



**CITY COUNCIL AGENDA – REVISED ON 3/3/17**  
**Monday, March 6, 2017**

**6:30 p.m.** **Closed session as provided by Section 2.2-3712 of the Virginia Code**  
*Second Floor Conference Room (Consultation with legal counsel regarding Ragged Mountain Natural Area)*

**7:00 p.m.** **Regular Meeting - CALL TO ORDER**  
*Council Chambers*

**PLEDGE OF ALLEGIANCE**  
**ROLL CALL**

**AWARDS/RECOGNITIONS ANNOUNCEMENTS** GFOA Distinguished Budget Award; 125<sup>th</sup> Anniversary of Ebenezer Baptist Church

**CITY MANAGER RESPONSE TO MATTERS BY THE PUBLIC**

**MATTERS BY THE PUBLIC** Public comment is provided for up to 12 speakers at the beginning of the meeting (limit 3 minutes per speaker.) Pre-registration is available for up to 9 of these spaces, and pre-registered speakers are announced by noon the day of the meeting. An unlimited number of spaces are available at the end of the meeting.

- 1. CONSENT AGENDA\*** (Items removed from consent agenda will be considered at the end of the regular agenda.)
- a. Minutes for February 21
  - b. APPROPRIATION: BAMA Works Fund Grant for Family Advocate Program - \$9,000 (1<sup>st</sup> of 2 readings)
  - c. APPROPRIATION: Local Gov't Arts Challenge Grant to VA Discovery Museum - \$5,000 (1<sup>st</sup> of 2 readings)
  - d. RESOLUTION: Support for Charlottesville Area Alliance (1<sup>st</sup> of 1 reading)
- 2. PUBLIC HEARING / RESOLUTION\*** Matters by the Public – Procedures - **20 minutes**
- 3. REPORT RESOLUTION\*** Landmark Hotel – John Dewberry – **20 minutes**
- 4. REPORT** School Board's Adopted FY 2018 Budget – **15 minutes**
- 5. REPORT** City Manager's Proposed FY 2018 Budget - **15 minutes**
- 6. REPORT** Recommended Changes to Debt Policy Language – **10 minutes**
- 7. RESOLUTION\*** Sidewalk Waiver Request – 1421 Dairy Road (1<sup>st</sup> of 1 reading) – **10 minutes**
- 8. RESOLUTION\*** Charlottesville High School – Critical Slopes Waiver (1<sup>st</sup> of 1 reading) – **10 minutes**
- 9. ORDINANCE\*** Changes to Business License Fees and Technology Zone Credits (1<sup>st</sup> of 2 readings) – **10 minutes**
- 10. ORDINANCE\*** Cable Television Franchise Agreement with Comcast (2<sup>nd</sup> of 2 readings) – **10 minutes**

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

*\*ACTION NEEDED*

# GUIDELINES FOR PUBLIC COMMENT

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**We welcome public comment;  
it is an important part of our meeting.**

**Time is reserved near the beginning and at the end of each regular City Council meeting for Matters by the Public.**

**Please follow these guidelines for public comment:**

- If you are here to speak for a **Public Hearing**, please wait to speak on the matter until the report for that item has been presented and the Public Hearing has been opened.
- Each speaker has **3 minutes** to speak. Please give your name and address before beginning your remarks.
- Please **do not interrupt speakers**, whether or not you agree with them.
- Please **refrain from using obscenities**.
- If you cannot follow these guidelines, you will be escorted from City Council Chambers and not permitted to reenter.

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



<b>Agenda Date:</b>	March 6, 2017
<b>Action Required:</b>	Present Award to Office of Budget and Performance Management
<b>Staff Contacts:</b>	Leslie Beauregard, Assistant City Manager Ryan Davidson, Sr. Budget and Management Analyst Maya Kumazawa, Budget and Management Analyst
<b>Presenter:</b>	Leslie Beauregard, Assistant City Manager
<b>Title:</b>	Government Finance Officers Association Distinguished Budget Presentation Award for the FY 2017 Council Adopted Budget

**Background:** The Government Finance Officers Association of the United States and Canada (GFOA) has awarded the City of Charlottesville GFOA's Distinguished Budget Presentation Award for its Fiscal Year 2017 budget. This is the 24<sup>th</sup> time that Charlottesville has won this award, and the 15<sup>th</sup> consecutive budget award.

**Discussion:** This award represents a significant achievement by the City. It reflects the commitment of Council and staff to meeting the highest principles of governmental budgeting. In order to receive the budget award, the City had to satisfy nationally recognized guidelines for effective budget presentation, guidelines that assess how well an entity's budget illustrates in the following areas:

- ◆ Introduction and Overview
- ◆ Financial Structure, Policy and Process
- ◆ Financial Summaries
- ◆ Capital and Debt
- ◆ Departmental Information
- ◆ Document-wide Criteria

There are then four summarized categories that produce the final scoring for a document and for the FY 2017 submission, the City received a Proficient rating in all four categories:

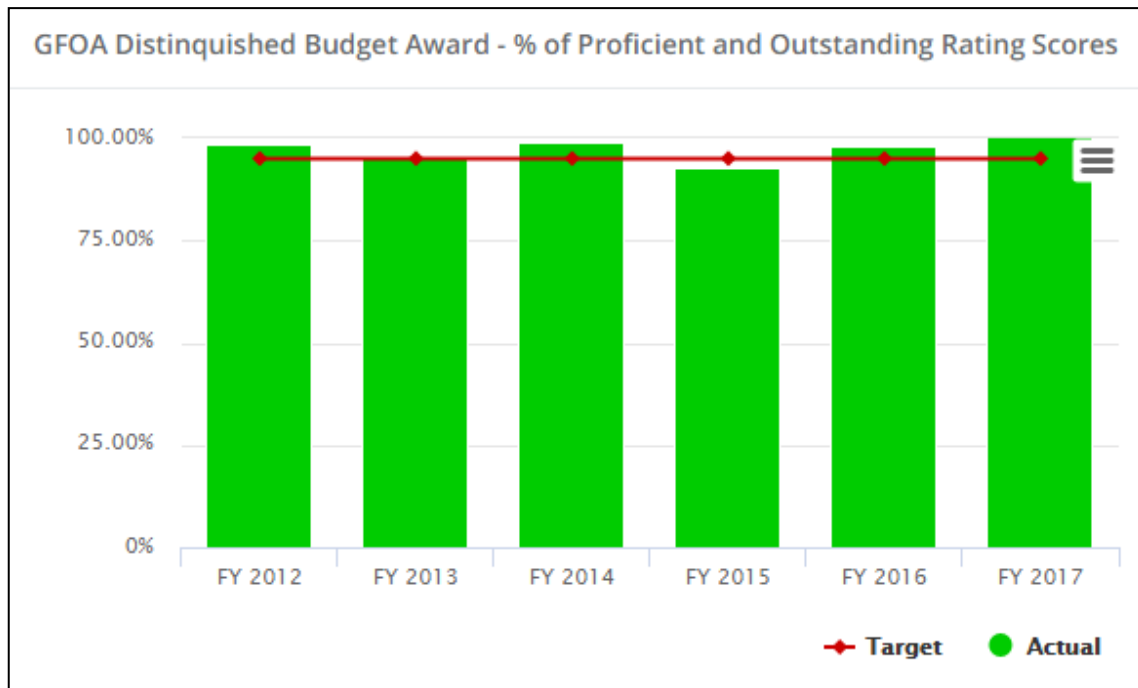
- ◆ Policy Document
- ◆ Financial Plan
- ◆ Operations Guide
- ◆ Communications Device

If an entity receives a "proficient" rating in all four categories, an award is granted.

Since 1906, GFOA has been a nonprofit association serving 18,000 government finance professionals throughout North America. GFOA's Distinguished Budget Presentation Awards

Program began in 1984. The GFOA's Distinguished Budget Presentation Awards Program is the only national awards program in governmental budgeting. Award recipients have pioneered efforts to improve the quality of budgeting and provide an excellent example for other governments.

The City has consistently scored very high in all categories to receive this award year after year. And each year, Budget Office staff evaluates the feedback from the reviewers, and incorporates the suggested changes in order to improve the budget document the following year. The following chart shows that the City has mostly scored above or around its target of 95% when it comes to receiving Proficient and Outstanding rating scores for each of the above areas. In FY 2017, the City scored Proficient and Outstanding in every single category, a rating of 100% and a first time for this accomplishment!



**Community Engagement:** N/A

**Alignment with City Council's Vision and Strategic Plan:** This aligns directly with Strategic Plan Goal 5: Be a Well-Managed and Successful Organization, under the objective *Continue Strategic Management Efforts*.

**Budgetary Impact:** N/A

**Recommendation:** N/A

**Alternatives:** N/A

**Attachments:** N/A

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



Agenda Date:	March 6, 2017
Action Required:	Appropriation
Presenter:	Rory Carpenter, Human Services Department
Staff Contacts:	Rory Carpenter, Human Services Department Kaki Dimock, Director of Human Services
<b>Title:</b>	<b>Bama Works Fund Family Advocate Grant - \$9,000</b>

**Background:**

The Charlottesville Department of Human Services has received a \$9,000 grant from the Bama Works Fund to provide a Family Advocate Program, which will ensure that families from Charlottesville and Albemarle with children currently being served through the Children Services Act have supportive mentors to help them voice their opinions and navigate the service system. The grant period is from January 1, 2017 – December 31, 2017. The Region Ten Community Service Board will provide family advocate services for approximately 90 Children’s Service Act service and policy meetings from January 2017 - December 2017.

**Discussion:**

The Charlottesville and Albemarle Social Service Departments manage the collaborative, community process by which children with mental health needs access funding for services through the Virginia Children’s Services Act. The funds specifically will provide stipends for Family Advocates who are consumer family members accompanying parents/guardians of children with mental health needs to multidisciplinary, community service-planning and funding approval meetings being held for their children. Family Advocates will be recruited by the City and the County Social Service Departments to participate in weekly service planning meetings and paid for their participation by the City of Charlottesville using the Bama Works funds.

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

The Bama Works Family Advocate grant aligns with the Council Vision Areas including America’s Healthiest Cities and a Community of Mutual Respect, and it aligns with Goal 2, Objective 2.1 as follows:

- Goal 2: Be a safe, equitable, thriving and beautiful community
- Objective 2.1: Provide an effective and equitable public safety system

**Community Engagement:**

The Bamaworks funds will engage the community by supporting Family Advocates who will help families voice their needs, values and goals as they navigate the multidisciplinary, community service-planning and funding approval meetings being held for their children.

**Budgetary Impact:**

There is no impact on the General Fund. The funds will be expensed and reimbursed to a Grants Fund. There is no local match required.

**Recommendation:**

Staff recommends approval and appropriation of grant funds.

**Alternatives:**

If the grant funds are not appropriated, the funds would have to be returned and the Family Advocate Program would not be funded.

**Attachments:**

Appropriation

**APPROPRIATION**  
**Bama Works Fund Family Advocate Grant**  
**\$9,000**

**WHEREAS**, the City of Charlottesville has been awarded \$9,000 from the Bama Works Fund for the Family Advocate Program; and

**WHEREAS**, the grant award covers the period from January 1, 2017 through December 31, 2017.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$9,000 is hereby appropriated in the following manner:

**Revenue**

\$ 9,000      Fund: 213      Cost Center: 1900277      G/L Account: 451020

**Expenditures**

\$ 9,000      Fund: 213      Cost Center: 1900277      G/L Account: 530670

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$9,000 from the Bama Works Fund.



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



<b>Agenda Date:</b>	March 6, 2017
<b>Action Required:</b>	Approval and appropriation
<b>Presenter:</b>	Alexander Ikefuna, Neighborhood Development Services Leslie Beauregard, Assistant City Manager
<b>Staff Contacts:</b>	Alexander Ikefuna, Neighborhood Development Services
<b>Title:</b>	<b>Virginia Commission of the Arts Challenge Grant - \$5,000</b>

**Background/Discussion:**

The City received \$5,000 in grant funding from the Virginia Commission of the Arts in January to be used for an arts organization to which the City provides funding greater than or equal to the amount of grant funding. In past years the funds were divided evenly between the Piedmont Council of the Arts and the Virginia Discovery Museum. However, the Piedmont Council of the Arts did not receive City funding this year and is therefore ineligible for this grant funding. Therefore, all of these funds will be provided to the Virginia Discovery Museum this year per award application submitted March 2016.

**Discussion:**

The City has received a grant from the Virginia Commission of the Arts in the amount of \$5,000 to match City funding appropriated to arts organizations that receive funding from the City. These funds will be passed-through to the Virginia Discovery Museum.

**Future Direction:**

Recently, City staff were approached by another arts-related nonprofit about the Virginia Commission for the Arts matching grants. Upon investigation, staff learned that these funds may be allocated to any nongovernmental arts organization that receives funding from the City. The FY17 award cannot be changed, but in future applications to the Commission, the City will request that matching funds be allocated equally to all arts organizations receiving City funds.

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

Approval of this item aligns directly with the City Council Vision for "Charlottesville Arts and Culture" by providing direct support to arts organizations.

**Community Engagement:** N/A

**Budgetary Impact:**

Matching funds for these projects have already been approved and appropriated by City Council as part of the FY 2017 Budget.

**Recommendation:**

Staff recommends approval and appropriation.

**Alternatives:**

The alternative is to return this grant funding.

**Attachments:**

Appropriation

**Appropriation  
Virginia Commission of the Arts Challenge Grant  
\$5,000**

**WHEREAS**, the Virginia Commission for the Arts has notified the City of Charlottesville of its grant award in the Local Government Challenge Grant category; and

**WHEREAS**, the grant award will be the Piedmont Council for the Arts for their activities during the FY 2017 Fiscal Year;

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that a total of \$5,000 is hereby appropriated in the following manner:

**Revenues**

\$5,000      Fund: 209      Internal Order: 1900271      G/L Account: 430080

**Expenditures**

\$5,000      Fund: 209      Internal Order: 1900271      G/L Account: 540100

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon receipt of \$5,000 in funds from the Virginia Commission of the Arts.

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



Agenda Date:	March 6, 2017
Action Required:	Approval of Resolution
Presenter:	Marta Keane, CEO, JABA Sue Friedman, President/CEO, Alzheimer's Association of Central & Western Virginia Peter Thompson, Executive Director, Senior Center, Inc. Brad Sheffield, Executive Director, JAUNT
Staff Contacts:	Kaki Dimock, Director of Human Services
Title:	<b>A Resolution in Support of Charlottesville Area Alliance</b>

**Background:**

The Charlottesville Area Alliance is a newly formed coalition of organizations which aims to support the development of an age-friendly community. According to its charter: *The Charlottesville Area Alliance's primary purpose is to provide leadership and development for an age-friendly community through education, advocacy, engagement, planning and evaluations. Lead organizations create an age-friendly community by developing a common understanding of the needs and issues, developing policy recommendations, and joining together to encourage the implementation by government, nonprofit organizations, the general public and businesses.*

**Discussion:**

In addition to leaders of area nonprofits, representatives from the city, Albemarle County and the Thomas Jefferson Planning District serve on the Charlottesville Area Alliance's Steering Committee. Kaki Dimock, Director of Human Services, represents the city.

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

The goals of the Charlottesville Area Alliance are aligned with City Council Strategic Plan Goal #2: A healthy and safe city.

**Community Engagement:**

The Charlottesville Area Alliance is working to create a diverse and representative coalition representing the broad needs of the community and identify ways to engage community members in data collection and feedback.

**Budgetary Impact:** This item has no budgetary impact.

**Recommendation:** N/A

**Alternatives:** N/A

**Attachments:** Resolution attached.



## **Resolution of Support for Charlottesville Area Alliance**

WHEREAS, the Charlottesville Area Alliance (CAA) is a collective of organizations who aim to lead the advancement of goals making the Region 10 an age friendly community, being mindful of the unique needs of those aging in this regional community and taking action when needed; and

WHEREAS, the Charlottesville Area Alliance (CAA) includes The Alzheimer's Association, Jefferson Area Board on Aging, The Senior Center, JAUNT Inc., Westminster Canterbury of the Blue Ridge, and Thomas Jefferson Planning District Commission as the initial lead organizations; and

WHEREAS, The CAA's primary purpose is to provide leadership for and to develop an age-friendly community through educating, advocating, engagement, planning, and evaluation, bringing organizations together to create an age-friendly community by developing a common understanding of the needs and issues, developing policy recommendations, and joining together to encourage the implementation by government, non-profit organizations, the general public and businesses; and

WHEREAS, the vision of the CAA is that the Greater Charlottesville area will be the most Age-Friendly community in the country; and

WHEREAS, the mission of the Charlottesville Area Alliance is to lead the advancement of an age friendly community; and

WHEREAS, The CAA has identified five goal areas of work including  
**1) Assessment/Monitoring 2) Planning 3) Advocacy 4) Education & Public Relations 5) Engagement ; and**

WHEREAS, the CAA will utilize the World Health Organization's measurement/indicators of Outdoor Spaces & Buildings, Transportation, Housing, Social Participation, Respect & Social Inclusion, Civil Participation & Employment, Communication & Information, and Community & Health Services; and

WHEREAS, the City of Charlottesville supports the participation of staff in efforts to improve our community for citizens of all ages;



WHEREAS, the city's strategic plan goal # 2 – a healthy and safe city – includes support for the World Health Organization's definition of an age-friendly city; and

THEREFORE, the City of Charlottesville hereby endorses the organization of the Charlottesville Area Alliance and its goals.

Adopted March 6, 2017 by the City of Charlottesville Council duly assembled.

ATTESTED:

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Mike Signer  
Mayor

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



Agenda Date:	March 6, 2017
Action Required:	Direction from City Council
Presenter:	Maurice Jones, City Manager
Staff Contacts:	Maurice Jones, City Manager
<b>Title:</b>	<b>Council Meeting Procedures / Matters by the Public Selection Process</b>

**Background:**

At their work session on February 6, 2016, City Councilors discussed potential revisions to Council meeting procedures to help ensure more efficient Council meetings while also expanding the opportunity to hear from a variety of citizens during public comment. The Council voted to change the Council procedures during its regularly scheduled meeting on February 16, 2016.

The measures agreed upon included the following:

- Publicly post Council's governing procedures on the City's website in a prominent location; <http://www.charlottesville.org/departments-and-services/departments-a-g/city-council/council-meeting-procedures>
- Closer adherence to Robert's Rules of Order in deliberations, including formal motions and discussion periods;
- Incorporate most work sessions into the second Council meeting each month;
- Allot a maximum of 20 minutes for presentation and discussion of most agenda items;
- Limit most Councilor comments to 3 minutes, the same limit as comments by members of the public;
- Establish new guidelines for Councilor inquiries to City staff, in order to improve operational efficiencies;
- Expand opportunities to speak during the first public comment period by allowing requests in advance by email and and/or telephone.

A random selection process for speaking slots for the first Matters by the Public section is proposed as follows:

- Each request that comes in over email, phone, or in person by 9:00 a.m. the day of the Council meeting is given a number.
- A random number generator located at the web site [www.random.org](http://www.random.org) generates 12 random numbers in the range of total sign-ups; for example, 30 people sign up, and 12 random numbers are generated between 1 and 30.
- The 12 selected numbers are given speaking slots.

- The remaining people who signed up to speak are placed on a wait-list in the order that they contacted the Clerk.
- Both the list of assigned speakers and the wait-list will be published on the City's website by 12:00 noon on the day of Council meetings.
- The second Matters by the Public section will remain in place, and any remaining speakers on the wait-list from the first section will be called first.
- It is proposed that this process be put into place for a pilot period of six months, after which it will be evaluated by Council.

On September 16, 2016 the Council revised the Matters by the Public section by reducing the number of speakers who are assigned by the random number generator from 12 to 9 and including three slots that are assigned on a first come, first serve basis on the evening of the Council meeting nights.

The Council will be reviewing the procedures this evening and discussing whether to keep them as is or to revise them.

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

This supports the City Council's vision areas to be a *Community of Mutual Respect* and to have a *Smart, Citizen-Focused Government*. It contributes to Goal 4 of the Strategic Plan, to *Be a Well-Managed and Successful Organization*, and objective 4.4, continue strategic management efforts. It also contributes to Goal 5, *Foster Strong Connections*, and objective 5.3 to promote community engagement

**Attachments:**

Statistics on City Council Meeting Speakers from 2012-2017

Date	# of Speakers 1st MBP	Comments: Agenda Item 1st MBP	Waiting List	# of Speakers 2nd MBP	Comments: Agenda Item 2nd MBP	# of Public Hearings	# Speakers in Public Hearings
2/21/2017	12	3	12	6	4	1	0
2/6/2017	12	9	25	6	4	2	2
1/17/2017	12	10	12	1	1	0	0
1/3/2017	9	3	0	7	0	1	0
12/19/2016	12	8	11	7	2	1	2
12/5/2016	11	0	8	7	0	2	39
11/21/2016	8	3	0	0	0	2	0
11/7/2016	8	2	0	0	0	0	0
10/17/2016	7	1	0	1	0	1	1
10/3/2016	7	0	0	0	0	0	0
9/19/2016	5	3	0	2	1	4	15
9/6/2016	7	1	0	1	0	2	1
8/15/2016	11	1	0	1	1	1	0
7/18/2016	7	2	0	1	1	3	7
7/5/2016	10	0	0	1	0	3	8
6/20/2016	11	5	0	12	9	0	0
6/6/2016	9	2	0	4	2	2	0
5/16/2016	9	0	0	4	0	1	1
5/2/2016	9	1	0	4	4	2	0
4/18/2016	13	12	4	7	7	1	29
4/4/2016	10	1	1	3	1	2	1
3/21/2016	13	9	0	4	1	3	7
3/7/2016	12	10	13	1	1	1	0
2/16/2016	9	9		5	5	2	0
2/1/2016	15	5		6	4	0	0
1/19/2016	8	2		5	5	1	4
1/4/2016	11	1		9	5	0	0
12/21/2015	10	2		4	1	0	0
12/7/2015	5	1		5	0	1	0
11/16/2015	5	1		2	1	1	0
11/2/2015	11	5		2	2	0	0

10/19/2015	7	0			3	1	7	1	2	27
10/5/2015	9	2			1	1	1	1	1	1
9/21/2015	12	7			1	1	1	1	1	7
9/8/2015	14	5			0	0	1	1	0	1
8/17/2015	12	5			3	1	1	0	0	0
7/20/2015	12	3			0	0	1	1	1	0
7/6/2015	13	3			11	0	0	1	1	1
6/15/2015	11	0			2	2	2	2	3	3
6/1/2015	8	9			0	0	1	1	0	0
5/18/2015	13	3			1	0	1	1	2	2
5/4/2015	8	3			0	0	3	3	6	6
4/20/2015	8	3			2	1	3	3	4	4
4/6/2015	6	3			1	1	2	2	11	11
3/16/2015	11	3			0	0	2	2	12	12
3/2/2015	13	4			1	0	1	1	0	0
2/17/2015	12	0			3	0	0	0	0	0
2/2/2015	13	4			2	2	3	3	22	22
1/20/2015	14	0			5	0	0	0	0	0
1/5/2015	11	8			7	2	2	0	0	0
12/15/2014	15	1			0	0	0	0	0	0
12/1/2014	12	3			2	0	0	0	0	0
11/17/2014	12	4			7	3	3	0	0	0
11/3/2014	6	0			1	1	1	1	0	0
10/20/2014	12	5			1	0	0	0	0	0
10/6/2014	11	2			1	1	2	2	0	0
9/15/2014	12	6			3	2	1	1	0	0
9/2/2014	12	2			5	0	1	1	1	1
8/18/2014	12	3			2	2	2	1	0	0
7/21/2014	11	2			4	4	4	0	0	0
7/7/2014	11	5			0	0	0	0	0	0
6/16/2014	12	5			1	1	1	1	20	20
6/2/2014	10	3			0	0	3	3	21	21
5/19/2014	12	1			2	0	1	1	1	1
5/5/2014	12	0			0	0	1	1	1	1

4/21/2014	5	2		1	0	2	1	0	2	1
4/7/2014	11	5		4	1	2	4	1	2	11
3/17/2014	5	1		1	1	3	1	1	3	12
3/5/2014	9	0		0	0	0	0	0	0	0
2/18/2014	9	0		0	0	2	0	0	2	1
2/3/2014	11	5		3	0	0	3	0	0	0
1/22/2014	10	5		2	1	2	2	1	2	3
1/6/2014	7	0		1	1	1	1	1	1	6
12/16/2013	13	5		1	0	2	1	0	2	0
12/2/2013	9	3		0	0	3	0	0	3	0
11/18/2013	11	0		0	0	3	0	0	3	8
11/4/2013	6	1		0	0	0	0	0	0	4
10/21/2013	11	5		1	0	0	1	0	0	0
10/7/2013	13	4		5	1	3	5	1	3	0
9/16/2013	12	8		3	3	1	3	3	1	1
9/3/2013	11	2		2	0	3	2	0	3	2
8/19/2013	10	5		3	3	1	3	3	1	1
7/15/2013	11	2		2	0	1	2	0	1	0
7/1/2013	10	5		3	0	0	3	0	0	0
6/17/2013	6	0		3	0	1	3	0	1	0
6/3/2013	10	3		0	0	1	0	0	1	1
5/20/2013	13	1		0	0	3	0	0	3	0
5/6/2013	10	1		0	1	1	0	1	1	18
4/15/2013	7	2		0	0	2	0	0	2	2
4/1/2013	5	0		2	0	1	2	0	1	6
3/18/2013	8	4		1	1	3	1	1	3	15
3/4/2013	13	7		3	3	0	3	3	0	28
2/19/2013	20	18		4	3	4	4	3	0	0
2/4/2013	13	11		1	1	2	1	1	2	0
1/22/2013	12	3		0	0	1	0	0	1	27
1/7/2013	11	1		3	3	2	3	3	2	28
12/17/2012	12	9		9	4	1	9	4	1	1
12/3/2012	13	0		3	0	3	3	0	3	19
11/19/2012	11	7		7	5	3	7	5	3	1





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



**Agenda Date:** March 6, 2017

**Action Required:** Direction

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

**Staff Contacts:** Maurice Jones, City Manager  
Craig Brown, City Attorney  
Chris Engel, Director of Economic Development

**Title:** **Potential Assistance for Hotel Project at 201 E. Main St. - Revised**

*Note: This item is a continuation from the February 21, 2017 City Council meeting. The bolded items are new and have been added at Council's request.*

**Background:**

In 2008, construction commenced on a project, that was to be known as the Landmark Hotel, at 201 East Main Street, in a former bank building fronting the downtown mall. In 2009, amid the recession the project's financing was called into question ultimately resulting in work ceasing and leaving the building unfinished. Subsequently, in 2012, ownership of the property transferred to Deerfield Square Associates II, LLC following a court sanctioned auction process. Since that time various City staff have interacted with representatives of Dewberry Capital (manager for Deerfield Square Associates II, LLC) and its principal, Mr. John Dewberry, to ensure the safety and security of the structure; but no additional progress has been made to complete the construction.

**Discussion:**

Over the past eight years the City has heard growing concern from residents; businesses and visitors regarding the eyesore and safety concern this long-delayed project has created in the downtown area. Given the unique set of circumstances surrounding this project; members of the City Council, key City staff and representatives of Dewberry Capital have recently engaged in discussions to identify the best options available to move the project to completion as quickly as possible. Ultimately, these conversations resulted in a request from Dewberry Capital for assistance from the City.

After discussion and considerable negotiation City staff and Dewberry Capital are in basic agreement on the following components.

**City agrees to:**

1. City agrees to lease 75 City owned parking spaces in the Water Street Parking Garage for an initial term of 5 years. (If desired, an additional 75 spaces can be leased for a second five year period or the City can conduct a request for proposal process in which terms greater than five

years are possible). In year one, the lease shall be structured so that rent will be equal to 25% of the parking revenue generated by the hotel from the use of the 75 spaces, but not less than \$40,000. In year two, the minimum is increased to \$60,000. In subsequent years, the rent will be equal to 25% of the parking revenue generated by the hotel from the use of the 75 spaces, but not less than \$80,000 annually. The effective date of the lease will coincide with the issuance of a certificate of occupancy for the hotel. The lease will terminate by mutual agreement of both parties or if the hotel ceases to operate for more than 90 days.

2. The City in conjunction with the Charlottesville Economic Development Authority agrees to provide a performance grant, to the developer, equal to 50% of the incremental real estate tax generated by the project (above the base value) for ten years to assist in retiring the debt service. Base value as of 2017 is \$6,642,500. The actual amount of the grant will be determined annually by the assessed value beginning the year following the completion date. The initial estimated annual grant amount is approximately \$110,000, although that may increase or decrease depending on the annual assessment and tax rate.

In order to trigger the performance grant the project must receive a certificate of occupancy and generate in year one a minimum of \$150,000 in lodging tax receipts. In year two the minimum is increased to \$225,000 and in years three – ten to \$300,000. The developer must also make a minimum capital investment of \$20 million in the construction of the project.

**Dewberry Capital (as Developer) agrees to:**

1. **Developer agrees to provide the city with a report, prepared by a qualified professional consultant, confirming the structural integrity of the building and make a reasonable good faith effort to improve the structure's current appearance by July 1, 2017.**
2. **Developer agrees to provide the City with an official project *pro forma* showing all sources and uses of funds, construction costs, upfit costs and anticipated operating costs. Developer agrees that the primary lender have experience in hotel financing and will provide such qualifications to the City upon request.**
3. Developer agrees to expeditiously pursue all necessary City permits and approvals needed to construct the hotel and will not request any reduction in fees related to such.
4. **Developer agrees to allow the city to approve any change in management of the hotel during the term of the agreement.**
5. **Developer commits to a minimum employment level of 60 positions located on the property.**
6. **For purposes of the agreement the completion date will be July 1, 2020.** If a certificate of occupancy has not been issued by the completion date the total grant amount allowable will be reduced by 2% per month. **If a certificate of occupancy has not been issued within 12 months of the agreed upon completion date the agreement will terminate.**
7. Developer agrees to remit all required City taxes in a timely manner during the grant period, agrees not to contest any increase in assessed value for the property during the grant period. **Developer agrees to pay legal fees associated with preparing and reviewing the agreement, in an amount not to exceed \$10,000.**

With respect to the aforementioned performance agreement, the City has entered similar agreements in the past for projects that induce significant capital investment and job creation in the City. These are considered on a case by case basis and approved by the council. The threshold for consideration has been a minimum investment of \$20 million dollars and the creation of 200 or more jobs.

This project is expected to exceed \$20 million dollars in capital investment and create approximately 100 jobs. An additional requirement to generate a significant amount of lodging tax revenue was added in this case. Once completed and operational the hotel project is expected to generate \$800,000 – \$950,000 in annual City tax revenue. This includes real property taxes, personal property taxes, sales taxes, meals taxes, lodging taxes, BPOL and utility taxes.

From a policy standpoint, it is important to remember that the implementation of a tax increment based performance agreement does not negatively impact the City budget as the grant is generated solely from the increase in real estate revenue received from the project. If the project is stalled or never completed for any reason the increase in taxes is not realized and therefore CEDA is not obligated to make the grant.

Specifically what is being proposed is that 50% of the incremental increase in real property taxes attributable to the development be granted to the developer, for a period of ten years, as an incentive to complete the project. The City will receive the other 50% of the increase during the ten year period and the full amount of real property taxes from the project thereafter.

If the City Council indicates their agreement with this approach, staff will proceed to draft the necessary agreements and schedule for future Council action.

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

This agenda item aligns with Council’s vision for Economic Sustainability. It also addresses one of the goals in the City’s Strategic Plan that were recently adopted by Council: Goal 3: Have a Strong, Diversified Economy.

**Community Engagement:**

No engagement specific to this item.

**Budgetary Impact:**

The City operating budget will be minimally impacted by these contemplated agreements. Funds for the performance grant will come from the incremental increase in real estate generated by the project once it has received a certificate of occupancy and the taxes have been realized for a full year. With respect to parking, the City will likely lose some revenue from the 75 spaces in year one, but as hotel operations stabilize and the minimum payment amount is triggered in year 2-10 that amount is expected to be recouped.

**Recommendation/Alternatives:**

Staff seeks direction from council as to whether to pursue this or not to entertain this request further.

## **RESOLUTION**

### **Approving Agreement of Assistance for Hotel Project at 201 E. Main Street**

**WHEREAS**, in 2008, construction commenced on a project, that was to be known as the Landmark Hotel, at 201 East Main Street in a former bank building fronting the downtown mall; and

**WHEREAS**, in 2009, amid the recession, the project's financing was called into question ultimately resulting in work ceasing and leaving the building unfinished; and

**WHEREAS**, over the past eight years the City has heard growing concern from residents, businesses and visitors regarding the eyesore and safety concern this long-delayed project has created in the downtown area; and

**WHEREAS**, given these unique circumstances, members of the City Council, City staff and representatives of Dewberry Capital (manager for Deerfield Square Associates II, LLC, and owner of record of the property at 201 E. Main Street) have recently engaged in discussions to identify the best options available to move the project to completion as quickly as possible; and

**WHEREAS**, these conversations resulted in a request from Dewberry Capital for assistance from the City; and

**WHEREAS**, after discussion and considerable negotiation City staff is willing to recommend to Council the following components:

#### **City agrees to:**

1. City agrees to lease 75 City owned parking spaces in the Water Street Parking Garage for an initial term of 5 years. (If desired, an additional 75 spaces can be leased for a second five year period or the City can conduct a request for proposal process in which terms greater than five years are possible.) In year one, the lease shall be structured so that rent will be equal to 25% of the parking revenue generated by the hotel from the use of the 75 spaces, but not less than \$40,000. In year two, the minimum is increased to \$60,000. In subsequent years, the rent will be equal to 25% of the parking revenue generated by the hotel from the use of the 75 spaces, but not less than \$80,000 annually. The effective date of the lease will coincide with the issuance of a certificate of occupancy for the hotel. The lease will terminate by mutual agreement of both parties or if the hotel ceases to operate for more than 90 days.
2. The City in conjunction with the Charlottesville Economic Development Authority agrees to provide a performance grant, to the developer, equal to 50% of the incremental real estate tax generated by the project (above the base value) for ten years to assist in retiring the debt service. Base value as of 2017 is \$6,642,500. The actual amount of the grant will be determined annually by the assessed value beginning the year following the completion date. The initial estimated annual grant amount is approximately \$110,000, although that may increase or decrease depending on the annual assessment and tax rate.

In order to trigger the performance grant the project must receive a certificate of occupancy and generate in year one a minimum of \$150,000 in lodging tax receipts. In year two the minimum is increased to \$225,000 and in years three – ten to \$300,000. The developer must also make a minimum capital investment of \$20 million in the construction of the project.

**Dewberry Capital (as Developer) agrees to:**

1. Developer agrees to provide the city with a report, prepared by a qualified professional consultant, confirming the structural integrity of the building and make a reasonable good faith effort to improve the structure's current appearance by July 1, 2017.
2. Developer agrees to provide the City with an official project *pro forma* showing all sources and uses of funds, construction costs, upfit costs and anticipated operating costs. Developer agrees that the primary lender have experience in hotel financing and will provide such qualifications to the City upon request.
3. Developer agrees to expeditiously pursue all necessary City permits and approvals needed to construct the hotel and will not request any reduction in fees related to such.
4. Developer agrees to allow the city to approve any change in management of the hotel during the term of the agreement.
5. Developer commits to a minimum employment level of 60 positions for local residents during the term of the agreement.
6. For purposes of the agreement the completion date will be July 1, 2020. If a certificate of occupancy has not been issued by the completion date the total grant amount allowable will be reduced by 2% per month. If a certificate of occupancy has not been issued within 12 months of the agreed upon completion date the agreement will terminate.
7. Developer agrees to remit all required City taxes in a timely manner during the grant period, agrees not to contest any increase in assessed value for the property during the grant period. Developer agrees to pay legal fees associated with preparing and reviewing the agreement, in an amount not to exceed \$10,000.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that these terms are acceptable in concept and shall form the basis of a lease agreement for parking spaces and a performance agreement between the parties;

**BE IT FURTHER RESOLVED**, that the Council of the City of Charlottesville, Virginia directs the City Manager and his staff to prepare the necessary documents to effect such an agreement and schedule such for council consideration as soon as is practicable.

# City School Board's Adopted FY 2018 Budget

## **PowerPoint Presentation**

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



Agenda Date:	March 6, 2017
Action Required:	None
Presenter:	Maurice Jones, City Manager
Staff Contacts:	Leslie Beauregard, Assistant City Manager Ryan Davidson, Sr. Budget and Management Analyst Maya Kumazawa, Budget and Management Analyst
Title:	<b>Presentation – City Manager’s Proposed F.Y. 2018 Budget</b>

**Background:**

At the first Council meeting in March of each year, the City Manager formally presents the proposed budget to City Council and the public. This is followed by a series of public hearings, worksessions, a community budget forum and a final vote on the budget no later than April 15<sup>th</sup>. This item begins the F.Y. 2018 budget discussions and deliberations.

**Discussion:**

The total General Fund Budget for F.Y. 2018 is proposed to be **\$171,619,374**, a **5.93%** increase over F.Y. 2017. The proposed budget also includes a \$23.3M Capital Improvement Program budget in F.Y. 2018.

**Community Engagement:**

There are several opportunities for the community to provide input into the budget. More information on each of the worksessions can be found at [www.charlottesville.org/budget](http://www.charlottesville.org/budget). A few minutes are reserved at the end of each budget worksession for public comment.

Council Budget Worksession	March 9, 2017 – 5:00PM City Space Meeting Room
Community Budget Forum	March 15, 2017 – 6:00PM City Space Meeting Room
Council Budget Worksession	March 16, 2017 – 5:00PM City Space Meeting Room
Public Hearings - Tax Levy and Manager’s Proposed Budget	March 20, 2017 – 7:00PM Council Chambers
Council Budget Worksession	March 30, 2017 – 5:00PM City Space Meeting Room

Public Hearing on Council  
Proposed Budget and First  
Budget Reading

April 3, 2017 – 7:00PM  
Council Chambers

Council Budget Worksession

April 6, 2017 – 5:00PM  
City Space Meeting Room

Second Reading and Budget  
Adoption

April 11, 2017 – 5:30PM  
City Hall - Second Floor Conference Room

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

The proposed budget aligns with Council’s Vision and the Strategic Plan, detailed in the budget document and supplemental material.

**Budgetary Impact:**

The presentation alone has no budgetary impact.

**Recommendation:**

N/A

**Alternatives:**

N/A

**Attachments:**

The City’s proposed budget document and materials for the budget worksessions are posted at [www.charlottesville.org/budget](http://www.charlottesville.org/budget).



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



<b>Agenda Date:</b>	March 6, 2017
<b>Action Required:</b>	Approve Revised Long Term Financial Debt Limit Policy
<b>Presenter:</b>	Leslie Beauregard, Assistant City Manager
<b>Staff Contacts:</b>	Chris Cullinan, Finance Director Krisy Hammill, Debt Manager
<b>Title:</b>	Recommended Changes to Debt Policy Language

**Background:**

At City Council's February 2, 2017 Budget Worksession, Council instructed staff to come back to them with revised language for the long term financial policy that speaks to the City's limit on debt service as a ratio to general fund expenditures. Staff had recommended to City Council increasing the ratio to be more in line with other jurisdictions and to provide flexibility and opportunities to adopt a more aggressive capital budget program, if revenues can support the increases needed to fund the debt service payments. At this time, staff is only recommending a change in the policy language.

**Discussion:**

The current policy is the following:

*Maintain a debt service to general fund total expenditure ratio of 8% or less.*

The revised policy being proposed is the following:

*Debt service as a percentage of the general fund total expenditure budget has a ceiling of 10%, with a target of 9%. In calculating compliance with this ratio, the City will exclude debt serviced by dedicated revenues, i.e. self-supporting debt.*

**Community Engagement:**

Each year, City Council receives public feedback and the community has several opportunities to engage with Council regarding the budget. This policy will be discussed and evaluated each budget planning cycle and will help guide those future budgets as do the City's other budget and long term financial guidelines.

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

This action aligns with the Strategic Plan Goal of being a well-managed and successful organization as it comes to maintaining strong fiscal policies.

**Budgetary Impact:**

The presentation alone has no budgetary impact for the F.Y. 2018 Proposed Budget. Staff will continue to monitor and build future capital budgets that manage to this policy as has always been done.

**Recommendation:**

Approved policy language changes.

**Alternatives:**

Keep policy as currently written and staff will continue to monitor and build future capital budgets that manage to this policy as has always been done

**Attachments:**

N/A

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

<b>Agenda Date:</b>	March 6, 2017
<b>Action Required:</b>	Vote on a request for a sidewalk waiver
<b>Presenter:</b>	Heather Newmyer, City Planner, Neighborhood Development Services
<b>Staff Contact:</b>	Heather Newmyer, City Planner, Neighborhood Development Services
<b>Title:</b>	<b>Sidewalk Waiver Request for 1421 Dairy Road (TM 41 P 15.2)</b>

**Background:**

T.J. Southmayd is the record owner of a vacant lot located at 1421 Dairy Road. A single-family detached dwelling is currently under construction on 1421 Dairy Road, and Mr. Southmayd has applied for a sidewalk waiver for this site (the "Lot"). The Lot is zoned R-1 and the construction is permitted by right. The Lot has frontage on Dairy Road and Rugby Road. The applicant is requesting a sidewalk waiver pursuant to the provisions of Zoning Ordinance sec. 34-1124 (vacant lot construction).

**Discussion:**

The following ordinance pertains to the waiver of sidewalks, noted in *Section 34-1124 Vacant lot construction- Required sidewalks, curbs and gutters.*

*Section 34-1124(b)*

*For the protection of pedestrians and to control drainage problems, when not more than two (2) dwelling units are to be constructed upon a previously unimproved lot or parcel, or when any single-family detached dwelling is converted to a two-family dwelling, sidewalk, curb and gutter (collectively, "sidewalk improvements") shall be constructed within public right-of-way dedicated along the adjacent public street frontage for that purpose. No certificate of occupancy shall be issued for the dwelling(s) until the sidewalk improvements have been accepted by the city for maintenance, or an adequate financial guaranty has been furnished to the city conditioned upon completion of the sidewalk improvements within a specific period of time. The requirements of this paragraph shall not apply, if (i) the owner of the lot or parcel obtains a waiver of the required sidewalk improvements from city council, or (ii) the owner of the lot or parcel, at the owner's sole option, elects to contribute funds to a sidewalk improvement fund in an amount equivalent to the cost of dedication of land for and construction of the required sidewalk, curb and gutter.*

The applicant qualifies for Option i (to seek a waiver from Council) and Option ii (to contribute to the sidewalk improvement fund in lieu of building a sidewalk). The applicant has indicated to staff

that he wishes to contribute to the sidewalk improvement fund at this time for the portion of the Lot that fronts onto Rugby Road. He is seeking the sidewalk waiver from Council regarding the portion of the Lot that fronts Dairy Road.

The applicant includes the following justifications for a sidewalk waiver in the waiver request specific to the frontage on Dairy Road:

- There is currently no sidewalk installed on the western side of Dairy Road where the subject property is being constructed
- There is a sidewalk that runs the entire length of the east side of Dairy Road
- Installation of a sidewalk on the Lot will require the removal of a large, mature tree
- If a future sidewalk were to be continued in the southwest direction, neighboring properties would lose landscape screening that fronts their homes
- Neighboring properties to the north have expressed the desire to maintain existing vegetative screening in front of their homes to screen from traffic along Dairy. If a future sidewalk on this side of the road were installed, it would require removal of mature landscaping and vegetative screening
- Taken from the Barracks/Rugby neighborhood plan (2006), sidewalks are to be installed “only on streets that neighbors want them.” A letter signed by neighbors voicing their opposition to a sidewalk being constructed on the eastern side of Dairy Road is included in the application attached.

City staff evaluates sidewalk waiver requests based on factors which include whether any engineering challenges exist that would require an undue financial burden on the applicant as well as increase the cost of the City to maintain the sidewalk in the future (i.e. the need for retaining walls). In addition, the City’s Bicycle and Pedestrian Coordinator comments on all requests for sidewalk waivers.

During the Bicycle and Pedestrian Master Plan planning process, residents of the Barracks/Rugby Neighborhood expressed a strong desire for sidewalks on Rugby Road. There is a sidewalk connection included in the Bicycle and Pedestrian Master Plan (adopted September 2015) and evaluated as part of the ongoing CIP program for sidewalk construction. While the sidewalk received a high score in the evaluation process, it did not meet the threshold for inclusion in the current round of funding. This is due in part to the significant investment the building of this sidewalk would require. The planning level cost estimates provided from a constructability study conducted by EPR engineering staff in 2015 were approximately \$450,000 not including right-of-way acquisition or utility relocation. The cost estimate accounts for enclosing a drainage ditch, construction of a retaining wall among other improvements. However, due to lower Rugby Road’s high score and it being a desired sidewalk, it is possible for its inclusion in a future priority list.

**Citizen Engagement:**

No input has been received by the City specific to this waiver request.

During the Bicycle and Pedestrian Master Plan (adopted September 2015) planning process, there was expressed interest from the Barracks/Rugby Neighborhood for construction of a sidewalk on Rugby Road.

The application includes a letter signed by neighbors voicing their opposition to a sidewalk being constructed on the eastern side of Dairy Road.

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

The City Council Vision of a Connected Community states that “bike and pedestrian trail systems, sidewalks, and crosswalks enhance our residential neighborhoods.” The applicant contributing to the sidewalk fund, which is used to support sidewalk construction in the City, would support the City Council’s vision of a Connected Community.

Strategic Plan Goal 2 is to be a safe, equitable, thriving and beautiful community. Specifically, Goal 2.3 specifies to provide reliable and high quality infrastructure. The applicant contributing to the sidewalk fund would support this goal.

**Alignment with City Council’s Comprehensive Plan:**

The first goal in the Transportation Chapter of the Comprehensive Plan states “Increase safe, convenient and pleasant accommodations for pedestrians, bicyclists and people with disabilities that improve quality of life within the community and within individual neighborhoods.”

**Budgetary Impact:**

This item has a small impact on the budget as a contribution to the sidewalk fund would be used for construction of a new sidewalk, which requires City maintenance once completed.

**Recommendation:**

Following a review of the request, staff has made the following findings:

- The 2015 Bicycle and Pedestrian Master Plan did not evaluate a sidewalk on Dairy Road. Neighboring property owners have expressed opposition to the construction of sidewalk on the eastern side of Dairy Road. Staff is supportive of City Council waiving the sidewalk requirements for the portion of the Lot that fronts on Dairy Road.
- Since (i) residents of the Barracks/Rugby Neighborhood have expressed desire for a sidewalk on Rugby Road, (ii) there is a sidewalk connection included in the 2015 Bicycle and Pedestrian Master Plan that is evaluated as part of the ongoing CIP program for sidewalk construction, and (iii) the Lot fronts on the eastern side of Rugby Road which is the side deemed viable for future sidewalk construction based off of EPR’s study completed in 2015, staff supports the applicant contributing to the sidewalk fund in the amount that accounts for the Lot’s frontage on Rugby Rd.
- Engineering staff has reviewed the Lot and has provided a cost estimate for a sidewalk contribution based off of the Lot’s road frontage on Rugby Road: \$4,300.
- Contributions made into the sidewalk fund assist in sidewalk construction city-wide, which helps improve connectivity throughout the City.

Staff recommends a partial waiver be approved for the portion of the Lot that fronts on Dairy Road.

**Alternatives:**

Council could choose to approve this request for both frontages and the applicant would not be required to install sidewalk in order to develop the Lot and/or opt to contribute to the sidewalk fund.

**Suggested Motions:**

1. I move to approve the attached Resolution authorizing a waiver of sidewalk requirements applicable to the Lot at 1421 Dairy Road for the Lot's Dairy Road frontage.
2. I move to deny this request for a waiver of sidewalk requirements at 1421 Dairy Road.

**Attachments:**

- (1) Proposed Resolution
- (2) Application
- (3) Applicant's Narrative with Photographs
- (4) Applicant's Addendum received February 15, 2017



**RESOLUTION**  
**Approving a Sidewalk Waiver Request for**  
**1421 Dairy Road (Dairy Road Frontage)**

**WHEREAS**, application has been made by T. J. Southmayd, the owner of property located at 1421 Dairy Road, identified on City Tax Map 41 as Parcel 15.2 (“Subject Property”), seeking a waiver of the sidewalk requirement set forth within City Code Sec. 34-1124 in connection with the construction of a single-family detached dwelling on the Subject Property; and

**WHEREAS**, the Subject Property has frontage on both Rugby Road and Dairy Road, but the property owner is seeking a sidewalk waiver only for the Dairy Road frontage; for the Rugby Road frontage, the property owner is electing to contribute to the sidewalk improvement fund in lieu of constructing a sidewalk, as permitted under City Code Sec. 34-1124(b)—as a practical matter, the requested waiver, combined with the contribution to the sidewalk fund, will relieve the property owner from having to construct any sidewalks along any public street frontage at this location; and

**WHEREAS**, City staff has submitted a report to Council containing staff’s comments and recommendations regarding the sidewalk waiver request, and Council has reviewed the staff recommendations and the information and materials submitted with the application; and

**WHEREAS**, City Council has considered the factors set forth within City Code Section 34-1124(b) and has determined that the sidewalk waiver request should be approved; now, therefore

**BE IT RESOLVED** by the Council for the City of Charlottesville, Virginia that the sidewalk improvements required by City Code Section 34-1124(b) with respect to the Dairy Road frontage on the Subject Property are hereby waived.

RECEIVED

JAN 05 2017



WAIVER REQUEST FORM

NEIGHBORHOOD DEVELOPMENT SERVICES

Please Return To: City of Charlottesville
Department of Neighborhood Development Services
PO Box 911, City Hall
Charlottesville, Virginia 22902
Telephone (434) 970-3182 Fax (434) 970-3359

For a Critical Slopes Waiver Request, please include one of the following application fees: \$75 for single-family or two-family projects; \$500 for all other project types. \*additional application form required
For all other Waiver Requests, please include one of the following application fees: \$50 for single-family or two-family project; \$250 for all other project types.

Applicant: T.J. Southmayd Property Owner Name: T.J. Southmayd
Address: 408 N. 1st St., Apt. 2, Charlottesville Va, 22903
Phone (H) 610-529-5754 (W) (F)
Email: tjsouthmayd@gmail.com
Address of Waiver: 1421 Dairy Rd.
Tax Map and Parcel No. of Property: 410015200

Waiver Requested (review Zoning Ordinance for items required with waiver submissions):

- Checkboxes for: Sidewalk, Drainage/Storm Water Management, Site Plan Review, Off-street Parking, Landscape, Lighting, Setbacks, Signs, Communication Facilities, Critical Slopes, Stream Buffer Mitigation Plan, Other.

Description of Waiver Requested: Sidewalk waiver request for 1421 Dairy Rd.

Reason for Waiver Request: See attached letter.

Applicant Signature Date

Property Owner Signature (if not applicant) Date

For Office Use Only: Date Received: 1/5/2017
Review Required: Administrative Planning Commission
Approved: Denied:
Director of NDS
Comments: OT17-00007

RECEIVED

JAN 05 2017

NEIGHBORHOOD DEVELOPMENT SERVICES

T.J. Southmayd  
408 N. 1<sup>st</sup> St. Apt. 2  
Charlottesville Va 22903

City of Charlottesville  
Department of Neighborhood Development Services  
PO Box 911, City Hall  
Charlottesville Va 22902  
Attn: Mr. Brian Haluska  
Neighborhood Planner

RE: 1421 Dairy Road Sidewalk Waiver Request

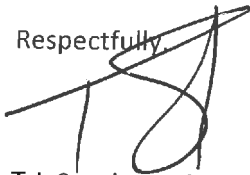
Mr. Haluska,

Please find the sidewalk waiver request and support statement. I would also personally like to request the right to waive the sidewalk as the homeowner at 1421 Dairy Rd. and am presenting a signed letter from my direct neighbors to the property whom are also in opposition of the sidewalk installation. The concerns that I have are as follows:

- There is no sidewalk installed on the western side of Dairy Rd. where the subject property is being constructed.
- There is no sidewalk at all installed on the western side of Rugby Rd., all the way to Preston Avenue
- There is already a sidewalk installed on the entire length of the Eastern side of Dairy Rd.
- Installation of a sidewalk on the subject property will require us to take down a large, mature tree that provides beauty to the lot and shades the property.
- If a future sidewalk were to be continued in the Southwest direction, my direct neighbors would lose the landscape screening in front of their home and the sidewalk would likely be detrimental to the circular driveway on their property
- To the North, many neighbors enjoy vegetative screening in front of their homes due to the traffic on Dairy Rd. Installation of a future sidewalk on this side of the road would mean the removal of mature landscaping, vegetative screening and encroachment on driveways for many neighbors on Dairy Rd.
- In keeping with the Barracks/Rugby Neighborhood plan (2006), sidewalks are to be installed "only on streets that neighbors want them" (XX) neighbors on the street have voiced their opposition to a sidewalk on the Eastern side of the street.

Thank you for taking the time to review my concerns. I hope you will support my concerns and wishes.

Respectfully



T.J. Southmayd

Appendix



**1505 Dairy Rd**

- Mature landscaping at front of property to be destroyed by future sidewalk



**1413 Dairy Rd**

- Mature landscaping at front of property to be destroyed by future sidewalk



**1426 Dairy Rd**

- Mature landscaping and fence at front of property to be destroyed by future sidewalk



**1415 Dairy Rd/1421 Dairy Rd**

- **1415 Dairy Rd**—Mature landscaping and circular driveway at front of property to be impacted by future sidewalk
- **1421 Dairy Rd**—Mature tree to be destroyed by future sidewalk

Residents of Dairy Rd.  
Charlottesville Va, 22903  
September 14, 2016

Re: 1421 Dairy Rd.

Charlottesville City Council Members  
Charlottesville, Va

Dear Council Members,

We would like to support the waiver request to not install a sidewalk in front of 1421 Dairy Rd. As residents of Dairy Rd., we enjoy the mature plantings on our properties that line the street both for their beauty and for the screening they provide. We recognize that the installation of a future sidewalk would require the removal of these plantings and we would ask that you take our concern into consideration when making your decision to approve the request to waive the requirement of installing a sidewalk at 1421 Dairy Rd.

1426 Dairy Road

Address

Loise & Trudel

Signature

1505 Dairy Road

Address

Wendy B. Brown

Signature

1413 Dairy Rd

Address

Patricia Mangano

Signature

1517 Dairy Road

Address

Andrew Mordstein

Signature

Address

Signature

RECEIVED

FEB 15 2017

NEIGHBORHOOD DEVELOPMENT SERVICES

T.J. Southmayd  
408 N. 1<sup>st</sup> St. Apt. 2  
Charlottesville Va 22903

City of Charlottesville  
Department of Neighborhood Development Services  
PO Box 911, City Hall  
Charlottesville Va 22902  
Attn: Ms. Heather Newmyer  
Neighborhood Planner

RE: 1421 Dairy Road Sidewalk Waiver Request Addendum

Ms. Newmyer,

Per our conversation on January 20<sup>th</sup>, I would like to formally note that I plan to contribute funds to the city's sidewalk initiative per the formula created by Mr. Silman for the portion of my property that backs to Rugby Rd.

Although I had not anticipated that a sidewalk on Rugby Rd. would be part of the city's sidewalk plan, I now understand this to be a section of sidewalk that the city intends to pursue as part of their "Approved Sidewalk Priorities through 2021".

Whereas a sidewalk on the Dairy Rd. frontage of my property is neither part of the city's sidewalk plan or desired by my neighbors and myself (per my previously submitted sidewalk waiver request), I'm happy to be able to support a section of sidewalk that I understand to be integral to the city's sidewalk goals.

Respectfully,

T.J. Southmayd

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



Agenda Date: March 6, 2017

Action Required: Consideration of a Critical Slope Waiver

Presenter: Heather Newmyer, City Planner, Neighborhood Development Services

Staff Contact: Heather Newmyer, City Planner, Neighborhood Development Services

**Title: Charlottesville High School Track Critical Slope Waiver**

**Background:**

The City of Charlottesville School Board submitted a site plan on December 21, 2016 that proposes replacing the existing track. Charlottesville High School has road frontage on Melbourne Road. The site plan proposes replacing the existing 6 lane track with an 8 lane track and the addition of track and field features. Expanding from an existing 6 lane track to an 8 lane track will allow for the high school to host track meets as 8 lanes are required for official meets. A new building is proposed to house concessions and restrooms. Other proposed features include new sidewalk, curb, stairs and bleachers.

Improvements specific to areas where critical slopes would be impacted should the waiver be approved are shown on the Critical Slope Exhibit, included in Attachment 1, and include space for the expansion of the track and the addition of stairs, bleachers and sidewalk east of and directly adjacent to the track. Existing critical slopes areas located on this Property include 2.82 acres/ 7 percent of the site (42.40 acres), where less than an acre (0.34 acre) of critical slopes would be disturbed should the critical slope waiver be approved. The proposal preserves the large forested area west of the track that extends largely into West McIntire Park, where the critical slopes and the stream within that area are left undisturbed. The portion of slope proposed to be disturbed is man-made from where the track was originally constructed.

**Discussion:**

The Planning Commission considered this application at their regular meeting on February 14, 2017.

Staff recommended approval of the critical slope waiver based off of Finding 1 referenced in City Code Sec. 34-1120(b)(6)(d.i), “*the public benefits of allowing disturbance of a critical slope outweigh the public benefits of the undisturbed slope (public benefits include, but are not limited to, stormwater and erosion control that maintains the stability of the property and/or the quality of adjacent or environmentally sensitive areas; groundwater recharge; reduced stormwater velocity; minimization of impervious surfaces; and stabilization of otherwise unstable slopes).*”

The justification for Finding 1 includes:

- Installation of an infiltration BMP that will reduce flow and pollutants from the site below pre-developed levels and will recharge groundwater



- Proposed erosion and sediment control measures *with the addition of staff's recommended sediment traps and reinforced silt fence to lesson impacts*
- Minimal impacts to the critical slopes on-site/ leaving the large forested area west of the track that extends largely into West McIntire Park and contains critical slopes/stream undisturbed

Staff, in addition, recommended the proposed willow oaks lining the walkway to the track be replaced as they do not have adequate space and would run the risk of bringing up the adjacent track with their root system. Parks Department provided a list of example plantings that would succeed in those conditions given the space.

### **Citizen Engagement:**

Written notice was sent to the applicant, the owner, and the owner of each property located within five hundred (500) feet of the property per City Code 34-1120(b)(6)(b).

Sue Hart, resident of 1602 Grove Street, reached out in support of the track expansion but noted general traffic concerns along Grove Street. The information she brought up was forwarded along to Brennen Duncan, Traffic Engineer.

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

The City Council Vision of A Green City states that "We have clean air and water, we emphasize recycling and reuse, and we minimize storm-water runoff."

### **Budgetary Impact:**

N/A.

### **Recommendation:**

The Planning Commission considered this matter at their February 14, 2017 meeting.

The Commission took the following action:

Mr. Santoski moved to recommend approval of the critical slope waiver with conditions for Tax Map 43A, Parcel 1, 1400 Melbourne Rd (Charlottesville High School), based on a finding that the public benefits of allowing the disturbance outweigh the benefits afforded by the existing undisturbed critical slope, per City Code 34-1120(b)(6)(d.i).

Planning Commission recommended the following conditions as being necessary to mitigate the potential adverse impacts of approving the waiver in the location requested:

1. The developer include the additional E&S measures recommended by staff (sediment traps and reinforced silt fence), those measures to be detailed on the site plan prior to site plan approval.
2. The developer relocate the proposed Willow Oaks to a location on-site where the recommended spacing (30'-40') is available and the developer work with Neighborhood Development Services and Parks and Recreation Department staff to line the walkway with plantings that would achieve a successful growing environment given the space and given that there may be an additional restroom facility built on-site.

Ms. Green seconded the motion. The Commission voted 6-0 to recommend approval of the critical slope waiver.

**Alternatives:**

City Council has several alternatives:

- (1) by motion, take action to approve the attached resolution (granting a waiver of critical slope provisions as recommended by the Planning Commission);
- (2) by motion, request changes to the attached Resolution, and then approve a waiver of critical slope provisions
- (3) by motion, defer action on the waiver of critical slope provisions
- (4) by motion, deny the requested waiver of critical slope provisions.

**Attachment:**

- (1) Proposed Resolution approving a Critical Slope Waiver
- (2) Planning Commission Staff Report dated February 3, 2017 with Application Materials Attached

**CITY OF CHARLOTTESVILLE**  
**DEPARTMENT OF NEIGHBORHOOD DEVELOPMENT SERVICES**  
**STAFF REPORT**



**REQUEST FOR A WAIVER:  
CRITICAL SLOPES**

**PLANNING COMMISSION REGULAR MEETING**  
**DATE OF PLANNING COMMISSION MEETING: February 14, 2017**

**Project Planner:** Heather Newmyer  
**Date of Staff Report:** February 3, 2017  
**Applicant:** City of Charlottesville School Board  
**Applicant's Representative:** Timmons Group  
**Current Property Owner:** City of Charlottesville School Board

**Application Information**

**Property Street Address:** 1400 Melbourne Rd  
**Tax Map/Parcel #:** Tax Map 43A, Parcel 1  
**Total Site Area:** 42.40 acres  
**Total Project Area (Limits of Disturbance):** 4.60 acres  
**Total Area of Critical Slopes on Parcel:** (2.82 acres) | (7% of total site area)  
**Area of Proposed Critical Slope Disturbance:** (0.34 acres/ 14,810 SF) | (0.8% of total site area)  
**Comprehensive Plan (Land Use Plan) Designation:** Public or Semi-Public  
**Current Zoning Classification:** R-1 (Residential)

**Background**

The City of Charlottesville School Board submitted a site plan on December 21, 2016 that proposes replacing the existing track. Charlottesville High School has road frontage on Melbourne Road. The site plan proposes replacing the existing 6 lane track with an 8 lane track and the addition of track and field features. A new building is proposed to house concessions and restrooms. Other proposed features include new sidewalk, curb, stairs and bleachers.

Proposed improvements associated with this project will impact critical slopes on-site and request of a critical slope waiver is required per Section 34-1120(b) prior to site plan approval. Details on the critical slope waiver request are provided below.

## **Application Details**

The City of Charlottesville School Board is requesting a waiver from Section 34-1120(b) of the City Code (Critical Slope Ordinance) to allow for construction of a new track and addition of track and field features. Expanding from an existing 6 lane track to an 8 lane track will allow for the high school to host track meets as 8 lanes are required for official meets.

Improvements specific to areas where critical slopes would be impacted should the waiver be approved are shown on the Critical Slope Exhibit (Attachment 2) and include space for the expansion of the track and the addition of stairs, bleachers and sidewalk east of and directly adjacent to the track.

Existing critical slopes areas located on this Property include 2.82 acres/ 7 percent of the site. The applicable definition of “critical slope” is as follows:

Any slope whose grade is 25% or greater, **and** (a) a portion of the slope has a horizontal run of greater than 20 feet, and its total area is 6,000 SF or greater, **and** (b) a portion of the slope is within 200 feet of a waterway. *See* City Code Sec. 34-1120(b)(2).

Based on the information presented within the application materials, Staff verifies that the area for which this waiver is sought meets all of the above-referenced components of the definition of “critical slope”.

The following information relevant to the evaluation of this request:

- Large stands of trees: **There is a large wooded area directly west of the track which contains critical slopes and has a stream running through it. The wooded area is connected to and a part of the larger forested area within West McIntire Park. The applicant has noted this area of critical slopes is being left untouched with no disturbance.**

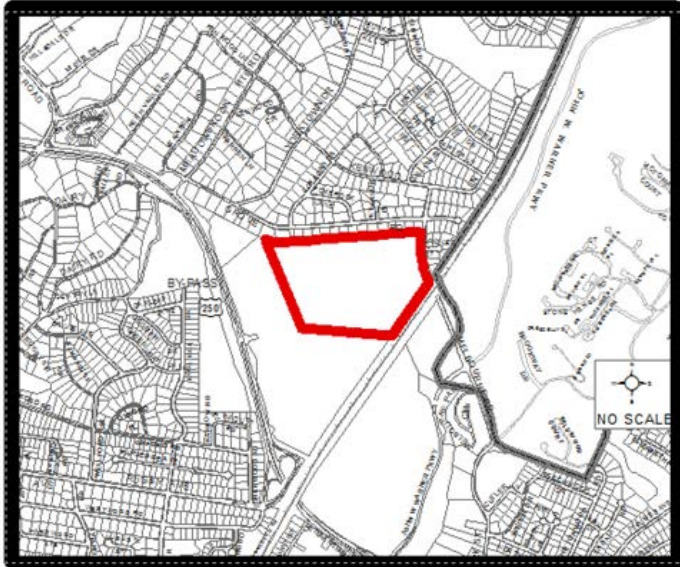
**East of the track is a man-made slope with a line of large trees at the top. Five (5) of the twenty-six (26) trees are called to be removed. The site plan calls for an addition of seven (7) willow oaks. See Attachment 5 for excerpts of the site plan. See Staff Analysis and Recommendation below for analysis on proposed tree plantings.**

- Rock outcroppings: **None.**
- Slopes greater than 60%: **7,240 SF (6%) of the total critical slopes on site are greater than 60%. See Attachment 2 for location of slopes greater than 60%. The majority of slopes greater than 60% are located on the west side of track and are outside of the critical slope disturbance area.**
- Waterway within 200 feet: **Series of smaller streams off of Schenk’s Branch and Meadow Creek are within 200 feet of the critical slope area.**
- Location of other areas of the Property, outside Critical Slopes areas, that fit the definition of a “building site” and could accommodate this proposed development: **In order to expand the existing track and keep it in its existing location, it is not possible to leave the critical slopes undisturbed. The applicant did minimize the**

impact by leaving the critical slopes west of the track that contain the stream running through it undisturbed and call to only disturb the man-made slope east of the track. The applicant did not provide a justification for Finding #2 in their application.

## Vicinity Map

### *Charlottesville High School*



## Standard of Review

**A copy of Sec. 34-1120(b) (Critical Slopes Regulations) is attached for your reference. The provisions of Sec. 34-1120(b) must guide your analysis and recommendations.**

It is the Planning Commission's ("PC") responsibility, when a waiver application has been filed, to review the application and make a recommendation to City Council as to whether or not the waiver should be granted based off the following:

- (i) The public benefits of allowing disturbance of a critical slope outweigh the public benefits of the undisturbed slope (public benefits include, but are not limited to, stormwater and erosion control that maintains the stability of the property and/or the quality of adjacent or environmentally sensitive areas; groundwater recharge; reduced stormwater velocity; minimization of impervious surfaces; and stabilization of otherwise unstable slopes); or
- (ii) Due to unusual size, topography, shape, location, or other unusual physical conditions, or existing development of a property, one (1) or more of these critical slopes provisions would effectively prohibit or unreasonably restrict the use, reuse or

redevelopment of such property or would result in significant degradation of the site or adjacent properties.

If the recommendation is for City Council to grant the requested waiver, the PC may also make recommendations as to the following:

- Whether any specific features or areas within the proposed area of disturbance should remain undisturbed (for example: large stands of trees; rock outcroppings; slopes greater than 60%, etc.)?
- Whether there are any conditions that could be imposed by City Council that would mitigate any possible adverse impacts of the proposed disturbance?

### **Project Review / Analysis**

The applicant indicates the space for the expansion of the track and the addition of stairs, bleachers and sidewalk east of and directly adjacent to the track are the improvements that would affect critical slopes. The proposed critical slope disturbance accounts for 12% of the total critical slope area on-site and 0.8% of the total project site area (42.40 acres), where less than an acre (0.34 acre) of critical slopes would be disturbed.

Each applicant for a critical slopes waiver is required to articulate a justification for the waiver, and to address how the land disturbance, as proposed, will satisfy the purpose and intent of the Critical Slopes Regulations (as found within City Code Sec. 34-1120(b)(1), attached). If it wishes to grant a waiver, the City Council is required to make one of two specific findings: either (1) public [environmental] benefits of allowing disturbance of the critical slope outweigh the benefits afforded by the existing undisturbed slope, see City Code 34-1120(b)(6)(d.i), OR (2) due to unusual physical conditions or existing development of a site, the critical slopes restrictions would unreasonably limit the use or development of the property, see City Code 34-1120(b)(6)(d.ii.). The applicant has provided information in the attached critical slopes waiver application for Finding #1.

#### **Applicant's justification for Finding #1**

Statement: The applicant states the disturbance associated with this project is in order to provide stabilized track and field facilities that will allow the greatest number of people, both students and community members, to access and enjoy the area with the lowest impact where the critical slopes to be disturbed have been limited to the man-made portion.

The applicant states the proposed track and field area will drain to an infiltration BMP that will reduce flow and pollutants from the site area below pre-developed levels, helping to preserve the stream. The applicant states erosion and sediment control measures will be employed as necessary to protect undisturbed areas during construction.

Staff Analysis: Staff finds the current proposed erosion and sediment control measures are appropriate but the addition of sediment traps and silt fence reinforcement are needed to help lessen any possible impacts.

Staff finds that the addition of an infiltration BMP to the site will allow the project to comply with stormwater regulations, will reduce flow and pollutants from the site area below pre-developed levels, and will have a positive effect over current conditions by recharging groundwater. See the more detailed engineering analysis in Attachment 4.

### **Staff Recommendation**

Staff finds the proposed improvements will increase usability of the track, providing a benefit to the community. The applicant is preserving the large forested area that extends largely into West McIntire Park, where the critical slopes and the stream within that area are left undisturbed. A small portion of the man-made slope that was created originally for the existing track to be constructed will be disturbed, but staff believes the disturbance will be mitigated by the proposed E&S measures *with the addition of staff's E&S recommended measures* and installation of the infiltration BMP. Staff's does have concern regarding the applicant's proposed replacement of the five (5) existing trees to be removed:

Staff is concerned that while the applicant is proposing to replace the five (5) existing trees with seven (7) willow oaks, the four (4) Willow Oaks proposed to line the pathway to the track would struggle as they would be in a location with limited space and would run the risk of bringing up the adjacent track with their root system. Willow Oaks require at least 30'-40' spacing. Charlottesville Parks and NDS staff recommend planting the Willow Oaks in the area east of the path where there is more space available starting 30' off the concrete and spacing 30'-40' a part. Staff likes the idea of lining the walkway with plantings and recommends replacing the proposed Willow Oaks by choosing from the following to achieve a successful growing environment given the space:

- Service Berry
- Crape Myrtle (a larger variety; ex. High Cotton)
- Oklahoma Redbud

Staff **recommends approval** of the critical slope waiver with the following conditions:

- The developer include the additional E&S measures recommended by staff (sediment traps and reinforced silt fence), those measures to be detailed on the site plan prior to site plan approval.
- The developer relocate the proposed Willow Oaks to a location on-site where the recommended spacing (30'-40') is available and line the walkway with plantings that would achieve a successful growing environment given the space, where the relocation of Willow Oaks and any new proposed plantings will be shown on landscape plan prior to site plan approval.

### **Suggested Motions**

1. "I move to recommend approval of the critical slope waiver for Tax Map 43A, Parcel 1, Charlottesville High School, as requested, with no reservations or conditions, based on a finding that [*reference at least one*]:

- The public benefits of allowing the disturbance outweigh the benefits afforded by the existing undisturbed critical slope, per City Code 34-1120(b)(6)(d.i)
  - Due to unusual physical conditions, or the existing development of the property, compliance with the City’s critical slopes regulations would prohibit or unreasonably restrict the use or development of the property.
2. “I move to recommend approval of the critical slope waiver for Tax Map 43A, Parcel 1, Charlottesville High School, based on a finding that [*reference at least one*]:
- The public benefits of allowing the disturbance outweigh the benefits afforded by the existing undisturbed critical slope, per City Code 34-1120(b)(6)(d.i)
  - Due to unusual physical conditions, or the existing development of the property, compliance with the City’s critical slopes regulations would prohibit or unreasonably restrict the use or development of the property.
- And this motion for approval is subject to the following conditions:  
 \_\_\_\_\_the following features or areas should remain undisturbed [*specify*]
- \_\_\_\_\_the following conditions are recommended as being necessary to mitigate the potential adverse impacts of approving the waiver in the location requested:  
 [*specify*]
3. “I move to recommend denial of the steep slope waiver for Tax Map 43A, Parcel 1, Charlottesville High School.”

**Attachments**

- 1) Application and Narrative
- 2) Critical Slope Exhibit
- 3) Critical Slopes Ordinance
- 4) Engineering Department Review
- 5) Site Plan Excerpts, December 21, 2016



City of Charlottesville  
CRITICAL SLOPES WAIVER REQUEST SUPPLEMENT

Please review city zoning ordinance section 34-1120(b) "Critical Slopes" and submit a completed Waiver Application Form, Critical Slopes Waiver Request Supplement and a Critical Slope Exhibit\*.

**Applicant:** City of Charlottesville School Board /Timmons Group

**Property Owner:** City of Charlottesville School Board

**Project Description: What are you proposing to do on this site?**

This project includes the construction of a new track and the addition of track and field features. A building for restrooms and concession will be constructed. Other sitework includes, a proposed sidewalk, curb, parking and asphalt will be constructed.

**Existing Conditions:**

Area was previously a track and field area.

**Total Site Area:**

4.5 Acres disturbed area. Property is

**Zoning (if applying for rezoning-please note existing and intended change):**

Current Zoning is R-1

**Percentage of Area that is made up of critical slopes - meets criteria set forth in Sec. 34-1120(b)(2) *Definition of critical slope*: greater than or equal to 25% slopes and a) a portion of the slope has a horizontal run of greater than twenty (20) feet and its area is six thousand (6,000) square feet or greater; and b) a portion of the slope is within two hundred (200) feet of any waterway:**

**Total Critical Slope Area:**

**Critical slopes make up 2.82 acres of the site's 40.8 acres, or 7 % of the site area.**

**\*If critical slopes extend beyond property line, quantify total critical slope area as well as provide area of critical slope that falls within site area.**

**Critical Slope Area Disturbed:**

**0.34 acres of the total critical slope area identified above will be disturbed, or 12 % of the total critical slope area. Proposed critical slope area to be disturbed is 0.8 % of the site area.**

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*\*Critical Slope Exhibit:* Survey indicating location and area of critical slopes and what portions of critical slopes are proposed to be disturbed. Survey should be prepared, sealed, signed and dated by a professional engineer or land surveyor licensed to practice within the Commonwealth of Virginia.

This application should be used to explain how the proposed project meets some or all of the requirements as described in Section 34-1120(6) "Modification or waiver." The applicant is expected to address finding #1 and/or finding #2 and justify the finding by utilizing the "critical slope provisions" as a guide. Completing this application will help staff make their recommendation to the Planning Commission and City Council.

*City Council may grant a modification or waiver, upon making one or more of the following findings:*

**Finding #1: The public benefits of allowing disturbance of critical slope outweigh the public benefits of the undisturbed slope( public benefits include, but are not limited to, stormwater and erosion control that maintains the stability of the property and/or the quality of adjacent or environmentally sensitive areas; groundwater recharge; reduced stormwater velocity; minimization of impervious surfaces; and stabilization of otherwise unstable slopes)**

All disturbance associated with this project is in order to provide track and field facilities for Charlottesville High School. Providing stabilized track and field facilities will allow the greatest number of people, both students and community members to access and enjoy the area with the lowest impact. The critical slopes to be disturbed are man made slopes.

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**Finding #2. Due to unusual size, topography, shape, location, or other unusual physical conditions, or existing development of a property, one (1) or more of these critical slopes provisions would effectively prohibit or unreasonably restrict the use, reuse or redevelopment of such property or would result in significant degradation of the site or adjacent properties.**

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*Please address how Finding #1 and/or Finding #2 will be met utilizing the "critical slope provisions" noted below.*

**1. Erosion affecting the structural integrity of those features.**

Erosion and sediment control measures will be employed as necessary to protect undisturbed areas during construction. Down hill structural practices, silt fence, culvert inlet protection and inlet protection will capture sediment.

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**2. Stormwater and erosion-related impacts on adjacent properties.**

The proposed track and field area will drain to and Infiltration BMP that will reduce flow and pollutants from the site area below pre-developed levels.

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**3. Stormwater and erosion-related impacts to environmentally sensitive areas such as streams and wetlands.**

The proposed track and field area will drain to and Infiltration BMP that will reduce flow and pollutants from the site area below pre-developed levels.

This will help protect and preserve the stream.

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**4. Increased stormwater velocity due to loss of vegetation.**

The slopes to be disturbed are mostly grass. Therefore there will not be an increase in stormwater velocity due to the loss of vegetation.

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**5. Decreased groundwater recharge due to changes in site hydrology.**

The proposed track and field area will drain to and Infiltration BMP that will slow much of the track run off to infiltrate into the ground in small storm events.

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**6. Loss of natural or topographic features that contribute substantially to the natural beauty and visual quality of the community such as loss of tree canopy, forested areas and wildlife habitat.**

The additional area to be disturbed and converted to impervious is currently grass turf area.

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**Please list all attachments that should be viewed as support to the above explanations.**

Critical Slopes Exhibit

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Please sign the following statement.

I certify that, to the best of my knowledge, the information I have provided above is based on sound engineering and surveying data and that this site has been carefully inspected and reviewed for the purposes of completing this application accurately. I certify that as the property owner/applicant I have not given false information that may affect the decisions made regarding this development.

Charlottesville City School Board

Property Owner

Juandiego Wade, Chair



1/12/17

Applicant

Please do not write below this line. For office use only.

Planner's Comments/Recommendations:

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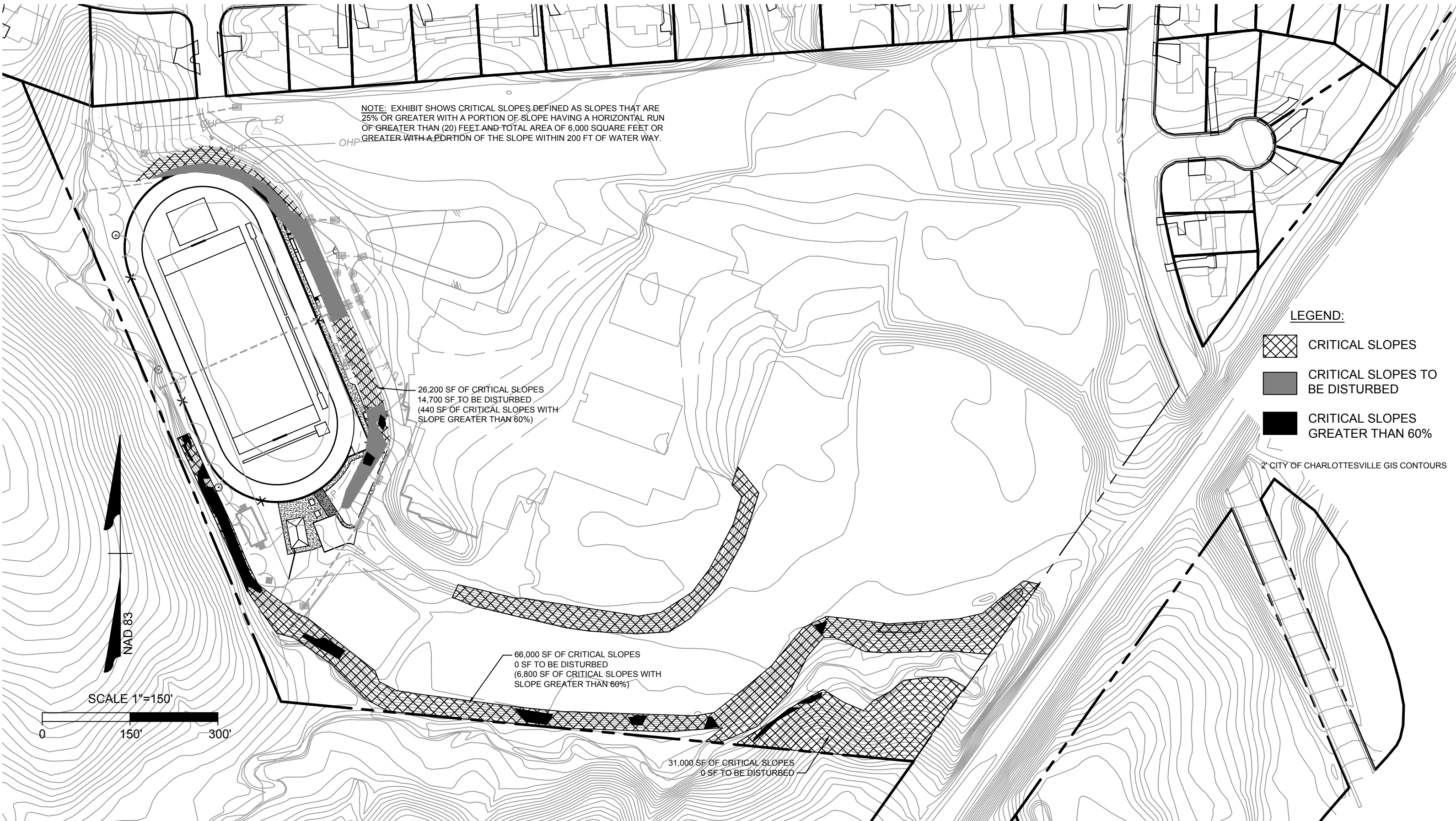
Engineer's Comments/Recommendations:

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# CHS TRACK CRITICAL SLOPES EXHIBIT

CHS TRACK - JANUARY 27, 2017 REVISION

Sec. 34-1120. - Lot regulations, general.

(a) *Frontage requirement.* Every lot shall have its principal frontage on a street or place (i) that has been accepted by the city for maintenance, or (ii) that a subdivider or developer has been contractually obligated to install as a condition of subdivision or site plan approval and for which an adequate financial guaranty has been furnished to the city. Except for flag lots, stem lots, and cul-de-sac lots, or other circumstances described within the city's subdivision ordinance, no lot shall be used, in whole or in part, for any residential purpose unless such lot abuts a street right-of-way for at least the minimum distance required by such subdivision ordinance for a residential lot.

(b) *Critical slopes.*

(1) *Purpose and intent.* The provisions of this subsection (hereinafter, "critical slopes provisions") are intended to protect topographical features that have a slope in excess of the grade established and other characteristics in the following ordinance for the following reasons and whose disturbance could cause one (1) or more of the following negative impacts:

- a. Erosion affecting the structural integrity of those features.
- b. Stormwater and erosion-related impacts on adjacent properties.
- c. Stormwater and erosion-related impacts to environmentally sensitive areas such as streams and wetlands.
- d. Increased stormwater velocity due to loss of vegetation.
- e. Decreased groundwater recharge due to changes in site hydrology.
- f. Loss of natural or topographic features that contribute substantially to the natural beauty and visual quality of the community such as loss of tree canopy, forested areas and wildlife habitat.

These provisions are intended to direct building locations to terrain more suitable to development and to discourage development on critical slopes for the reasons listed above, and to supplement other regulations and policies regarding encroachment of development into stream buffers and floodplains and protection of public water supplies.

(2) *Definition of critical slope.* A critical slope is any slope whose grade is 25% or greater and:

- a. A portion of the slope has a horizontal run of greater than twenty (20) feet and its total area is six thousand (6,000) square feet or greater; and
- b. A portion of the slope is within two hundred (200) feet of any waterway as identified on the most current city topographical maps maintained by the department of neighborhood development services.

Parcels containing critical slopes are shown on the map entitled "Properties Impacted by Critical Slopes" maintained by the department of neighborhood development services. These critical slopes provisions shall apply to all critical slopes as defined herein, notwithstanding any subdivision, lot line adjustment, or other action affecting parcel boundaries made subsequent to the date of enactment of this section.

(3) *Building site required.* Every newly created lot shall contain at least one (1) building site. For purposes of this section, the term building site refers to a contiguous area of land in slopes of less than 25%, as determined by reference to the most current city topographical maps maintained by the department of neighborhood development services or a source determined by the city engineer to be of superior accuracy, exclusive of such areas as may be located in the flood hazard overlay district or under water.

(4) *Building site area and dimensions.* Each building site in a residential development shall have adequate area for all dwelling unit(s) outside of all required yard areas for the applicable zoning district and all parking areas. Within all other developments subject to the requirement of a site

plan, each building site shall have adequate area for all buildings and structures, parking and loading areas, storage yards and other improvements, and all earth disturbing activity related to the improvements.

(5) *Location of structures and improvements.* The following shall apply to the location of any building or structure for which a permit is required under the Uniform Statewide Building Code and to any improvement shown on a site plan pursuant to Article VII of this chapter:

- a. No building, structure or improvement shall be located on any lot or parcel within any area other than a building site.
- b. No building, structure or improvement, nor any earth disturbing activity to establish such building, structure or improvement shall be located on a critical slope, except as may be permitted by a modification or waiver.

(6) *Modification or waiver.*

- a. Any person who is the owner, owner's agent, or contract purchaser (with the owner's written consent) of property may request a modification or waiver of the requirements of these critical slopes provisions. Any such request shall be presented in writing and shall address how the proposed modification or waiver will satisfy the purpose and intent of these provisions.
- b. The director of neighborhood development services shall post on the city website notice of the date, time and place that a request for a modification or waiver of the requirements of these critical slopes provisions will be reviewed and cause written notice to be sent to the applicant or his agent and the owner or agent for the owner of each property located within five hundred (500) feet of the property subject to the waiver. Notice sent by first class mail to the last known address of such owner or agent as shown on the current real estate tax assessment books, postmarked not less than five (5) days before the meeting, shall be deemed adequate. A representative of the department of neighborhood development services shall make affidavit that such mailing has been made and file the affidavit with the papers related to the site plan application.
- c. All modification or waiver requests shall be submitted to the department of neighborhood development services, to be reviewed by the planning commission. In considering a requested modification or waiver the planning commission shall consider the recommendation of the director of neighborhood development services or their designee. The director, in formulating his recommendation, shall consult with the city engineer, the city's environmental manager, and other appropriate officials. The director shall provide the planning commission with an evaluation of the proposed modification or waiver that considers the potential for soil erosion, sedimentation and water pollution in accordance with current provisions of the Commonwealth of Virginia Erosion and Sediment Control Handbook and the Virginia State Water Control Board best management practices, and, where applicable, the provisions of Chapter 10 of the City Code. The director may also consider other negative impacts of disturbance as defined in these critical slope provisions.
- d. The planning commission shall make a recommendation to city council in accordance with the criteria set forth in this section, and city council may thereafter grant a modification or waiver upon making a finding that:
  - (i) The public benefits of allowing disturbance of a critical slope outweigh the public benefits of the undisturbed slope (public benefits include, but are not limited to, stormwater and erosion control that maintains the stability of the property and/or the quality of adjacent or environmentally sensitive areas; groundwater recharge; reduced stormwater velocity; minimization of impervious surfaces; and stabilization of otherwise unstable slopes); or
  - (ii) Due to unusual size, topography, shape, location, or other unusual physical conditions, or existing development of a property, one (1) or more of these critical slopes provisions would effectively prohibit or unreasonably restrict the use, reuse or

redevelopment of such property or would result in significant degradation of the site or adjacent properties.

No modification or waiver granted shall be detrimental to the public health, safety or welfare, detrimental to the orderly development of the area or adjacent properties, or contrary to sound engineering practices.

- e. In granting a modification or waiver, city council may allow the disturbance of a portion of the slope, but may determine that there are some features or areas that cannot be disturbed. These include, but are not limited to:
  - (i) Large stands of trees;
  - (ii) Rock outcroppings;
  - (iii) Slopes greater than 60%.

City council shall consider the potential negative impacts of the disturbance and regrading of critical slopes, and of resulting new slopes and/or retaining walls. City council may impose conditions as it deems necessary to protect the public health, safety or welfare and to insure that development will be consistent with the purpose and intent of these critical slopes provisions. Conditions shall clearly specify the negative impacts that they will mitigate. Conditions may include, but are not limited to:

- (i) Compliance with the "Low Impact Development Standards" found in the City Standards and Design Manual.
- (ii) A limitation on retaining wall height, length, or use;
- (iii) Replacement of trees removed at up to three-to-one ratio;
- (iv) Habitat redevelopment;
- (v) An increase in storm water detention of up to 10% greater than that required by city development standards;
- (vi) Detailed site engineering plans to achieve increased slope stability, ground water recharge, and/or decrease in stormwater surface flow velocity;
- (vii) Limitation of the period of construction disturbance to a specific number of consecutive days;
- (viii) Requirement that reseeded occur in less days than otherwise required by City Code.

(7) *Exemptions.* A lot, structure or improvement may be exempt from the requirements of these critical slopes provisions, as follows:

- a. Any structure which was lawfully in existence prior to the effective date of these critical slopes provisions, and which is nonconforming solely on the basis of the requirements of these provisions, may be expanded, enlarged, extended, modified and/or reconstructed as though such structure were a conforming structure. For the purposes of this section, the term "lawfully in existence" shall also apply to any structure for which a site plan was approved or a building permit was issued prior to the effective date of these provisions, provided such plan or permit has not expired.
- b. Any lot or parcel of record which was lawfully a lot of record on the effective date of this chapter shall be exempt from the requirements of these critical slopes provisions for the establishment of the first single-family dwelling unit on such lot or parcel; however, subparagraph (5)(b) above, shall apply to such lot or parcel if it contains adequate land area in slopes of less than 25% for the location of such structure.
- c. Driveways, public utility lines and appurtenances, stormwater management facilities and any other public facilities necessary to allow the use of the parcel shall not be required to be located within a building site and shall not be subject to the building site area and



dimension requirements set forth above within these critical slopes provisions, provided that the applicant demonstrates that no reasonable alternative location or alignment exists. The city engineer shall require that protective and restorative measures be installed and maintained as deemed necessary to insure that the development will be consistent with the purpose and intent of these critical slopes provisions.

(9-15-03(3); 11-21-05; 1-17-06(7); 1-17-12; 7-16-12)

**CITY OF CHARLOTTESVILLE**  
**DEPARTMENT OF NEIGHBORHOOD DEVELOPMENT SERVICES**  
**STAFF REPORT**



**ENGINEERING REVIEW OF APPLICATION FOR A WAIVER:  
CRITICAL SLOPES**

**Project Review / Analysis (CHS Track Expansion)**

The applicant has provided detailed information in the attached narrative for each item discussed below:

**Finding #1:**

The applicant's explanations are summarized below and the format parallels what was provided with the waiver application. *Comments from the Engineering Staff are indicated in italics.*

**1. Erosion affecting the structural integrity of those features:**

Erosion and sediment control measures will be employed as necessary to protect undisturbed areas during construction. Down hill structural practices, silt fence, culvert inlet protection and inlet protection will capture sediment. *All of the above have been proposed by the applicant, and as part of the site plan review, the City will also be asking for sediment traps and for the silt fence to be reinforced to help lessen any possible impacts.*

**2. Stormwater and erosion-related impacts on adjacent properties:**

The proposed track and field area will drain to an Infiltration BMP that will reduce flow and pollutants from the site area below pre-developed levels. *As stated, an infiltration practice will be used to treat the majority of the area. This will allow the project to comply with the 20% reduction required by the DEQ stormwater regulations.*

**3. Stormwater and erosion-related impacts to environmentally sensitive areas such as stream and wetlands:**

The proposed track and field area will drain to an infiltration BMP that will reduce flow and pollutants from the site area below pre-developed levels. This will help protect and preserve the stream. *Concur.*

**4. Increased stormwater velocity due to loss of vegetation:**

The sloped to be disturbed are mostly grass. Therefore there will not be an increase in stormwater velocity due to the loss of vegetation. *The current slopes and vegetation will be similar to existing conditions, just moved back toward the school slightly to allow for additional room for the track expansion. There should minimal to no impact on stormwater velocity, and ultimately, this will be reduced due to the BMP practices being utilized.*

**5. Decreased groundwater recharge due to changes in the site hydrology:**

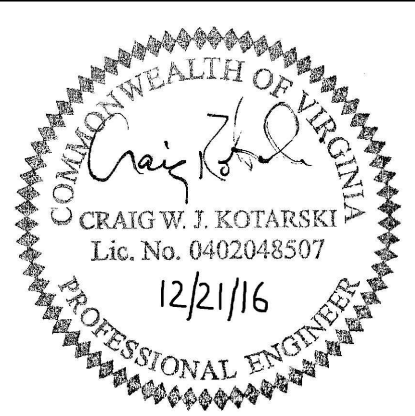
The proposed track and field area will drain to an Infiltration BMP that will slow much of the track run off to infiltrate into the ground in small storm events. *Based on the BMP that is to be implemented, instead of decreasing the groundwater recharge, this project will have a positive effect over current conditions by recharging the groundwater.*

**6. Loss of natural or topographic features that contribute substantially to the natural beauty and visual quality of the community such as loss of tree canopy, forested areas and wildlife habitat:**

The additional area to be disturbed and converted to impervious is currently grass turf area. *The critical slope in question is not “natural” or anything that would contribute to the natural beauty. This critical slope was created in conjunction with the original track construction and will look very similar to the current condition when finished.*

**Engineering Recommendation**

Engineering staff recommends approval of the critical slope waiver application as the technical issues regarding disturbance of these critical slopes will be mitigated with the proposed development and the proposed design will meet state and local minimum control requirements for stormwater runoff. The overall plan for the track will provide a benefit to the community and to the environmental/water quality aspects of the area.



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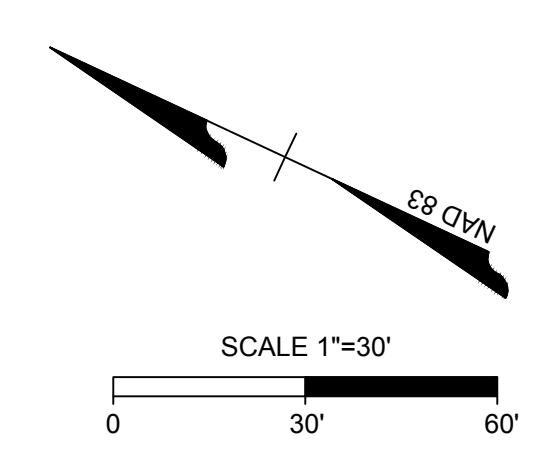
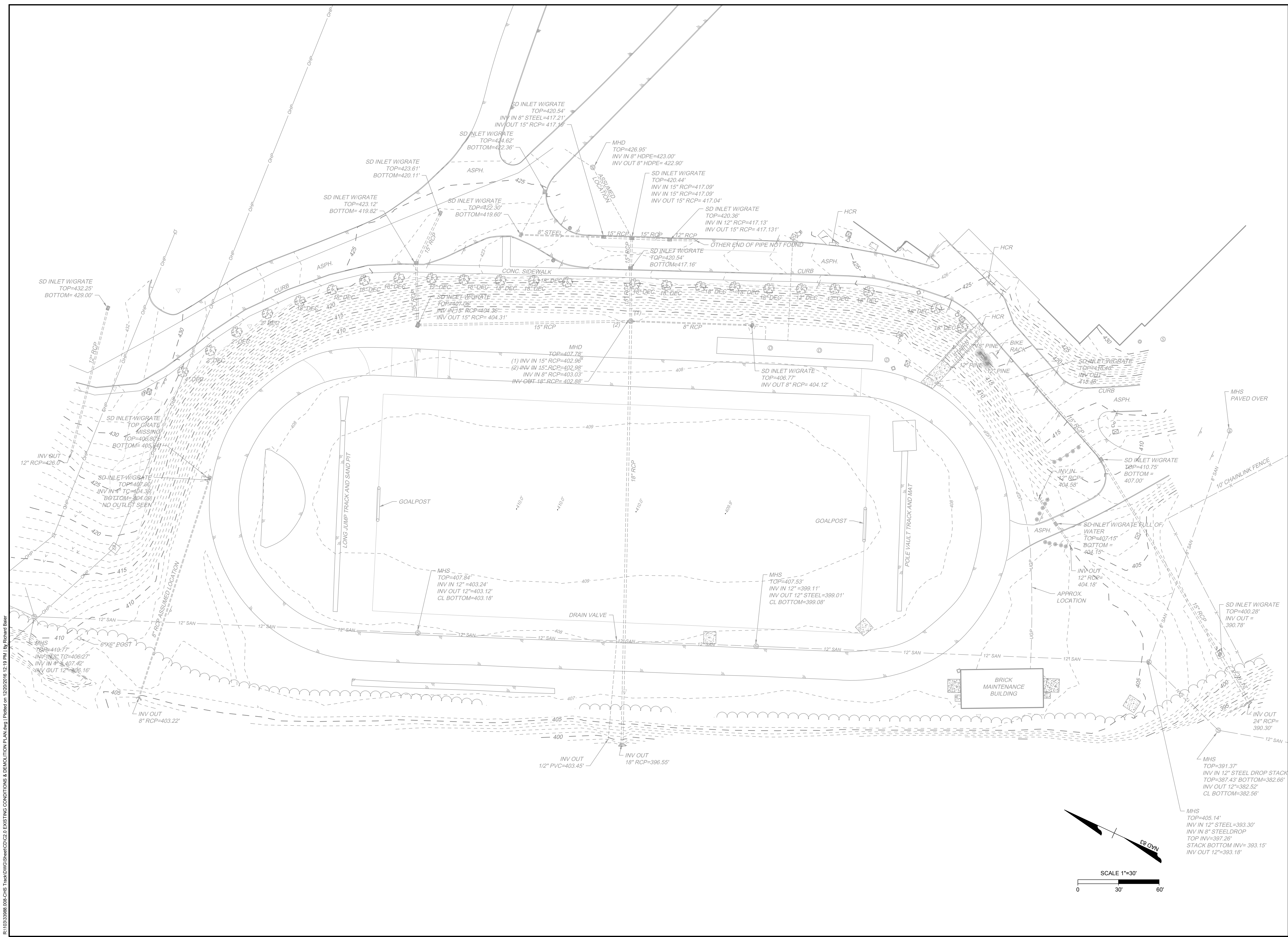
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 J. SHOWALTER  
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 C. KOTARSKI  
 SCALE  
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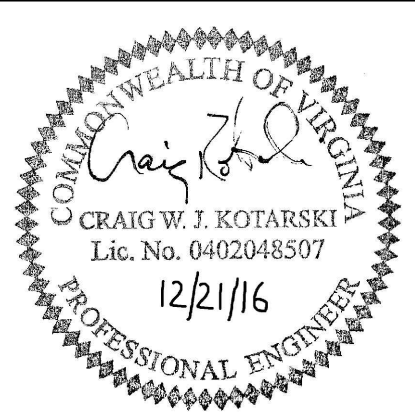
CHS TRACK REPLACEMENT  
 CHARLOTTESVILLE, VA  
 EXISTING CONDITIONS PLAN

JOB NO.  
**33988**  
 SHEET NO.  
**C2.0**



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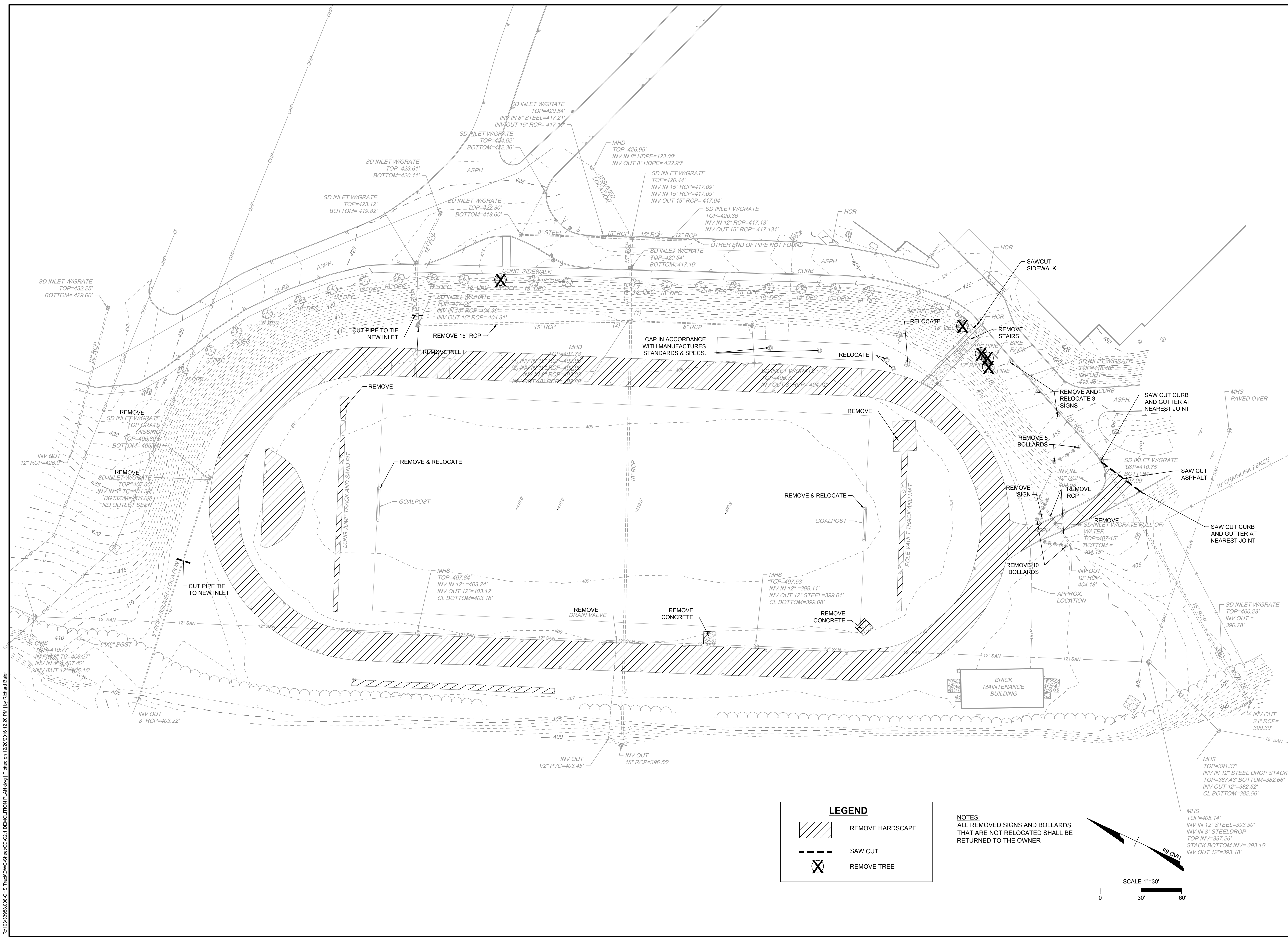
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 CHARLOTTESVILLE, VA  
**DEMOLITION PLAN**

JOB NO.  
**33988**

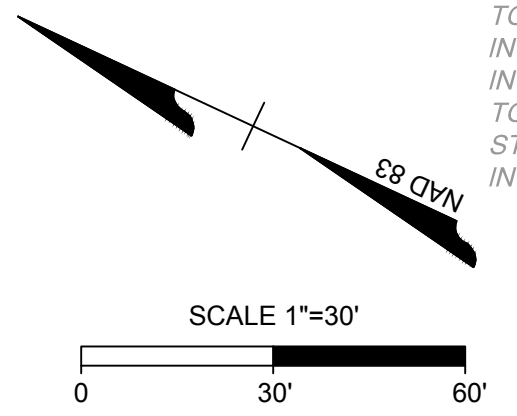
SHEET NO.  
**C2.1**



**LEGEND**

	REMOVE HARDSCAPE
	SAW CUT
	REMOVE TREE

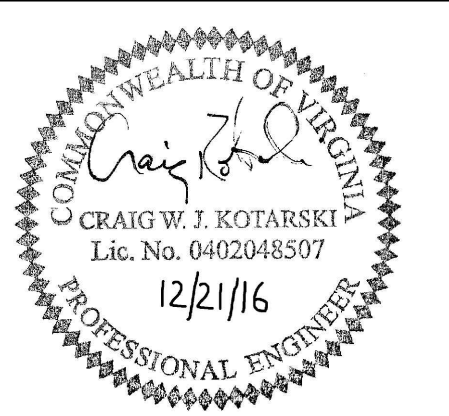
**NOTES:**  
 ALL REMOVED SIGNS AND BOLLARDS  
 THAT ARE NOT RELOCATED SHALL BE  
 RETURNED TO THE OWNER



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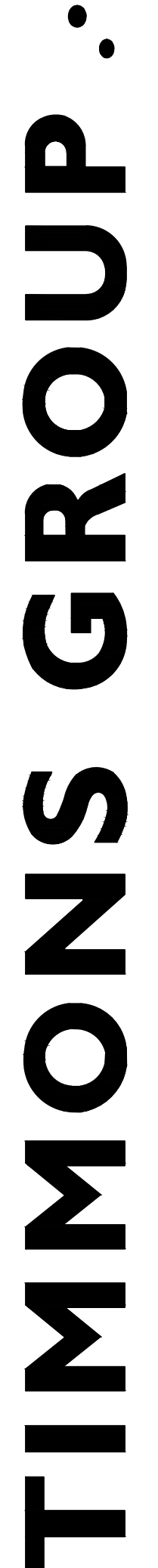




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**CHS TRACK REPLACEMENT  
EROSION & SEDIMENT CONTROL PHASE I PLAN**  
CHARLOTTEVILLE, VA

JOB NO.	33988
SHEET NO.	C3.1

**SOILS INFORMATION:**

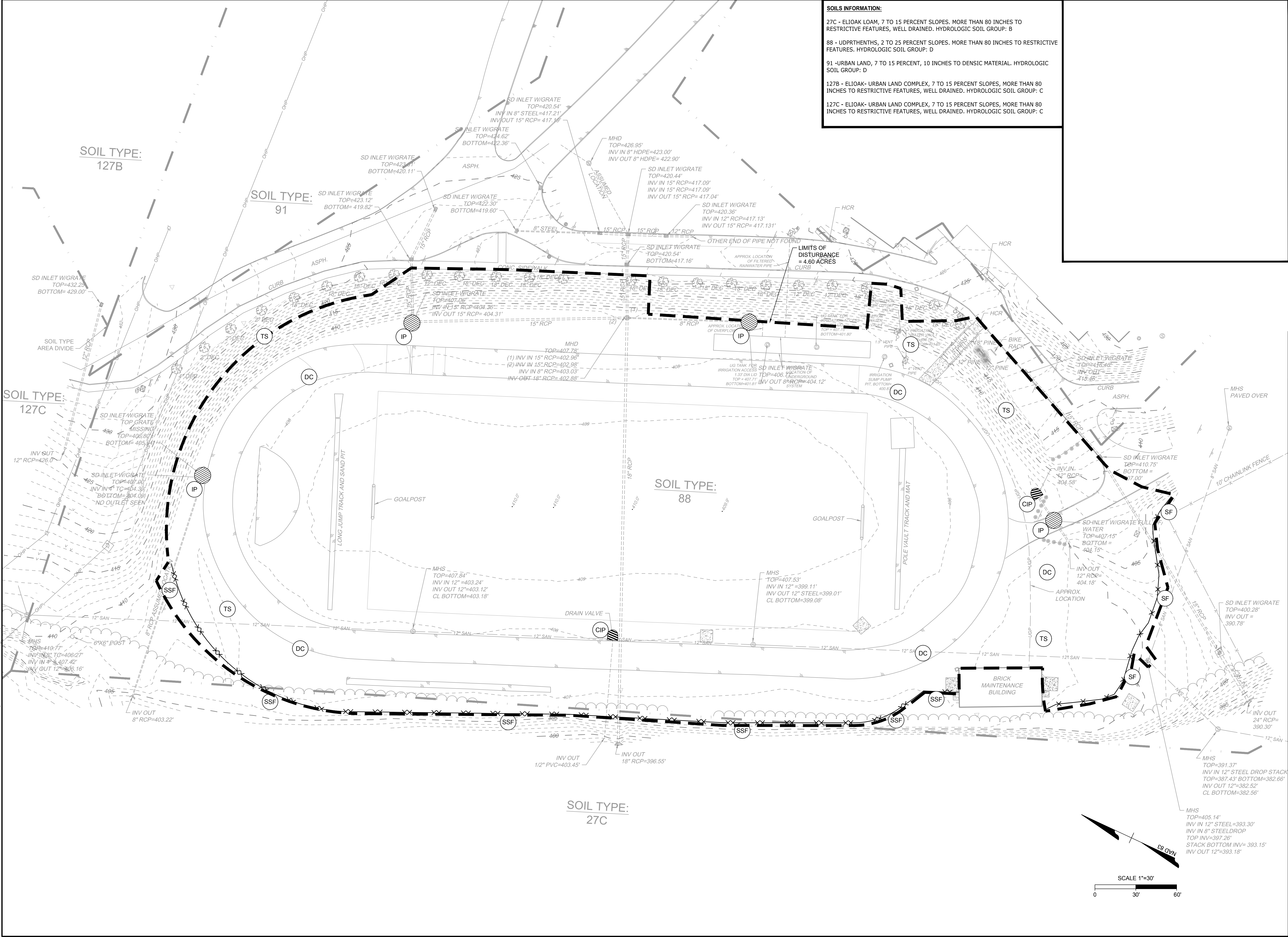
27C - ELIOAK LOAM, 7 TO 15 PERCENT SLOPES, MORE THAN 80 INCHES TO RESTRICTIVE FEATURES, WELL DRAINED. HYDROLOGIC SOIL GROUP: B

88 - UDRPHTHENTIS, 2 TO 25 PERCENT SLOPES, MORE THAN 80 INCHES TO RESTRICTIVE FEATURES. HYDROLOGIC SOIL GROUP: D

91 - URBAN LAND, 7 TO 15 PERCENT, 10 INCHES TO DENSIC MATERIAL. HYDROLOGIC SOIL GROUP: D

127B - ELIOAK- URBAN LAND COMPLEX, 7 TO 15 PERCENT SLOPES, MORE THAN 80 INCHES TO RESTRICTIVE FEATURES, WELL DRAINED. HYDROLOGIC SOIL GROUP: C

127C - ELIOAK- URBAN LAND COMPLEX, 7 TO 15 PERCENT SLOPES, MORE THAN 80 INCHES TO RESTRICTIVE FEATURES, WELL DRAINED. HYDROLOGIC SOIL GROUP: C



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R:\10339888.008\CHS Track\DWG\Sheet\CD\3.2 EROSION AND SEDIMENT CONTROL PHASE 2 PLAN.dwg | Printed on 12/20/2016 12:22 PM | by Richard Baier

**SOILS INFORMATION:**

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88 - UDPRTHENTHS, 2 TO 25 PERCENT SLOPES, MORE THAN 80 INCHES TO RESTRICTIVE FEATURES. HYDROLOGIC SOIL GROUP: D

91 -URBAN LAND, 7 TO 15 PERCENT, 10 INCHES TO DENSIC MATERIAL. HYDROLOGIC SOIL GROUP: D

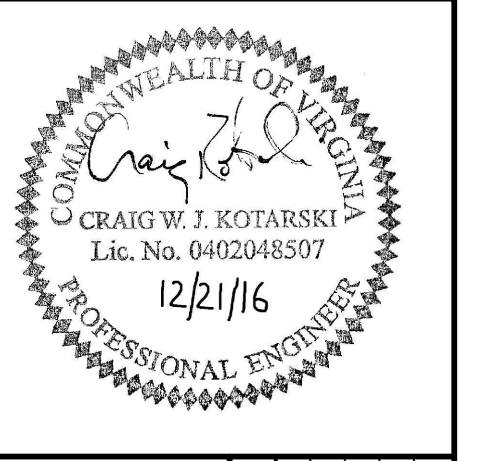
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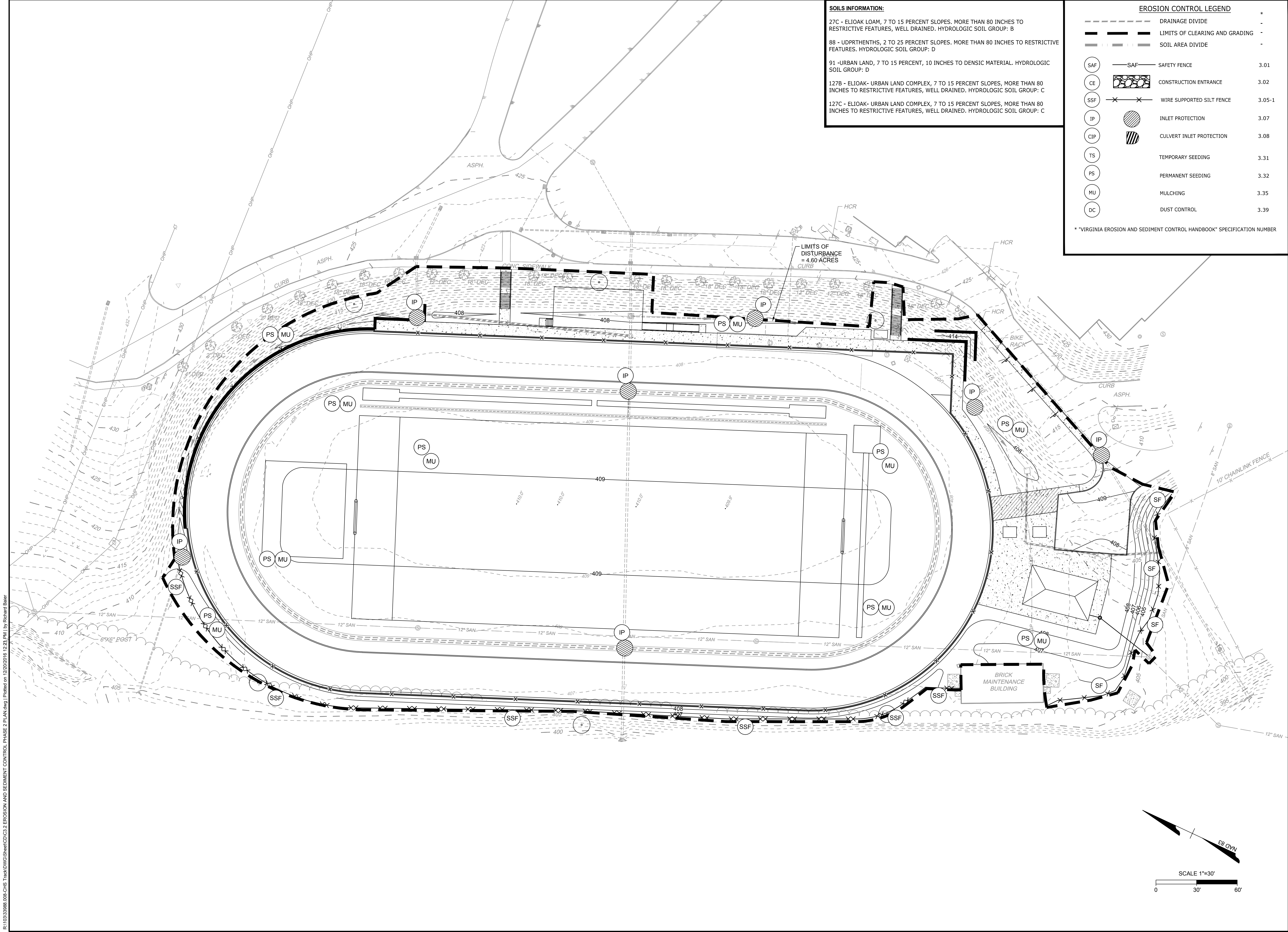
**EROSION CONTROL LEGEND**

---	DRAINAGE DIVIDE	*
---	LIMITS OF CLEARING AND GRADING	-
---	SOIL AREA DIVIDE	-
○ SAF	SAF SAFETY FENCE	3.01
○ CE	CONSTRUCTION ENTRANCE	3.02
○ SSF	WIRE SUPPORTED SILT FENCE	3.05-1
○ IP	INLET PROTECTION	3.07
○ CIP	CULVERT INLET PROTECTION	3.08
○ TS	TEMPORARY SEEDING	3.31
○ PS	PERMANENT SEEDING	3.32
○ MU	MULCHING	3.35
○ DC	DUST CONTROL	3.39

\* "VIRGINIA EROSION AND SEDIMENT CONTROL HANDBOOK" SPECIFICATION NUMBER



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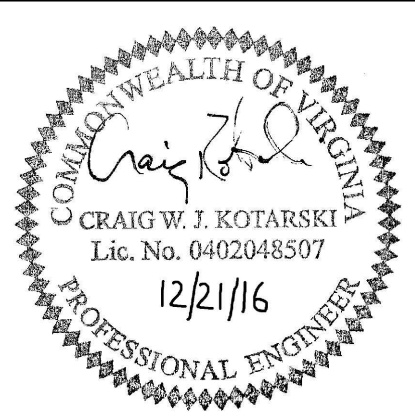
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CHS TRACK REPLACEMENT  
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 EROSION & SEDIMENT CONTROL PHASE II PLAN

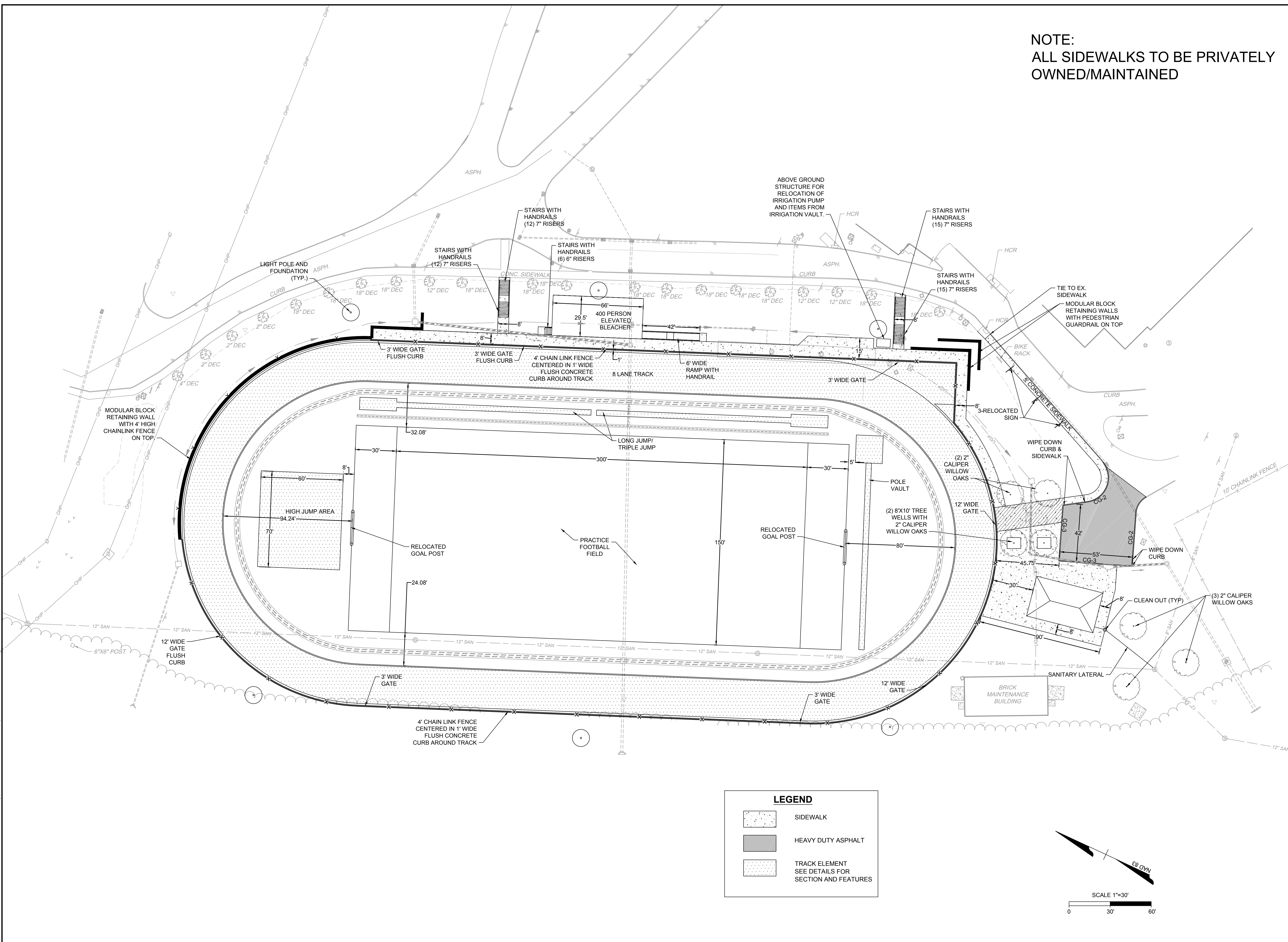
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 SHEET NO. C3.2

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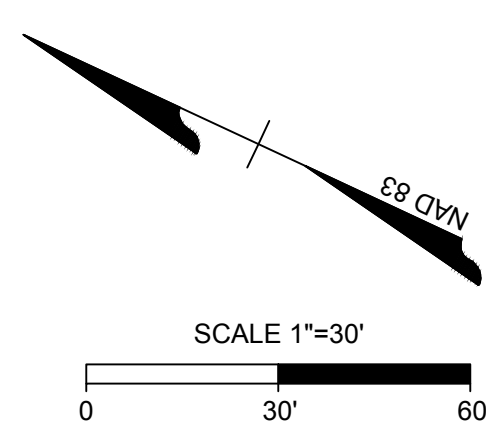


**NOTE:**  
ALL SIDEWALKS TO BE PRIVATELY OWNED/MAINTAINED



**LEGEND**

- SIDEWALK
- HEAVY DUTY ASPHALT
- TRACK ELEMENT  
SEE DETAILS FOR SECTION AND FEATURES



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SCALE  
1"=30'

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CHS TRACK REPLACEMENT  
CHARLOTTEVILLE, VA  
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**CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA**



<b>Agenda Date:</b>	March 6, 2017
<b>Action Required:</b>	Approve Amended Ordinance
<b>Presenter:</b>	Todd Divers, Charlottesville Commissioner of the Revenue Jason Vandever, Charlottesville Treasurer
<b>Staff Contacts:</b>	Betty Graham, Business License Inspector Levingston Plumb, Business Personal Property Inspector
<b>Title:</b>	<b>Proposed Change to Business License Fee Amount and Associated Change to Technology Zone Credit</b>

**Background:**

Currently any business operating in the City of Charlottesville is required to pay a business license tax based on its gross receipts, known as the Business Professional Occupational License (BPOL). In fiscal year 2016, BPOL generated \$6,925,402 in revenue for the City, accounting for about 4.4% of all City revenue. BPOL plays a vital role in diversifying the City's revenue sources and permits commercial enterprises within City limits. BPOL tax has been authorized in City Code since at least 1932, and has existed in its current form across Virginia since 1964. All 38 cities in Virginia charge a BPOL tax as authorized by State Code.

Charlottesville businesses grossing \$50,000 or less per year pay a flat fee of \$35 and businesses grossing more than \$50,000 pay based on a rate (established in State Code and as determined by the particular type of business) multiplied by annual gross receipts.

As an example, a veterinarian grossing \$49,000 per year pays \$35 for an annual business license. A veterinarian grossing \$51,000 per year pays according to the standard rate for veterinarians and other similar professions (\$0.58/\$100), and would pay a rate-based fee of \$295.80.

A graphic designer grossing \$49,000 per year pays \$35 for an annual business license. A graphic designer grossing \$51,000 per year pays according to the standard rate for graphic designers and other similar professions (\$0.36/\$100), and would pay a rate-based fee of \$183.60. The effect is that similar small businesses with very similar gross receipts end up paying very different fee amounts.

In Albemarle County, businesses earning up to \$100,000 pay a flat rate of \$50.

The practical effect of these structures is that in the City, businesses grossing below \$50,000 pay a slightly lower fee than their counterparts in the County (\$35 instead of \$50). However, those grossing between \$50,000 and \$100,000 can sometimes pay significantly more than their counterparts in the County.

### **Discussion:**

In an effort to attract, retain, and encourage small businesses in the City of Charlottesville, the Commissioner of the Revenue and City Treasurer are proposing a modest change to the fee structure used to assess BPOL:

- Businesses grossing \$50,000 and below continue to pay a \$35 license fee
- Businesses grossing \$50,001 to \$100,000 pay a \$50 license fee
- Businesses grossing over \$100,000 pay the license tax based on the applicable BPOL rate

This proposed change would benefit small businesses within the City of Charlottesville by reducing the license fee paid by businesses earning between \$50,000 and \$100,000. Staff estimates that approximately 450 businesses would benefit from this structural change. There would also be a comparable change in the technology business incentive as well. We are recommending that these changes take place for the upcoming assessment year of 2018.

The Commissioner and Treasurer would note that this is a relatively modest proposal that seeks to provide meaningful relief to small businesses in our community within limited statutory, system, and budget constraints.

### **Community Engagement:**

The Commissioner of the Revenue's office hears continuing concern from taxpayers about what can be a dramatic jump in the effective tax rate for a small business once it crosses the \$50,000/year threshold, especially compared to Albemarle County where businesses pay the \$50 minimum fee up to \$100,000 in annual gross receipts. Additionally, recent efforts by City Council to attract Tech businesses through a broadened and enhanced Tech Zone Credit led to discussion about the relative benefits of providing similar encouragement to non-tech small businesses.

Given an uptick in recent assessments and collections for business-related taxes, the Commissioner and Treasurer thought it an opportune moment to present a new business fee/tax structure that attempts to provide some parity with the County for businesses grossing above \$50,000 up to \$100,000.

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

Approval of this agenda item aligns directly with Goal 3 of the City's Strategic Plan: Have a Strong, diversified economy. Specifically, this proposal would advance initiative 3.2: Attract and cultivate a variety of new businesses, and initiative 3.3: Grow and retain viable businesses.

### **Budgetary Impact:**

Adoption of this change would potentially reduce BPOL revenue by an estimated \$90,000. Adoption of this change would potentially reduce BPOL revenue due to Technology Zone incentives by an additional estimated \$3,000 for a total estimated reduction of \$93,000.

**Recommendation:**

Staff recommends approval of these Code changes.

**Alternatives:**

Council could elect to leave the BPOL rate structure unchanged at this time.

**Attachments:**

Ordinance

**AN ORDINANCE AMENDING CHAPTER 14 (LICENSES) OF THE CODE OF THE CITY OF CHARLOTTESVILLE (1990), AS AMENDED RELATING TO CHANGES IN THE LICENSE FEE FOR BUSINESSES WITH GROSS RECEIPTS NOT EXCEEDING ONE HUNDRED THOUSAND DOLLARS (\$100,000) AND TAX INCENTIVES FOR TECHNOLOGY BUSINESSES**

WHEREAS, after consideration of a recommendation from the Commissioner of the Revenue and City Treasurer, this Council is of the opinion that a modification to the fee structure used in the assessment of license fees for businesses with gross receipts not exceeding one hundred thousand dollars (\$100,000) is an appropriate means to attract, retain, and encourage small business activity and growth within the City of Charlottesville; now, therefore,

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia that:

- 1. Sections 14-15 and 14-24 of Chapter 14 of the Code of the City of Charlottesville (1990), as amended, are hereby amended and reenacted as follows:**

**CHAPTER 14. LICENSES**

**Sec. 14-15. Taxes, categories and rates.**

(a) Except as otherwise provided herein, there shall be assessed and collected by the commissioner a license tax, at the rates and/or in the amounts specified herein following, with respect to each business for which a license is required by this chapter, except that no license tax shall be assessed and collected from any person whose gross receipts from a business subject to licensure are ~~fifty thousand dollars (\$50,000.00)~~ one hundred thousand dollars (\$100,000.00) or less.

(b) There shall be assessed and collected by the commissioner, with respect to each business for which a license is required, a thirty-five dollar (\$35.00) issuance fee for businesses with gross receipts not exceeding fifty thousand dollars (\$50,000.00), or a fifty dollar (\$50.00) issuance fee for businesses with gross receipts of more than fifty thousand dollars (\$50,000.00) but not exceeding one hundred thousand dollars (\$100,000.00), except that:

- (1) No license issuance fee shall be assessed and collected from any person whose gross receipts from a business subject to licensure are more than ~~fifty thousand dollars (\$50,000.00)~~ one hundred thousand dollars (\$100,000.00), and
- (2) No license issuance fee shall be assessed and collected with respect to a business activity subject to a flat license tax (one not based upon gross receipts) pursuant to this chapter, and
- (3) No license issuance fee shall be assessed and collected from any person whose business is not assessable with such license fee pursuant to the provisions of § 58.1-

3703(c) of the Virginia Code.

**Sec. 14-24. Tax incentives for technology businesses.**

(a) . . .

(b) The following incentives, in the form of reduction of taxes owed, shall be available to qualified technology businesses:

- (1) For a qualified technology business whose gross receipts from a technology business subject to licensure are ~~fifty thousand dollars (\$50,000.00)~~ one hundred thousand dollars (\$100,000.00) or less, any license fee which would otherwise be required by this chapter shall be reduced by one hundred (100) percent for no more than seven (7) years.
- (2) A qualified technology business whose gross receipts from a technology business subject to licensure are more than ~~fifty thousand dollars (\$50,000.00)~~ one hundred thousand dollars (\$100,000.00) shall receive a fifty (50) percent reduction of any taxes owed pursuant to this chapter for no more than seven (7) years.

**2. This ordinance shall take effect on January 1, 2018.**

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



Agenda Date:	February 21, 2017
Action Required:	Public Hearing/1 <sup>st</sup> Reading of Ordinance
Presenter:	Allyson Manson Davies, Deputy City Attorney
Staff Contacts:	Allyson Manson Davies, Deputy City Attorney Miriam Dickler, Director of Communications
<b>Title:</b>	<b>Comcast Cable Franchise Renewal Ordinance</b>

**Background:**

Comcast seeks a renewal of their Cable Franchise with the City of Charlottesville. The current franchise agreement between Comcast and Charlottesville has been in place since 2006 when Comcast assumed Adelphia's franchise. This franchise agreement expired in December of 2013 and has been subject to two extensions and ongoing renewal discussions. Negotiations for a renewal between the City and Comcast occurred over thirty-six months. After many hours of work and discussion, the City and Comcast negotiated the attached renewal agreement for Council's consideration.

The City's current cable system is owned and operated entirely by Comcast. This system was acquired from Adelphia in July of 2006. Comcast has provided cable services within the City since that time. The attached negotiated renewal reflects both federal and state law requirements as well as the specific interest of the City of Charlottesville. It is heavily influenced by Title 15.2, Chapter 21 of the Code of Virginia and the Communications Act of 1934, 47 U.S.C. §§ 521 *et seq.*

Charlottesville City Council's ability to engage in a cable franchise renewal derives from Virginia Code Section § 15.2-2108.20 *et seq.* Under state law the City has the following authority:

1. To enforce customer service standards in accordance with federal law;
2. To enforce standards as agreed upon by the cable operator through the terms of a negotiated cable franchise; and
3. To review basic tier cable charges and associated equipment and installation charges.

Rates for all other services are deregulated by federal law and the City does not have legal control over rate setting beyond review of basic tier rates. Further, Virginia Code § 15.2-2108.30 exempts cable franchise agreements from the requirement of advertisement and receipt of bids for renewals that do not exceed a combined 40 year term. In this circumstance, the City and Comcast are able to negotiate a franchise renewal. Since the federal communications laws require that all franchise agreements be non-exclusive, the City cannot deny renewal to an existing cable operator except for very specific criteria set forth under federal law and subject to judicial review.

The attached negotiated franchise does provide the City with several benefits. The agreement

provides Charlottesville's citizens with guarantees as to Comcast's service obligations, the provision of public, education and government (PEG) access channels, customer services standards (including a local office within the Charlottesville/Albemarle area), compliance with the City's local ordinances (such as the City's tree conservation requirements), and customer privacy rights. The most significant provisions of the agreement are enumerated in the discussion section below.

**Discussion:**

The cable franchise renewal agreement's most significant provisions are as follows:

**GRANT OF AUTHORITY & TERM:**

This franchise is non-exclusive, meaning that other cable companies can obtain a franchise to serve Charlottesville should they elect to enter the market. The term of this renewal is ten (10) years.

**CONSTRUCTION AND MAINTENANCE:**

Comcast is required to do all of the following: (1) to obtain, at its own cost and expense, all permits, licenses, or other forms of City approval or authorization for system maintenance; (2) to underground cable at their own expense where other utilities are underground; (3) to seek approval from the City for the installation of any new poles; and (3) to engage in tree trimming under the direction of the City Manager and in accordance with the City's tree conservation ordinance. Comcast is also required to provide two weeks' notice to the public of any construction that will significantly disturb or disrupt public property.

**SERVICE OBLIGATIONS & PUBLIC ACCESS CHANNELS:**

Under this agreement, cable service must be provided to residential dwelling units within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and to new homes within 150 feet of their distribution line. Comcast must also continue to offer service to those homes already subject to service within the Franchise Area.

Comcast agrees to provide at least three public access channels on the most basic tier of service. Comcast shall also continue to collect a "PEG Access Support Fee" of thirty-five cents (0.35) per subscriber per month which shall be remitted to the City. This will result in budgeted income to the City to fund capital expenses related to public access station equipment.

**FEES & CHARGES**

Under this agreement, Comcast is required to provide notice of changes to any fees, charges, deposits, terms or conditions for subscribers at least thirty (30) days prior to the effective date. Comcast may charge a reasonable administrative fee for a downgrade or disconnection of services under the agreement but Comcast cannot charge any expense beyond the reasonable cost of disconnection to City subscribers for disconnection of service without contracting to do so in advance.

**CUSTOMER SERVICE STANDARDS & PRIVACY:**

Pursuant to this agreement, Comcast is required to have a convenient local customer service and bill payment location for receiving payments, handling billing questions and providing for equipment replacement which shall be open during regular business hours.

Comcast agrees to maintain a local, toll-free or collect call telephone access line which will be available to City Subscribers twenty-four (24) hours a day, seven (7) days a week and under normal conditions the answer time shall not exceed thirty (30) seconds.

Under Normal Operating Conditions, Comcast is required by this agreement to complete standard installations within seven (7) business days after an order has been placed. Comcast will promptly work on service calls within twenty-four (24) hours after the interruption becomes known to Comcast. Comcast will set appointments with specificity within a time frame not to exceed four hours.

The Agreement requires fair billing and collection practices, allowing for a twenty day period before a delinquency is applied. In addition, the agreement requires Comcast to give subscribers additional time to fix the delinquency before a late fee is applied. The agreement also limits the amount of such late fee to no more than 10% of the billing amount as a one-time late fee.

### **SYSTEM CAPACITY & PROVISION OF SERVICE:**

The Franchise agreement requires Comcast to provide free cable services to several municipal and City school buildings, allowing for citizens to participate in activities at those locations without cost for access to cable services. Specifically the public buildings to be provided with cable services include all state accredited K-12 public school buildings, several City Hall locations, Tonsler Park Community Center, Carver Recreation Center, Key Recreation Center, Smith Aquatics & Fitness Center, The Jefferson-Madison Regional Library Main branch, The Jefferson-Madison Regional Library Gordon Avenue branch, and Meadow Creek Golf Course Club House. This section of the agreement also requires Comcast to provide signal quality services that are consistent with FCC's quality standards during the life of this agreement.

### **ENFORCEMENT:**

The City may impose penalties on Comcast for violations of the franchise, pursuant to a public hearing and an opportunity for Comcast to cure any violations.

The attached franchise agreement is comprehensive and affords the citizens of Charlottesville the opportunity to have several customer service amenities such as a local office, public, education and government access channels, protection for our tree conservation efforts, free cable services in our libraries and community centers, and toll free customer service access with prompt response requirements. Further, with this agreement in place, any new cable operator that enters the market will have to meet all of these requirements as well.

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

The cable franchise agreement promotes Council's vision for a Smart, Citizen-Focused Government.

The attached franchise places several customer service requirements on Comcast to ensure the delivery of quality services to the Citizens of Charlottesville. Comcast must comply with City codes and maintain the City's public rights of way and the tree canopy which enhances the City's neighborhoods.

Negotiating for free access to cable services in all of our schools allows the schools to provide cost effective access to appropriate television programming. The opportunity to access public, government

and educational access channels through Comcast creates additional opportunities for city students and all citizens to stay informed about government meetings and to engage in original programming. This franchise agreement promotes opportunities for effective communication and active citizen involvement through the guaranteed public access channels.

Council's strategic plan to foster strong connections is advanced by a franchise agreement that provides public access channels to inform the public and promote community engagement.

**Community Engagement:**

The original draft franchise agreement was posted on the City's web site over three years ago and the final draft was posted on February 15, 2017 and has been available for public comment. This item is before the City Council for a public hearing allowing for additional feedback on this proposed agreement. Further, the new franchise provides for ongoing public access, educational and government channels to promote ongoing community participation.

**Budgetary Impact:**

The new agreement requires Comcast to continue to collect and provide to City a "PEG Access Support Fee" of thirty five cents (\$0.35) per subscriber per month. The PEG Access Support Fee may be used by City solely to fund public, educational and government access-related capital expenditures. Currently this provides an annual budgeted payment to the City of \$47,500.

Comcast has also agreed to pay a one-time monetary grant to the City ("Community Interest Grant"). This Community Interest Grant shall be in the amount of fifteen thousand dollars (\$15,000) and shall be paid to the City within sixty days (60) of the effective date of the Franchise Agreement. The Community Interest Grant shall not be offset against the Virginia Communications Tax paid to the City and Comcast agrees not to pass the cost of this grant through to customers.

**Recommendation:**

It is staff's recommendation to approve this franchise agreement.

**Alternatives:**

1. City Council may postpone adopting this negotiated agreement and continuing operating with an expired franchise agreement.
2. Pursuant to 47 USCS § 546, City Council could issue a preliminary assessment that the franchise should not be renewed and comply with all of the administrative findings and requirements necessary to decline renewal. This course of action would require significant time and cost to the City up to and including protracted litigation.

**Attachments:**

Proposed Franchise Agreement

2017 CABLE FRANCHISE RENEWAL

By and between

City of Charlottesville, Virginia

And

Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia,  
LLC

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**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF CALIFORNIA/MARYLAND/PENNSYLVANIA/VIRGINIA/WEST VIRGINIA, LLC TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF CHARLOTTESVILLE, SETTING FORTH THE TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHT OF WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS OF THIS ORDINANCE.**

THIS CABLE FRANCHISE AGREEMENT (the “Franchise Agreement”) is entered into by and between the City of Charlottesville, Virginia (“City”), and Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC (“Comcast”) as of \_\_\_\_\_ (the “Effective Date”).

WHEREAS, Comcast requested to renew their nonexclusive Franchise (the “Prior Franchise”) with the City to own, construct, reconstruct, install, maintain, operate, dismantle, test, upgrade, repair, use, and/or remove a Cable System (as hereinafter defined) in the City; and

WHEREAS, the construction, installation, reconstruction, maintenance, operation, testing, upgrade, repair, use, and/or removal of such a system involves the occupation and placement of private commercial facilities along, under, over, above, through or across the Public Rights-of-Way or public land within the City; and

WHEREAS, the City has considered Comcast’s performance under the Prior Franchise, and the quality of service during the term of the Prior Franchise, has identified and negotiated for the future needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of Comcast, and Comcast’s plans for ongoing construction, operation and maintenance of the Cable System; and

WHEREAS, the City has determined such to be adequate, and to meet the foregoing requirements of 47 U.S.C. § 546 and

WHEREAS, the City held a full public hearing affording due process to all parties to discuss and consider the terms and conditions of the negotiated agreement between the City and Comcast set forth herein; and

WHEREAS, based on Comcast’s representations in this Franchise Agreement and subject to the terms and conditions set forth herein and the provisions of the Charlottesville City Code Chapter 6, the grant of a new nonexclusive Franchise to Comcast, to supersede the Prior Franchise, is consistent with the public interest; and

NOW, THEREFORE, in consideration of the City’s authority to grant a new Cable Franchise Agreement:

The City of Charlottesville does hereby ordain that it is in the public interest to permit the use of Public Right of Ways and easements for the construction, maintenance, and operation of a cable television system under the terms and conditions of this Franchise and that the public purpose of enhancement of the communication within the City, the expansion of communication opportunities outside the City, and the provisions programming of a truly local interest are achieved by the Franchise Agreement and the Agreement is hereby adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

## SECTION 1 - Definitions

For the purpose of this Franchise Agreement, all terms used herein shall have the meanings ascribed to them in Title 15.2, Chapter 21 of the Code of Virginia and the Communications Act of 1934, 47 U.S.C. §§ 521 et seq., as amended from time to time unless otherwise defined herein.

- 1.1. “**Act**” means the Communications Act of 1934.
- 1.2. “**Affiliate**” in relation to any person, means any person who owns or controls, is owned or controlled by, or is under common ownership or control with the Grantee, excluding any entity related to the operations of NBC Universal.
- 1.3. “**Applicable Laws**” means any applicable lawful federal, state or local law.
- 1.4. “**Basic Cable Service**” means any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §§ 522(3) or 543(b)(7).
- 1.5. “**Cable Act**” means the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§521 - 631.
- 1.6. “**Cable Operator**” means any Person or group of Persons that (i) provides Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or (ii) otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System.
- 1.7. “**Cable Service**” means the one-way transmission to Customers of (i) Video Programming or (ii) other programming service, and Customer interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Cable Service does not include any Video Programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).
- 1.8. “**Cable System or System**” means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Customers within the Franchise Area, except that such definition shall not include: a facility that serves only to retransmit the television signals of one or more television broadcast stations; a facility that serves only Customers without using any Public Right-of-Way; a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 USC 201 et seq., except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of Video Programming directly to Customers, unless the extent of such use is solely to provide Interactive On-demand Services; any facilities of any electric utility used solely for operating its electric systems; or an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.
- 1.9. “**Channel**” or “**Cable Channel**” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the FCC.
- 1.10. “**City**” means City of Charlottesville, a municipal corporation, in the State of Virginia, acting by and through its City Council, or its lawfully appointed designee.
- 1.11. “**City Council**” means the governing body of the City of Charlottesville, Virginia.
- 1.12. “**Complaint**” means any verbal or written inquiry, allegation or assertion made by a Subscriber to Grantee which raises an objection to Grantee’s performance under the Franchise. Notwithstanding the forgoing, an inquiry shall not be deemed a Complaint if it is resolved between the Grantee and a subscriber in one



conversation, phone call or other interface or if the inquiry is related solely and specifically to Grantee's rates or programming decisions (unless the inquiry alleges some malfeasance or negligent act).

- 1.13. "**Converter**" means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the Service.
- 1.14. "**Customer(s)**" means the City or any Person who is lawfully receiving, for any purpose or reason, Cable Service via the Grantee's Cable System, whether or not a fee is paid for such service.
- 1.15. "**Drop**" means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.
- 1.16. "**Effective Date**" means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the "Term of Franchise" Section herein.
- 1.17. "**FCC**" means the Federal Communications Commission or successor governmental entity thereto.
- 1.18. "**Force majeure**" means an event or events reasonably beyond the ability of Grantee to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Grantee's facilities are attached or to be attached or conduits in which Grantee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.
- 1.19. "**Franchise**" means an initial authorization, or renewal thereof, issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction or operation of a cable system, a telecommunications system, or other facility in the public rights-of-way, including either a negotiated cable franchise or an ordinance cable franchise.
- 1.20. "**Franchise Agreement**" or "**Agreement**" means this Agreement and any amendments or modifications hereto.
- 1.21. "**Franchise Area**" means the territorial boundary of the City, and shall also include any subsequent additions thereto, by annexation or other legal means. This shall not include certain of the property within the territorial boundary of the City belonging to the Rector and Visitors of the University of Virginia, over which, by law, the County of Albemarle retains jurisdiction.
- 1.22. "**Franchising Authority**" means the City of Charlottesville.
- 1.23. "**Franchise Fee**" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17.
- 1.24. "**Grantee**" means Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC.
- 1.25. "**Gross Revenue**" means all revenue, as determined in accordance with generally accepted accounting principles, that is actually received by the Grantee and derived from the operation of its Cable System to provide Cable Service in the Franchise Area; however, "Gross Revenue" shall not include:

- (i) refunds or rebates made to Customers or other third parties;
- (ii) any revenue which is received from the sale of merchandise over home shopping channels carried on the Cable System, but not including revenue received from home shopping channels for the use of the Cable Service to sell merchandise;
- (iii) any tax, fee, or charge collected by the Grantee and remitted to a governmental entity or its agent or designee, including without limitation a local public access or education group;
- (iv) program launch fees;
- (v) directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing;
- (vi) a sale of Cable Service for resale or for use as a component part of or for the integration into Cable Service to be resold in the ordinary course of business, when the reseller is required to pay or collect Franchise fees or similar fees on the resale of the Cable Service;
- (vii) revenues received by any Affiliate or any other Person in exchange for supplying goods or services used by the Grantee to provide Cable Service; and
- (viii) revenue derived from services classified as Noncable Service under federal law, including, without limitation, revenue derived from telecommunications services and information services, and any other revenues attributed by the Grantee to Noncable Service in accordance with rules, regulations, standards, or orders of the Federal Communications Commission.

- 1.26. **“Installation”** means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.
- 1.27. **“Interactive On-Demand Services”** means a service providing Video Programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing Video Programming prescheduled by the programming provider.
- 1.28. **“Normal Business Hours”** means those hours during which most similar businesses in the community are open to serve Customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.
- 1.29. **“Normal Operating Conditions”** means those service conditions which are within the control of the Cable Operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Cable Operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.
- 1.30. **“Other Programming Service”** means information that a cable operator makes available to all Subscribers generally.
- 1.31. **“Person(s)”** means any natural person(s) or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.
- 1.32. **“Public Right-of-Way(s)”** or **“Public Way(s)”** mean the surface of, and the space above and below, any public street, avenue, highway, boulevard, concourse, driveway, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, alley, right-of-way, including, but not limited to easements dedicated for compatible use
- 1.33. **“Public Property”** means any real property, other than a Street, owned by any governmental unit.
- 1.34. **“Franchise Area”** means the entire geographic area within the City as it is now constituted or may in the future be constituted.

- 1.35. “**Service Interruption**” means the loss of picture or sound on one or more cable channels.
- 1.36. “**Standard Installation**” means any residential Installation which can be completed using a Drop of one hundred fifty (150) feet or less.
- 1.37. “**Street**” means the surface of and the space above and below any public Street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or right-of-way now or hereafter held by the City which shall entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.
- 1.38. “**Subscriber**” means any Person who lawfully receives Cable Service via the System. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.
- 1.39. “**Transfer**” means any transaction in which (i) an ownership or other interest in the Grantee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that majority control of the Grantee is transferred; or (ii) the rights and obligations held by the Grantee under the Franchise are transferred or assigned to another Person or group of Persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the Franchise shall not include (a) transfer of an ownership or other interest in the Grantee to the parent of the Grantee or to another Affiliate of the Grantee; (b) transfer of an interest in the Franchise or the rights held by the Grantee under the Franchise to the parent of the Grantee or to another Affiliate of the Grantee; (c) any action that is the result of a merger of the parent of the Grantee; (d) any action that is the result of a merger of another Affiliate of the Grantee; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Grantee in the Franchise or the System used to provide Cable Service in order to secure indebtedness.
- 1.40. “**Video Programming**” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## **SECTION 2 - Grant of Authority**

- 2.1. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise, subject to the terms and conditions of this Franchise Agreement, the Code of Virginia, the City Code, the Cable Act, and all other Applicable Law. The Franchise will be for the period specified in Section 2.2 below, during which time the Grantee will receive the right and obligation to construct, reconstruct, operate and maintain a Cable System within the Public Ways within the Franchise Area to provide Cable Service. This Franchise Agreement neither authorizes the Grantee to use the Public Ways for purposes of providing any service other than Cable Service, nor prohibits the Grantee from doing so. The Grantee’s authority to provide noncable service shall be subject to Applicable Law. No privilege or power of eminent domain is bestowed by this grant, nor by the Agreement.
- 2.2. **Term of Franchise.**
- The term of the Franchise granted hereunder shall be no more than ten (10) years, and shall commence upon the Effective Date of \_\_\_\_\_ and shall expire on \_\_\_\_\_, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act.
- 2.3. **Reservation of Authority.**

Grantee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power.

Nothing in this Franchise Agreement shall:

- A. abrogate the right of the Franchising Authority to perform any public works or public improvements of any description,
- B. be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority, or
- C. be construed as a waiver or release of the rights of the Franchising Authority in and to the Public Ways.

All rights and privileges granted herein are subject to the police powers of the City and its rights under Applicable Laws and regulations to exercise its governmental powers to their full extent. The City reserves the right to exercise its governmental powers over Cable Systems granted by the Cable Act.

**2.4. Grant Not Exclusive.**

The Franchise and the right it grants to use and occupy Public Ways shall not be exclusive. The City specifically reserves the right to grant, at any time, additional franchises for a System in accordance with Applicable Laws, and other Franchises for similar uses or for other uses of Public Ways, or any portions thereof, to any Person. The City reserves the public right of ways for its own purposes.

**2.5. Additional Franchises.**

The City shall at all times abide by all Applicable Laws with respect to the granting of any additional cable television franchises within the City.

**2.6. Nature of Franchise.**

Upon acceptance, the Grantee's nonexclusive Franchise for the occupation and use of the Streets and Public Right-of-Ways within the City for the construction, operation, maintenance, upgrade, repair and removal of the System in accordance with the provisions of this Franchise shall be deemed to have been renewed. This Franchise shall authorize the Grantee to provide Cable Services as defined in this Franchise Agreement and as authorized by the Cable Act and to lease excess capacity upon its System to other third parties as it may contemplate from time to time.

**2.7. Authority for Use of Streets.**

- A. For the purpose of constructing, operating, and maintaining a System in the City, Grantee may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the Streets and Public Right-of-Ways within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.
- B. Thirty (30) days in advance of any reconstruction or rebuild of the System, Grantee shall, in each case, file plans with the City and receive written approval of such plans, which approval shall not be unreasonably withheld. Failure of City to take action on such plans within thirty (30) days of receipt of such plans shall be deemed approval of such plans.
- C. Grantee shall construct and maintain the System so as not to interfere with other uses of Streets. Grantee shall endeavor to make use of existing poles and other facilities available to Grantee where feasible.

Grantee shall widely publicize proposed construction work prior to commencement of that work. Except in cases of an emergency, Grantee shall individually notify in writing all residents reasonably affected by proposed underground work not less than forty-eight (48) hours prior to commencement of that work. Such notice shall include the Grantee's telephone number and the department to call regarding questions about the construction.

- D. Notwithstanding the above grant to use the Streets, no Street shall be used by Grantee if the City, reasonably determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used.

## **2.8. Competitive Equity.**

**2.8.1. Purposes.** The Grantee and the Franchising Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to residents of the Franchise Area; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to residents of the Franchise Area; promote local communications infrastructure investments and economic opportunities in the Franchise Area; and provide flexibility in the event of subsequent changes in the law, the Grantee and the Franchising Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

**2.8.2. New Video Service Provider.** Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider ("VSP") (i.) enters into any agreement with the Franchising Authority to provide video services to subscribers in the Franchise Area, or (ii.) otherwise begins to provide video services to subscribers in the Franchise Area (with or without entering into an agreement with the Franchising Authority), the Franchising Authority, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to subscribers in the Franchise Area under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the Franchising Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the Franchising Authority. If there is no written agreement or other authorization between the new VSP and the Franchising Authority, the Grantee and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the Franchise Area.

**2.8.3. Subsequent Change in Law.** If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to provide video services to Subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Franchising Authority may request from or impose on a VSP providing video services to subscribers in the Franchise Area, the Franchising Authority agrees that, notwithstanding any other provision of law, upon Grantee's written request the Franchising Authority shall: (i) permit the Grantee to provide video services to subscribers in the Franchise Area on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity between the Grantee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to Subscribers in the Franchise Area. The Franchising Authority and the Grantee shall implement the provisions of this Section within sixty (60) days after the Grantee submits a written request to the Franchising Authority. Notwithstanding any provision of law that imposes a time or

other limitation on the Grantee's ability to take advantage of the changed law's provisions, the Grantee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

**2.8.4. Effect on This Agreement.** Any agreement, authorization, right or determination to provide video services to subscribers under Section 2.8 herein shall supersede this Agreement, and the Grantee, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

**2.8.5. Video Service Provider.** The term "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple Video Programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multi-channel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

### **SECTION 3 - Construction and Maintenance of the Cable System**

#### **3.1. Permits and General Obligations.**

The Grantee shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. The Grantee shall comply with all Applicable Law regarding its construction and maintenance of the Cable System.

##### **3.1.1. Construction Code and Permits.**

- A. Grantee shall obtain all required permits from the City before commencing any work requiring a permit, including the opening or disturbance of any Street, Public Property or public easement within the City. Grantee shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in the City.
- B. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise and to make such tests it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of Applicable Laws.
- C. Nothing contained in this Franchise shall be construed to give or to withhold from Grantee the authority to enter upon or work on private property in areas not encumbered with public easements without the permission of the property owner.

**3.1.2. Repair of Streets and Property.** Any and all Streets or Public Property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly repaired by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's construction.

**3.1.3. Use of Existing Poles.** Grantee shall not erect, for any reason, any pole on or along any Street in an existing aerial utility System without the advance written approval the City. Grantee shall exercise its best efforts to negotiate the lease of pole space and facilities from the exiting owners for all aerial construction.

**3.1.4. Undergrounding of Cable.** Cable shall be installed underground at Grantee's expense where both the existing telephone and electrical utilities are already underground. Grantee may place cable underground in newly platted areas in concert with both the telephone and electrical utilities. In the event that telephone or electric utilities are reimbursed by the City or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as the telephone or electric utilities. In the event that the Grantee is required to place existing aerial plan underground, the

Grantee reserves its right to pass those costs through to Customers if and to the extent allowed by applicable law.

**3.1.5. Reservation of Street Rights.**

- A. Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating or repairing any sidewalk or other public work.
- B. All such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Grantee.
- C. If any such property of Grantee shall interfere with the construction or relocation, maintenance or repair of any Street or public improvement, whether it be construction, repair, maintenance, removal or relocation of a sewer, public sidewalk or water main, street or any other public improvement, thirty (30) days' notice shall be given to Grantee by the City and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by Grantee in such manner as shall be directed by the City so that the same shall not interfere with the said public work of the City, as determined by the City, and such removal or replacement shall be at the expense of Grantee herein. Should, however, any utility company, pursuant to any contract dated after the date of acceptance of this Franchise, be reimbursed for relocation of its facilities as part of the same work that requires Grantee to remove its facilities, Grantee shall be reimbursed upon the same terms and conditions as such utility.
- D. Nothing contained in this Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing any work connected with grading, re-grading or changing the line of any Street or public place or with the construction or reconstruction of any sewer or water System.

**3.1.6. Trimming of Trees.** Grantee shall have the authority to trim trees upon and hanging over Streets, Public Rights-of-Way, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee; provided, however, all trimming shall be done, at the expense of Grantee, in a safe and orderly manner and in accordance with the pruning standards currently in effect for heritage trees, as referenced in the City's Tree Preservation Ordinance, and all local ordinances which may, from time to time, be amended, including the City Zoning Ordinance and Charlottesville City Code Chapter 18, Article II, Sections 18.5 through 18.20, notwithstanding anything to the contrary.

**3.1.7. Street Vacation or Abandonment.** In the event any Street or portion thereof used by Grantee shall be vacated by the City or the use thereof discontinued by Grantee, during the term of this Franchise, Grantee shall, at Grantee's expense, forthwith remove its facilities therefrom unless specifically permitted by the City to continue the same, and on the removal thereof restore, repair or reconstruct the Street area where such removal has occurred, and place the Street area where such removal has occurred to a condition similar to that existing before such removal took place. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by the City to remove the facilities or to repair, restore, reconstruct, improve or maintain such Street portion, the City may do such work or cause it to be done, and the cost thereof as found and declared by the City shall be paid by Grantee as directed by the City and collection may be made by any available remedy.

**3.1.8. Movement of Facilities.** In the event it is necessary temporarily to move or remove any of Grantee's wires, cables, poles or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the Streets of the City, upon two (2) weeks' notice by the City to Grantee, Grantee shall move at the expense of the Person requesting the temporary removal such of his facilities as may be required to facilitate such movements. Any Service disruption provisions of this Franchise shall not apply in the event that the removal of Grantee's wires, cables, poles or other facilities results in temporary Service disruptions.

**3.2. Cable System Infrastructure Tests and Inspections.**

- A. The Grantee shall perform all tests necessary to demonstrate compliance with the requirements of the FCC and this Franchise Agreement, and to ensure that the Cable System components are operating as expected.
- B. In the event there is a consistent pattern demonstrated by Subscriber Complaints that evidences a potential problem with the Cable System, upon the City's request, Grantee shall conduct tests upon the City's request to ensure that its Cable System is functioning in compliance with applicable federal and state laws and regulations, and make the results of such test available to the City to verify such compliance. If any such test indicates that any part or component of the System fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from City, shall take corrective action, retest the locations and advise the City of the action taken and results achieved.
- C. The City may conduct inspections of construction areas and customer installations for the purpose of assessing compliance with the Grantee's construction and installation requirements, this Agreement and applicable law generally. Inspection does not relieve the Grantee of its obligation to build in compliance with all provisions of the Franchise.
- D. Specific testing and inspection requirements in this Agreement, including but not limited to those of Sections 3.2(A) through 3.2(C), shall not be read to preclude the City from exercising its general rights to inspect and require information.

**3.3. Publicizing Proposed Construction Work.**

The Grantee shall notify the public prior to commencing any proposed construction that will significantly disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally. The Grantee shall publicize proposed construction work at least two (2) weeks prior to commencement of any proposed non-emergency construction work by causing written notice of such construction work to be delivered to the Franchising Authority and by notifying those Persons most likely to be affected by the work in at least one (1) of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, or by publication in local newspapers.

**SECTION 4 - Service Obligations**

**4.1. General Service Obligations.**

The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile when measured from the nearest technically feasible connection point of the existing Cable System. Subject to this density requirement, Grantee shall offer Cable Service to all new homes or previously un-served homes located within 150 feet of the Grantee's distribution cable. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee shall continue to provide Cable Service to those homes



currently being served within the Franchise Area. The Grantee may impose an additional charge in excess of its regular installation charge for any Service installation requiring a drop or line extension in excess of the above standards. Such additional charge shall be paid by the developer or landowner or Customer requesting Cable Service in an area that does not meet the density and distance standards.

#### **4.2. Public, Educational and Governmental Access Channels.**

Use of channel capacity for public, educational and governmental (“PEG”) access shall be provided on the most basic tier of service offered by Grantee in accordance with the Cable Act, § 611, and as further set forth below. Grantee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use. Grantee shall not exercise editorial control over any public, educational, or governmental use of channel capacity, except Grantee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity.

**4.2.1. Public Access.** A “Public Access Channel” is a channel designated for noncommercial use by the public on a first-come, first-served, nondiscriminatory basis. A Public Access Channel may not be used to cablecast programs for profit, nonpolitical or commercial fundraising in any fashion.

**4.2.2. Educational Access.** An “Educational Access Channel” is a channel designated for noncommercial use by educational institutions such as public or private schools, community colleges, and universities, but not “home schools.”

**4.2.3. Government Access.** A “Governmental Access Channel” is a channel designated for noncommercial use by the Franchising Authority.

**4.2.4. Maintenance of Upstream Link for PEG.** Grantee shall maintain existing upstream link connecting the PEG origination building, located at City Hall 605 E. Main Street, Charlottesville Virginia, with the Grantee’s head-end for the transmission of programming on the public, educational, and government access channels. After construction of the link, the City shall bear the cost of any maintenance or relocation of the facility.

#### **4.2.5. SD PEG Channels.**

- A. The Grantee shall continue to make available for use by the City without charge, a minimum of one (1) activated Channel for non-commercial Governmental programming (hereinafter government access channel) and shall make available, without charge, a minimum of one (1) activated Channel for non-commercial public access programming (hereinafter community access channel) and shall make available a minimum of one (1) activated Channel for non-commercial educational programming for educational institutions within the Franchise Area, including Piedmont Virginia Community College and the University of Virginia (hereinafter educational access channel). Additionally, at such time as one (1) of the current PEG access channels is programmed with original and first repeat, non-character generated, non-alphanumeric, locally produced programming for a minimum of eight (8) hours per day for five (5) days per week for eight (8) consecutive weeks, Grantee shall provide the City with one (1) additional PEG access channel for government, community and/or education access. At such time as a second current access channel is programmed with original and first repeat, non-character generated, non-alphanumeric, locally produced programming for a minimum of eight (8) hours per day for five (5) days per week for eight (8) consecutive weeks Grantee shall provide the City with one (1) additional PEG access channel for government, community and/or education access. Grantee

shall be given one hundred eighty (180) days advance written notice before such channel must be made available.

- B. Grantee shall also provide Channel capacity on the System available for lease in accordance with 47 U.S.C. § 532.
- C. Grantor shall establish rules pertaining to the administration of the specially designated access Channels required in this section.
- D. The City may, at its choosing, provide staff to promote the access channels and access programming and provide, on a regular basis, technical assistance and guidance to access users who may require help and support in utilizing the access equipment and facilities.
- E. The Grantee shall monitor the PEG Access Channels for technical quality consistent with applicable FCC technical standards for standard definition broadcast and shall ensure that they are maintained at standards commensurate with those which apply to the Cable System's commercial channels for standard definition broadcast.

#### **4.2.6 Access Equipment and Facilities.**

- A. Any and all payments, costs and expenses made by Grantee pursuant to this Section shall not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542) and such payments shall not be deemed to be: (i) "payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the City by Grantee pursuant to Section 7 hereof, or (ii) part of the compensation to be paid to the City by Grantee pursuant to Section 7 hereof.
- B. The City shall also have the unilateral right to create, support, assist, or otherwise help to establish a non-profit separate access organization to provide non-commercial access programming. Nothing in this Section shall prohibit a private Person or entity from creating an independent non-profit access organization nor prohibit the City from providing funding in support of such access organization.
- C. All existing public access equipment, including but not limited to all equipment located at current and former public access centers and studios located at 1000 Rio Road and City Hall 605 East Main Street, is hereby deemed the property of the City of Charlottesville, notwithstanding any other documentation or agreement to the contrary.

#### **4.2.7 PEG Access Support Fee.**

- A. Grantee shall continue to provide to City a "PEG Access Support Fee" of thirty five cents (\$0.35) per subscriber per month. The PEG Access Support Fee may be used by City solely to fund public, educational and Government Access-related capital expenditures, unless and until changes to federal and State law allow for the PEG Access fee to be used for other expenditures, in which case the City may use such fees in accordance with changes in the law. Any and all payments by Grantee to City used for capital needs to support PEG access shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act 47 U.S.C. § 542).
- B. The PEG Access Support Fee shall be paid by the Grantee to City on a quarterly basis, together with a brief report from Grantee evidencing the amount remitted. City shall use the PEG Access Support Fee only for PEG Access costs as permitted by Applicable Laws and shall not use the fee

for any other purposes. Grantee has the right to collect this fee from Subscribers as permitted by law.

- C. City may, at any time, discontinue the imposition of the PEG Access Support Fee or reduce the amount of the fee to be paid by Grantee.
- D. The City acknowledges that, pursuant to Applicable Laws, certain franchise related costs, such as PEG contributions, are entitled to be passed through by the Grantee to the subscribers. The City will not challenge such pass-through so long as it is done in accordance with Applicable Laws.

**4.3. Emergency Alert System.**

Grantee shall maintain compliance with the Emergency Alert System requirements of the FCC and, the Virginia Emergency Alert System where applicable, in order that emergency messages may be distributed over the System.

**4.4. No Discrimination.**

Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Grantee are satisfied, unless such Person has engaged in theft of Grantee's Cable Services, vandalism of its property or harassment of its representatives. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

**4.5. Prohibition Against Reselling Service.**

No Person shall resell, without the express prior written consent of the Grantee, any Cable Service, program or signal transmitted over the Cable System by the Grantee.

**4.6. Technical Standards.**

The Cable System design, construction, and operation shall meet or exceed the technical standards set forth in 47 C.F.R. Part 76, as may from time to time be amended, and any other applicable technical standards. The results of grantee's tests required to be performed by the FCC shall be delivered to the City upon request.

**4.7. Leased Access Channels.**

The Grantee shall provide leased access channels as required by federal law.

**4.8. Home Wiring.**

The Grantee shall comply with 47 C.F.R. §§ 76.800-806 regarding cable inside wiring.

**4.9. Programming.**

The Grantee shall offer to all Customers a diversity of video programming services in accordance with federal law and in accordance with the meaning of 47 USC § 544(b)(2)(B).

**4.10. Programming Decisions.**

All programming decisions not related to PEG channels or broad diverse categories of programming shall be at the sole discretion of Grantee. In all cases Grantee shall provide a minimum of thirty (30) days advance written notice of any programming changes to all Subscribers and to the City.

## **SECTION 5 - Fees and Charges to Customers**

### **5.1. Notice of Changes.**

Not less than thirty (30) days prior to the effective date of any change in any fee, charge, deposit, term or condition (or such shorter period as may, upon a showing of good cause, be approved by the City), the Grantee shall provide written notice of the change to the Grantor and each affected Subscriber and other person utilizing the affected service. The Grantee shall not make any change in any rate unless it has provided the notice required in Section 5.2 of this Franchise.

Notwithstanding the foregoing, the City reserves the right to regulate the rates for Basic Service if provided the authority to do so under any change to federal and state law, after affording Grantee due process. Grantee shall maintain on file with the City at all times a current schedule of all rates and charges.

### **5.2. Non-Regulated Rates.**

Prior to implementing any rate increase for Cable Service not requiring City approval, Grantee shall give the following notice:

- A. At least thirty (30) days advance written notice to the City; and
- B. At least thirty (30) days advance written notice to Subscribers of said Service.

### **5.3. Charges for Disconnection or Downgrading of Service.**

- A. Grantee may only impose a charge for the downgrade or disconnection of Service to any Subscriber that is not prohibited by federal law and that is reasonably related to the cost incurred for a downgrade or disconnection of Service or is limited to a fee where the Subscriber has agreed to the fee by contract with Grantee to such charges. Grantee agrees that it will not impose any fee that has the effect of discouraging a downgrade in service unless such fee is reasonably related to Grantee's costs associated with providing the downgrade.
- B. If a Subscriber requests disconnection from Service prior to the effective date of an increase in rates, the Subscriber shall not be charged the increased rate if Grantee fails to disconnect Service prior to the effective date. Any Subscriber who has paid in advance for the next billing period and who requests disconnection from Service shall receive a prorated refund of any amounts paid in advance.

## **SECTION 6 - Customer Protection Standards; Customer Bills; and Privacy Protection**

### **6.1. Consumer Protection and Service Standards.**

In accordance with applicable law, Grantee shall maintain a convenient local customer service and bill payment location for receiving Subscriber payments, handling billing questions and equipment replacement. Grantee shall also provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under Normal Operating Conditions:

#### **6.1.1. Cable System office hours and telephone availability.**

- A. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
  - i. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
  - ii. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.
- B. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
- C. Both parties agree that the Grantee's equipment that measures compliance with this service obligation commingles data from other local Franchise Areas. Both parties acknowledge and agree that such commingled data shall be deemed valid as to the City.
- D. Under Normal Operating Conditions, the Customer will receive a busy signal less than three percent (3%) of the time.
- E. The customer service center and bill payment locations will be open at least during Normal Business Hours.
- F. Grantee shall provide the City with current contact information for a Director of Government and Community Affairs or similar representative and update such contact information regularly to handle customer service concerns that are referred by the City.

**6.1.2. Installations, Outages and Service Calls.** Under Normal Operating Conditions, each of the following four (4) standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

- A. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred fifty (150) feet from the existing distribution system.
- B. Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem. Grantee shall resolve all Service Interruptions within forty-eight (48) hours (or within the timeframe agreed upon by the Customer) under Normal Operating Conditions.
- C. The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the Customer).
- D. Absent extraordinary circumstances, Grantee may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment.

- E. If Grantee's representative is running late for an appointment with a Customer and will not be able to keep the appointment as scheduled, the Customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the Customer.

**6.2. Subscriber Service Information.**

Pursuant to FCC rules, Grantee shall provide to the City, all new Customers, and, at least once a year, to existing Customers, written subscriber service information, which shall include, but not be limited to, the following:

- A. Products and services offered;
- B. Prices and options for programming services and conditions of subscription to programming and other services;
- C. Installation and service maintenance policies;
- D. Instructions on how to use the cable service;
- E. Channel positions of programming carried on the system; and
- F. Billing and complaint procedures, including the address and telephone number of the local cable office.

**6.3. Subscriber Billing Practices.**

- A. Grantee shall notify each of its Subscribers, through the written service information, of its billing practices. The service information shall describe Grantee's billing practices including, but not limited to, the following: frequency of billing; time periods upon which billing is based; advance billing practices; security deposit requirements; charges for late payments or returned checks; payments required necessary to avoid account delinquency; availability of credits for Service outages; procedures to be followed to request Service deletions including the notice period a Subscriber must give to avoid liability for such Services and procedures to be followed in the event of a billing dispute.
- B. Grantee shall notify all affected Subscribers not less than thirty (30) days prior to any change in the billing practices and such notice shall include a description of the changed practice.
- C. The Subscriber bill shall contain the following information presented in plain language and format:
  - i. Name and address of Grantee;
  - ii. The period of time over which each chargeable Service is billed including prorated periods as a result of the establishment and termination of Service;
  - iii. Each rate of charge levied;
  - iv. The amount of the bill for the current billing period, separate from any balance;
  - v. Grantee's telephone number and a statement that the Subscriber may call this number with any questions or Complaints about the bill; and
  - vi. A specific due date for Subscribers whose accounts are current which shall be at least twenty (20) days from the mailing of the bill. The due date for delinquent accounts may be listed as "upon receipt" for payments that are past due.

- D. The account of a Subscriber shall not be considered delinquent until at least twenty (20) days after the mailing of the bill. In no event shall Grantee issue a statement that a first time bill is due upon receipt. The following provisions shall apply to the imposition of late charges on Subscribers:
- i. Grantee shall not impose a late charge on a Subscriber unless a Subscriber is delinquent, Grantee has given the Subscriber written notice of the delinquency in a clear and conspicuous manner, and the Subscriber has been given at least eight (8) days from time of mailing of the notice to pay the balance due.
  - ii. A charge of not more than 10% of the bill may be imposed as a one-time late charge. This amount shall be exclusive of any interest that may be charged.
  - iii. No late charge may be assessed on the amount of a bill in dispute where a Subscriber has notified Grantee within thirty (30) days of receipt of original bill unless the disputed charged has been deemed reasonable by the Grantee.
  - iv. Any charge for returned checks shall be reasonably related to the costs incurred by Grantee in processing such checks.
  - v. Any collection fee for funds collected at a Subscriber's residence upon Service disconnection shall not be considered a late fee.

**6.4. Parental Control Option.**

Grantee shall provide parental control devices to all Subscribers who wish to be able to cut out any objectionable Channel(s) of programming from the Cable Service entering the Subscriber's home.

**6.5. Subscriber Complaints.**

Grantee shall maintain and provide at least annually upon request to the City a log of all subscriber Complaints indicating the action taken by Grantee.

**6.6. Rights of Individuals Protected.**

Grantee shall comply with all privacy provisions of Section 631 of the Cable Act, 47 U.S.C. § 543.

**SECTION 7 - COMMUNICATIONS TAX AND FRANCHISE FEE**

**7.1. Communications Tax.**

Grantee shall comply with the provisions of Section 58.1-645 *et seq.* of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax, as amended (the "Communications Tax"). Sections 7.2 through 7.8 of this Agreement shall not have any effect, for so long as the Communications Tax or a successor state or local tax that would constitute a Franchise Fee for purposes of 47 U.S.C. § 542 / 641 as amended, is imposed on the sale of Cable Services by the Grantee to Customers in the City.

**7.2. Payment of Franchise Fee to City.**

**7.2.1.** In the event that the Communications Tax is repealed and no successor state or local tax is enacted that would constitute a Franchise Fee for purposes of 47 U.S.C. § 542/ 641, as amended, Grantee shall pay to the City a Franchise Fee of five percent (5%) of annual Gross Revenue, beginning on the effective date of the repeal of such tax (the "Repeal Date"). Beginning on the Repeal Date, the terms of Sections 7.2 through 7.8 of this Agreement shall take effect. Payments due the City under this provision shall be computed at the end of each quarter year for that quarter year. Payments shall be due and payable for each quarter or a portion of a quarter year on January 15, April 15, July 15 and October 15.

**7.2.2. Not Franchise Fees.**

- A. Unless expressly stated herein, Grantee acknowledges and agrees that no payment or contribution shall offset the Franchise Fee.
- B. Grantee expressly acknowledges and agrees that, as applicable, except for the compensation payments expressly required by Section 7.2.1 hereof, and consistent with the requirements of Section 4.2.7A of this Agreement, each of the payments or contributions made by, or the Services, equipment, facilities, support, resources, or other activities to be provided by the Grantee, are within the exclusions from the term “Franchise fee” set forth in Section 622(g)(2) of the Cable Act (47 U.S.C. § 542(g)(2)).

**7.3. Supporting Information.**

Each payment shall be accompanied by a brief report showing the basis for the computation, a breakdown by major revenue categories (such as basic service, premium service, etc.), and such other relevant facts as may be reasonably required by the City, including the completion of a Franchise Fee Payment Worksheet, subject to the proprietary information provisions of Section 8.8. The brief report and Franchise Fee Payment Worksheet shall be submitted to the City with information and statistics for only the System serving the City of Charlottesville and shall not include any statistics which reflect a larger scope of operations that include the County of Albemarle or other similarly situated regions.

**7.4. Limitation on Franchise Fee Actions.**

No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Franchise where the City gives the Grantee notice in writing contesting any amount paid within five (5) years of the receipt of the disputed payment. All amounts shall be subject to audit and recomputation by the City.

**7.5. Bundled Services.**

If Cable Services subject to a Franchise Fee, or any other fee determined by a percentage of the Cable Operator’s Gross Revenues in a locality, are provided to Customers in conjunction with other services: the Franchise Fee shall be applied only to the value of these Cable Services, as reflected on the books and records of the Cable Operator in accordance with rules, regulations, standards, or orders of the Federal Communications Commission or the State Corporation Commission, or generally accepted accounting principles. Any discounts resulting from purchasing the services as a bundle shall be reasonably allocated between the respective services that constitute the bundled transaction.

**7.6. Audit.**

**7.6.1.** Subject to the proprietary information provisions of Section 8.8 of this Franchise Agreement, the City, or such Person or Persons designated by the City, shall have the right to inspect and copy records and the right to audit and to recompute any amounts determined to be payable under this Franchise, without regard to by whom they are held. If an audit discloses an overpayment or underpayment of Franchise Fees, the City shall notify the Grantee of such overpayment or underpayment within ninety (90) days of the date the audit was completed. The City, in its sole discretion, shall determine the completion date for any audit conducted hereunder. Audit completion is not to be unreasonably delayed by either party.

**7.6.2.** Subject to the proprietary information provisions of **Section 8.8** of this Franchise Agreement, the Grantee shall be responsible for providing to the City all records necessary to confirm the accurate payment of Franchise Fees. The Grantee shall maintain such records for five (5) years. To the extent the City hires an



independent auditor to verify the accuracy of Grantee's Franchise Fee payments and finds the payments accurate to within five percent (5%) of funds due the City or in all cases in which the discrepancy favors Grantee, the City shall pay the auditor's full costs and expenses. To the extent it is reasonably necessary for the City to send an auditor to a location outside of the City or Albemarle County to inspect Grantee's books and records, Grantee shall be responsible for all travel costs incurred by such auditor. Such costs may not exceed five thousand dollars (\$5,000). In the event the independent auditor determines that a discrepancy which favors City in excess of five percent (5%) exists, Grantee shall pay the auditor's full costs and expenses. within thirty (30) days following written notice to the Grantee by the City of the underpayment, which notice shall include a copy of the audit report. In all cases, Grantee shall promptly pay all outstanding Franchise Fees subject to the terms and conditions of this Franchise. The auditor shall not be compensated on a success based formula, e.g., payment based on a percentage of any underpayment, if any.

No acceptance of any payment by the City shall be construed to as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under this Franchise where the City gives Grantee notice of in writing contesting any amount paid within five years of receipt of the disputed payment. All amounts paid shall be subject to audit and recomputation by the City.

- 7.7.** With each Annual Report required pursuant to **Section 8.9**, Grantee shall provide the City with a certification of the Gross Revenues for the preceding year prepared by a responsible financial representative of the Company. This certification shall be used to determine the exact amount of payments due the City and to correct any overpayments or underpayments by Grantee. This certification shall include statistics for only the System serving the City of Charlottesville and not any statistics which reflect a larger scope of operations that include the County of Albemarle or other similarly situated regions. To the extent it is reasonably necessary for City to send representatives to a location outside of the City or Albemarle County to inspect Grantee's books and records, Grantee shall be responsible for all travel costs incurred by City representatives; such costs not to exceed a maximum of five thousand dollars (\$5,000).
- 7.8.** In the event any payment is not made on the due date, simple interest on the amount due shall accrue from such date at the annual rate of six percent (6%).
- 7.9. No Limitation on Taxing Authority.**
- A. Nothing in this Agreement shall be construed to limit any authority of the City to impose any tax, fee, or assessment of general applicability. By way of illustration and not limitation, to the extent permitted by Applicable Law, the City may impose a tax, fee, or other assessment on any Person (other than the Grantee) with respect to Cable Service or other communications service provided by such Person over a Cable System for which charges are assessed to Customers but not received by the Grantee.
  - B. The Franchise Fee payments required by this Section shall be in addition to any and all taxes, fees or charges which the Grantee shall be required to pay to the City or to any state or federal agency or authority, except to the extent that such taxes, fees or charges must be considered Franchise Fees pursuant to 47 U.S.C. § 542 (g).
  - C. Grantee expressly acknowledges and agrees that the compensation and other payments to be made pursuant to this Section 7.2 of this Franchise shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability or other fees or charges which the Grantee 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 Grantee.
  - D. Grantee shall not have or make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made pursuant to this Franchise from or against any

City or other governmental taxes of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers or income taxes) or other fees or charges which the Grantee is required to pay to the City or other governmental agencies.

## **SECTION 8 - Oversight and Regulation by Franchising Authority**

### **8.1 Open Books and Records.**

The City shall have the right to inspect, seven (7) days after Grantee's receipt of written notice at any time during Normal Business Hours at the System office all books, records, maps, plans, financial statements, Complaint logs, performance test results, record of requests for Service and other like materials of Grantee which are reasonably necessary to monitor compliance with the terms of this Franchise. To the extent it is reasonably necessary for City to send representatives to a location outside of the City of Charlottesville or Albemarle County to inspect Grantee's books and records, Grantee shall be responsible for all travel costs incurred by City representatives. Such costs may not exceed five thousand dollars (\$5,000).

### **8.2. Technical Standards.**

The Grantee shall comply with all applicable technical standards of the FCC regulations in 47 CFR Part 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards as provided by Applicable Law. The Franchising Authority shall have the right to obtain, upon written request, a copy of the tests and records pursuant to the FCC's rules.

### **8.3. Operational Records.**

The Grantee shall maintain the records required to compute all operational and customer service compliance measures outlined in this Franchise to demonstrate that the measures are being met. Failure to maintain the records as required herein shall subject the Grantee to the penalties established in this Franchise Agreement.

### **8.4. Records Required.**

Grantee shall at all times maintain and upon written request provide the following:

- A. Records of all written complaints for a period of one year after receipt by Grantee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Grantee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;
- B. Records of outages and-Service Interruptions for a period of one year after occurrence, indicating date, duration, area, and the number of Customers affected, type of outage, and cause;
- C. Records of service calls for repair and maintenance for a period of one year after resolution by Grantee;
- D. Records of installation/reconnection for a period of one year after the request was fulfilled by Grantee.

### **8.5. Federal Communications (FCC) Testing:**

Within fourteen (14) days of a written request by the City, Grantee shall make available the results of its FCC proof of performance tests required by the FCC's rules.

**8.6. File for Public Inspection.**

Throughout the term of this Franchise Agreement, the Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

**8.7. Periodic Inspection.**

The City and Grantee shall, at the request of the City, undertake an inspection of the System to ascertain the System performance at randomly selected Subscriber Drops selected by the City for the purposes of determining compliance with the terms and conditions of this Franchise Agreement and applicable law. The request for such an inspection will be made on the basis of Complaints received or other evidence indicating non-compliance with the terms and conditions of this Franchise or applicable law.

- A. The City shall give written notice to Grantee of the City's intention to undertake an inspection of the System and the name of that Person who will participate for the City.
- B. Grantee shall, within two (2) days of receipt of the City notice, select one Person who will participate for Grantee and so notify the City.
- C. The representatives of the City and Grantee shall, within three (3) days of the selection of the Grantee representative, select a third representative, who shall be subject to a confidentiality agreement.
- D. The representatives shall commence the inspection of the System at the head-end by viewing all programmed Channels or a representative portion thereof and, by a decision of the majority, determine whether the quality of the signals meets all applicable technical standards outlined within this Franchise and Applicable Laws.
- E. The representatives shall then view the System performance at appropriate Subscriber Drops. The representatives shall view all or a representative portion of the program Channels at each location and, by a decision of the majority, determine whether the quality of the signals meets all applicable technical standards outlined within this Franchise and Applicable Laws.
- F. The representatives shall prepare and submit to the City and Grantee a written report of its findings any appropriate recommendation.
- G. Grantee shall report to the City, at a regular or specially scheduled meet of the City, its findings as to the status of the System, and whether it agrees with the findings of the representatives. Should Grantee agree that corrective action is required, it will report as to the status of corrective measures planned and undertaken currently. Should the representatives find that Grantee has operated the System properly and no legitimate basis for the Complaints exists within the control of Grantee, then the City shall provide Grantee with written notice that it has investigated the matter and that the Grantee is absolved from any wrongdoing in that matter. Nothing herein shall prevent Grantee from providing City with such additional evidence or information as Grantee deems relevant.

**8.8. Proprietary Information.**

**8.8.1.** Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to submit information to the City that it reasonably deems to be proprietary or confidential in nature, nor submit to the City any of its or an affiliate's books and records not relating to the provision of Cable Service in the Franchise Area, except as provided herein. Such confidential information shall be subject to the following, to be applied as is most practicable for the purposes of this Agreement:

- A. To the extent an exemption under the Virginia Freedom of Information Act permits the City to maintain the confidentiality of submitted information and the Grantee submits such information to the City, the City shall maintain the confidentiality of such information and not disclose it to any public request;
- B. To the extent the information provided to an accountant, attorney, consultant, or any other agent of the City (“City Consultant”) would not be subject to public disclosure under the Virginia Freedom of Information Act and the City instructs the Grantee to provide such information to the City Consultant as may be required by this Agreement, the Grantee shall provide such information to the City Consultant and the City shall not take possession of the information nor engage in any act that would jeopardize the confidentiality of such information; or
- C. Grantee must provide the following documentation to the City:
  - i. Specific identification of the information;
  - ii. Statement attesting to the reason(s) the Grantee believes the information is confidential; and
  - iii. Statement that the documents are available at the Grantee’s designated offices for inspection by the City.

**8.8.2.** At all times, the City shall take reasonable steps to protect the proprietary and confidential nature of any books, records, maps, plans, or other City-requested documents that are provided pursuant to this Franchise Agreement to the extent they are designated as such by the Grantee. Nothing in this Section shall be read to require the Grantee to violate Federal or State Law protecting Customer privacy.

**8.9. Annual Reports.**

Upon written request at least ninety (90) days in advance, Grantee shall file with the City a copy of the following information regarding the System, in such a format as can be specifically allocated to the Franchise Area that is legally included within the City of Charlottesville:

**8.9.1. Service Availability Report.** Upon written request, and subject to federal law, after the end of the calendar year, Grantee shall submit a written report to the City which lists the addresses where cable service was made available during the preceding year, and a description of the Services then being offered at the end of the fiscal year.

**8.9.2. Customer Service Reports.** A compilation summarizing the Complaints received during the reported year, by category, and a discussion of any unresolved Complaints which shall include:

- A. A report showing the number of services calls received by type;
- B. A report showing the number of outages that exceed one hour in duration.
- C. A report showing the grantee’s performance with respect to Section 6 of this franchise agreement, signed by an officer or employee certifying its performance with these customer service standards. Included in this report will be the following information;
  - i. Percentage of telephone calls that were answered within thirty (30) seconds;
  - ii. Percentage of telephone calls received that were abandoned before being answered by a live operator;
  - iii. Average hold time for telephone calls received;
  - iv. Percentage of time when all incoming trunk lines were in a busy condition;
  - v. Percentage of standard installations performed within seven (7) business days; and

vi. Percentage of repair calls for Service Interruptions responded to within 24 hours.

**8.9.3. Communications with Regulatory Agencies.** Copies of all petitions, applications, communications and reports submitted by Grantee or on behalf of or relating to Grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the System authorized pursuant to this Franchise shall be available for City inspection. Copies of responses from the regulatory agencies to Grantee shall likewise be made available.

**8.9.4. Financial Statement.** A financial statement including an income statement, statement of operating expenses in detail, a cash flow statement and a balance sheet prepared in accordance with generally accepted accounting principles and certified by a financial representative of Grantee. Grantee's SEC Form 10-K shall suffice for such purposes.

**8.9.5. Subscriber Service information.** A current copy of the Subscriber Service information required in accordance with Section 6.2. hereof.

**8.9.6. Principals.** A current list of names and addresses of each principal. For the purposes of this requirement the term "principal" means any Person, firm, corporation, partnership or joint venture, or other entity who or which owns or controls five percent (5%) or more of the voting stock (or any equivalent interest of a partnership or joint venture of Grantee).

**8.10. Additional Reports.**

Grantee shall prepare and furnish to the City, within a reasonable time, such additional reports with respect to its operation, affairs, transactions or property, which are reasonably necessary for the administration and enforcement of this Franchise.

**8.11. Maps.**

Grantee shall maintain at all times a current map or set of maps drawn to scale showing the Grantee's System in the streets and other public places, and upon written request and contingent upon the City's agreement to hold this information confidential, will provide the City with access to such maps, during Normal Business Hours, at the local office defined under Section 6.1.

**8.12. Periodic Evaluation and Renegotiation Sessions.**

The field of cable communications is a rapidly changing one which may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for a maximum degree of communication between the parties, and to help achieve a continued advanced and modern System, the following evaluation provisions will apply:

- A. The City and Grantee, upon request of the City, shall hold annual evaluation sessions during the term of this Franchise.
- B. Topics which may be discussed at any evaluation and session include, but are not limited to, Channel capacity, the System performance, programming, access, municipal uses of cable, Complaints, customer service, telephone answering performance, judicial rulings, FCC rulings and any other topics the City or Grantee deem relevant.
- C. During an evaluation session, Grantee shall fully cooperate with the City and shall provide without unreasonable cost such information and documents, including, but not limited to, telephone response information, as the City may request.

## **SECTION 9 - Transfer or Change of Control of Cable System or Franchise**

### **9.1. Removal After Revocation or Expiration.**

- A. At the expiration of the present and all subsequent renewal terms for which the Franchise is granted, or upon its revocation, as provided for, the City shall have the right, consistent, however, with Grantee's rights under Section 12.6 of this Agreement, to require Grantee to remove, at Grantee's expense, all or any portion of the System from all Streets and Public Property within the City. In so removing the System, Grantee shall refill and compact at its own expense, any excavation that shall be made and shall leave all Streets, Public Property and private property in as good a condition as that prevailing prior to Grantee's removal of the System, and without affecting, altering or disturbing in any way electric, telephone or utility, cables wires or attachments. The City, or its delegation, shall have the right to inspect and approve the condition of such Streets and Public Property after removal. The performance bond, insurance, indemnity and penalty provision of the Franchise shall remain in full force and effect during the entire term of removal.
- B. If, in the sole discretion of the City, Grantee has failed to commence removal of the System, or such part thereof as was designated within thirty (30) days after written notice of the City's demand for removal is given, or if Grantee has failed to complete such removal within one (1) year after written notice of the City's demand for removal is given, the City shall have the right to exercise the following option:
  - i. Cause the System, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the security fund, indemnity and penalty section provided for in the Franchise or from Grantee directly.
- C. Notwithstanding any other provision of the franchise, subject to Grantee's rights under applicable federal law (47 U.S.C. §541) upon the lawful termination of this cable Franchise, the Grantee may continue to operate other services on its System, and shall not be required to remove facilities necessary to provide these other services not related to the provision of cable services.

### **9.2. Sale or Transfer of Franchise.**

- A. This Franchise shall not be sold, assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or properly therein, pass to or vest in any Person without full compliance with the procedure set forth in this section.
- B. The provisions of this section shall only apply to the sale or transfer of all or a majority of Grantee's assets, merger (including any parent and its subsidiary corporation), consolidation, or sale or transfer of stock in Grantee so as to create a new controlling interest. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer. No transfer of this shall occur without the prior written consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned. No transfer to the parties to the sale shall be made to a Person, group of Persons, or Affiliate that is not legally, technically, and financially qualified to operate the Cable System and satisfy the obligations hereunder.
- C. In accordance with applicable federal law, in reviewing a request for sale or transfer pursuant to paragraph (A) above, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party, and Grantee shall assist the City in so inquiring. The City shall not unreasonably delay or withhold its approval. In no event shall a transfer or assignment of ownership or control of the franchise be approved without the transferee becoming a signator to this Franchise. For purposes of this section 9.2, no assignment, transfer, or sale shall occur when the Franchise is transferred

or sold to a company owned, managed, or controlled by fifty-one percent (51%) of the stock of Grantee, or any of its subsidiaries, or the assets or stock of the company are transferred to a financial institution as security for refinancing purposes.

- D. The City hereby reserves all rights under Applicable Laws to seek reimbursement of reasonable costs and expenses incurred (including, but not limited to, attorneys and other consultants), up to five thousand dollars (\$5,000), in connection with any sale or transfer of the System and/or Franchise. Such reimbursements, if found to be consistent with Applicable Law, shall not be deemed to be “Franchise Fees” within the meaning of the Cable Act (47 U.S.C. § 542). Grantee also hereby reserves its rights under Applicable Laws with respect to this issue.
- E. In the event of a transfer, the City reserves the right to require a Corporate Guarantee in the form of Exhibit A upon a subsequent grantee.
- F. The City shall comply with lawful statutes and regulations in effect at the time of sale or transfer regarding time limits applicable to consideration of a transfer application. (Currently 47 CFR §76.502 and Va. Code §15.2-2108.28)

## **SECTION 10 - Insurance and Indemnity**

### **10.1. Liability Insurance.**

- A. Grantee shall maintain, throughout the term of the Franchise, the following types of insurance for any liability with regards to damages outlined in Section 10.2:
  - i. **Statutory Workers’ Compensation** coverage or Employer’s Liability coverage, as required by the laws of the Commonwealth of Virginia. The Grantee shall indemnify and hold harmless the Franchising Authority from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.
  - ii. **Commercial General Liability insurance** with a coverage limit no less than two (2) million dollars per occurrence and four (4) million dollars aggregate per accident.
    - a. This insurance will include coverage for claims of Bodily Injury, Property Damage, Personal and Advertising Injury, and Products and Completed Operations, which may arise from operations under the agreement, whether such operations are performed by the Grantee or by any subcontractor or independent contractor on behalf of the Grantee.
    - b. The Commercial General Liability insurance shall name the City and its officials, officers, employees, and agents as “additional insured” by endorsement, and shall be primary and non-contributory.
- B. At the time of acceptance, Grantee shall furnish the City with a certificate evidencing that the insurance policies have been obtained in accordance with the requirements above. The Grantee shall also provide the endorsement page(s) evidencing that the City, its officials, officers, employees, and agents have been included as additional insured parties on the General Liability policy. In addition, it shall be the obligation of the Grantee promptly to notify the City of any pending or threatened litigation that would be likely to affect its insurance coverage.

### **10.2. Indemnification, Damages, and Defense.**

Grantee shall indemnify the City, its officers, boards, committees, commissions, elected officials, employees and agents for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of the Cable System or as to any other action of Grantee with respect to this Franchise Agreement. The City shall give the Grantee timely written notice of its obligations to indemnify and defend the City within ten (10) days of receipt of a claim or action pursuant to this section.

## **SECTION 11 - System Description and Service**

### **11.1. System Capacity.**

Grantee shall continue to own, operate, maintain, and make available a System providing a minimum of 860 MHz capacity. During the term of this Agreement, the Grantee's Cable System shall make Video Programming available to its Customers in the Franchise Area and shall meet all FCC technical standards as established in 47 CFR Part 76.

Grantee agrees that it shall not enter into a franchise with another locality within the franchise area which contains terms and provisions regarding PEG access or the System upgrade/rebuild that when compared to the City Franchise are more favorable to the other locality. In the event Grantee enters into such a franchise which contains terms that are more favorable to the other locality than those available to the City under this Franchise, the City shall have the option to substitute the more favorable provisions franchise with those in the City Franchise. Grantee shall have the right to appear before City Council to present any information Grantee deems relevant to the City's consideration of the provisions in question. When considering such issues the City shall weigh the overall requirements of each franchise and the respective benefits and burdens of each. If Grantee disagrees with the determination of the City Council, Grantee shall have the right to appeal to a court having competent jurisdiction in the City of Charlottesville.

#### **11.1.1. Interconnection.**

- A. The System shall be designed so that it may be interconnected with other Cable Systems.
- B. The City may request Grantee to negotiate interconnecting the System with other adjacent Systems in the general area. Grantee shall keep the City informed of the progress of any negotiations.

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### **11.2. Provision of Service.**

- A. After Service has been established for any area, Grantee shall provide Service to any household requesting Service within that are in a reasonable and timely manner.
- B. The Grantee shall continue to provide, at no cost to the Franchising Authority, basic Cable Service and Standard Installation at one outlet to each public building identified below and, upon written request from the City, one additional public building location per year, located in the Franchise Area within one hundred twenty five feet of the Grantee's distribution cable. It is the intent of the parties that the Grantee shall continue to provide the same general quality and quantity of programing to the free service drops as was made available on the Effective date of this Franchise. Each of these Installations shall include a signal Drop, one outlet, and one Converter (or such other terminal equipment as may be necessary to provide an electronic interface with a television receiver). The public buildings to be provided this Service shall include the following:



- i. All state accredited K-12 public school buildings;
  - ii. The following locations in the City Hall complex, located at 605 East Main Street, Charlottesville, VA 22902, or other City owned buildings:
    - (a) City Hall – General Registrar;
    - (b) City Hall – Neighborhood Development Services;
    - (c) City Hall – City Manager’s Office (four connections);
    - (d) City Hall – Police Department (two connections);
    - (e) City Hall – Mayor’s Office;
    - (f) City Hall – Sheriff;
    - (g) City Hall – Information Technology;
    - (h) City Hall – City Attorney Library;
    - (i) City Hall – Basement Conference Room;
    - (j) Tonsler Park Community Center, 501 5th Street, SW;
    - (k) Carver Recreation Center, 233 4th Street, NW;
    - (l) Public Works Admin. Bldg., 305 4th Street, NW, (three connections);
    - (m) Key Recreation Center, 800 E. Market Street;
    - (n) City of Charlottesville Parks and Recreation Smith Aquatics & Fitness, 100-A Cherry Ave;
  - iii. City of Charlottesville Community Attention Homes, 907 E. Jefferson Street & 414 4th Street, NE;
  - iv. The Jefferson-Madison Regional Library Main branch, 201 East Market Street ;
  - v. The Jefferson-Madison Regional Library Gordon Avenue branch, 1500 Gordon Ave;
  - vi. The City police department and substations located at 724G Prospect Ave., 531 2d St. S.E. Suite 12A, Frank Ix Bldg. (NSB); and Forrest Avenue 705 Dale Avenue; and
  - vii. City of Charlottesville Parks and Recreation Meadow Creek Golf Course Club House, 1400 Pen Park Road.
- C. Should City construct or move any of the aforementioned facilities beyond three hundred (300) feet of the existing System, as upgraded, Grantee shall not be required to absorb the Installation costs for such facilities until such time as Grantee extends its System to accommodate same.

**11.3. Technical Standards.**

The System shall be designed, constructed and operated so as to meet those technical standards promulgated by the FCC relating to Cable Systems contained in Part 76 of the FCC’s rules and regulations as may, from time to time, be amended. Upon written request, the results of tests required by the FCC will be delivered to the City within thirty (30) days of the completion of testing.

**11.4. Special Testing.**

- A. The City shall have the right to inspect all construction and installation work performed pursuant to the provisions of the Franchise in order to ensure compliance with the terms and conditions of the franchise agreement and all other applicable laws. Any such inspection shall not interfere with the Grantee’s operations, except in emergency situations. Except for emergency situations, the City shall provide the Grantee with timely notice of any such inspection(s). The Grantee shall have the right to have a representative present at any such inspection. Both parties shall make a good faith effort to work with each other to schedule any such inspections at a mutually convenient time.
- B. Before ordering such tests, Grantee shall be afforded thirty (30) days advance written notice. City shall meet with Grantee prior to requiring inspection to discuss the need for such and, if possible, visually inspect those locations which may be the focus of concern. If, after such meetings and inspections, City wishes to commence inspection, the tests shall be conducted at City’s expense by a qualified engineer selected by City. Grantee shall participate and cooperate in such testing and shall not assess City or

Subscribers any fees or costs associated with time or labor Grantee may incur as a result of its participation in such testing.

**11.5. Signal Quality.**

The System shall produce a picture and signal quality that is consistent with FCC rules contained in Part 76 of the Code of Federal Regulations as may, from time to time, be amended.

**11.6. Semi-Annual Testing.**

Grantee shall conduct semi-annual technical performance tests in compliance with FCC requirements and upon request the City shall be provided with copies of test results. If a test fails to meet the performance standards, Grantee shall restore the system to the FCC requirements at Grantee's expense within a reasonable period of time

**11.7. Standby Power.**

The head-end and all hubs serving the City shall employ a back-up generator and Uninterruptible Power Supply (UPS) with sufficient capacity to provide twenty four (24) hours power in the event of a commercial power outage or other primary power system failure. The distribution system shall employ standby power at all power supply locations capable of providing up to two hours power to the distribution system in the event of a commercial power outage or other primary power failure.

**SECTION 12 - Enforcement of and Termination of Franchise; Foreclosure, Receivership, and Abandonment**

**12.1. Notice of Violation or Default.**

In the event the Franchising Authority believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the nature of the alleged non-compliance or default.

**12.2. Grantee's Right to Cure or Respond.**

The Grantee shall have the right to respond to written notice of a violation. The Grantee shall have forty-five (45) days from the receipt of the Franchising Authority's written notice: (A.) to respond to the Franchising Authority, contesting the assertion of non-compliance or default; or (B.) to cure such default; or (C.) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that the cure will be completed.

**12.3. Public Hearing.**

In the event the Grantee fails to respond to the Franchising Authority's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the Franchising Authority shall schedule a public hearing to evaluate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority at a time that is no less than ten (10) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

**12.4. Enforcement.**

**12.4.1.** Subject to applicable federal and state law, in the event the Franchising Authority determines after a public hearing, that the Grantee has violated any material provision of the Franchise, the Franchising Authority may:

- A. Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief;
- B. Seek penalties in accordance with Section 12.9 hereof; or

**12.4.2 Revocation.** In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, in the event of a substantial default that:

- A. Grantee breaches any material provision of this Franchise; or
- B. Grantee is adjudicated guilty of practicing fraud or deceit upon the City; or
- C. Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt and the Grantee's creditors or Trustee in Bankruptcy do not agree to fulfill and be bound by all requirements of this Franchise by the City; or
- D. Grantee materially misrepresents a material fact in the application for or negotiation of, or renegotiation of, or renewal of, the Franchise and such misrepresentation was relied upon by the City to its detriment.
- E. In the case of a substantial default as found in 12.4.3, the Franchising Authority must initiate revocation proceedings in accordance with the revocation procedures established in Section 12.4.4.

**12.4.3. Revocation Procedures.**

- A. The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of non-compliance by the Grantee, including but not limited to the grounds listed in Section 12.4.2 or two or more instances of substantial non-compliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the non-compliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response from the Grantee or upon receipt of the response does not agree that the allegations of non-compliance have been or will be resolved, it may then seek revocation of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request revocation of the Franchise.
- B. At the designated public hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Virginia, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days.
- C. Upon completion of the public hearing if the Franchising Authority determines there is a violation, breach, failure, refusal or neglect by Grantee, the Franchising Authority may direct

Grantee to correct or remedy the same within such reasonable additional time, in such manner and upon such reasonable terms and conditions as City may direct. The issue of revocation shall automatically be placed upon the City Council agenda at the expiration of the time set by it for compliance. The City then may terminate Franchise forthwith upon finding that Grantee has failed to achieve compliance or may further extend the period, in its discretion. Or, at Grantee's option, after the full public proceeding is held and the City determines there was a violation, breach, failure, refusal or neglect, then the City may declare, by resolution, the Franchise revoked and cancelled and of no further force and effect.

- D. The decision of the Franchising Authority shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to the courts having jurisdiction over the City of Charlottesville, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reverse such decision as applicable laws and/or this agreement may require.

#### **12.5. Technical Violation.**

The Franchising Authority agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

- A. in instances or for matters where a violation or a breach of the Franchise by the Grantee was a good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or
- B. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

#### **12.6 No Removal of System.**

Grantee shall not be required to remove its Cable System or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Grantee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act, or any portion thereof in accordance with 47 U.S.C. §621 (b).

#### **12.7 Security Fund**

- A. At the time this Franchise is accepted, Grantee agrees to provide and deposit with the City, and maintain through the term of this Franchise, a performance bond in the form of a performance bond with a company which is qualified to write bonds in the Commonwealth of Virginia established in favor of the City in the amount of Fifty Thousand Dollars (\$50,000.00) for the faithful performance by it of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the System. Such security fund whether a letter of credit or performance bond shall be subject to the approval of the City and such approval shall not be unreasonably withheld.
- B. The performance bond shall be effective throughout the term of the Franchise, including the time for removal of all of the facilities provided for herein, and shall be conditioned that in the event that the Grantee shall fail to comply with any one or more provisions of the Franchise, the City shall recover from the surety of such bond all damages suffered by the City as a result thereof. Said bond shall be a continuing obligation of the Franchise, and thereafter until the Grantee has satisfied all of its obligations to the City that may have arisen from the grant of the Franchise or from the exercise of any privilege herein granted. In the event that the City recovers from said surety, the Grantee shall

take immediate steps to reinstate the performance bond to the appropriate amount required herein. Neither this section, any bond accepted pursuant thereto, nor any damages recovered thereunder shall limit the liability of the Grantee under the Franchise Agreement.

- C. The performance bond shall contain the following endorsement (or the substantive equivalent thereto): “It is hereby understood and agreed that this performance bond may not be cancelled by the issuer, nor may the intention not to renew be stated by the issuer, until thirty (30) days after receipt by the City of a written notice stating such intention to cancel or not to renew.”

## **12.8. Penalties.**

**12.8.1. Penalties from Security Fund.** In addition to any other remedies provided herein, penalties for violations of this Franchise are set forth below. As a result of any acts or omissions by Grantee pursuant to the Franchise, the City may charge to and collect the following penalties:

- A. For failure to complete or commence construction in accordance with the Franchise unless the City approves the delay, the penalty shall be Two Hundred Dollars (200.00) per day for each day, or part thereof, such failure occurs or continues.
- B. For failure to provide data, documents, reports or relevant information to the City during a renewal process or the System review, the penalty shall Two Hundred and No/100 Dollars (\$200.00) per day.
- C. For failure to comply with any material provision of this Franchise, for which a penalty is not otherwise specifically provided, the penalty shall be Two Hundred and No/100 Dollars (\$200.00) per day.
- D. For failure to test, analyze and report on the performance of the System following a request by the City, the penalty shall be Two Hundred and No/100 Dollars (\$200.00) per day.
- E. For failure of Grantee to comply with operation or maintenance standards, the penalty shall be Two Hundred and No/100 Dollars (\$200.00) per day.
- F. For failure to comply with all conditions of the City permits to disturb Streets, fix Streets, or other terms or conditions of the City, the penalty shall be Two Hundred and No/100 Dollars (\$200.00) per day. This penalty shall be offset by any penalties collected by the City for the violation of any such City Code provisions.

## **12.8.2. Procedure for Imposition of Penalties.**

- A. Whenever the City finds that Grantee has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have twenty (20) days subsequent to receipt of the notice in which to correct the violation. Grantee may, within ten (10) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to the City shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time.
  - i. The City shall hear Grantee’s dispute at a regularly or specially scheduled meeting. Grantee shall have the right to subpoena and cross-examine witnesses. The City shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Grantee may petition for reconsideration.

- ii. If after hearing the dispute the claim is upheld by the City, Grantee shall have ten (10) days from such a determination to remedy the violation or failure. At any time after that ten (10) day period, the City may assess penalties.
  - iii. Upon receipt of written notice from Grantee that the violation has been corrected or remedied, the City's right to assess penalties shall be suspended. Following receipt of such notice, the City shall have the right to conduct an independent investigation of any alleged violations and should it find, in its sole determination, that such violations have not been completely corrected, it shall have the right to collect penalties as described herein.
- B. The time for Grantee to correct any alleged violation may be extended by the City if the necessary action to correct the alleged violation is of such a nature or character to require more than ten (10) days within which to perform provided Grantee commences the corrective action within the ten (10) day period and thereafter uses reasonable diligence to correct the violation.
  - C. The City shall stay or waive the imposition of any penalties set forth above for any failure or delay that is a result of an act of God or upon a finding that the failure or delay is due to circumstances beyond the reasonable control of Grantee.

**12.9. Rights Cumulative.**

The rights reserved to the City herein are in addition to all other rights of the City, whether reserved herein or authorized by Applicable Law. The receipt of any damages recovered by the City thereunder, shall not be construed to excuse the faithful performance by the Grantee or limit the liability of the Grantee under the terms of its Franchise for damages.

**12.10. Foreclosure.**

Upon the foreclosure or other judicial sale of the System, Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

**12.11. Receivership.**

The City shall have the right to cancel this Franchise subject to any applicable provisions of state law, including the Bankruptcy Act, one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- A. Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and
- B. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

**12.13. Abandonment.**

Grantee may not abandon any portion of the System thereof without having first given three (3) months written notice to the City. Grantee may not abandon any portion of the System without compensating the City for damages actually sustained by the City resulting from the abandonment.

## **SECTION 13 - Miscellaneous Provisions**

### **13.1. Compliance with Laws.**

Grantee and the City shall conform to all Applicable Laws and rules regarding cable television as they become effective, unless otherwise stated. Grantee shall also conform with all the generally applicable City ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. Any such City Ordinances, resolutions, rules or regulations that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement. This Franchise Agreement reflects the entire agreement of the parties and subsequent City rules and regulations that are in conflict with this Franchise Agreement cannot amend or change the obligations of Grantee herein without the mutual agreement of the parties pursuant to a formal amendment to the Franchise Agreement.

### **13.2. Compliance with Federal State and Local Laws.**

- A. If any federal or state law or regulation requires or permits Grantee to perform any Service or act or shall prohibit Grantee from performing any Service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, Grantee will use its best efforts where appropriate to notify the City of the point of conflict believed to exist between such law or regulation.
- B. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and the City.
- C. Notwithstanding anything to the contrary, in the event that any court, agency, commission, legislative body or other authority of competent jurisdiction (i) declares Sections 4.2.5 or 4.2.6 invalid, in whole or in part, or (ii) requires Grantee either to (a) perform any act which is inconsistent with any of the said sections or (b) cease performing any act required by said sections, Grantee shall immediately notify the City. Such notice shall state whether Grantee intends to exercise its rights pursuant to such declaration or requirement.

### **13.3. Franchise Renewal.**

This Franchise may be renewed in accordance with Applicable Laws.

### **13.4. Continuity of Service Mandatory.**

Upon expiration or termination of this Franchise, the City may require Grantee to continue to operate the system for an extended period of time not to exceed six months. Grantee shall, as trustee for its successor in interest, continue to operate the System under the terms and conditions of this Franchise. In the event that Grantee does not operate the System, the city may take such steps as it deems necessary to assure continued service to Subscribers.

### **13.5. Work Performed by Other for Grantee.**

- A. All provisions of this Franchise shall remain the responsibility of Grantee, and Grantee shall be responsible for and hold the City harmless for any claims or liability arising out of work performed by subcontractors of the Grantee.
- B. All provisions of this Franchise shall apply to any subcontractor or others performing any work or Services pursuant to the provisions of this Franchise.

**13.6. Nonenforcement by City.**

Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance within a reasonable period of time not to exceed three (3) years.

- 13.7. No Evasion and Time of Essence.** Unless specifically referenced herein, in determining whether Grantee has substantially complied with this Franchise, the parties agree that time is of the essence. Grantee's failure to meet the obligations herein including providing information requested by Grantor in a timely manner shall constitute a material breach.

The Grantee shall not take any action to evade any provision of this Agreement. This provision shall be read to prohibit, among other things, the Grantee from requiring any Customer to waive any right (including without limitation privacy rights) as a condition of obtaining Cable Service.

**13.8. Force Majeure.**

The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation, or revocation of the Franchise), provided that the Grantee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Agreement without unduly endangering the health, safety, and integrity of the Grantee's employees or property, or the health and integrity of the public, Public Way, public property, or private property, where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative, or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary where such unavailability is reasonably beyond the Grantee's ability to anticipate or control.

**13.9. Each Party Bears Its Own Cost.**

Unless otherwise expressly provided in this Agreement, all acts that the Grantee is required to perform must be performed at Grantee's own expense. Unless otherwise expressly provided in this Agreement, all acts that the City is required to perform must be performed at the City's own expense.

**13.10. Governing Law.**

This Franchise Agreement shall be deemed to be executed in the Commonwealth of Virginia, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the Commonwealth of Virginia, as applicable to contracts entered into and performed entirely within the Commonwealth and the venue for any litigation with respect thereto shall be in the Circuit Court for Charlottesville, Virginia, or the Federal District Court with jurisdiction over Charlottesville.

**13.11. No Third-Party Beneficiaries.**



Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

**13.12. No Waiver of Rights.**

Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, either party may have under federal or state law unless such waiver is expressly stated herein.

**13.13. Captions and References.**

The captions and headings of Sections throughout this Agreement are intended solely to facilitate reading and reference to the Sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

**13.14. Calculation of Time.**

Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

**13.15. Entire Agreement.**

This Franchise Agreement, including any Exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.

**13.16. Severability.**

If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If the Grantee believes that the terms of the Franchise Agreement or any City law or regulation conflict with any state or federal law or regulation, the Grantee shall notify the Franchise Authority immediately upon learning of the conflict.

**13.17. Modification.**

No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Grantee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by Applicable Law.

**13.18. Binding Acceptance.**

This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, and the promises and obligations herein shall survive the expiration date hereof.

**13.19. Time of Acceptance.**

- A. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein. Grantee shall provide all Services and offerings specifically set forth herein to provide Cable Services within the City.
- B. With its acceptance, Grantee shall also deliver any security deposit, insurance certificates, performance bonds and the Guaranty.

**13.20. Publication; Effective Date.** This Franchise shall be signed by the City Manager or acting City Manager and attested by the City Clerk. The Franchise shall be published in accordance with the requirements of City and state law and shall take effect upon acceptance by Grantee.

**13.21. Notice.** All notices, reports or demands required to be given in writing under this Franchise shall be deemed to be given when delivered Personally to the Person designated below, or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

**To the Franchising Authority:**

City Manager  
 City of Charlottesville  
 Room 214, City Hall  
 605 E. Main St.  
 Charlottesville, VA 22902

With a copy to:  
 City Attorney  
 City Hall  
 605 E. Main St.  
 Charlottesville, VA 22902

**To the Grantee:**

Comcast  
 5401 Staples Mill Road  
 Richmond VA 23228  
 Attn: Director, Government Affairs

And to:  
 Comcast Cable Communications, Inc.  
 7850 Walker Drive, 2<sup>nd</sup> Floor  
 Greenbelt, MD 20770  
 Attn.: VP, Government Affairs

And to:  
 Comcast Cable Northeast Division  
 676 Island Pond Rd.  
 Manchester, NH 03109  
 Attention: Government Affairs Department

Such addresses may be changed by either party upon notice to the other party given as provided in this section. The Grantee shall at all times keep the City advised as to which individual(s) are authorized to act on behalf of the Grantee and whose acts will be considered to bind the Grantee.

REMAINDER OF PAGE LEFT BLANK UNTIL SIGNATURE PAGE.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the last date set forth below:

City of Charlottesville:

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

Print Name: \_\_\_\_\_

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

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

Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC:

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

Print Name: Mary McLaughlin

Title: Regional Senior Vice President

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

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