses	-	-	1,020	1,700	1,768	1,839	1,912	1,989	2,068	2,151	2,237
<b>Total</b>	-	-	278,157	463,596	483,308	503,861	525,292	547,637	570,936	595,229	620,560
<b>Fitness Center</b>											
Payroll Expense	-	-	123,107	205,178	214,336	223,903	233,898	244,340	255,248	266,643	278,547
Program Supplies	-	-	9,849	16,414	17,147	17,912	18,712	19,547	20,420	21,331	22,284
Occupancy Costs	-	-	42,000	70,000	72,800	75,712	78,740	81,890	85,166	88,572	92,115
Equipment	-	-	47,160	78,600	78,744	78,894	79,211	79,380	79,555	79,737	79,915
Insurance	-	-	1,440	2,400	2,496	2,596	2,700	2,808	2,920	3,037	3,158
Training	-	-	3,000	5,000	5,200	5,408	5,624	5,849	6,083	6,327	6,580
Other Expenses	-	-	0	0	0	0	0	0	0	0	0
<b>Total</b>	-	-	226,555	377,592	390,723	404,425	418,724	433,645	449,216	465,465	482,422
<b>Membership/Facility</b>											
Payroll Expense	-	-	217,402	362,337	378,530	395,446	413,120	431,584	450,873	471,026	492,080
Program Supplies	-	-	17,392	28,987	30,282	31,636	33,050	34,527	36,070	37,682	39,366
Occupancy Costs	-	-	19,800	33,000	34,320	35,693	37,121	38,605	40,150	41,756	43,426
Equipment	-	-	10,800	18,000	18,720	19,469	20,248	21,057	21,900	22,776	23,687
Insurance	-	-	1,440	2,400	2,496	2,596	2,700	2,808	2,920	3,037	3,158
Training	-	-	7,200	12,000	12,480	12,979	13,498	14,038	14,600	15,184	15,791
Other Expenses	-	-	0	0	0	0	0	0	0	0	0
<b>Total</b>	-	-	274,034	456,724	476,828	497,819	519,756	542,619	566,512	591,460	617,508
<b>Administrative/ Management</b>											
Payroll Expense	-	-	149,456	249,094	259,058	269,420	280,197	291,405	303,061	315,183	327,791
Community Support	-	-	45,000	50,000	100,000	120,000	140,000	160,000	180,000	180,000	180,000
Promotion and Marketing	-	-	11,800	23,209	32,210	33,740	35,706	36,602	37,569	38,179	39,007
<b>TOTAL OPERATING EXPENSES</b>	\$ -	\$ -	\$ 1,001,603	\$ 1,654,153	\$ 1,793,614	\$ 1,883,358	\$ 1,977,227	\$ 2,070,824	\$ 2,167,134	\$ 2,246,757	\$ 2,329,753
<b>YMCA Benefits</b>											
			42,000	70,000	74,200	78,652	83,371	88,373	93,676	99,296	105,254



**Debt Service Detail**

Loan Size: 12,000,000  
 Interest Rate: 4.00%  
 4.52%

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
Principal	-	-	-	23,340	266,042	278,319	291,163	304,600	318,657	333,362	348,746
Interest	70,261	427,781	427,781	480,000	535,878	523,601	510,757	497,320	483,264	468,558	453,174
<b>Total Debt Service</b>	<b>70,261</b>	<b>427,781</b>	<b>427,781</b>	<b>503,340</b>	<b>801,920</b>	<b>801,920</b>	<b>801,920</b>	<b>801,920</b>	<b>801,920</b>	<b>801,920</b>	<b>801,920</b>

**Pay down of Debt**

	-	-	-	-	-	-	-	-	-	-	-
--	---	---	---	---	---	---	---	---	---	---	---

2015  
 Term: 25  
 Rate (1): 4.00%  
 Amount: 12,000,000  
 4.52%

Costs	FY	Principal	Interest	Total
Construction	2015	8,470,537	8,569,250	17,039,788
FF&E (interior & exterior)	2016	-	70,261	70,261
Construction Contingency	2017	-	427,781	427,781
Permits & Const. Fees & Ins.	2018	23,340	480,000	503,340
Consultants/Architects/Engineering	2019	266,042	535,878	801,920
Bond Issuance Closing/Legal	2020	278,319	523,601	801,920
Capitalized Interest	2021	291,163	510,757	801,920
Funded Reserves	2022	304,600	497,320	801,920
Bank Origination Fee	2023	318,657	483,264	801,920
<b>Total Costs</b>	2024	333,362	468,558	801,920
	2025	348,746	453,174	801,920
	2026	364,840	437,080	801,920
	2027	381,677	420,243	801,920
	2028	399,291	402,630	801,920
	2029	417,717	384,203	801,920
	2030	436,994	364,926	801,920
	2031	457,161	344,760	801,920
	2032	478,258	323,663	801,920
	2033	500,328	301,592	801,920
	2034	523,418	278,503	801,920
	2035	547,573	254,348	801,920
	2036	572,842	229,078	801,920
	2037	599,278	202,643	801,920
	2038	626,933	174,987	801,920

Sources of Funds	Balance of Funds required
Loan	\$3,548,174.00
County/City Contributions	\$187,506
Total Sources of Funds	\$4,020,522
	\$0
	\$50,000
	\$4,258,028

Capital Campaign Fund Balance	\$187,506
Pledges in Hand	\$4,020,522
Pledge Receipts	\$0
Better Living - In-kind Pledge for FF&E	\$50,000
	\$4,258,028

(1) Interest Rate is Prime Rate plus 0.75%



exterior perspective, view of YMCA entrance and family aquatics center from southeast



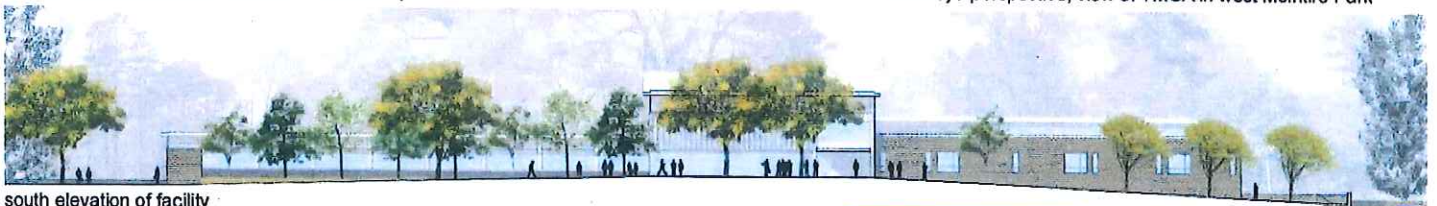
exterior perspective, view of family aquatics center from southwest



exterior perspective, winter view of YMCA facility in McIntire Park from route 250 west



bird's eye perspective, view of YMCA in west McIntire Park



south elevation of facility

**schematic SITE AND FACILITY IMAGES**



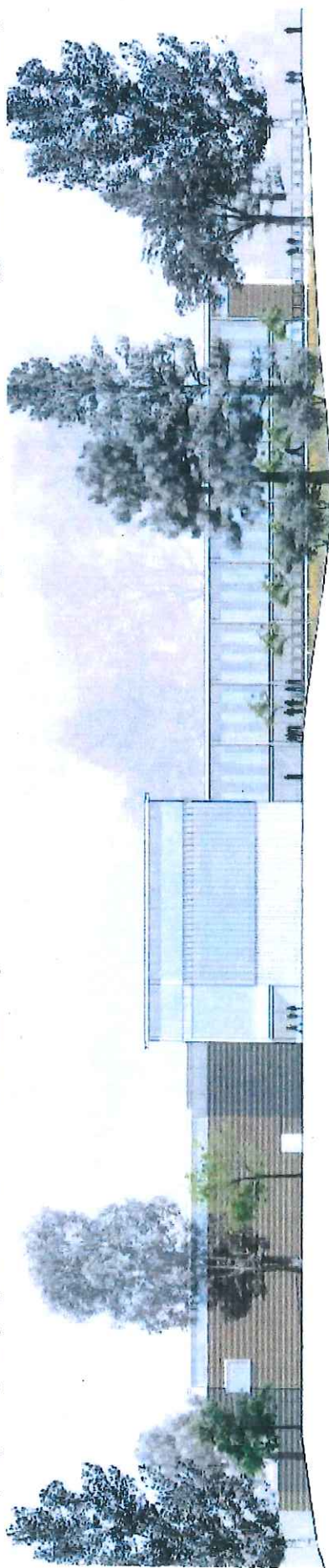
interior perspective, family aquatics center and view to woods beyond



interior perspective, fitness center with woods and gym views



physical model, view of northwest (gymnasium) corner of facility



north elevation of facility

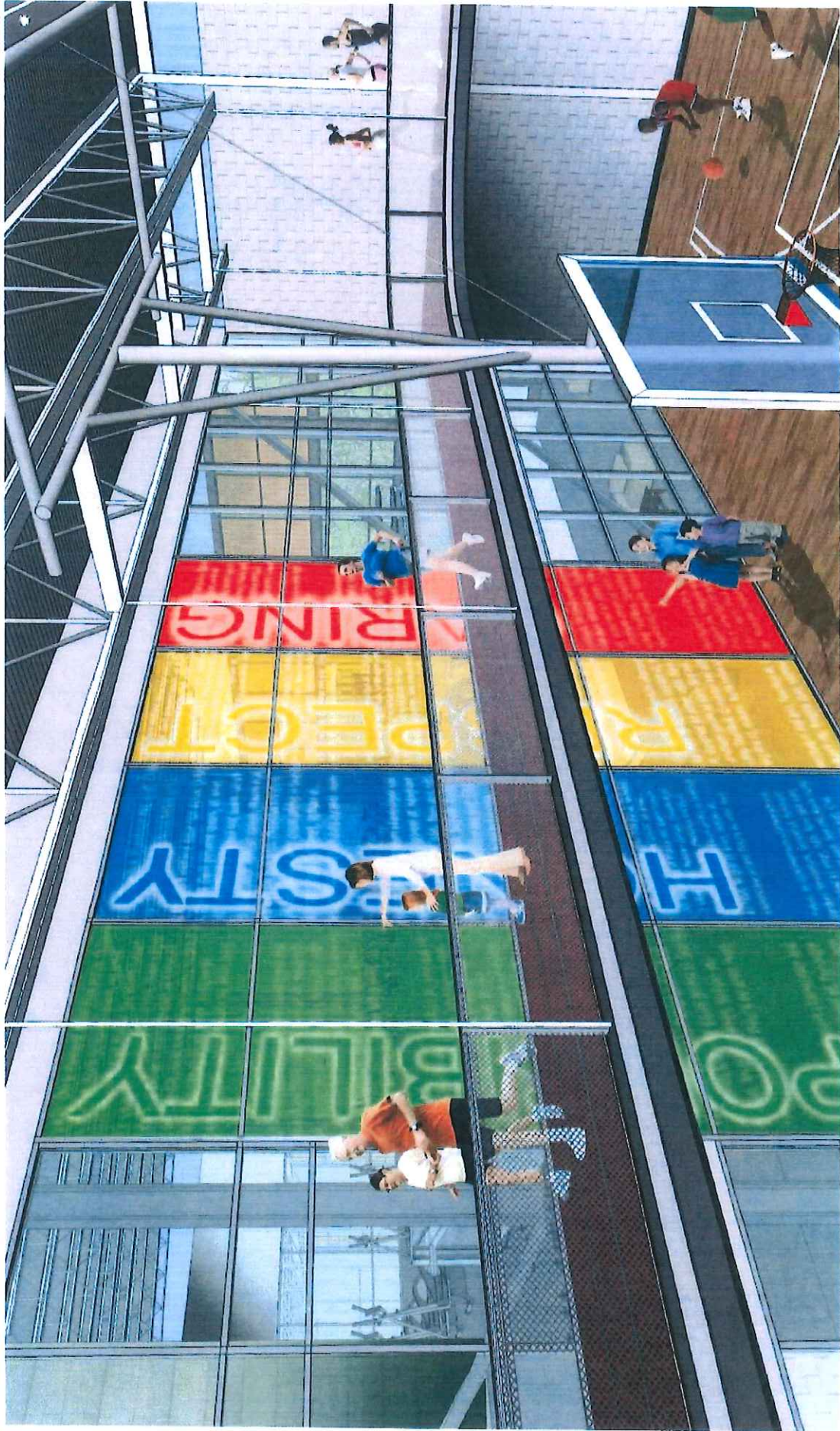
**schematic SITE AND FACILITY IMAGES**

PIEDMONT FAMILY YMCA in McIntire Park

© 2009, 2016

**VMDO** ARCHITECTS





elevated running track



PIEDMONT FAMILY YMCA in McIntire Park  
2010\_06 09

VMDO ARCHITECTS

**USE AGREEMENT**  
**MCINTIRE PARK NON-PROFIT COMMUNITY RECREATION CENTER**

THIS AGREEMENT is entered into this 15<sup>th</sup> day of January, 2008, among the **PIEDMONT FAMILY YMCA, INC.** (the "Lessee"), the **CITY OF CHARLOTTESVILLE** (the "City"), and the **COUNTY OF ALBEMARLE** (the "County").

WHEREAS, the City and the Lessee have entered into a Ground Lease dated January 15, 2008, for certain property within McIntire Park in the City of Charlottesville (the "Lease"); and,

WHEREAS, under the terms of the Lease the Lessee will construct and operate a community recreation center on the Leased Premises (the "Facility"); and,

WHEREAS, the County has agreed to make a future capital contribution of \$2,030,000 for construction of the Facility (the "County Capital Contribution"); and,

WHEREAS, the parties hereto desire to enter into an agreement that sets forth the terms, conditions and requirements for the operation of the Facility.

The Parties therefore agree that throughout the term of the Lease the Facility will be operated and managed in accordance with the following:

(1) Lessee Status: Lessee covenants that it, and any authorized or approved assignee or subtenant of Lessee, will operate the Facility as a charitable, non-profit organization.

(2) County Capital Contribution and Facility Components: The County agrees to make the County Capital Contribution and the Lessee agrees to diligently conduct a capital campaign to solicit contributions from private donors to pay for the cost of construction of the Facility. Subject to Paragraph 8 of the Lease, Lessee shall not begin construction until it has secured cash, pledges and a loan commitment sufficient to construct the following components (the "Core Components"):

- fitness center
- gymnasium (including indoor track)
- multi-purpose space (including meeting space)
- locker rooms
- child watch space
- family aquatics center

Lessee desires to raise sufficient contributions, and if successful, intends to add the following additional components (the "Additional Components"):

- licensed child care center

(3) Core Functions: Lessee agrees to provide the following programs, functions or activities at the Facility utilizing the Core Components:

(Check if to be provided)

- Youth, teen, adult and senior athletics
- Health, fitness and wellness facilities and programs
- Youth and teen life skill development
- Community and family special events
- Art, culture and enrichment programming
- Environmental education
- Outdoor adventure education
- Therapeutic recreation
- Child Watch
- Instructional / recreational / therapeutic aquatics
- Competitive / recreational / aquatics

Lessee intends to provide the following programs if sufficient funds are raised by it to construct the Additional Components:

- Licensed child care

(4) Public Access: The Facility will be open to all residents of the City of Charlottesville and Albemarle County, and any non-resident member of the YMCA. Lessee's service area, as designated by the YMCA of the USA, includes all or portions of the counties of Greene, Nelson, Madison, Fluvanna, Orange and Louisa, and residents within this service area will also have access to the Facility. Lessee shall not discriminate against any person in its membership, programs or employment because of race, religion, color, gender, sexual orientation, national origin, disability, financial circumstances or any other basis prohibited by law.

(5) Relation to McIntire Park: Lessee desires to coordinate with the City's Parks and Recreation Department in the preparation of its master plan for McIntire Park. Integration of the Facility as a component part of the larger McIntire Park will depend in large degree on the outcome of that planning process. Nevertheless, it is anticipated that the Facility can be used to enhance current annual events at McIntire Park such as the Dogwood Festival, Earth Day, and Fourth of July events by holding on such days programs such as family open house activities, helping to coordinate outdoor activities with the Parks and Recreation Department or serving as the focal point for event coordination. Lessee also intends to offer programs and services that will take advantage of McIntire Park's inherent assets. Such programs may include walking programs for fitness for all ages using the trails and in bad weather using the Facility, summer day camps, and nature and environmental programs such as the YMCA's Earth Corps program through which YMCA member volunteers can build and maintain additional walking trails within the Park. Users of the Facility, as part of their overall fitness

program, can use these trails, giving participants both an indoor and outdoor experience, and an appreciation of the Park's inherent beauty. The Facility's multi-purpose space could be used for class room space, as a meal site and provide rainy day options in connection with other Parks and Recreation Department programs at the Park. Lessee could also use the Facility in a number of different ways to bring in new events to the community such as a duathlon and other athletic events.

(6) Management of Lessee: Responsibility for the ongoing management and operation of the Facility will be vested in an Executive Director or Chief Executive Officer who will report to a Board of Directors, chaired by a volunteer President, which will function as the policy-making body of the Lessee. The City and the County will each have the right to appoint two members (four members altogether) to the Lessee's Board of Directors. The Lessee agrees to amend its Bylaws to provide that the Directors of the City and the County Parks and Recreation Departments are both invited and expected to attend each and every meeting of the Board of Directors of the Lessee until termination of the Lease. Such Directors, like the Lessee's Executive Director, shall attend such meetings in an advisory capacity and have no vote, nor any liability as directors. Lessee further agrees to actively seek and recruit residents of the City as Board members to more equally balance the residencies of the members of Lessee's Board. All members of the Board, regardless of residency, will be required to be members of the YMCA.

(7) Fee Structure: The membership and fee structure of Lessee at the time of the opening of the Facility is anticipated to be as follows, and shall be subject to change by the Lessee's Board of Directors:

	Anticipated Monthly Membership Rate upon opening	Anticipated Non-Member Daily Admission Fee upon opening
City/County Resident – Family	\$72.00	\$9.00
City/County Resident – Adult Individual (ages 24-61)	\$48.00	\$6.00
City/County Resident – Senior Individual (62+)	\$43.00	\$5.00
City/County Resident - Young Adult (19-23) Individual	\$30.00	\$4.00
City/County Resident – Teen/High School (ages 14-18)	\$20.00	\$3.00
City/County Resident – Youth (13 and under)	\$18.00	\$3.00

Reasonable membership categories, and membership, daily admission, class and program fees shall be set by the Lessee's Executive Director / Chief Operating Officer, subject to the approval of Lessee's Board of Directors. Lessee understands that there are a number of City residents who currently utilize a punch pass system to allow them to have access to Crow and Smith pools for recreational lap swimming. Lessee agrees to implement a similar system for individual recreational lap swimming in addition to its membership and program fee structure to help transition these individuals to the Facility, which system shall be phased out over a reasonably short period of time based on its actual usage.

(8) Financial Assistance: No resident of the City of Charlottesville or Albemarle County will be denied access or use of the Facility for financial reasons. The Lessee will provide financial aid based on need to any City or County resident wishing to participate as a member of Lessee, or in any class, program or activity conducted at the Facility. The process to determine eligibility for financial aid shall be simple, applicant-friendly, consistently applied and subject to approval by the Lessee's Board of Directors to ensure both (i) the accuracy of the determinations and (ii) convenience to the applicants. Initially, and consistent with the policy of many other YMCA's, Lessee will require applicants for financial assistance to provide it with copies of such person's tax return for the prior year and last two payroll stubs. In the event the applicant does not file a tax return, Lessee will require the applicant to provide it with a letter from a federal or state agency indicating that the applicant is eligible for federal or state assistance.

The Lessee's income criteria for the granting of financial aid for reduced or free admissions or memberships are as follows:

- (i) Any individual or family living at or below the established federal poverty level will be eligible for 100% financial assistance.
- (ii) Any individual living at or above the median household income for the City of Charlottesville would not ordinarily be eligible for any financial assistance, subject to extenuating circumstances.
- (iii) To determine eligibility for financial assistance for families, an additional \$4500 per additional family member is added to the income standards used to determine eligibility.
- (iv) The Lessee's Board of Directors will establish a graded scale to determine the level of financial assistance available for those individuals and families whose means lie between the two standards of 100% to 0% assistance eligibility.

These criteria are subject to reasonable modifications from time to time by Lessee's Board of Directors. The Lessee also understands that the federal poverty level is used by the City school system to determine eligibility for certain school benefits and agrees to work with the school administrators to establish a system whereby a common application for financial assistance eligibility can be used.



(9) Hours of Operation: The anticipated hours of operation of the Facility will be as follows, subject to reasonable adjustment by the Lessee's Board of Directors:

Monday – Friday: 6:00 a.m. to 9:00 p.m.  
Saturday: 6:00 a.m. to 4:00 p.m.  
Sunday: 1:00 p.m. to 5:00 p.m.

(10) Community Engagement: Lessee will publicize, and participate in the efforts of the City and the County to publicize, membership benefits, programs, transportation assistance and employment opportunities at the Facility, in order to encourage use of the Facility and participation in programs by the public.

(11) Transportation and Parking: The Lessee desires that the City extend its existing bus line on Rugby Avenue into McIntire Park to serve the Facility. The Lessee will provide additional transportation assistance for programs as is reasonably feasible based upon need, insurance and operating costs and equipment available to it. The City agrees to permit users of the Facility to use the existing parking spaces in McIntire Park. Lessee will construct such additional parking spaces as is reasonably feasible based upon the size and layout of the Leased Property and as may be required by applicable zoning.

(12) Additional Provisions Related to Funding, Access and Use by City and County Residents. In the event the Lease is not renewed or is otherwise terminated, the City agrees to allow access to the Facility to County residents on the same basis in all respects as it allows access to City residents. In the event the City commits on or before May 20, 2008 to a future capital contribution of \$1,250,000 for construction of the family aquatics center, the Lessee agrees to include at least six (6) 25-yard competitive swimming lanes and a one (1) meter board and diving well and give the Charlottesville High School swim team priority access to those six lanes for practices up to two hours immediately after school classes end during the high school winter swim season, and otherwise subject to the same terms and conditions established by the Lessee with respect to other teams and programs using the pool. The Lessee further agrees that the City may deduct the funds provided by it for this purpose from any amounts owed to Lessee under Paragraph 31.A of the Lease upon termination of the Lease. The City and the Lessee further understand that the County has tentatively set aside \$1,250,000 in its CIP budget for 2012 for a competitive pool at the Facility. The City, County and Lessee agree to negotiate in good faith prior to completion of the City's master plan for the active side of McIntire Park with respect to the building of additional swim lanes and/or a competition pool; provided, however, that in the event no agreement is reached prior to the earlier of completion of such plan or May 20, 2008, the Lessee shall have the right to move forward with construction of the Facility with the components identified in Paragraph (2) above, including in the aquatics center, if the City has committed to make the \$1,250,000 capital contribution as set forth above, at least six lanes, a 1 meter board and diving well. Lessee agrees to work with the City and County to design and implement learn to swim programs for public school students.


(13) Additional Provisions Related to Rights of County With Respect to Lease.

Lessee agrees to provide the County Executive with copies of all reports and records provided to the City Manager under Paragraph 28 of the Lease, and the County shall have the same rights to audits and inspections of books and records as are provided to the City under such Paragraph. The County shall have the same right of entry as provided to the City under Paragraph 34 of the Lease. The City and Lessee agree that the Lease may not be modified in any way which lessens or adversely impacts the rights of the County or its residents hereunder.

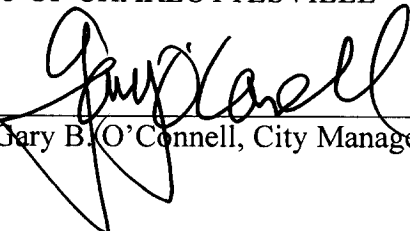
(14) Modification: This Agreement may only be modified by written amendment executed by authorized individuals on behalf of the Lessee, the City and the County.

WITNESS the following authorized signatures:

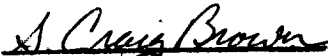
PIEDMONT FAMILY YMCA, INC.

By:   
Kurt J. Krueger, President

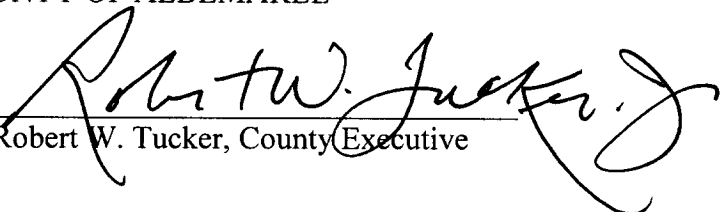
CITY OF CHARLOTTESVILLE

By:   
Gary B. O'Connell, City Manager

**Approved as to form:**

by   
City Attorney

COUNTY OF ALBEMARLE

By:   
Robert W. Tucker, County Executive

**Approved as to form:**

  
County Attorney

V4811553.9

**THIS GROUND LEASE** (hereafter the "Lease") is entered into this 15th day of January, 2008, by the **CITY OF CHARLOTTESVILLE** (hereafter the "City") and the **PIEDMONT FAMILY YMCA, INC.**, a charitable non-profit organization authorized to do business in the Commonwealth of Virginia (hereafter "Lessee").

**1. Leased Property.** The City, as the title holder of the subject property, in consideration of the rents and covenants to be paid and performed by the Lessee, leases to the Lessee and the Lessee leases a portion of the property commonly known as McIntire Park in the City of Charlottesville, being within the area described on Exhibit A, attached hereto and incorporated herein by reference, (hereafter the "Leased Property").

*[Note: the specific property subject to this Lease will be approximately 3 – 5 acres and located on the western side of McIntire Park in the area currently used as softball fields. The exact boundaries of the Leased Property will be determined by the City following the completion of a Master Plan for McIntire Park, which the City shall complete by May 20, 2008. The area to be studied for the exact boundaries is shown in Exhibit A. In the event the City has not completed the Master Plan, the boundaries of the Leased Property shall be the area identified on the plat attached hereto as Exhibit C, as per Paragraph 4 below. In no event shall the Leased Property include the existing picnic shelters, playground area, concession/restrooms building, parking areas or baseball fields.]*

**2. Title to Leased Property.** The City represents and warrants to the Lessee that it has the power and authority to execute this Lease and to carry out and perform all covenants to be performed by the City under this Lease.

**3. Condition of Leased Property and Lessee's Right of Entry.** The Leased Property is currently used as active and passive public recreational areas under the supervision of the City Department of Parks and Recreation. The City makes no representation or warranty as to the condition or suitability of the Leased Property for the intended purpose of this Lease prior to or at the time of the execution of this Lease. Lessee accepts the Leased Property "as is" on the effective date hereof.

Prior to the Commencement Date specified in Paragraph 4, the Lessee shall have the right to enter onto the Leased Property for the purpose of conducting, at Lessee's own risk, cost and expense, surveys, soil borings, engineering studies and other similar examinations necessary to determine the suitability of the Leased Property for the Lessee's intended use. Lessee shall provide reasonable notice to the City Department of Parks and Recreation prior to entering the property, and shall exercise this right of entry at all times so as not to unreasonably interfere with the normal operation of McIntire Park. If Lessee determines, as a result of its studies, that the Leased Property is not suitable for its intended use, Lessee may terminate this Lease prior to the Commencement Date, and neither party shall have any further rights or obligations hereunder. In the event of such termination Lessee shall, at its own expense, restore the Leased Property to the condition in which it existed prior to any changes made during the course of its studies. Lessee indemnifies and agrees to hold the City harmless and defend the City

from all claims for damages to the City or its agents caused by actions of the Lessee in the course of conducting the studies.

**4. Term.** The initial term of this Lease shall be for a period of forty (40) years, which shall begin on the date specified in the notice from Lessee to the City required below (the "Commencement Date") and continuing thereafter throughout the \_\_\_\_ day of \_\_\_\_\_, 2048. Lessee shall give the City at least sixty (60) days prior written notice of the Commencement Date, which shall be the date it may commence occupancy of the Leased Property, not later than 120 days from the earlier of May 20, 2008 or the date the City completes its Master Plan for McIntire Park. The City agrees to complete such Plan and give notice to the Lessee of the site in McIntire Park on or before May 20, 2008. In the event the City fails to complete such Plan or give such notice, the area identified on the plat attached hereto as Exhibit C shall be designated as the Leased Property without further action on the part of either the City or Lessee.

**5. Rent.** The Lessee shall pay to the City nominal rent at the rate of \$1.00 per year, the receipt of which is hereby acknowledged.

**6. Use.** Subject to the Lessee's compliance with all applicable local, state and federal laws and regulations, the City hereby grants permission to the Lessee to occupy the Leased Property for the purposes of constructing and operating a fitness and recreational center with such amenities as are provided for in the Use Agreement (defined in Paragraph 7 below) (hereinafter the "Facility").

**7. Purpose.** Unless otherwise agreed by the parties, the use of the Facility shall be primarily for the benefit of residents of the City of Charlottesville and Albemarle County, and non-resident members of Lessee. The operation of the Facility, and the conducting of any programs, classes or activities on the Leased Property, shall be in accordance with a "Use Agreement" executed by the parties hereto and the County of Albemarle, which is attached hereto and incorporated herein as Exhibit B. The Use Agreement may be modified from time to time with the approval of all of the parties to the Use Agreement, provided that such modifications are in writing and signed by authorized representatives of all such parties.

**8. Construction Commencement and Completion.** If construction is not commenced within sixty (60) months of the execution of this Lease, this Lease shall terminate unless an extension of time is requested by the Lessee for good cause and agreed to by the City, such agreement not to be unreasonably withheld. Subject to delays beyond the reasonable control of the Lessee, the Lessee shall substantially complete construction of the Facility and obtain a Certificate of Occupancy within twenty-four (24) months of the beginning of construction, unless an extension of time is requested by the Lessee for good cause and agreed to by the City, such agreement not to be unreasonably withheld. All construction shall be conducted in such a way as to minimize disruption to other activities and uses of McIntire Park outside of the Leased Property. In the event construction materially disrupts operations of the City or other authorized users of McIntire Park outside of the Leased Property, the City may, by written order to the

Lessee, require the Lessee to temporarily stop all, or any part, of the construction. Upon completion of construction, Exhibit A shall be replaced with a map showing the exact coordinates for the location of the Facility, in addition to the boundaries of the Leased Property.

**9. Quiet Enjoyment.** The Lessee, on paying the rent and observing and keeping all covenants, warranties, agreements and conditions of the Lease on its part to be kept, shall quietly have and enjoy the Leased Property and the Facility during the Lease term.

**10. Approval of Improvements.**

A. No improvements of any kind, including driveways and parking areas, shall be made to the Leased Property unless and until Lessee shall have obtained any and all required local, state and federal governmental approvals and permits, and all such improvements shall be undertaken and constructed in strict compliance with all applicable City, state and federal rules, regulations and laws.

B. The City and the Lessee acknowledge that the Lessee's intended use of the Leased Property may require a rezoning, special use permit or site plan approval for all or any portion of the Leased Property. By its execution of this Lease the City hereby evidences its written consent for Lessee to apply for and seek any and all land use and zoning approvals necessary for the future intended use of the property. The City's consent shall not be construed as a representation that it will grant or approve any particular application submitted by Lessee, which is otherwise within the City's discretion to approve or deny.

C. The Lessee shall, at its own expense, engage licensed architects, engineers and other professionals as necessary to conduct all necessary site evaluations and surveys, to include, but not necessary limited to, public records, easements, utility locations, plat surveys, existing conditions surveys, soils investigations and environmental investigations. The Lessee shall produce for approval design plans and construction documents, to include specifications, site, building, traffic, roadway and parking plans. The preliminary drawings and design plan for the entire Facility shall be approved by the City Council prior to commencement of any construction. Additionally, a site plan must be approved by the City Planning Commission prior to the commencement of any construction. Such approvals by the City Council and the City Planning Commission shall not be unreasonably withheld.

D. The design and exterior appearance of the proposed Facility shall be subject to the approval of the Charlottesville City Council. Prior to the commencement of construction Lessee shall submit to the City Board of Architectural Review ("BAR") a detailed and clear description of the exterior features of the proposed Facility, including but not limited to the general design, arrangement, texture, materials, plantings and colors to be used, and the type of windows, exterior doors, lights, landscaping, parking, signs and other exterior fixtures and appurtenances. The BAR shall, within forty-five (45) days from receipt of a complete submittal make a

recommendation to the Charlottesville City Council regarding the appropriateness of the design and appearance of the proposed Facility and if a recommendation is not made, within such time period the application shall be forwarded to City Council for action. Within thirty (30) days of the earlier of (i) receipt of the recommendation of the BAR or (ii) expiration of the review period, the City Council shall approve, approve with conditions or disapprove the proposed exterior design and appearance of the Facility. Such approval by the City Council shall not be unreasonably withheld. The Lessee and the BAR or the City Council, as applicable, may mutually agree to an extension of the time limits set forth in this Paragraph.

E. If Lessee fails to obtain any of the approvals necessary to construct and operate the Facility, following diligent pursuit thereof, the Lessee may terminate this Lease without further obligation, responsibility or duty by either party hereto.

F. The City agrees to grant to Lessee standard easements to and from the Leased Property for any utility lines required to serve the Facility. Lessee shall have a right of access to and from the Leased Property over existing McIntire Park ingresses and egresses.

G. The Lessee shall have the right to place signs on the exterior of the Facility and at such other location at McIntire Park as may be permitted pursuant to the City of Charlottesville zoning ordinance.

H. Upon termination of this Lease for any cause Lessee shall remove, at Lessee's sole expense, any and all improvements made by the Lessee to the Leased Property excepting those made with the consent or approval of the City. The City shall provide thirty (30) days notice of any request to remove such improvements or to elect to keep such improvements as the City's property. In the event of removal Lessee shall be responsible for the restoration of the Leased Property to its prior condition, and if Lessee fails to do so then the City may do so and collect from Lessee the cost thereof.

**11. Existing Improvements within the Leased Property.** Lessee shall, at its own expense, be responsible for the removal and disposal of any existing structures or improvements on the Leased Property at the time of the execution of this Lease. Lessee shall be under no obligation to replace any improvements removed pursuant to this provision. In lieu of disposal by the Lessee, the City may, in its discretion, retain ownership of any materials, equipment or structures removed by the Lessee. In the event the City elects to retain ownership, any extra cost for removal over and above demolition costs shall be borne by the City.

**12. Reservation of Easements.** The City reserves to itself, while this Lease is in effect, easements over and for all existing utilities within the Leased Property, including but not limited to water, sanitary sewer, storm water sewer, electrical power and gas. At the option of the City, Lessee shall execute standard deeds of easement granting the City adequate access to any existing utilities within the Leased Property. Any relocation of existing utilities required by construction of the Facility and related improvements shall

require the prior approval of the City of Charlottesville, which approval shall not be unreasonably withheld, and shall be accomplished at the sole expense of the Lessee.

**13. Existing Recreation or Parking Facilities.** All construction shall be performed in a manner so as not to materially reduce or interfere with the City's or the City Parks and Recreation Department's existing recreational or parking amenities located outside of the Leased Property at McIntire Park; provided, however, that the Lessee and the City, through its Department of Parks and Recreation, may agree on certain site or use restrictions during the construction period. The Lessee shall provide reasonable parking and roadway improvements to accommodate the construction and operation of the Facility.

**14. Title, Liens.** Title to the ground shall remain in the name of the City. Title to the Facility constructed by the Lessee shall be titled in the name of the Lessee, except as otherwise provided herein. The Lessee agrees that the Leased Property and the Facility shall not be encumbered by any mortgage, lien (mechanic's lien, materialmen's lien or other lien), pledge other encumbrance during the term of the Lease. If any such lien or notice of lien rights shall be filed with respect to the Leased Property, the Lessee shall immediately take such steps as may be necessary to have such lien released, and shall permit no further work to be performed at the Leased Property until such release has been accomplished.

**15. Financial Assurances.** Prior to the commencement of any construction in or upon the Leased Property, the Lessee shall have entered into a written contract with a licensed and bonded Class A general contractor and shall have secured a performance bond for the entire amount of the contract, or shall have secured other contractual arrangements reasonably acceptable to the City that provide assurance that the construction will be completed. Additionally, prior to the commencement of construction, the Lessee shall present to the City Manager for his review and concurrence (a) a capital financial plan containing adequate assurance of the Lessee's ability to finance the construction of the Facility and (b) a five-year operational plan and budget that demonstrates adequate assurance that the Lessee will have available funds to support the operational plan for use and maintenance of the Facility. The Lessee acknowledges that the City is under no obligation under this Lease to provide any funding to construct, equip or operate the Facility.

**16. Maintenance / Operational Expenses.**

A. Upon the date of commencement of construction of the Facility, and continuing throughout the term of the Lease or its termination, whichever first occurs, the Lessee shall, at its own cost and expense, maintain and keep the Leased Property, whether improved or unimproved, in a reasonably clean, attractive condition, and not commit or allow any waste or damage to be committed on or to any portion of the Leased Property. The Lessee shall be responsible for all costs associated with the ongoing maintenance, operation and repair of the Facility, including but not limited to the roof, doors, windows, mechanical, utility and electrical systems, sidewalks, parking areas

installed by Lessee, and landscaping. Maintenance, repair and snow removal from joint City – Lessee parking areas shall be as set forth in the joint use agreement for such areas. Lessee further agrees to abide by any duly adopted City policies, present or future, governing the use of pesticides, cleaners, fertilizers or other products at McIntire Park.

B. As part of its maintenance responsibilities Lessee agrees to comply fully with any applicable governmental laws, regulations and ordinances, limiting and regulating the use, occupancy or enjoyment of the Leased Property, and to comply with the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code, as supplemented and modified by duly enacted ordinances of the City of Charlottesville.

**17. Utilities and Services.** The Lessee shall be responsible for and pay all costs and charges for utilities and services in connection with the Lessee's occupancy of the Leased Property including, but not limited to, permits and connection charges for gas, heat, light, water, sewer, power, telephone, cable, internet connection, janitorial, trash removal and other utilities or services. All of the foregoing utilities and services shall be instituted and obligated for in the name of the Lessee, and the City shall have no responsibility whatsoever for the furnishing or cost of the same.

**18. Taxes and Assessments.** Real property taxes shall not be imposed against the leasehold interest of Lessee if Lessee is exempt from the payment of real property taxes pursuant to Chapter 36 of Title 58.1 of the Code of Virginia (Virginia Code sections 58.1-3600 *et seq.*); provided, however, that real estate taxes on the Lessee's leasehold interest shall become due and payable at any time that Lessee is no longer entitled to a tax exemption under the laws of the Commonwealth of Virginia.

**19. [Intentionally Omitted.]**

**20. Damage or Destruction of the Leased Property.** The City shall have no responsibility for any damage caused to the Facility or the Leased Property, except that caused by the negligence or willful misconduct of the City or its employees and agents, to the extent provided by law. The Lessee agrees that all property of every kind and description kept, stored or placed in the Facility shall be at the Lessee's sole risk and hazard and that the City shall not be responsible for any loss or damage to any of such property resulting from fire, explosion, water, steam, gas, electricity, the elements or otherwise, whether or not originating in the Facility and whether or not caused by or from leaks or defects in or breakdown of plumbing, piping, wiring, heating or any other facility, equipment or fixtures or any other similar cause or act.

**21. Indemnification.** The Lessee shall indemnify, defend and hold the City and its officials, officers and employees harmless from and against any and all liability, loss, claim, suit, damage, charge or expense suffered, sustained, incurred or in any way be subjected to, on account of death of or injury to any person and for damage to, loss of and destruction of any property whatsoever, which arises out of, results from, or is in any way connected with actions taken in the performance of the Lessee's obligations under this



Lease, or which occurs as a consequence of any negligence, omission or misconduct of the Lessee and any of its contractors, subcontractors, agents or employees in the performance of the Lessee's obligations under this Lease. The City, to the extent provided by law, shall be responsible for the negligent acts, omissions or misconduct of its agents or employees.

**22. Assignment.** The Lessee shall have no right to assign, in any manner or fashion, any of the rights, privileges or interests accruing to it under this Lease to any other individual or entity, without the prior written consent of the City, which consent shall not be unreasonably withheld in the event of a proposed assignment to a successor non-profit charitable organization. In the event of assignment, the Lessee shall remain fully liable and responsible for all of the obligations imposed by this Lease unless it is otherwise agreed in writing by the City.

**23. Sublease.** The Lessee may sublet portions of the Facility subject to approval by the City. The operations of any tenant under such a sublease arrangement must be compatible with the operations of the Lessee and the intent of this Lease. Any sublease will ensure the completion of the proposed construction and continuation of any necessary utilities, maintenance and repairs. Any sublease must incorporate the terms of all contracts and agreements then in existence between the parties in connection with the Facility including the terms of this Lease.

**24. Nondiscrimination.** During the term of this Lease, the Lessee agrees that it will not discriminate against any person in its membership, programs or employment because of race, religion, color, gender, sexual orientation, national origin, disability, financial circumstances or any other basis prohibited by law.

**25. Drug-Free Workplace.** During term of this Lease, the Lessee is to provide a drug-free workplace for the Lessee's employees, and to provide notification of this policy to its employees and applicants for employment. For the purposes of this Paragraph, "drug-free workplace" means a workplace where employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the term of this Lease.

**26. Insurance.** Prior to commencing any construction of the Facility, the Lessee, at its sole cost and expense, shall secure and maintain throughout the term of this Lease, the following insurance coverage:

(a) **Workers' Compensation Insurance.** The Lessee shall maintain and require all contractors or subcontractors to maintain such workers' compensation coverage as may be required pursuant to the provisions of Chapter 8 (§65.2-800 et seq.) of Title 65.2 of the Code of Virginia, 1950, as amended.

(b) **Commercial General Liability Insurance.** The Lessee shall maintain and require all contractors or subcontractors to maintain, per occurrence,

the following coverages: \$1,000,000 general aggregate limit (other than products/completed operations); \$1,000,000 aggregate limit products/completed operations; \$1,000,000 personal injury and advertising injury limit liability; \$1,000,000 each occurrence limit; \$100,000 fire damage limit (any one fire); and \$10,000 medical expenses limit (any one person).

(c) Fire and Extended Coverages. The Lessee shall maintain coverage against loss, damage or destruction by fire and such other hazards as are covered and protected against, at standard rates under policies of insurance commonly referred to and known as "extended coverage," as the same may exist from time to time.

Each insurance policy required by this Paragraph shall be written or endorsed so as to preclude the exercise of the right of subrogation against the City and, with the exception of Workers' Compensation Insurance, shall name the City as an additional insured. Each insurance policy required by this Paragraph also shall be endorsed to include the following clause: Should any of the insurance policies be canceled before the expiration date thereof, the issuing insurance company will endeavor to mail written notice of such cancellation to the City at least 10 days in advance. Upon receipt of any notice, verbal or written, that the said insurance is subject to cancellation, the Lessee shall immediately (within five business days) notify the City. In the event Lessee fails to comply with the requirements of this section, the City shall have the right to require the Lessee to suspend use of the Facility until such time as the requirements of this Paragraph are met.

**27. Proof of Insurance.** The Lessee shall provide the City with one or more certificate(s) of insurance confirming the insurance required by this Lease. The Workers' Compensation Insurance and Commercial General Liability Insurance certificates shall be provided to the City by the Lessee upon the Commencement Date of this Lease, then again (without demand) on or before the expiration date of any policy and, upon request by the City, on each anniversary of the Commencement Date of this Lease. The Fire and Extended Coverages certificate shall be provided to the City by the Lessee prior to the commencement of construction of the Facility, then again (without demand) on or before the expiration date of any policy and, upon request by the City, on each subsequent anniversary of the Commencement Date of this Lease. Upon demand by the City, Lessee shall furnish copies of the Lessee's insurance policies, together with the required endorsements as provided herein.

**28. Annual Report; Financial Records.** The Lessee shall prepare an annual report for presentation to the City Manager upon the anniversary of the Commencement Date of this Lease or at such time as otherwise agreed, including an operational plan and budget with at least a five-year projection. In accordance with generally accepted accounting procedures, the Lessee shall maintain books and records pertaining to the Leased Property and Facility and amounts expended by it in connection with this Lease. Upon request, the City shall be entitled, at its own expense, to obtain an audit of such books and records. Upon receipt of notice that the City desires an audit, the Lessee shall

make its books and records available to the City and its auditor(s), and the Lessee shall cooperate with the audit.

**29. Default.** Each of the following occurrences relative to the Lessee shall constitute default:

- (a) Failure or refusal by the Lessee to make the timely payment of rent or other charges due under this Lease when the same shall become due and payable, provided the City has given the Lessee fifteen (15) days written notice of the same;
- (b) The filing or execution or occurrence of an insolvency proceeding by or against the Lessee; or an assignment for the benefit of creditors; or a petition or other proceeding by or against the Lessee for the appointment of a trustee or a receiver or for the liquidation of any of the Lessee's property; or a proceeding by any governmental authority for the dissolution or liquidation of the Lessee;
- (c) Failure by the Lessee in the performance or compliance with any of the terms, covenants, or conditions provided in this Lease, including provisions of the Use Agreement, which failure continues uncured for a period of sixty (60) days after written notice from the City to the Lessee specifying the items in default; provided, however, if such failure is of a type that is not reasonably capable of being cured within such sixty (60) day period, such sixty (60) day period shall be extended for so long as the Lessee is making diligent efforts to cure such default; or
- (d) Any change in the operation, charter, or ownership of the Lessee (including, but not limited to, loss of Internal Revenue Code 501(c)(3) tax-exempt status) incompatible with the purpose of this Lease, or a change, incompatible with the purpose of this Lease, in the nature of the services provided at the inception of the Lease as set forth more fully in Exhibit B).

In the event of default as defined in this Paragraph, title to the Facility shall revert automatically to the City, and the Lessee shall surrender the Facility as provided in Paragraph 32 and execute all documents deemed necessary by the City to convey title to the Facility.

**30. Eminent Domain.** In the event of termination due to any taking by eminent domain, partial or total, the City shall be entitled to receive that part of the total condemnation award or compensation for the taking which is equal or attributable to the value of the land taken, and the Lessee shall be entitled to receive the part of the award or compensation which is equal or attributable to the value of the Facility thereupon. If the taking is such that sufficient area remains for the Lessee to continue its normal operations, then the Lease shall terminate as to the part of the premises and Facility so taken, but shall remain in effect with respect to the part of the premises not taken.

### **31. Termination of Lease.**

A. In the event the City chooses not to enter into a renewal of this Lease and not to enter into a new lease allowing continued operation of the Facility by the Lessee on substantially the same conditions, then (i) the City shall provide the Lessee with five years' notice of its intent not to enter into such a renewal or new lease (or shall renew this Lease for a sufficient duration to provide such five years' notice); (ii) the Lessee shall surrender the Facility as provided in Paragraph 32, and transfer title to the City at Lease termination and execute all documents deemed necessary by the City to convey title to the Facility. In the event of such termination or any agreed upon earlier termination of this Lease; the City shall compensate the Lessee in the amount of ninety percent (90%) of fair market value of the Facility as of the time of Lease termination. Nothing in this Paragraph shall be construed as granting the Lessee a lease for a period longer than forty years.

B. To calculate fair market value, the parties shall mutually determine a fair market value for the Facility, which value shall be determined as of the date of the termination of this Lease. If for any reason the parties are unable to agree upon a price, the following procedure shall apply: The City and the Lessee shall each select one qualified individual as an appraiser at each party's own expense. Said two appraisers shall determine the market value of the Facility (without adjustment for the status of the underlying real estate), including any furniture, fixtures and equipment, as of the date of the termination of the Lease, taking into consideration such factors as are generally considered in valuing similar facilities. If said appraisers are unable to mutually agree upon a fair market price for the facility, furniture, fixtures and equipment within thirty (30) days after their appointment, they shall select a third qualified appraiser and the two of the three appraisals closest in value shall be averaged, and that average shall be binding on the parties.

**32. Surrender.** Upon termination of the Lease, unless the Lease is renewed or a new Lease is granted to the Lessee pursuant to the requirements of state law, and upon payment by the City to Lessee of the amount required under Paragraph 31 above, the Lessee shall quit and surrender to the City the Leased Property and the Facility in good order and condition, except for ordinary wear and tear, free and clear of any liens or encumbrances, provided that the Lessee shall remove from the premises any personal property belonging to the Lessee (other than furniture, fixtures and equipment) or third parties, which can be so removed without material damage to the Leased Property and the Facility, and at its cost and expense shall repair any damage caused by such removal. Personal property not so removed shall become the property of the City, which may thereafter remove the property and dispose of it. Upon such termination and payment, the City may without further notice enter on, reenter, possess and repossess the Leased Property and the Facility by any necessary means, and may remove the Lessee and all other persons, and may have, hold and enjoy the Leased Property and the Facility and the right to receive all rental and other income of and from the same. The surrender of this Lease shall not work a merger and shall, at the option of the City, terminate all or any

existing subleases or may, at the option of the City, operate as an assignment to it of any or all such subleases.

**33. Failure to Construct Facility or Abandonment of Use.** If the Lessee fails to substantially complete the Facility within the timeframe set forth in Paragraph 8 above, discontinues use of the Facility for the purposes as set forth in this Lease and as more particularly described in Exhibit B for a period of at least six (6) months, or willfully abandons the use of the Facility for a period of at least six (6) months prior to the expiration of the term of the Lease, the Facility shall revert automatically to the City. In such event, the Lessee shall surrender the Facility as provided in Paragraph 32 and transfer title to the City at Lease termination, and execute all documents deemed necessary by the City to convey title to the Facility. Any period of time in which use of the Facility is discontinued or abandoned for the sole purpose of Facility maintenance, casualty repairs or improvements shall not be included in the six month period described in this Paragraph.

**34. Right of Entry.** At any time during the term of the Lease, the City shall have the right, upon prior notice to the Lessee (except in the event of an emergency), to enter the Leased Property and the Facility at all reasonable times for the purposes of inspecting the Leased Property and the Facility to ensure compliance with the terms of this Lease. Notwithstanding the City's right to inspect the Leased Property, the City shall have no obligation to inspect the same. The City's failure to detect any violation or to notify the Lessee of any violation shall not relieve the Lessee of obligations under the terms of this Lease.

**35. Waiver.** No failure on the part of the City to enforce any of the terms or conditions set forth in this Lease shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the City of any default or failure to perform by Lessee shall be construed as or deemed to be a waiver of any other and/or subsequent default or failure to perform. The acceptance or payment of any rentals, fees and/or charges and/or the performance of all or any part of this Lease, for or during any period(s) following a default or failure to perform by the Lessee, shall not be construed as or deemed to be a waiver by the City of any rights hereunder.

**36. Identity of Interest.** The execution of this Lease or the performance of any act or acts pursuant to the provisions hereof shall not be deemed to have the effect of creating between the Lessee and the City any relationship of principal and agent, partnership or relationship other than that of lessee and lessor.

**37. Notice.** The City's designated representative to receive all communications, claims and correspondence regarding this Lease is the City Manager, at the following address: P.O. Box 911, Charlottesville, Virginia, 22902. The Lessee's designated representative to receive all communications, claims and correspondence regarding this Lease is its Executive Director/CEO, at the following address: 442 Westfield Road, Charlottesville, VA 22901. Either party may change the designated representative or

address for receipt of notices by giving notice to the other party as provided in this Paragraph.

**38. Modification or Amendment.** Any other modification or amendment of the Lease (other than for an extension or enlargement of the time or territory of the Lease, which is subject to Virginia Code section 15.2-2105) shall be binding only if approved by the Lessee and the City, and evidenced in a writing signed by each.

**39. Time of Essence.** Unless specifically provided herein to the contrary, in all instances where a party is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood and stipulated that time is of the essence.

**40. Cooperation.** The City and the Lessee agree to provide any further documentation or cooperate in any way necessary to carry out the basic intent of this Lease.

**41. Persons Bound.** The covenants, agreements, terms, provisions and conditions of this Lease shall bind and inure to the benefit the respective parties hereto and to their representatives, successors and (where permitted by this Lease) their assigns.

**42. Entire Agreement.** This Lease, together with the schedules, riders and exhibits, if any, attached, contains the entire agreement between the City and the Lessee. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding on either party except to the extent incorporated in this Lease.

**43. Recording.** Any party shall have the right, at its sole cost and expense, to prepare and record a Memorandum of Lease or short form of the lease in recordable form, but excluding detailed provisions of this Lease.

**44. Headings.** The section headings are for convenience only and shall not be used to explain, modify, simplify, limit, define or aid in determining the meaning or content.

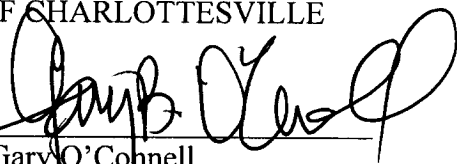
**45. Interpretation.** In the event of any conflict, discrepancy or inconsistency between this document and any other documents which have been incorporated into this document by reference or made exhibits or attachments hereto, then the provisions set forth within the body of this document shall govern the parties' intent.

**46. Severability.** In the event that any term, provision or condition of this Lease, or the application thereof to any person or circumstances, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, and the application of any term, provision or condition contained herein to any person or circumstances other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

**47. Governing Law.** This Lease shall be governed, construed and enforced by and in accordance with the laws of the Commonwealth of Virginia. Any suit or controversy arising under this Lease shall be litigated in the General District or Circuit Court of the City of Charlottesville, Virginia. The party prevailing or substantially prevailing in any such litigation shall be entitled to an award of its attorney's fees from the non-prevailing party.

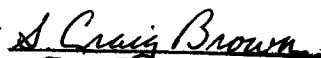
We agree to be bound by this Lease and its terms and conditions.

LESSOR:  
CITY OF CHARLOTTESVILLE

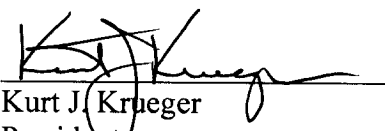
By   
Gary O'Connell  
City Manager

Date 1/22/08

Approved as to form:

by   
City Attorney

LESSEE:  
PIEDMONT FAMILY YMCA, INC.

By   
Kurt J. Krueger  
President

Date 1/15/08

V4802940.8

Exhibit A





**USE AGREEMENT  
MCINTIRE PARK NON-PROFIT COMMUNITY RECREATION CENTER**

THIS AGREEMENT is entered into this 15<sup>th</sup> day of January, 2008, among the **PIEDMONT FAMILY YMCA, INC.** (the "Lessee"), the **CITY OF CHARLOTTESVILLE** (the "City"), and the **COUNTY OF ALBEMARLE** (the "County").

WHEREAS, the City and the Lessee have entered into a Ground Lease dated January 15, 2008, for certain property within McIntire Park in the City of Charlottesville (the "Lease"); and,

WHEREAS, under the terms of the Lease the Lessee will construct and operate a community recreation center on the Leased Premises (the "Facility"); and,

WHEREAS, the County has agreed to make a future capital contribution of \$2,030,000 for construction of the Facility (the "County Capital Contribution"); and,

WHEREAS, the parties hereto desire to enter into an agreement that sets forth the terms, conditions and requirements for the operation of the Facility.

The Parties therefore agree that throughout the term of the Lease the Facility will be operated and managed in accordance with the following:

(1) Lessee Status: Lessee covenants that it, and any authorized or approved assignee or subtenant of Lessee, will operate the Facility as a charitable, non-profit organization.

(2) County Capital Contribution and Facility Components: The County agrees to make the County Capital Contribution and the Lessee agrees to diligently conduct a capital campaign to solicit contributions from private donors to pay for the cost of construction of the Facility. Subject to Paragraph 8 of the Lease, Lessee shall not begin construction until it has secured cash, pledges and a loan commitment sufficient to construct the following components (the "Core Components"):

- fitness center
- gymnasium (including indoor track)
- multi-purpose space (including meeting space)
- locker rooms
- child watch space
- family aquatics center

Lessee desires to raise sufficient contributions, and if successful, intends to add the following additional components (the "Additional Components"):

- licensed child care center

(3) Core Functions: Lessee agrees to provide the following programs, functions or activities at the Facility utilizing the Core Components:

(Check if to be provided)

- Youth, teen, adult and senior athletics
- Health, fitness and wellness facilities and programs
- Youth and teen life skill development
- Community and family special events
- Art, culture and enrichment programming
- Environmental education
- Outdoor adventure education
- Therapeutic recreation
- Child Watch
- Instructional / recreational / therapeutic aquatics
- Competitive / recreational / aquatics

Lessee intends to provide the following programs if sufficient funds are raised by it to construct the Additional Components:

- Licensed child care

(4) Public Access: The Facility will be open to all residents of the City of Charlottesville and Albemarle County, and any non-resident member of the YMCA. Lessee's service area, as designated by the YMCA of the USA, includes all or portions of the counties of Greene, Nelson, Madison, Fluvanna, Orange and Louisa, and residents within this service area will also have access to the Facility. Lessee shall not discriminate against any person in its membership, programs or employment because of race, religion, color, gender, sexual orientation, national origin, disability, financial circumstances or any other basis prohibited by law.

(5) Relation to McIntire Park: Lessee desires to coordinate with the City's Parks and Recreation Department in the preparation of its master plan for McIntire Park. Integration of the Facility as a component part of the larger McIntire Park will depend in large degree on the outcome of that planning process. Nevertheless, it is anticipated that the Facility can be used to enhance current annual events at McIntire Park such as the Dogwood Festival, Earth Day, and Fourth of July events by holding on such days programs such as family open house activities, helping to coordinate outdoor activities with the Parks and Recreation Department or serving as the focal point for event coordination. Lessee also intends to offer programs and services that will take advantage of McIntire Park's inherent assets. Such programs may include walking programs for fitness for all ages using the trails and in bad weather using the Facility, summer day camps, and nature and environmental programs such as the YMCA's Earth Corps program through which YMCA member volunteers can build and maintain additional walking trails within the Park. Users of the Facility, as part of their overall fitness

program, can use these trails, giving participants both an indoor and outdoor experience, and an appreciation of the Park's inherent beauty. The Facility's multi-purpose space could be used for class room space, as a meal site and provide rainy day options in connection with other Parks and Recreation Department programs at the Park. Lessee could also use the Facility in a number of different ways to bring in new events to the community such as a duathlon and other athletic events.

(6) Management of Lessee: Responsibility for the ongoing management and operation of the Facility will be vested in an Executive Director or Chief Executive Officer who will report to a Board of Directors, chaired by a volunteer President, which will function as the policy-making body of the Lessee. The City and the County will each have the right to appoint two members (four members altogether) to the Lessee's Board of Directors. The Lessee agrees to amend its Bylaws to provide that the Directors of the City and the County Parks and Recreation Departments are both invited and expected to attend each and every meeting of the Board of Directors of the Lessee until termination of the Lease. Such Directors, like the Lessee's Executive Director, shall attend such meetings in an advisory capacity and have no vote, nor any liability as directors. Lessee further agrees to actively seek and recruit residents of the City as Board members to more equally balance the residencies of the members of Lessee's Board. All members of the Board, regardless of residency, will be required to be members of the YMCA.

(7) Fee Structure: The membership and fee structure of Lessee at the time of the opening of the Facility is anticipated to be as follows, and shall be subject to change by the Lessee's Board of Directors:

	Anticipated Monthly Membership Rate upon opening	Anticipated Non-Member Daily Admission Fee upon opening
City/County Resident – Family	\$72.00	\$9.00
City/County Resident – Adult Individual (ages 24-61)	\$48.00	\$6.00
City/County Resident – Senior Individual (62+)	\$43.00	\$5.00
City/County Resident - Young Adult (19-23) Individual	\$30.00	\$4.00
City/County Resident – Teen/High School (ages 14-18)	\$20.00	\$3.00
City/County Resident – Youth (13 and under)	\$18.00	\$3.00

Reasonable membership categories, and membership, daily admission, class and program fees shall be set by the Lessee's Executive Director / Chief Operating Officer, subject to the approval of Lessee's Board of Directors. Lessee understands that there are a number of City residents who currently utilize a punch pass system to allow them to have access to Crow and Smith pools for recreational lap swimming. Lessee agrees to implement a similar system for individual recreational lap swimming in addition to its membership and program fee structure to help transition these individuals to the Facility, which system shall be phased out over a reasonably short period of time based on its actual usage.

(8) Financial Assistance: No resident of the City of Charlottesville or Albemarle County will be denied access or use of the Facility for financial reasons. The Lessee will provide financial aid based on need to any City or County resident wishing to participate as a member of Lessee, or in any class, program or activity conducted at the Facility. The process to determine eligibility for financial aid shall be simple, applicant-friendly, consistently applied and subject to approval by the Lessee's Board of Directors to ensure both (i) the accuracy of the determinations and (ii) convenience to the applicants. Initially, and consistent with the policy of many other YMCA's, Lessee will require applicants for financial assistance to provide it with copies of such person's tax return for the prior year and last two payroll stubs. In the event the applicant does not file a tax return, Lessee will require the applicant to provide it with a letter from a federal or state agency indicating that the applicant is eligible for federal or state assistance.

The Lessee's income criteria for the granting of financial aid for reduced or free admissions or memberships are as follows:

- (i) Any individual or family living at or below the established federal poverty level will be eligible for 100% financial assistance.
- (ii) Any individual living at or above the median household income for the City of Charlottesville would not ordinarily be eligible for any financial assistance, subject to extenuating circumstances.
- (iii) To determine eligibility for financial assistance for families, an additional \$4500 per additional family member is added to the income standards used to determine eligibility.
- (iv) The Lessee's Board of Directors will establish a graded scale to determine the level of financial assistance available for those individuals and families whose means lie between the two standards of 100% to 0% assistance eligibility.

These criteria are subject to reasonable modifications from time to time by Lessee's Board of Directors. The Lessee also understands that the federal poverty level is used by the City school system to determine eligibility for certain school benefits and agrees to work with the school administrators to establish a system whereby a common application for financial assistance eligibility can be used.

(9) Hours of Operation: The anticipated hours of operation of the Facility will be as follows, subject to reasonable adjustment by the Lessee's Board of Directors:

Monday – Friday: 6:00 a.m. to 9:00 p.m.  
Saturday: 6:00 a.m. to 4:00 p.m.  
Sunday: 1:00 p.m. to 5:00 p.m.

(10) Community Engagement: Lessee will publicize, and participate in the efforts of the City and the County to publicize, membership benefits, programs, transportation assistance and employment opportunities at the Facility, in order to encourage use of the Facility and participation in programs by the public.

(11) Transportation and Parking: The Lessee desires that the City extend its existing bus line on Rugby Avenue into McIntire Park to serve the Facility. The Lessee will provide additional transportation assistance for programs as is reasonably feasible based upon need, insurance and operating costs and equipment available to it. The City agrees to permit users of the Facility to use the existing parking spaces in McIntire Park. Lessee will construct such additional parking spaces as is reasonably feasible based upon the size and layout of the Leased Property and as may be required by applicable zoning.

(12) Additional Provisions Related to Funding, Access and Use by City and County Residents. In the event the Lease is not renewed or is otherwise terminated, the City agrees to allow access to the Facility to County residents on the same basis in all respects as it allows access to City residents. In the event the City commits on or before May 20, 2008 to a future capital contribution of \$1,250,000 for construction of the family aquatics center, the Lessee agrees to include at least six (6) 25-yard competitive swimming lanes and a one (1) meter board and diving well and give the Charlottesville High School swim team priority access to those six lanes for practices up to two hours immediately after school classes end during the high school winter swim season, and otherwise subject to the same terms and conditions established by the Lessee with respect to other teams and programs using the pool. The Lessee further agrees that the City may deduct the funds provided by it for this purpose from any amounts owed to Lessee under Paragraph 31.A of the Lease upon termination of the Lease. The City and the Lessee further understand that the County has tentatively set aside \$1,250,000 in its CIP budget for 2012 for a competitive pool at the Facility. The City, County and Lessee agree to negotiate in good faith prior to completion of the City's master plan for the active side of McIntire Park with respect to the building of additional swim lanes and/or a competition pool; provided, however, that in the event no agreement is reached prior to the earlier of completion of such plan or May 20, 2008, the Lessee shall have the right to move forward with construction of the Facility with the components identified in Paragraph (2) above, including in the aquatics center, if the City has committed to make the \$1,250,000 capital contribution as set forth above, at least six lanes, a 1 meter board and diving well. Lessee agrees to work with the City and County to design and implement learn to swim programs for public school students.

(13) Additional Provisions Related to Rights of County With Respect to Lease.

Lessee agrees to provide the County Executive with copies of all reports and records provided to the City Manager under Paragraph 28 of the Lease, and the County shall have the same rights to audits and inspections of books and records as are provided to the City under such Paragraph. The County shall have the same right of entry as provided to the City under Paragraph 34 of the Lease. The City and Lessee agree that the Lease may not be modified in any way which lessens or adversely impacts the rights of the County or its residents hereunder.

(14) Modification: This Agreement may only be modified by written amendment executed by authorized individuals on behalf of the Lessee, the City and the County.

WITNESS the following authorized signatures:

PIEDMONT FAMILY YMCA, INC.

By: \_\_\_\_\_  
Kurt J. Krueger, President

CITY OF CHARLOTTESVILLE

By: \_\_\_\_\_  
Gary B. O'Connell, City Manager

**Approved as to form:**  
by \_\_\_\_\_  
**City Attorney**

COUNTY OF ALBEMARLE

By: \_\_\_\_\_  
Robert W. Tucker, County Executive

V4811553.9



**RESOLUTION  
EXTENDING THE DEADLINE FOR PIEDMONT FAMILY YMCA  
TO COMMENCE CONSTRUCTION ON THE RECREATIONAL FACILITY  
TO BE LOCATED IN McINTIRE PARK**

**WHEREAS**, the City of Charlottesville and Piedmont Family YMCA ("YMCA") entered into a Ground Lease, dated January 15, 2008, for the long-term use of a portion of McIntire Park on which the YMCA intends to build a recreational facility to benefit the community; and

**WHEREAS**, construction has been delayed due to litigation over the City's bidding and funding process related to the leasing of the subject land; and

**WHEREAS**, Paragraph 8 of the Ground Lease states the lease will terminate if construction of the facility is not commenced within sixty (60) months of the execution of the lease, unless an extension of time is requested by the YMCA for good cause and agreed to by the City; and

**WHEREAS**, this Council finds that good cause does exist for the delay in construction, and YMCA has requested in writing a twelve (12) month extension of the deadline to commence construction; now, therefore,

**BE IT RESOLVED** by the Council for the City of Charlottesville, Virginia that this Council hereby agrees to extend for an additional twelve (12) months the deadline to commence construction on the YMCA facility, as required by Paragraph 8 of the above-referenced Ground Lease. The new deadline will be January 15, 2014.

Approved by Council  
December 17, 2012



Clerk of Council



**RESOLUTION  
EXTENDING THE DEADLINE FOR PIEDMONT FAMILY YMCA  
TO COMMENCE CONSTRUCTION ON THE RECREATIONAL FACILITY  
TO BE LOCATED IN McINTIRE PARK**

**WHEREAS**, the City of Charlottesville and Piedmont Family YMCA (“YMCA”) entered into a Ground Lease, dated January 15, 2008, for the long-term use of a portion of McIntire Park on which the YMCA intends to build a recreational facility to benefit the community; and

**WHEREAS**, construction has been delayed due to litigation over the City’s bidding and funding process related to the leasing of the subject land which litigation concluded in January of 2013; and

**WHEREAS**, Paragraph 8 of the Ground Lease states the lease will terminate if construction of the facility is not commenced within sixty (60) months of the execution of the lease or January 15, 2013, unless an extension of time is requested by the YMCA for good cause and agreed to by the City; and

**WHEREAS**, Council previously granted a one year extension to the deadline on December 17, 2012 allowing for a deadline of January 15, 2014 for commencement of construction, and

**WHEREAS**, this Council finds that good cause does exist for the delay in construction, and YMCA has requested in writing a second twelve (12) month extension of the deadline to commence construction due to the litigation delays; now, therefore,

**BE IT RESOLVED** by the Council for the City of Charlottesville, Virginia that this Council hereby agrees to extend the construction commencement deadline for an additional twelve (12) months on the YMCA facility, as required by Paragraph 8 of the above-referenced Ground Lease. The new construction commencement deadline will be January 15, 2015.

Approved by Council  
December 16, 2013

  
\_\_\_\_\_

Clerk of Council

**RESOLUTION  
EXTENDING THE DEADLINE FOR PIEDMONT FAMILY  
YMCA  
TO COMMENCE CONSTRUCTION ON THE RECREATIONAL  
FACILITY TO BE LOCATED IN McINTIRE PARK**

**WHEREAS**, the City of Charlottesville and Piedmont Family YMCA ("YMCA") entered into a Ground Lease, dated January 15, 2008, for a portion of McIntire Park where the YMCA intends to build and operate a recreational facility to benefit the community; and,

**WHEREAS**, construction of the facility was delayed due to litigation challenging the process used to lease the property to the YMCA and to provide City funding for the project, which litigation began in May 2010 and concluded in January 2013; and,

**WHEREAS**, Paragraph 8 of the Ground Lease states that the lease will terminate if construction of the facility is not commenced within sixty (60) months of the execution of the lease (by January 15, 2013), unless an extension of time is requested by the YMCA for good cause and agreed to by the City; and,

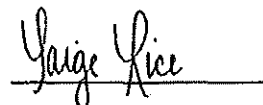
**WHEREAS**, Council previously granted one year extensions to the deadline on December 17, 2012 and December 16, 2013, resulting in a current deadline of January 15, 2015 for the YMCA to commence construction of the facility; and,

**WHEREAS**, the YMCA has requested another one year extension of the deadline to begin construction, to January 15, 2016, because additional time is needed to finalize the financing for the project due to the unanticipated withdrawal of one of the guarantors of the financing; and,

**WHEREAS**, this Council finds that good cause does exist to extend the deadline to begin construction of the facility from January 15, 2015 to January 15, 2016.

**NOW, THEREFORE, BE IT RESOLVED** by the Council for the City of Charlottesville, Virginia that this Council hereby agrees to extend the deadline for the commencement of construction of the YMCA facility in McIntire Park for an additional twelve (12) months, as requested by the YMCA. The new construction commencement deadline will be January 15, 2016.

Approved by Council  
January 5, 2015



Clerk of Council

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



**Agenda Date:** September 8, 2015

**Action Required:** No

**Presenter:** Chris Engel, CEcD, Director of Economic Development

**Staff Contacts:** Chris Engel, CEcD, Director of Economic Development  
Craig Brown, City Attorney

**Title:** **Market Plaza Update**

**Background:** In December of 2013, the Council directed staff to develop a Request for Proposal (RFP) to solicit interest from the development community in creating a mixed use development at the city owned parking lot on Water Street that would also include space for the City Market to operate.

On January 28, 2014 the City of Charlottesville issued this request for proposals from qualified developers interested in presenting a viable design and development concept for a mixed-use development in downtown Charlottesville. Four responses were received by the deadline of March 28, 2014.

On April 24, 2104 the council held a public hearing in City Council chambers and after a brief presentation councilors engaged in a question and answer period with each respondent. Public comment was also received on the proposals.

At the June 16, 2014 the Council voted unanimously in favor of the Market Plaza concept and directed staff to begin negotiations for sale of the city property.

**Discussion:** Over the past year representatives from the City and Market Plaza LLC have met to discuss a series of issues related to the land sale including utility relocation and undergrounding improvements, geotechnical, survey, the first street right of way access, city market operations and plaza use.

Due to the complexity of the project and its importance to the city, representatives from

MPLLC have requested an opportunity to review the concept plan and the changes that have occurred throughout the entitlement process with the Council and the public.

There is no council action requested with this item tonight. This item is intended to provide an update and reorientation to the project in anticipation of a public hearing and first reading of an ordinance to sell the city property at the next council meeting.

**Community Engagement:** There has been significant community engagement over recent years with respect to the City Market and its current and future location. Virginia Code Sec. 15.2-1800(B) requires that any time the City wishes to sell or lease public property to a private party, the City must hold a public hearing prior to doing so.

**Budgetary Impact:** There is no immediate budget impact as a result of this agenda item.

**Alignment with City Council Vision and Strategic Plan:** This agenda item aligns with the City Council vision related to economic sustainability and current priority related to the City Market.

**Recommendations:** N/A.

**Alternative:** N/A.

**Attachment:** None

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CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	September 21, 2015
Action Required:	Approve Resolution
Presenter:	Richard Hunt, Property Maintenance and Housing Inspector City of Charlottesville Neighborhood Development Services
Staff Contacts:	Richard Hunt, Property Maintenance and Housing Inspector City of Charlottesville Neighborhood Development Services
Title:	<b>610 Ridge St Blight Remediation Plan – Requesting \$125,000 from Capital Improvement Program Contingency Account</b>

**Background:**

On February 17, 2015 City Council approved the blight designation for 610 Ridge Street. Staff has developed a plan for remediation however no financial resources were allocated at that time to implement the plan. We request approval of funding to make repairs to protect the life safety of the surrounding public and preserve this structure in a historically designated district. The estimate for this remediation is \$125,000 and it is being recommended that these funds be allocated from the Capital Improvement Program Contingency Account.

**Discussion:**

Staff has notified the owner of 610 Ridge St, before and after the February 2015 blight determination, numerous times about the current conditions of the property. The owner has replied once with a brief letter acknowledging the conditions (attached). On April 15, 2015 staff executed a Building Inspection Warrant to ensure that the structure was still structurally sound. It was discovered that the roof and gutter system has become severely deteriorated and has been the major cause of further damage to the structure. A structural engineer's report and a report from a member of the BAR (attached) confirm the conditions of the property. After meeting with several contractors and gathering additional professional opinions we have developed a plan that will not only stabilize the blight but could also lead to the changing of ownership that could revive this portion of a historic area in the city. This plan could commence on or before November 1, 2015.

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

This funding supports the City Council 2025 Vision Statements of “Economic Sustainability” and being “A Connected Community” as well as a “Community of Mutual Respect”. We can reach strategic goal #2 to be a safe, equitable, thriving and beautiful community. Blight is a major concern in any neighborhood. This is an area that is rapidly growing and the SIA plan notes it as an area of priority.

### **Community Engagement:**

There has been correspondence with the Ridge Street Neighborhood Association as well as phone conversations with neighbors of the property. It is our understanding that citizens are pleased with the City for taking steps to address the blight and assist in neighborhood stability.

### **Budgetary Impact:**

At this time, City staff recommends that the funds, \$125,000, come from the Capital Improvement Program Contingency Account to address the work on this particular property. All work completed will be billed to the owner and placed in the form of a lien on the property if left unpaid. Under the blight ordinance the City can earn interest on these funds. This lien shall be treated in all respects as a tax lien and enforceable in the same manner. (*Reference* VA Code §36-49.1:1(E)) Due to the conditions of the property this work will have an impact on the City budget, however the attached remediation plan addresses recovering those funds.

### **Recommendation:**

The following points provide a summary of the full recommendation as contained in the Blight Remediation Plan:

- Approve allocation of \$125,000 to address the blight and stabilize the structure resolution included, but Council will need to approve source of funding).
- Make necessary repairs and bill the owner.
- Make an offer to purchase based on 2016 assessment, less money owed to the City.
- If initial offer is rejected, proceed with eminent domain through condemnation proceedings.
- Once the City owns the property, staff plans to come back to Council to discuss options on renovation/disposal of property.

### **Alternatives:**

The following points highlight the attached alternatives.

- Maintain status quo
- Arrest deterioration and maintain as needed
- Demolition

### **Attachments:**

Resolution

Blight Remediation Plan

Alternatives

Structural Engineer report – Dunbar Milby Williams Pittman & Vaughan

Report from BAR member

Council Minutes - [March 2, 2015](#)



**RESOLUTION**  
**APPROVAL OF 610 RIDGE STREET BLIGHT REMEDIATION PLAN**  
**AND ALLOCATION OF FUNDING**  
**\$125,000**

**WHEREAS**, the City of Charlottesville approved a designation of blight for 610 Ridge Street on February 17, 2015; and

**WHEREAS**, a Blight Remediation Plan has been prepared to address removal of blighting conditions as well as acquisition of the property in the future; and

**WHEREAS**, in order to move forward with phase 1 of the Blight Remediation Plan, approval of \$125,000 is required.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that:

1. The Blight Remediation Plan for 610 Ridge St. is accepted.
2. The sum of \$125,000 is transferred as follows from the Capital Improvement Program Contingency Account:

**Transfer From**

\$125,000      Fund: 426      Project: CP-080      G/L Account: 599999

**Transfer To**

\$125,000      Fund: 426      Project: P-00886      G/L Account: 599999

# BLIGHT REMEDIATION PLAN – 610 RIDGE ST. | 2015

**Subject Property Address:** 610 Ridge Street, Charlottesville, VA 22902

**Declaration of Blight:** City Council Ordinance, adopted 2/17/2015

## Background Information

The process of Spot Blight Abatement is authorized pursuant to state law, Virginia Code §36-49.1:1. Previously, in February 2015, City Council adopted an ordinance declaring the Subject Property to be a blighted property, and authorized the NDS Director to take action to acquire the property. However, during the period since the Blight Declaration, staff has had no success in establishing a line of communication with the property owners in order to discuss a proposed acquisition, and [as yet] staff has no source of funding for an acquisition.

At this time, staff requests City Council to approve a Blight Remediation Plan, as authorized pursuant to Virginia Code § 36-49.1:1(D). If certain work can be done to stabilize this building, it is still possible that the building can be saved from the fate of “demolition by neglect.” Staff’s recommendation is that the City take remedial action to stabilize the property, and then identify a source of funding for a possible acquisition at the end of FY 16 or early in FY17.

Staff recommends that the proposed remediation and staging plan for 610 Ridge Street should be carried out in two phases. The initial phase (Phase One) will focus on protecting and preserving the existing building. The action items associated with this phase would include identification of the immediate threat of deterioration of roof structure and stucco siding due to water damage, and the exterior repairs required to impede further deterioration of siding. If the owner continues to remain unavailable to participate with the remediation effort, Phase Two would involve acquisition of the property either through a mutually agreeable sale, or through eminent domain.

## **Phase One—Stabilization**

### **RECOMMENDED FOR COMPLETION PRIOR TO DECEMBER 2015:**

- **Asbestos test - \$300**  
Typical before work commences on old structures
- **Demolition of rear porch - \$12,500**  
It was discovered during inspection that the floor of this porch has collapsed compromising the integrity of the walls that were framed in above and below to help enclose. It is recommended that this porch be demolished to protect the life safety of the public surrounding the property as well as the safety of any future occupants or workers. Construction has increased on the property adjacent to the rear and soon the population will too. Without the removal of this portion we cannot complete the roof replacement. We will not ask or allow a contractor to walk on this portion of the roof. After demolition we will board up exposed framing with plywood, then paint and seal. This is the only feasible measure to deal with this safety issue. It is possible that if left undisturbed this portion may stay standing for many years to come.
- **Roof and gutter system replacement - \$62,500**  
The metal roof is old and has been patched in several locations. The perimeter has deteriorated in several spots and it is not cost efficient to repair. There are some obvious

## BLIGHT REMEDIATION PLAN – 610 RIDGE ST. | 2015

structural repairs to make and anything that gets removed to make those repairs will likely not be salvageable. Tying in new metal to existing is not practical. The Philadelphia style gutters have completely failed and should be rebuilt with new flashing, lining, and downspouts. Downspouts will have to be tied in to the existing storm water drains. Those drains may or may not be currently functioning. Soffit and fascia trim will need to be replaced and painted to match existing.

- **Cut tree limbs back - \$750**

The trees surrounding the property are severely encroaching on the structure and have contributed to the existing water damage. These limbs need to be cut back to prevent any damage to the new roof and keep the gutter system free from debris.

- **Rebuild chimneys - \$7600**

One has failed and is in danger of collapse and the other has opened up along the base to allow water to penetrate. Rebuilding includes knocking down the chimneys below the roof line to get to solid masonry that is strong enough to build on. This will also allow the new roof to be flashed into it.

### **RECOMMENDED FOR COMPLETION IN SPRING 2016:**

- **Stucco repair - \$5000**

There are several areas where the stucco lath has separated from the structure. Large holes and cracks have opened up exposing original siding and untreated material which has caused significant damage to the sill plate of the framing. These areas will need to be cut out, boarded up with plywood and then sealed to prevent further water damage.

- **Termite Treatment - \$775**

During inspection we discovered termite damage. It is not known as to whether there is a current infestation or if the current owners have done anything to prevent or treat the issue. A treatment is necessary as a precautionary measure.

- **Board windows, clean exterior stucco and painted surfaces; paint trim, windows, boards, and porch - \$7000**

The windows on the front of the house seem to be in good shape but could use some fresh paint. All of the remaining windows are in disrepair beyond the point of new glass and glazing and are too costly at this stage to repair. They should be boarded up as tight as possible and painted to match the structure. The front windows and porch railings need to be scraped and painted. At this point any untreated or unprotected surface shall be properly surface coated to prevent further deterioration. The entire structure will be washed to remove existing mold, mildew, and dirt.

- **Construction costs – 25%**

These costs would cover construction management fees and possible unforeseen issues.

### **Total estimated cost of Phase One Blight Remediation (Building Stabilization): \$125,000**

The above number is rounded up from \$120,531.25 as a precaution. Any unspent funds will be transferred back to the account they originated from. As work is completed, the Property Owner will be notified of the cost of the work, and will be requested to pay. However, Since Council has already adopted an ordinance declaring this a blighted property the City will have a lien on the property for the cost of the Work, plus interest, beginning on the date(s) on which the Work is completed through the date on which the lien is paid. *Reference* Virginia Code §36-49.1:1(E)

**Note:** The BAR has been consulted and has indicated their general approval to this approach. Prior to commencement of any work, the BAR would be presented with specific work plans for review and approval.

# BLIGHT REMEDIATION PLAN – 610 RIDGE ST. | 2015

## Phase Two—Property Acquisition

- During the FY16-17 Budget Approval Process, funding should be set aside in an amount sufficient for a purchase of the Property.
- Staff will review the January 1, 2016 Property Tax Assessment, and will make an offer to purchase based on the tax-assessed value, less the amount(s) expended by the City to stabilize the property.
- If the offer is rejected or there is no response staff will return to Council and ask for initiation of eminent domain proceedings, as authorized by Va. Code §36-49.1:1(A).
- In the event that the City successfully acquires the Property, then the options for protecting and preserving it, and returning it to a status that contributes positively to the neighborhood and historic district, are increased. Options for a later disposition of the property include:
  1. Auction off the property. The bidding could be started at what the city has into it.
  2. Renovate (subject to BAR approval) and sell the property on the open market. Sale of a renovated property could maximize the purchase price and increase the likelihood that the City could recover the amount of its property lien. Also, performing renovations prior to a sale could allow the City to provide some opportunities for young carpenters-in-training to get some great hands on experience with renovating an old house.
  3. Sell the Property on the open market, as-is (i.e., the stabilized property), subject to the condition that the purchasers will invest in the property and restore it (subject to BAR approval of improvements).

RESPECTFULLY SUBMITTED:

Richard Hunt

Title: Property Maintenance and Housing Inspector

NDS Blight Team (610 Ridge): Patricia Carrington; Richard Hunt; Missy Creasy; Mary Joy Scala; Kathy McHugh; Tom Elliott.

Certificate of Mailing

# BLIGHT REMEDIATION PLAN – 610 RIDGE ST. | 2015

City Council Agenda Date: September 21, 2015

I certify that NOTICE OF THE foregoing BLIGHT REMEDIATION PLAN (610 Ridge St.)  
was GIVEN BY REGULAR MAIL TO:

Owner(s): **L Juanita Jones and Ruth L**

Address Per City Tax Records: **10902 Oakwood St, Silver Spring, MD 20901**

Mailed On: September 11, 2015

Signed:  (Richard Hunt)

## ALTERNATIVES:

1. Maintain the Status Quo –Likely result: the house will likely continue to deteriorate and the value of the home will continue to drop, impacting adjacent properties, the character of an historic district, and a major entrance corridor in the City. Costs to stabilize the structure will increase as well as the threat to public life safety. The owner(s) of the property are elderly, and perhaps without the means to undertake the scope of repairs that are necessary.
2. Arrest Deterioration & Maintain as needed– We can proceed with Phase One (Stabilization) and then Phase Two could be Ongoing Maintenance, as necessary from time to time, to protect the building from the infiltration of water and damage by the elements. At some point we would recover the public money invested, upon a sale or transfer of the property. The downside of this is that we have no way of knowing when title/ownership of the Property might change. Phase Two could extend over a significant period of time, during which we would be performing protective maintenance for many years. This result is inconsistent with the goal of abating the blight, rather than managing it.
3. Demolition –The City’s ordinance, and state law, allow the City the option of removal of the building or other structure so as to abate the blight on the property. However, this option is the most severe, both for the property owner and with respect to the public interest in preserving buildings that contribute to the character of an historic district. This option is a last resort and should remain our last resort until all options are carefully considered. Approximate cost for demolition would be \$25,000.

# DUNBAR MILBY WILLIAMS PITTMAN & VAUGHAN

*Consulting Structural Engineers*

PLLC

RICHMOND AND CHARLOTTESVILLE

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May 1, 2015

SENIOR ASSOCIATES  
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BETTY M. THOMPSON

Mr. Richard Hunt  
Property Maintenance & Housing Inspector  
Neighborhood Development Services  
610 East Market Street  
P.O. Box 911 – City Hall  
Charlottesville, VA 22902

**RE: 610 Ridge Street, Charlottesville, VA – Structural Observation  
DMWPV Project 1504-40**

Dear Richard,

At your request, a staff engineer from Dunbar Milby Williams Pittman & Vaughan, PLLC visited 610 Ridge Street, Charlottesville, VA, on Wednesday, April 15, 2015. We performed a brief preliminary walk-through structural condition assessment of the property. Our observations were limited to readily accessible and visible portions of the exterior and interior. The structure is a two-story wood-framed residence situated over a crawl space/cellar.

## Observations

1. Several areas exhibit signs of active water leaks, with openings at roof and walls.
2. Upstairs and downstairs ceilings have holes where ceiling appears has failed or is in process of failing due to leaks.
3. The ceiling over the entrance foyer is cracked and partially failed. The plaster ceiling in this area is starting to become unkeyed from the lathe and is at risk of failing completely.
4. Lower level middle room (between kitchen and foyer) floor is soft and spongy near entrance to kitchen. Significant moisture related deterioration is evident in floor framing. Extensive floor structural repairs are likely required in this area.
5. Upstairs bedrooms – several rafter ends are rotted and in need of repair. Studs are exposed in exterior wall and exhibit signs of insect infestation. The drywall ceiling is bowed significantly in the center. Roof rafter repairs have been started but not finished at rear bedroom/porch area.

## 610 Ridge Street, Charlottesville, VA – Structural Observation

May 1, 2015

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6. Foyer – settlement cracks are visible over doorways and window openings. Ceiling plaster is partially missing and cracked. Plaster has become partially unkeyed from lathe.
7. Kitchen – a portion of the floor is covered with plywood. Settlement cracks are visible over wall openings. The ceiling is detached and in poor condition.
8. Exterior – stucco over wood siding has become unbonded and has failed completely in patches. Stucco is bowed outward at the floor level. Other areas have not yet spalled off but are unbonded to wall and at risk to fail and should be removed.

In our opinion, the home is in generally fair to poor structural condition. Extensive repairs are required due to neglect and active water leaks. Of particular concern is the deteriorated floor framing near the door into the kitchen from the middle room. In our opinion, this area of floor is a safety concern and requires repairs or replacement for safe occupancy. We further recommend that unsupported and detached plaster ceiling and stucco areas be removed. All water leaks and openings in roof and walls should be addressed. Rotted rafter ends are extensive and require repairs.

We appreciate the opportunity to work with you on this project. Please contact us if you have any questions or if we can be of any further assistance.

Very truly yours,  
Dunbar, Milby, Williams, Pittman & Vaughan, PLLC

*Jeffrey M. Greenmun*

Jeffrey M. Greenmun, PE





**610 Ridge Street, Charlottesville, VA – Structural Observation**

May 1, 2015

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Photo 1 - Partially completed back roof repairs



Photo 2 – Partially completed back roof repairs

**610 Ridge Street, Charlottesville, VA – Structural Observation**

May 1, 2015

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Photo 3 – Active leak, damaged ceiling, mold and deteriorated wood framing



Photo 4 – Damaged ceiling area

## Hunt, Richard

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**From:** Mohr, Tim  
**Sent:** Wednesday, April 15, 2015 2:17 PM  
**To:** Hunt, Richard  
**Cc:** Scala, Mary Joy  
**Subject:** Site report - 610 Ridge Street

Hi Richard –

Good to meet you, Patricia et al this morning. 610 Ridge Street is a great old house and, in my opinion, the original part of the house (in particular) is well worth saving. It clearly has water damage in a number of places but this is not systemic (yet). Other than the porch at the northeast corner, I don't see anything irreparable. There are a number of areas where framing & exterior trim need to be repaired but most importantly it needs a new roof – or at least the current metal roof needs some serious TLC and the Philadelphia gutters need to be rebuilt/replaced. Fundamentally the house exterior needs to be made weather proof and soon. A couple of specific observations:

1. Roof must be repaired or replaced – metal standing seam roofing per original would be best and a change in material and/or color will require BAR approval.
2. The Philadelphia gutters have clearly failed and the eaves as well as interior finishes are showing the results of that failure – eaves need to be rebuilt/closed up and gutter system needs to be repaired/replaced.
3. Downspouts should be reinstalled (old downspouts were removed and water is spilling down the side of the house as a result). Need to confirm that in ground lines for the downspout leaders are functional as well.
4. Framing and exterior trim needs to be replaced/repared in areas with water damage. Also note that water damage is usually accompanied by insect damage so structure in these locations is typically compromised at the bearing point.
5. All exterior trim, including windows should be scraped and painted. Any color changes must go before the BAR fyi.
6. Glazing should be replaced where broken – not sure what the policy is regarding the boarded up windows. This does protect the house from vandals and weather but also makes it clear that it is an abandoned structure.
7. The northeast corner porch should be demolished and/or rebuilt – the framing is too far gone to justify replacing the roof or repairing what is there. For the purpose of stabilizing the house demolition alone seems justified to me. I could also see an argument for tearing off all of the additions to the rear of the house as a cost saving measure. Any demolition (as opposed to repair/maintenance) must go before the BAR for approval.
8. The stucco is generally in ok condition on the older part of the house but clearly failing on the additions at the rear - the house was originally clapboard with no sheathing and the stucco has been improperly applied directly over it (ie not building paper/felt separating the stucco from the siding – long term I would strongly recommend removing the stucco as it is not great for the long term life of the structure– it hasn't caused any real problems to date as the house is un-insulated and essentially not conditioned. The existing failures are as a result of water coming down the walls from the failed gutter system. Where the stucco has clearly failed I would suggest removing it altogether and re-instating the existing siding but as with the demo suggested in item 7 this requires BAR approval.

9. I will place the photos I took on the my boxnet site so that you and Mary Joy can download them and then distribute as you see fit.

Please feel free to call or write me for clarification, questions, etc.

All the best,

Tim

TIM MOHR AIA  
LEED BD+C

**todd+mohr**  
DESIGN

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**CITY OF CHARLOTTESVILLE  
NEIGHBORHOOD DEVELOPMENT SERVICES  
MEMO**

**To:** Charlottesville City Council  
**From:** Brian Haluska, Principal Planner  
Missy Creasy, Assistant Director  
**Date:** September, 11, 2015  
**Re:** ZT15-00002 – Application review process update

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At the June 15, 2015 meeting, City Council reviewed ZT15-0002 (An ordinance to amend City Code Chapter 34 (Zoning) to modify certain development review procedures and to include a requirement for community meetings\*\* prior to development application approvals). At the first reading of the proposed ordinance, Council expressed concern about a provision that would allow the Director of NDS to waive the requirement for community meetings in certain circumstances. Council directed staff to draft a document that would provide further guidance to the Director of NDS and staff about when it may be appropriate to waive the requirement for these community meetings.

Staff has drafted administrative regulations (attached) to guide the Director of NDS in making decisions as to when a community meeting might not be necessary. On September 9, 2015 these regulations were reviewed and recommended to City Council for approval by the Planning Commission. In addition, Planning Commission has asked staff to recommend to City Council that it should include within the Proposed Ordinance a provision that requires City Council to review the effectiveness of the community meeting process, after two years.

**\*\*Note:** the “community meetings” that are the subject of the proposed ordinance are in addition to the public hearings required by law for certain zoning and development approvals. (The Director of NDS could not waive any public hearing required by law). As proposed, the community meetings would take place before an application is accepted for review within the normal review processes, so that the public would have an opportunity to review and comment in advance of the official submission and city review of particular proposals.



**CITY OF CHARLOTTESVILLE  
STANDARD OPERATING PROCEDURE**

Type of Policy: <b>ZONING REGULATIONS</b>	Department: NDS
Subject: Community Meeting Requirements (Policy for Administrative Waivers)	
Authorization: Charlottesville City Code Chapter 34	
Approval by City Council: September _____, 2015	Effective Date:

**I. PURPOSE OF REGULATIONS**

The purpose of these zoning regulations is to assure that community meetings will be provided in accordance with Chapter 34 of the City Code (at the beginning of the public review process, and in addition to required public hearings), when such meetings will enhance the information available to the public in connection with specific applications seeking rezonings (including PUDs), special use permits, and development plan reviews. On occasion, however, there may be good reason(s) not to require a community meeting, and City Council desires to allow the Director of NDS to waive the requirement for a community meeting in the limited circumstances described in this policy.

**II. ENABLING ORDINANCES/LEGISLATION**

These provisions of these zoning regulations are authorized and enabled by Chapter 34 of the Charlottesville City Code.

**III. DEPARTMENTS/DIVISIONS AFFECTED**

These regulations will primarily affect the employees and officials of the City’s Department of Neighborhood Development Services, but may also affect the City Attorney’s Office.

**IV. REGULATIONS AND PROCEDURES**

Applications subject to the requirement for a Community Meeting are divided into three categories:

- The first category is for applications where the Director would not waive the public meeting requirement under any circumstances.
- The second category is for applications where the assumption is that the public meeting would be held, unless the Director specifically decides to waive the requirement
- The third category is for applications where the assumption is that the public meeting would NOT be held, unless the Director specifically directs staff to hold a public meeting.

A. **Applications for which a Community Meeting will be required in all situations (no waivers):**

1. Rezoning (including PUDs)
2. Special Use Permits
  - a) Requests for additional height
  - b) Requests for density greater than by-right density
3. Preliminary or Final Site Plans
  - a) Greater than 6 residential units proposed
  - b) Construction of a mixed-use, commercial or industrial structure greater than 5,000 sq. ft.
  - c) Expansion of a mixed-use, commercial or industrial structure by more than 5,000 sq. ft. GFA.
  - d) Proposed addition or more than 10 parking spaces.
4. Major Subdivisions

B. **Applications for which a Community Meeting will be required, unless waived by the Director of NDS:**

1. Rezoning (including PUDs)
  - a) Modifications to an existing Planned Unit Development
2. Special Use Permits
  - a) Requests for a use in an existing building
  - b) Alterations to an existing SUP
3. Preliminary or Final Site Plans
  - a) Greater than 2 residential units proposed
  - b) Construction of a mixed-use, commercial or industrial structure greater than 2,000 sq. ft.
  - c) Expansion of a mixed-use, commercial or industrial structure by more than 2,000 sq. ft. GFA.
  - d) Proposed addition or more than 5 parking spaces.
4. Minor Subdivisions
  - a) Creating more than 2 new lots

C. **Applications for which a Community Meeting will be presumed to have been waived, unless the Director of NDS notifies the applicant of a determination that the Community Meeting will be required for that particular application:**

1. Preliminary or Final Site Plans
  - o Construction of a mixed-use, commercial or industrial structure less than 2,000 sq. ft.
  - o Expansion of a mixed-use, commercial or industrial structure by less than 2,000 sq. ft. GFA.
  - o Proposed addition of less than 5 parking spaces.
2. Minor Subdivisions
  - o Creating 2 or fewer new lots
  - o Boundary line adjustments
  - o Vacation of interior property lines
3. Site Plan Amendments - "A minor modification is one (1) that, in the opinion of the director, will not substantially alter the terms of the original approval." (Sec. 34-826)



**ORDINANCE**  
**AMENDING CHAPTER 34 (ZONING) OF THE CODE OF THE CITY OF**  
**CHARLOTTESVILLE (1990), AS AMENDED, TO MODIFY THE PROCESS BY**  
**WHICH CERTAIN ZONING AND DEVELOPMENT APPLICATIONS ARE**  
**SUBMITTED AND REVIEWED**

**WHEREAS**, this City Council desires to enhance opportunities for citizens to obtain information about proposed developments within the City, and to allow expanded opportunities for public discussions of development applications; and

**WHEREAS**, Council believes that revising its established application review processes for certain types of applications will have the effect of improving citizens' opportunities to understand, review and comment on applications seeking development approvals, and will assure that Council, the Planning Commission, the BAR and other public bodies can make their decisions based on more detailed application materials and public comments, and

**WHEREAS**, Council desires to expedite the time frame in which changes to the City's procedures for review of development applications can be implemented; and

**WHEREAS**, a joint public hearing on the zoning and subdivision ordinance text amendments that are the subject of this Ordinance was held before the City Council and Planning Commission on May 12, 2015, following notice to the public as required by law; and

**WHEREAS**, legal notice of the public hearing held on May 12, 2012 was advertised in accordance with Va. Code Sec. 15.2-2204; and

**WHEREAS**, on May 12, 2012, the Planning Commission voted to recommend approval of the proposed zoning and subdivision ordinance text amendments, finding that such amendments are required by the public necessity, convenience, general welfare or good zoning practice, and this Council concurs with the Planning Commission's recommendation and hereby adopts the Planning Commission's findings as its own; **NOW THEREFORE**,

**BE IT ORDAINED THAT** Council hereby adopts, amends and re-ordains the Charlottesville City Code, Chapters 34 (Zoning) and 29 (Subdivisions), to approve and incorporate the amendments set forth following below:

**I. THE FOLLOWING ZONING TEXT AMENDMENTS ARE HEREBY ADOPTED, TO CHANGE THE APPLICATION REQUIREMENTS FOR SPECIAL USE PERMITS AND REZONINGS (INCLUDING PUD AND PUD AMENDMENT)**

**Sec. 34-8. Disclosure of real parties in interest.**

(a) An applicant for a special exception, a special use permit, an amendment to the zoning ordinance or a variance shall make complete disclosure of the equitable ownership (i.e., the real parties in interest) of the real estate to be affected. The applicant shall provide the names

and addresses of all of the real parties in interest, including, without limitation: each of the stockholders, officers and directors of a corporate entity (corporations, professional corporations, limited liability companies, professional limited liability companies, etc.). However, the requirement of listing names of stockholders shall not apply to a corporation whose stock is traded on a national or local stock exchange and which corporation has more than five hundred (500) shareholders.

- (b) All petitions initiated by property owners or the agents thereof, shall be sworn to under oath before a notary public, stating: (i) whether or not any member of the planning commission, or his immediate family member, has any personal interest in the property or transaction that is the subject of the application; and (ii) whether or not any member of the city council, or his immediate family member, has any such interest. A personal interest arises when a financial benefit or liability may accrue to a member of the planning commission or city council, or his immediate family member, as a result of an individual or business interest in the subject application. For the purposes of this section, the term "personal interest" shall have the meaning set forth within the State and Local Government Conflicts of Interests Act, Code of Virginia, § 2.2-3101, and may refer to an interest accruing to a person individually, as a result of business or professional relationships.

#### **Sec. 34-41. Amendments to the zoning ordinance.**

- (a) Whenever the public necessity, convenience, general welfare or good zoning practice require, the city council may, by ordinance, amend, supplement or change the city's zoning district regulations, district boundaries or zoning district classifications of property. Any such amendments may be initiated by:
- (1) Resolution of the city council;
  - (2) Motion of the planning commission; or
  - (3) Petition of any person who is the owner, owner's agent, or contract purchaser (with the owner's written consent) of property, where such petition proposes a change of the zoning district classification of such property ("zoning map amendments"). For purposes of this section, the term zoning map amendment includes, without limitation: petitions seeking to establish or to amend a planned unit development; petitions to amend established proffers; and petitions for approval of a special use permit.
- (b) Petitions for zoning map amendments shall be made in writing, shall be addressed to the city council, and shall be filed in the department of neighborhood development services; and shall be submitted to the city's department of neighborhood development services at least forty nine (49) days prior to a regular meeting of the planning commission. Each application shall be accompanied by the required application fee, as set forth within the most recent fee schedule adopted by city council. Each application shall be composed of a completed city-provided application form and supplemental information required in order for the city to review and act on the application. At a minimum, a complete application shall include:

(1) Verification of the applicant's attendance at a pre-application meeting with a City planner, at which the applicant was provided a list of the application materials, including required supplemental information, required for an application;

(2) A city-provided application form, signed by the owner of the property. Alternatively, the application form may be signed by the owner's authorized representative, if the application form is accompanied by the owner's written authorization;

(3) Written certification of compliance with sec. 34-10(b);

(4) The required application fee, as set forth within the most recent fee schedule adopted by city council;

(5) All information required by any provision of this zoning ordinance (including, without limitation: sec. 34-158 and 34-other applicable city ordinances, or state law;

(6) All required supplemental information.

The director of neighborhood development services shall establish and maintain appropriate uniform application forms for zoning map amendments, documents and informational requirements for making such petition, as well as a list identifying all materials required to be submitted along with the petition, which shall include any information the director deems necessary for the planning commission and city council to adequately evaluate the request which is the subject of the petition. Upon receipt of an application, the director shall within ten (10) business days review the application for completeness. Incomplete applications shall be rejected and shall not proceed for review or decision, and the applicant shall be notified in writing of the rejection and the reasons therefor.

(c) All petitions initiated by property owners, contract purchasers, or the agents thereof, shall be sworn to under oath before a notary public, stating: (i) whether or not any member of the planning commission, or his immediate family member, has any personal interest in the property or transaction that is the subject of the application; and (ii) whether or not any member of the city council, or his immediate family member, has any such interest. A personal interest arises when a financial benefit or liability may accrue to a member of the planning commission or city council, or his immediate family member, as a result of an individual or business interest in the subject application. For the purposes of this section, the term "personal interest" shall have the meaning set forth within the State and Local Government Conflicts of Interests Act, Code of Virginia, § 2.2-3101, and may refer to an interest accruing to a person individually, as a result of business or professional relationships. Following receipt of a complete application for a zoning map amendment:

- (1) Either the city council or the director may request work sessions or other public presentations to be scheduled before the city council, the planning commission, the board of architectural review ( if property is within an historic district), or other public bodies, as the director determines to be appropriate, taking into consideration the nature of the approval requested, the acreage affected, potential impacts of an approved application, applicable legal requirements, and any other factors consistent with good zoning practices. The purpose of a work session or other public presentation is to allow an applicant to present a proposed project, to allow the department of neighborhood development services to present a preliminary scoping of major issues, to seek directions as to the board's or commission's expectations in addressing those issues, and to allow the board or commission to receive public comments. The applicant's consent to a work session is required, if the work session would extend the time for action by the board or commission beyond applicable deadlines established by law.
  
- (2) The applicant shall hold a community meeting for the application. The purposes of a community meeting are to provide citizens an opportunity to receive information about a proposed project, about applicable zoning processes and procedures, about applicable policies of the comprehensive plan and city ordinances or regulations that may apply to the project, and to give citizens an opportunity to ask questions about the project. The director of neighborhood development services is authorized to establish written guidelines pertaining to which applications should have community meetings, when in the process such meetings should be conducted, the manner in which the meeting should be conducted, and how (and to whom) notice of the community meeting should be given. The applicant's consent to a community meeting is required, if the community meeting cannot, due to no fault of the applicant, be scheduled in sufficient time to allow action by the board or planning commission within applicable deadlines established by law. The director may waive the requirement for a public meeting, upon a determination that the meeting is not likely to achieve the public purposes intended to be served, after consideration of the following: (i) the nature of the approval requested, the acreage affected, the proposed density, the proposed scale, and potential impacts, (ii) any other factors deemed relevant upon applying sound zoning principles, (iii) whether other public work sessions or meetings have already been held regarding the application, so as to make a community meeting unreasonably duplicative.
  
- (3) Unless otherwise directed by city council, upon the director's receipt of proof by the applicant that a community meeting has been held in accordance with applicable policies and procedures, the director is authorized to refer the matter to the planning commission's for review in accordance with sec. 34-42(c), by written notice given to the planning commission chair.
  
- (d) Once a proposed amendment has been initiated as set forth within this section, it shall be deemed referred by the city council to the planning commission for study and recommendation reviewed by the director of neighborhood development for completeness. Incomplete applications shall be rejected and shall not proceed for review or decision. For each application for a zoning map amendment, the director may require supplemental

information to be submitted along with the application. In determining what supplemental information must be submitted, the director shall consider the proposed use, the proposed density, the proposed zoning district classification, and other considerations the director determines to be relevant according to sound zoning practices. Required supplemental information may consist of any or all of the following:

- (1) Project Proposal Narrative, consisting of a detailed written statement of the proposal, its public need or benefit, and of how the project satisfies the purpose, intent or objectives of the applicable zoning district classification.
- (2) Comprehensive Plan Analysis, consisting of a detailed written statement of the project's consistency with the comprehensive plan, including the land use map and any small area, strategic investment area or other plan for the applicable development area.
- (3) Impacts on Public Facilities and Infrastructure. A detailed narrative statement detailing the project's impacts on public facilities and infrastructure, including, without limitation: sidewalks and other pedestrian facilities; bicycle, public transit and motor vehicle transportation facilities; storm sewers; existing platted rights-of-way which have not previously been improved or accepted by the city for maintenance, etc.
- (4) Maps. One or more maps showing the proposed project's neighborhood context, existing natural and man-made conditions, and existing topography. If the proposal is to amend an existing planned unit development district, and the proposed amendment would affect less area than the entire district, the applicant shall submit a map showing the entire existing PUD and identifying any area to be added to or deleted from the district, or identifying the area to which the amended PUD plan or any amended proffers, would apply. If the proposal is for a special use permit, and the area proposed to be subject to the special use permit is less than an entire lot (or less than an entire PUD, if applicable) a map shall be provided showing the area proposed to be subject to the special use permit.
- (5) Impacts on Environmental Features. A narrative of environmental features of the property that would be affected by the project, including, without limitation: trees, existing pervious surfaces, steep slopes, streams, etc. Photographs shall be provided of features described in the narrative.
- (6) Project Concept Plan. For any zoning map amendment to establish a conventional zoning district (i.e., a district other than a PUD) or seeking approval of a special use permit, a conceptual plan shall be provided showing, as applicable: (i) street network, including circulation within the project and connections to existing and planned streets within and outside the project; (ii) general location of pedestrian and bicycle facilities; (iii) building envelopes; (iv) parking envelopes; (v) public spaces and amenities; (vi) conceptual stormwater management facility locations and types; (vii) conceptual

grading; (viii) conceptual landscape plan, (ix) topography, and identification of the source of the topographical information, supplemented where necessary by spot elevations, and identification of areas of the site containing slopes in excess of 25%; (x) general location of central features or major elements within the project that are essential to the design of the project, such as parking areas and structures, civic areas, open spaces, green spaces, recreation areas and other amenities.

- (7) PUD Concept Plan. In addition to any information required by city code sec. 34-517, a PUD concept plan shall include: (i) typical cross-sections to show proportions, scale, and streetscape/cross-sections/ circulation; (ii) conceptual stormwater management facility locations and types; (iii) conceptual grading; (iv) a use table listing the specific uses to be included by right, and the number of dwelling units, by type; (v) building envelopes; (vi) topography, and identification of the source of the topographical information, supplemented where necessary by spot elevations, and identification of areas of the site containing slopes in excess of 25%; (vii) general layout for water and sewer systems; (viii) the general location of central features or major elements within the project that are essential to the design of the project, such as parking areas and structures, civic areas, open spaces, green spaces, recreation areas and other amenities; (viii) a code of development identifying standards for proposed yards, open space characteristics, and any landscape or architectural characteristics relating to scale, proportions, and massing; and (ix) a conceptual lot layout.
- (8) Proposed Proffers to Address Impacts, consisting of a written statement of conditions, limitations, restrictions or amenities that the property owner offers as a means of mitigating impacts of a project or enhancing the public benefits of a project.
- (9) Other Information, including, without limitation, special studies or documentation, identified by the director as being necessary for a full and complete review of the proposed zoning map amendment consistent with good zoning practices.

#### **Sec. 34-42. Commission study and action.**

(a)...[NO CHANGE PROPOSED]

(b)...[NO CHANGE PROPOSED]

(c) The planning commission shall review the proposed amendment and shall report its findings and recommendations to the city council, along with any appropriate explanatory materials, within one hundred (100) days after the proposed amendment was referred to the commission for review. Owner-initiated petitions for zoning map amendments shall be deemed referred to the commission as of the date on which: (i) city council, by motion or by resolution, refers an amendment to the commission for review, or (ii) the first planning commission meeting following the referral acceptance of the petition by the director of neighborhood development services pursuant to sec. 31-41(c)(3). Failure of the commission to report to city council

within the ~~100 one hundred~~-day period shall be deemed a recommendation of approval, unless the petition is withdrawn. In the event of and upon such withdrawal, processing of the proposed amendment shall cease without further action.

**Sec. 34-158. Application generally.**

(a) The procedure for filing and consideration of an application for a special use permit is the same as that required by sec. 34-41 for an owner-initiated rezoning petition for a zoning map amendment, except that ~~each~~ a complete application for a special use permit shall also include:

(b) ....[NO CHANGE PROPOSED]

**Sec. 34-160. Review and action on application.**

(a)...[NO CHANGE PROPOSED]

(b) The planning commission shall review and make recommendations to city council in the same manner as provided within sec. 34-41 for an owner-initiated petition for a zoning map amendment-rezoning application. The planning commission may concurrently approve a preliminary site plan, subject to city council's approval of a special use permit, and subject to any necessary amendments to the site plan as a result of the city council's action. Alternatively, the planning commission may choose to defer consideration of a site plan until after council has rendered a final decision on the application for a special use permit.

**II. THE FOLLOWING ZONING TEXT AMENDMENTS ARE HEREBY ADOPTED, TO CHANGE PLANNED UNIT DEVELOPMENT (PUD) APPLICATION REQUIREMENTS**

**Sec. 34-515. ~~Pre-application review~~ process.**

(a)...[NO CHANGE PROPOSED]

(b) Upon confirmation by the director that all materials and information submitted by the applicant satisfy the requirements referenced within paragraph (c), below, in this section, the ~~pre-application will be scheduled for a preliminary discussion to be held at a regular planning commission meeting~~ application will be reviewed and acted upon in the manner prescribed within sec. 34-41.

(c) Each application shall ~~be accompanied by the required fee, as set forth within the most recent fee schedule adopted by city council~~ satisfy the requirements of sec. 34-41 as well as all of the requirements of this article.

**III. THE FOLLOWING ZONING TEXT AMENDMENTS ARE HEREBY ADOPTED, TO CHANGE THE SUBMISSION REQUIREMENTS FOR SITE PLAN APPLICATIONS:**

**Sec. 34-804. Pre-application ~~conference~~ requirements.**

- (a) No application seeking approval of a site plan, preliminary or final, for property that will be used for any commercial or industrial purpose, or that will contain six (6) or more residential dwelling units, shall be accepted for review, unless and until the applicant has participated in a pre-application conference and has held a community meeting in accordance with guidelines established by the director of neighborhood development services in accordance with sec. 34-41(c)(2). Any application that fails to demonstrate compliance with these requirements shall be rejected as incomplete. The director may waive the requirement for a community meeting, if a community meeting was previously held for the same development at the time of city council's consideration of an application for approval of a special use permit or petition for a zoning map amendment. The purpose of a pre-application conference is to discuss the required site plan, its contents, and the various city requirements pertaining to zoning, erosion and sedimentation control, building code regulations, and to consider preliminary features of a proposed site. Prior to submission of a preliminary site plan, an applicant for site plan review should meet with the director to ~~verify~~ determine whether a site plan will be required and if so, what information and application materials must be provided in either case.
- (b) The purpose of a pre-application conference is to discuss the required site plan, its contents, and the various city requirements pertaining to zoning, erosion and sedimentation control, building code regulations, and to consider preliminary features of a proposed site. At a pre-application conference, the director will verify whether a site plan will be required for a proposed development and if so, what information and application materials must be provided. As part of the pre-application conference the developer shall confer with the director to determine if the site plan should include provision for the reservation and/or dedication of suitable areas for parks, open space and other public facilities, utilities and uses as recommended in the comprehensive plan. The developer shall also confer with the director and/or other appropriate public officials of the city, to ascertain if, and when, and in what manner, any such areas should be reserved for acquisition by the city. Nothing in this provision shall be construed to preclude the dedication of any property for public use which is not included in the comprehensive plan, provided such property is acceptable to the city for dedication and maintenance.

**IV. THE FOLLOWING SUBDIVISION ORDINANCE TEXT AMENDMENTS ARE HEREBY ADOPTED, TO CHANGE THE SUBMISSION REQUIREMENTS FOR SITE PLAN APPLICATIONS:**

**Sec. 29-59. Review and approval.**

- (a) No application seeking approval of a subdivision, preliminary or final, that would divide any parcel(s) of land into six (6) or more lots, or involving a new street, shall be accepted for



review, unless and until the applicant has participated in a pre-application conference and has held a community meeting in accordance with guidelines established by the director of neighborhood development services in accordance with sec. 34-41(c)(2). Any application that fails to demonstrate compliance with these requirements shall be rejected as incomplete. The director may waive the requirement for a community meeting, if a community meeting was previously held for the same development as part of city council's consideration of an application for approval of a special use permit or a petition for approval of a zoning map amendment. Within fourteen (14) days of receipt of such an applicant's official submission of a complete application for approval of a subdivision, ~~plans~~ the agent shall forward copies to the affected city departments for their review and comments.

(b) ....[NO CHANGE PROPOSED]

(c) ....[NO CHANGE PROPOSED]

**AND, BE IT FURTHER ORDAINED THAT**, no later than two (2) years after the date on which the ordinance is adopted by City Council, the Director shall make a report to City Council as to the effectiveness of the community meeting process, as implemented pursuant to this Ordinance.

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