



**CITY COUNCIL AGENDA**  
**December 4, 2023**  
**CERTIFICATIONS**

J. Lloyd Snook, III, Mayor  
Juandiego Wade, Vice Mayor  
Michael K. Payne, Councilor  
Brian R. Pinkston, Councilor  
Leah Puryear, Councilor  
Kyna Thomas, Clerk

**4:00 PM OPENING SESSION**

**Call to Order/Roll Call**

**Agenda Approval APPROVED 5-0 (PINKSTON/PURYEAR)**

**Reports**

1. Presentation: Budget Presentations - Information Technology, Public Safety, PCOB

**5:30 PM CLOSED MEETING (legal consultation)**

**Vote to meet in closed meeting APPROVED 5-0 (PINKSTON/PURYEAR)**

**Closed meeting recessed until end of meeting.**

**6:30 PM BUSINESS SESSION**

**Moment of Silence**

**Announcements**

**Recognitions/Proclamations**

**Consent Agenda\* APPROVED 5-0 (PINKSTON/PURYEAR)**

2. Minutes: September 5 Council meeting
3. **Resolution:** Resolution to appropriate Fire Department FY22 State Homeland Security Program Grant Award, \$51,764.00 (2nd reading)  
#R-23-154
4. **Ordinance:** Ordinance for renewal of Ting Franchise Agreement (2nd reading)  
#O-23-155
5. **Resolution:** Resolution to appropriate \$750 in State assistance and citizen donation for Spay and Neuter Program  
#R-23-156
6. Resolution: Resolution to appropriate funding from the U.S. Department of the Interior for the Chesapeake Bay Gateways Network Grant- \$49,976 (1 of 2 readings)
7. Resolution: Resolution appropriating the Bureau of Justice Assistance FY23 Edward Byrne Memorial Justice Assistance Grant - Local Solicitation \$27,486 (1 of 2 readings)
8. Resolution: Resolution to appropriate State Historic Resources Grant Funds to Jefferson School African American Heritage Center - \$200,000 (1 of 2 readings)

**City Manager Report**

- Report: Monthly Report

**Community Matters**

**Action Items**

9. Report: Annual Financial Audit for Fiscal Year 2023 from the City's Auditors
10. **Resolution:** Resolution to amend the Rivanna Water and Sewer Authority Ragged Mountain Dam Project Agreement  
#R-23-157  
**APPROVED 5-0 (PINKSTON/WADE)**

11. **Resolution:** Resolution to approve a Sublease Agreement Extension with Sentara Martha Jefferson Hospital (SMJH) for lease of space at 233 4th Street NW  
#R-23-158  
**APPROVED 5-0 (PINKSTON/PURYEAR)**
12. **Resolution:** Resolution to amend a Lease Agreement with Omni Charlottesville Virginia Corporation for lease of city-owned public right-of-way  
#R-23-159  
**APPROVED 5-0 (PINKSTON/WADE)**
13. Ordinance: Ordinance to approve a Zoning Map Amendment pursuant to Sections 34-41 of the Code of the City of Charlottesville for properties located at 106 – 114 Stadium Road, 409 Stadium Road, 104 Stadium Road, 102 Stadium Road, 1705 Jefferson Park Avenue, and 100 Stadium Road - VERVE Charlottesville PUD – ZM23-00004  
**Applicant requested deferral**
14. Ordinance: Ordinance amending and re-enacting Chapter 34 (Zoning) of the Code of the City of Charlottesville (1990), as amended, to remove 104 Stadium Road from the list of Individually Protected Properties - VERVE Charlottesville PUD – ZT23-09-02  
**Item was deferred**
15. Ordinance: Ordinance to amend the November 4, 1996 Right-of-Way Closure Ordinance for Woodrow Street - VERVE Charlottesville PUD  
**Item was deferred**
16. Ordinance: Ordinance to amend the May 2, 2011 ordinance for the sale of 409 Stadium Road - VERVE Charlottesville PUD  
**Item was deferred**
17. Resolution: Resolution to grant a Critical Slope Waiver for a residential development referred to as "VERVE Charlottesville PUD"  
**Item was deferred**
18. Resolution: Resolution to grant a Sidewalk Waiver for a residential development referred to as "VERVE Charlottesville PUD"  
**Item was deferred**
19. Ordinance: Ordinance to Rezone land fronting on Ivy Road and Copeley Road related to the "2117 Ivy Road Plan Unit Development Plan Submittal"  
**Council by unanimous consent deferred the vote until December 18.**

### **General Business**

20. Report: Social Services Advisory Board Annual Report to City Council

### **Other Business**

### **Community Matters (2)**

### **Reconvened CLOSED MEETING**

**Vote to certify closed meeting APPROVED 5-0 (PINKSTON/PAYNE)**

### **Adjournment**

**RESOLUTION**  
**Appropriating funds from the Virginia Department of Emergency Management**  
**(VDEM) FY22 State Homeland Security Program Grant Award**  
**\$51,764**

**WHEREAS**, the City of Charlottesville through the Department of Emergency Management, has received from the Virginia Department of Emergency Management (VDEM) Fiscal Year 2022 Homeland Security Program Grant award of \$51,764 to be utilized to special operations equipment, for the replacement of one complete set of extrication tools;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that the sum of \$51,764 received from the Virginia Department of Emergency Management is hereby appropriated in the following manner:

**Revenues - \$51,764**

\$51,764      Fund: 209                      Internal Order: 1900542      G/L Code: 430110

**Expenditures - \$51,764**

\$51,764      Fund: 209                      Internal Order: 1900542      G/L Code: 599999

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$51,764 from the Virginia Department of Emergency Management FY22 State Homeland Security Program Grant.

Approved by City Council on December 4, 2023

**TING INTERNET LLC  
TELECOMMUNICATIONS FRANCHISE**

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**AN ORDINANCE  
GRANTING A RENEWED TELECOMMUNICATIONS FRANCHISE TO  
TING INTERNET LLC, ITS SUCCESSORS AND ASSIGNS  
TO USE THE STREETS AND OTHER PUBLIC PLACES  
OF THE CITY OF CHARLOTTESVILLE, VIRGINIA  
FOR ITS POLE, WIRES, CONDUITS, CABLES AND FIXTURES,  
FOR A PERIOD OF FIVE (5) YEARS**

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia, that Ting Internet LLC (the “Company”), its successors and assigns, is hereby granted a telecommunications franchise for a period of five (5) years from the effective date of March 7, 2021, and is hereby authorized and empowered to erect, maintain and operate certain telephone lines and associated equipment, including posts, poles, cables, wires and all other necessary overhead or underground apparatus and associated equipment on, over, along, in, under and through the streets, alleys, highways and other public places of the City of Charlottesville, Virginia (the “City”) as its business may from time to time require; provided that:

**ARTICLE I**

**SECTION 101 PURPOSE AND SCOPE**

To provide for the health, safety and welfare of its citizens and to ensure the integrity of its roads and streets and the appropriate use of the Public Rights-of-Way, the City strives to keep the right-of-way under its jurisdiction in a state of good repair and free from unnecessary encumbrances.

Accordingly, the City hereby enacts this Ordinance relating to a telecommunications right-of-way franchise and administration. This Ordinance imposes regulation on the placement and maintenance of Facilities and equipment owned by the Company currently within the City’s Public Rights-of-Way or to be placed therein at some future time. The Ordinance is intended to complement, and not replace, the regulatory roles of both state and federal agencies. Under this Ordinance, when excavating and obstructing the Public Rights-of-Way, the Company will bear financial responsibility for their work to the extent provided herein. Finally, this Ordinance provides for recovery of the City’s reasonable out-of-pocket costs related to the Company’s use of the Public Rights-of-Way, subject to the terms and conditions herein.

**SECTION 102 AUTHORITY TO MANAGE THE RIGHT OF WAY**

This Ordinance granting a telecommunications franchise is created to manage and regulate the Company’s use of the City’s Public Rights-of-Way along city roads pursuant to the authority granted to the City under Sections 15.2-2015, 56-460, and 56-462(A) of the Virginia Code and other applicable state and federal statutory, administrative and common law.

This Ordinance and any right, privilege or obligation of the City or Company hereunder, shall be interpreted consistently with state and federal statutory, administrative and common law, and

such statutory, administrative or common law shall govern in the case of conflict. This Ordinance shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce other general ordinances necessary to protect the health, safety, and welfare of the public.

## **SECTION 103 DEFINITIONS**

**103.1 CITY** means the City of Charlottesville, Virginia, a municipal corporation.

**103.2 COMPANY** means Ting Internet LLC, including its successors and assigns.

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

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

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

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

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

## **ARTICLE II**

### **SECTION 201 INITIAL INSTALLATION**

The initial installation of equipment, lines, cables or other Facilities by the Company shall be a mixture of overhead and underground in Public Rights-of-Way as depicted in Exhibit A, attached hereto, and as may have been or may hereafter be modified, and incorporated by reference.

### **SECTION 202 SUBSEQUENT INSTALLATION**

**202.1 SUBSEQUENT INSTALLATION MADE PURSUANT TO AN APPROVED PROW PLAN:** Additional Facilities installed within the PROW may be placed overhead or underground pursuant to an approved request by the Company made pursuant to Article III, and in accordance with such generally applicable ordinances or regulations governing such installations that have been adopted by the City from time to time.

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

**202.3 INSTALLATION OF OVERHEAD FACILITIES:** Where a subsequent PROW plan is approved for overhead installation, the Company shall use its existing Facilities, or those of another utility where available. If the PROW plan calls for overhead installation and existing Facilities cannot accommodate the proposed installation, the Company will clearly indicate in the PROW plan its intended placement of new Facilities for the Director's review and consideration pursuant to Article III.

**202.4 FUTURE ORDINANCES:** Nothing herein shall be construed to limit the authority of the city to adopt an ordinance that will restrict the placement of overhead lines for all utilities using the PROW within a defined area of the City.

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

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

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

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

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

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

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



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

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

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

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

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

## **ARTICLE III**

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

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

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

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

## **SECTION 303 GOOD CAUSE EXCEPTION**

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

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

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

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

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

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

## **SECTION 305 MAPPING DATA**

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

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

## ARTICLE IV

### SECTION 401 COMPLIANCE WITH ALL LAW AND REGULATIONS

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

## ARTICLE V

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

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

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

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

- (a) the number, size, depth and duration of the excavations, disruptions or damage to the Public Rights-of-Way;
- (b) the traffic volume carried by the Public Rights-of-Way; the character of the neighborhood surrounding the right-of-way;
- (c) the pre-excavation condition of the Public Rights-of-Way and its remaining life expectancy;

- (d) the relative cost of the method of restoration to the Company balanced against the prevention of an accelerated deterioration of the right-of-way resulting from the excavation, disturbance or damage to the Public Rights-of-Way; and
- (e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the Public Rights-of-Way that would otherwise take place.

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

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

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

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

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

Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such restoration.

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

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

## ARTICLE VI

### SECTION 601 INDEMNIFICATION AND LIABILITY

**601.1 SCOPE OF INDEMNIFICATION:** Subject to the following, the Company agrees and binds itself to indemnify, keep and hold the City Council members, officials and its employees free and harmless from liability on account of injury or damage to persons, firms or corporations or property growing out of or directly or indirectly resulting from:

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

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

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

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

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

## **SECTION 603 INSURANCE**

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

- (a) verification that an insurance policy has been issued to the Company by an insurance company licensed to do business in the Commonwealth of Virginia, or a form of self insurance acceptable to the City Attorney;
- (b) verification that the Company is insured against claims for personal injury, including death, as well as claims for property damage arising out of (i) the use and occupancy of the Public Rights-of-Way by the Company, its agents, employees and permittees, and (ii) placement and use of Facilities owned by the Company in the Public Rights-of-Way by the Company, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;

- (c) verification that the City Attorney will be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
- (d) verification that comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City Attorney in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Ordinance; and
- (e) verification that the policy has a combined single limit coverage of not less than two million dollars (\$2,000,000).

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

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

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

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

## **ARTICLE VII**

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

Prior to the Effective Date of this Ordinance, the Company has deposited with the City a Performance Bond made payable to the City in the amount of fifty thousand dollars (\$50,000). The bond shall be written by a corporate surety acceptable to the City and authorized to do business in the Commonwealth of Virginia. The Performance Bond shall be maintained at this amount through the term of this Agreement.

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

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

- (a) material changes in the net worth of the Company;
- (b) changes in the identity of the Company that would require the prior written consent of the City;

- (c) material changes in the amount and location of Facilities owned by the Company;
- (d) the Company's recent record of compliance with the terms and conditions of this Ordinance; and
- (e) material changes in the amount and nature of construction or other activities to be performed by the Company pursuant to this Ordinance.

**SECTION 703 PURPOSE OF PERFORMANCE BOND**

The Performance Bond shall serve as security for:

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

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

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

**704.2 APPEAL:** The Company may, upon written request within thirty (30) days of the City's decision to assess a fee or penalty and for reasons of good cause, ask the City to reconsider its imposition of a fee or penalty pursuant to this Ordinance unless another period is provided for in applicable law. The City shall schedule its review of such request to be held within forty-five (45) days of receipt of such request from the Company. The City's decision on the Company's



appeal shall be in writing and supported by written findings establishing the reasonableness of the City's decision. During the pendency of the appeal before the City or any subsequent appeal thereafter, the Company shall place any such fee or penalty in an interest-bearing escrow account. Nothing herein shall limit the Company's right to challenge such assessment or the City's decision on appeal, in a court of competent jurisdiction.

## **ARTICLE VIII**

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

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

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

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

### **SECTION 802 RESERVED**

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

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

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

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

## **ARTICLE IX**

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

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

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

### **SECTION 902 SEVERABILITY**

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

## **ARTICLE X**

### **SECTION 1001 MAINTENANCE OBLIGATION**

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

### **SECTION 1002 TREE TRIMMING**

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

## **ARTICLE XI**

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

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

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

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

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

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

## **ARTICLE XII**

### **SECTION 1201 NOTICE**

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

**To the Company:**

Ting  
Attn: Kara Chandeysson, Director, Community  
Engagement and Public Policy  
300 E Main St, Unit # 310  
Charlottesville, VA 22902

**To the City:**

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

**With a copy to:**

Jonathan B. Mirsky  
HWF LLP  
1919 M Street NW  
Washington, D.C. 20036

**With a copy to:**

Jacob P. Stroman, City Attorney  
City Attorney's Office  
P.O. Box 911  
Charlottesville, VA 22902

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

**SECTION 1202 EMERGENCY NOTIFICATION**

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

**To the Company:**

Brett Fausett  
Chief Legal Officer  
Tucows  
(310) 985-1351

**To the City:**

Gas Dispatchers  
(434) 970-3800 (office)  
Emergency (434)293-9164 (leaks)  
(434) 970-3817 (facsimile)

Director of Public Works  
(434) 970-3301 (office)  
(434) 970-3817 (facsimile)

**With a copy to:**

Jonathan B. Mirsky  
HWG LLP  
1919 M Street NW  
Washington, D.C. 20036

## **SECTION 1203 REGISTRATION OF DATA**

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

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

The Company shall notify the City within fifteen (15) days upon knowledge of any change to the above information in this section.

## **ARTICLE XIII**

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

The renewed franchise granted by this Ordinance may be terminated:

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

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

## **ARTICLE XIV**

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

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

provided above shall commence on the date of denial or expiration, whichever is later. The City reserves the right to waive this requirement, as provided for in Section 1402 herein. The City shall grant the Company access to the Public Rights-of-Way in order to remove its telecommunications Facilities owned by the Company pursuant to this paragraph.

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

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

### **ARTICLE XV**

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

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

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

#### **SECTION 1502 SUCCESSORS AND ASSIGNS**

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

**ARTICLE XVI**

**SECTION 1601 NONEXCLUSIVE FRANCHISE**

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

**ARTICLE XVII**

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

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

**SECTION 1702 NO CONSTRUCTIVE WAIVER RECOGNIZED**

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

**ARTICLE XVIII**

**SECTION 1801 NO DISCRIMINATION**

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

**ARTICLE XIX**

**SECTION 1901 FORCE MAJEURE**

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

blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions.

**ARTICLE XX**

**SECTION 2001 EFFECTIVE DATE**

This Ordinance shall be effective on March 7, 2021.

Adopted by the Council of the City of Charlottesville on the 4th day of December,  
2023 .

*Kyna Thomas*  
\_\_\_\_\_  
Kyna Thomas, Clerk of Council

[Signature Page Follows]



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

Ting Internet LLC

Date: 10/16/2023, 2023

By:   
86351C944507465...  
CFO and Manager

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

**RESOLUTION**

**Appropriating \$750 from the Virginia Department of Motor Vehicles (DMV)  
to Charlottesville/Albemarle Society for Prevention of Cruelty to Animals (CASPCA)  
for the Spay or Neuter Program**

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that \$750.00 is hereby appropriated to the Charlottesville/Albemarle Society for Prevention of Cruelty to Animals in the following manner:

**Revenues - \$750.00**

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

**Expenditures - \$750.00**

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

**RESOLUTION**

**BE IT RESOLVED** by the Council for the City of Charlottesville, Virginia, that the City Manager is hereby authorized to sign the following document, attached hereto, in form approved by the City Attorney or his designee.

A first amendment to the agreement among the City of Charlottesville, the Albemarle County Service Authority, and the Rivanna Water and Sewer Authority regarding the Ragged Mountain Reservoir Project Agreement for the urban water system.

Albemarle County  
TMP # 07500-00-00-00100

Prepared by:  
Valerie W. Long, Esq., VSB # 42968  
Williams Mullen  
321 E. Main Street,  
Suite 400  
Charlottesville, VA 22902

**EXEMPTED FROM RECORDATION TAXES UNDER  
SECTIONS 58.1-811.A.3 and 58.1-811E OF THE  
CODE OF VIRGINIA, (1950), AS AMENDED**

**FIRST AMENDMENT TO RAGGED MOUNTAIN DAM PROJECT AGREEMENT**

This **FIRST AMENDMENT TO RAGGED MOUNTAIN DAM PROJECT AGREEMENT** (this “Amendment”) is made for purposes of identification on \_\_\_\_\_, 2023, by and between the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation (the “City”), Grantor and Grantee for indexing purposes; the **ALBEMARLE COUNTY SERVICE AUTHORITY**, a public body politic and corporate (“ACSA”), Grantor and Grantee for indexing purposes; and the **RIVANNA WATER AND SEWER AUTHORITY**, a public body politic and corporate (“RWSA”), Grantor and Grantee for indexing purposes.

**WITNESSETH:**

A. The City, ACSA, and RWSA (the “Parties”) entered into that certain Ragged Mountain Dam Project Agreement dated January 1, 2012, recorded in the Clerk’s Office of the Circuit Court of Albemarle County, Virginia, in Deed Book 4124, page 697 (the “Project Agreement”) regarding the construction by RWSA of the New Ragged Mountain Dam, the expansion of the Ragged Mountain Reservoir, the South Rivanna Reservoir to Ragged Mountain Reservoir Pipeline (the “SRR-RMR Pipeline”), and other improvements necessary thereto, each as individually described in the Project Agreement and collectively referred to therein as the “Project,” for the purposes of replacing the existing dams at the Ragged Mountain Reservoir and increasing the pool elevation of the Ragged Mountain Reservoir to increase the safe yield of the Urban Water System (as the Urban Water System is defined in the Project

Agreement). The Urban Water System is sometimes also referred to as the “Urban Area Water System.” The Urban Area (the “Urban Area”) currently consists of all of the City and designated portions of the County that are served by public water that has been treated at one of the following three water treatment plants owned and operated by RWSA: the Observatory Water Treatment Plant, the South Rivanna Water Treatment Plant, or the North Rivanna Water Treatment Plant (collectively, the “Urban Area Water System Plants”). Other areas within the County that are served by public water that is not treated at one of the Urban Area Water System Plants (such as areas in Crozet, Red Hill, and Scottsville, each of which are served by other water treatment plants owned and operated by RWSA) are not part of the Urban Area as that term is referred to in Section 7.2 of the Four Party Agreement, and as that term is used in this First Amendment.

B. Construction of the New Ragged Mountain Dam was completed in 2014, and initial filling of the expanded Ragged Mountain Reservoir to the Initial Pool Level of Six Hundred Seventy-One (671) feet above mean sea level (the “Initial Pool Level”) was completed in 2016 (hereinafter such current operating pool level at the Initial Pool Level shall be referred to herein as the “Existing Reservoir Pool Level”). The route for the SRR-RMR Pipeline has been established, and acquisition of easements necessary for construction of the SRR-RMR Pipeline have been secured. Design and construction of the SRR-RMR Pipeline is scheduled to be completed between 2023 and 2030, or as funding permits.

C. Paragraph 3 of the Project Agreement provides that the normal operating reservoir pool level of the expanded Ragged Mountain Reservoir shall be limited to the Existing Reservoir Pool Level when initially constructed, and shall only be increased to the Additional Pool Level of Six Hundred Eighty-Three (683) feet above mean sea level (the “Additional Pool Level”) when water projections and surveys conducted pursuant to the methods described in paragraph 3 of the Project Agreement demonstrate that the Urban Area water demand is ten (10) years away from reaching Eighty-Five Percent (85%) of the available water capacity (the

“Capacity Threshold”). Paragraph 3 of the Project Agreement further provides that when the Capacity Threshold is reached, that RWSA, upon the written request of either ACSA or the City, shall modify the intake tower and remove trees and other vegetation necessary to allow the New Ragged Mountain Dam to impound and support a reservoir pool to the Additional Pool Level (the “Reservoir Modifications”), and RWSA shall raise the Existing Reservoir Pool Level by twelve (12) feet to the Additional Pool Level.

D. In the intervening years since the Project Agreement was executed in 2012, the Parties have determined that due to the current and projected future effects of a changing climate, including more frequent and severe storms, more severe and longer periods of drought, more frequent and severe heat waves, and the need to improve the resiliency and reliability of the Urban Area Water System to ensure that necessary infrastructure is in place to provide sufficient water storage and water treatment to increase the available safe water supply yield to meet the future demand for water in the Urban Area, that it is in the community’s best interest to have more water storage capacity in the Ragged Mountain Reservoir, and to raise the Existing Reservoir Pool Level to the Additional Pool Level even if the Capacity Threshold has not been met, and even if the SRR-RMR Pipeline has not been started or substantially completed.

E. As such, the Parties desire to amend the Project Agreement to remove the restriction on raising the Existing Reservoir Pool Level to the Additional Pool Level until the Capacity Threshold has been met, to permit RWSA to carry out the Reservoir Modifications at any time following full execution of this Amendment, and to commence raising the Existing Reservoir Pool Level to the Additional Pool Level.

F. Capitalized terms not expressly defined herein shall have the meanings set forth in the Project Agreement.

### **AGREEMENT**

NOW THEREFORE, for and in consideration of the premises, the cost allocations and other expense reimbursements set forth in the Cost Allocation Agreement (as the Cost Allocation

Agreement is defined in the Project Agreement), and other good and valuable consideration, the receipt of all which is hereby expressly acknowledged, the Parties hereby agree as follows:

1. Paragraph 3 of the Project Agreement is hereby amended to delete the last sentence of Paragraph 3 in its entirety.

2. Notwithstanding any other provision in the Project Agreement to the contrary, any conditions limiting, or any references to limitations on raising the Existing Reservoir Pool Level to the Additional Pool Level (including such references in Paragraph 1(a), 1(c), and 1(f), and Paragraph 2) are hereby deleted and shall be disregarded.

3. Upon the written request of either ACSA or the City, and without further authorization or approval from the other party, RWSA may commence and carry out the Reservoir Modifications at any time.

4. Following substantial completion of the Reservoir Modifications, RWSA may commence increasing the Existing Reservoir Pool Level to the Additional Pool Level, even if the SRR-RMR Pipeline and related elements of the Project have not yet started or been substantially completed. RWSA estimates that the Reservoir Modifications will commence approximately one (1) year following full execution of this Amendment, and thereafter take approximately one (1) additional year to complete.

5. Prior to the completion and operation of the SRR-RMR Pipeline and related elements of the Project, RWSA will utilize the Sugar Hollow Reservoir and the existing pipeline connecting the Sugar Hollow Reservoir to the Ragged Mountain Reservoir to raise the Existing Reservoir Pool Level to the Additional Pool Level only (i) when water inflow to the Sugar Hollow Reservoir is measured at or greater than thirty (30) million gallons per day, or as otherwise required by any permit issued to RWSA by the Virginia Department of Environmental Quality (“DEQ”); (ii) when the water level in the Ragged Mountain Reservoir falls below the Existing Reservoir Pool Level; or (iii) during any emergency situation, such as, but not limited to, drought, or damage to or contamination of the South Rivanna Reservoir or the Ragged Mountain Reservoir. Upon

completion and operation of the SRR-RMR Pipeline and related elements of the Project, if the Existing Reservoir Pool Level has not yet been fully raised to the Additional Pool Level, further work to raise the Existing Reservoir Pool Level to the Additional Pool Level shall utilize the SRR-RMR Pipeline and related elements of the Project, and use of the Sugar Hollow Reservoir for purposes of filling the Ragged Mountain Reservoir shall cease.

6. This Amendment shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and assigns.

7. The Project Agreement is hereby amended to the extent necessary to give effect to this Amendment, and the terms of this Amendment shall supersede any contrary terms in the Project Agreement. All references in the Project Agreement to “this Agreement” shall be deemed to refer to the Project Agreement as amended hereby. In all other respects, the terms and conditions of the Project Agreement remain unmodified and are hereby ratified and confirmed by the Parties.

**IN WITNESS WHEREOF**, the duly authorized officers of the City of Charlottesville, Virginia, the Albemarle County Service Authority, and the Rivanna Water and Sewer Authority have executed this Amendment as of the date first above written.

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*



*[SIGNATURE PAGE 1 of 3 OF FIRST  
AMENDMENT TO RAGGED MOUNTAIN DAM PROJECT AGREEMENT]*

**CITY OF CHARLOTTESVILLE, VIRGINIA**

By: \_\_\_\_\_  
Samuel Sanders, Jr., City Manager

COMMONWEALTH OF VIRGINIA  
CITY OF CHARLOTTESVILLE, to wit:

The foregoing instrument was acknowledged by me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Samuel Sanders, Jr., City Manager of the City of Charlottesville, Virginia.

\_\_\_\_\_  
Notary Public

Registration No.: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jacob Stroman, City Attorney

[SIGNATURE PAGE 2 OF 3 OF FIRST  
AMENDMENT TO RAGGED MOUNTAIN DAM PROJECT AGREEMENT]

**ALBEMARLE COUNTY SERVICE AUTHORITY**

By: \_\_\_\_\_  
Gary B. O'Connell, Executive Director

COMMONWEALTH OF VIRGINIA  
CITY OF CHARLOTTESVILLE, to wit:

The foregoing instrument was acknowledged by me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by  
Gary B. O'Connell as Executive Director of the Albemarle County Service Authority.

\_\_\_\_\_  
Notary Public

Registration No.: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

*[SIGNATURE PAGE 3 OF 3 OF FIRST  
AMENDMENT TO RAGGED MOUNTAIN DAM PROJECT AGREEMENT]*

**RIVANNA WATER AND SEWER AUTHORITY**

By: \_\_\_\_\_  
William I. Mawyer, Jr. P.E., Executive Director

COMMONWEALTH OF VIRGINIA  
CITY OF CHARLOTTESVILLE, to wit:

The foregoing instrument was acknowledged by me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by William I. Mawyer, Jr. P.E. as Executive Director of the Rivanna Water and Sewer Authority.

\_\_\_\_\_  
Notary Public

Registration No.: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**RESOLUTION**

**Approving a Sublease Agreement Extension with Sentara Martha Jefferson Hospital (SMJH), for sublease of space at 233 4<sup>th</sup> Street NW**

WHEREAS, a Sublease Agreement by and between the City of Charlottesville and Martha Jefferson Hospital, was entered into in January 2018, for lease of 1,771 square feet of space located in the Jefferson School building at 233 4<sup>th</sup> Street, N.W., for a health clinic; and

WHEREAS, Martha Jefferson Hospital (d/b/a Sentara Martha Jefferson Hospital/SMJH) wishes to extend that Sublease Agreement for one year, with the ability of either party to terminate upon 60 days written notice; and

WHEREAS, City Council has considered the terms of the proposed extension to the Sublease Agreement; NOW, THEREFORE,

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the Sublease Agreement Extension presented to Council this same date for consideration, is hereby APPROVED and the City Manager is hereby authorized to execute the amended agreement on behalf of City Council.

**RESOLUTION**

**Approving an Amendment of Lease Agreement to lease of public right-of-way at 212 Ridge-McIntire Road/235 West Main Street to Omni Charlottesville Virginia Corporation**

WHEREAS, a Lease Agreement by and between the City of Charlottesville and Omni Charlottesville Virginia Corporation, was entered into in February 2023; and

WHEREAS, Omni Charlottesville Virginia Corporation wishes to amend that Lease Agreement pursuant to changes to the leased property area following renovations; and

WHEREAS, City Council has considered the terms of the proposed amendment to the lease; NOW, THEREFORE,

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the Agreement for Amendment of Lease presented to Council this same date for consideration, is hereby APPROVED and the City Manager is hereby authorized to execute the amended agreement on behalf of City Council.