



CITY COUNCIL AGENDA
March 18, 2024
CERTIFICATIONS

Juandiego R. Wade, Mayor
Brian R. Pinkston, Vice Mayor
Natalie Oschrin
Michael K. Payne
J. Lloyd Snook, III
Kyna Thomas, Clerk

4:00 PM OPENING SESSION

Call to Order/Roll Call

Agenda Approval APPROVED 5-0 (PAYNE/OSCHRIN) Ceasefire
Resolution Discussion was added to #17 under Other Business.

Reports

1. Report: City Grants Inventory
2. Report: Zoning Ordinance Work Plan

5:30 PM CLOSED MEETING (if called)

6:30 PM BUSINESS SESSION

Moment of Silence

Announcements

Recognitions/Proclamations

- Proclamation: Women's History Month

Consent Agenda* APPROVED 5-0 (PINKSTON/SNOOK)

3. Minutes: January 2 meeting, January 9 joint Council-Planning Commission meeting, March 7 budget work session
4. Ordinance: Ordinance for creating Shenandoah Mobile Franchise Agreement (2nd reading)
#O-24-029
5. Resolution: Resolution to appropriate USDA Forest Service Urban and Community Forestry Inflation Reduction Grant for Charlottesville Urban Forest Management Planning - \$150,000 (1 of 2 readings)
6. Resolution: Resolution appropriating funding in the amount of \$21,458 to be received from Library of Virginia Circuit Court Records Preservation Grants Review Board (1 of 2 readings)
7. Ordinance: Ordinance amending the Charlottesville Code of Ordinances, Section 2-98(b) to increase the appropriation amount requiring two readings from \$1001.00 to \$5000.00. (1 of 2 readings)
8. Resolution: ~~Resolution for Approval of Memorandum of Understanding between Bennett's Village and the City of Charlottesville (POSTPONED)~~
9. Resolution: Resolution for refund of Business Tangible Personal Property Tax payment
#R-24-030

City Manager Report

- Report: City Manager Report

Community Matters

Action Items

10. Public Hearing: Tax Rate Public Hearings
 - a. Public Hearing: Real Estate Tax Rate for the City Manager's Proposed FY 2025 Budget
 - b. Public Hearing: Lodging Tax Rate for the City Manager's Proposed FY2025 Budget
 - c. Public Hearing: Meals Tax Rate for the City Manager's Proposed FY2025 Budget
11. **Public Hearing:** Public hearing and resolution for lease renewal for communications equipment at Market Street Parking Garage
#R-24-031
APPROVED 5-0 (PINKSTON/SNOOK)
12. **Public Hearing/Res.:** Public hearing and resolution to approve the New Hill Development Corporation's BEACON Commercial Kitchen Infrastructure Enhancements Project as a Minor Amendment to the CDBG Action Plan for Program Year 2023-24, in the Amount of \$89,896.51
#R-24-032
APPROVED 5-0 (PNIKSTON/OSCHRIN)
13. **Ordinance:** Ordinance adopting the WANRock Telecommunications Franchise Agreement
#O-24-033
APPROVED 5-0 on 1 reading with 4/5 vote (PINKSTON/SNOOK)
14. Resolution: Award of FY24 Charlottesville Affordable Housing Fund (CAHF) and FY25 Housing Operations and Program Support (HOPS)
 - a. Resolution: Resolution to award FY24 Charlottesville Affordable Housing Funds (CAHF) Grants (1 of 2 readings)
 - b. Resolution: Resolution to award FY25 Housing Operations and Program Support (HOPS) Grants (1 of 2 readings)
15. **Resolution:** Resolution amending and re-enacting City Council Rules and Procedures
#R-24-034
APPROVED 5-0 (SNOOK/PINKSTON)
16. Ordinance: Ordinance Amending City Code Article II. Section 2-38. Organizational Meeting and Section 2-39. Elections, Terms and General Powers and Duties of Mayor, Vice-mayor and Mayor Pro Tempore; Mayor's Veto (1 of 2 readings)

General Business

Other Business

17. Resolution calling for an immediate Ceasefire and an end to violence in Israel and Palestine
DENIED 2-3 (PAYNE/OSCHRIN; opposed Pinkston, Snook, and Wade)

Community Matters (2)

Adjournment

TELECOMMUNICATIONS FRANCHISE

TABLE OF CONTENTS

ARTICLE I **1**

SECTION 101 PURPOSE AND SCOPE 1

SECTION 102 AUTHORITY TO MANAGE THE RIGHT OF WAY 1

SECTION 103 DEFINITIONS 2

ARTICLE II **2**

SECTION 201 INITIAL INSTALLATION 2

SECTION 202 SUBSEQUENT INSTALLATION 2

SECTION 203 INSPECTION BY THE CITY 3

SECTION 204 AUTHORITY OF THE CITY TO ORDER CESSATION OF EXCAVATION 3

SECTION 205 LOCATION OF POSTS, POLES, CABLES AND CONDUITS 3

ARTICLE III **4**

SECTION 301 ADMINISTRATION OF THE PUBLIC RIGHTS OF WAY 4

SECTION 302 SUBMISSION OF PROW PLAN 5

SECTION 303 GOOD CAUSE EXCEPTION 5

SECTION 304 DECISION ON PROW PLAN BY THE DIRECTOR 5

SECTION 305 MAPPING DATA 5

ARTICLE IV **6**

SECTION 401 COMPLIANCE WITH ALL LAW AND REGULATIONS 6

ARTICLE V **6**

SECTION 501 RELOCATION OF COMPANY FACILITIES WITHIN THE PUBLIC RIGHTS-OF WAY 6

SECTION 502 RIGHTS-OF WAY PATCHING AND RESTORATION 6

ARTICLE VI **8**

SECTION 601 INDEMNIFICATION AND LIABILITY 9

SECTION 602 WAIVER BY THE CITY 9

SECTION 603 INSURANCE 10

SECTION 604 NEGLIGENCE AND INTENTIONAL ACTS 10

ARTICLE VII **11**

SECTION 701 GENERAL REQUIREMENT OF A PERFORMANCE BOND 11

SECTION 702 CHANGED AMOUNT OF THE PERFORMANCE BOND 11

SECTION 703 PURPOSE OF PERFORMANCE BOND 11

SECTION 704 FEES OR PENALTIES FOR VIOLATIONS OF THE ORDINANCE 12

ARTICLE VIII **12**

SECTION 801 COMPENSATION/PROW USE FEE 12

SECTION 802 FRANCHISING COSTS 13

SECTION 803 NO CREDITS OR DEDUCTIONS 13

SECTION 804 REMITTANCE OF COMPENSATION/LATE PAYMENTS, INTEREST ON LATE PAYMENTS 13

ARTICLE IX **13**

SECTION 901 RESERVATION OF ALL RIGHTS AND POWERS 13

SECTION 902 SEVERABILITY 14

ARTICLE X **14**

SECTION 1001 MAINTENANCE OBLIGATION	14
SECTION 1002 TREE TRIMMING	14
ARTICLE XI	14
SECTION 1101 INITIAL TERM OF TELECOMMUNICATIONS FRANCHISE.....	14
SECTION 1102 APPLICATION FOR NEW TELECOMMUNICATIONS FRANCHISE.....	15
SECTION 1103 OPERATION OF FACILITIES OWNED BY THE COMPANY WHILE RENEWAL IS PENDING	15
ARTICLE XII	15
SECTION 1201 NOTICE.....	15
SECTION 1202 EMERGENCY NOTIFICATION	15
SECTION 1203 REGISTRATION OF DATA	16
ARTICLE XIII	16
SECTION 1301 TERMINATION OF TELECOMMUNICATIONS FRANCHISE	16
ARTICLE XIV.....	17
SECTION 1401 REMOVAL OF FACILITIES FROM THE PUBLIC RIGHTS-OF-WAY.....	17
SECTION 1402 ABANDONMENT OF FACILITIES OWNED BY THE COMPANY IN THE PUBLIC RIGHTS-OF-WAY.....	17
ARTICLE XV	17
SECTION 1501 PRIOR WRITTEN CONSENT FOR ASSIGNMENT.....	17
SECTION 1502 SUCCESSORS AND ASSIGNS	18
ARTICLE XVI.....	18
SECTION 1601 NONEXCLUSIVE FRANCHISE	18
ARTICLE XVII.....	18
SECTION 1701 ALL WAIVERS IN WRITING AND EXECUTED BY THE PARTIES	18
SECTION 1702 NO CONSTRUCTIVE WAIVER RECOGNIZED.....	18
ARTICLE XVIII.....	18
SECTION 1801 NO DISCRIMINATION	18
ARTICLE XIX.....	19
SECTION 1901 FORCE MAJEURE	19
ARTICLE XX.....	19
SECTION 2001 EFFECTIVE DATE	19

**AN ORDINANCE
GRANTING A TELECOMMUNICATIONS FRANCHISE TO
SHENANDOAH MOBILE, 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 Shenandoah Mobile, LLC, (the "Company"), its successors and assigns, is hereby granted a telecommunications franchise for a period of five (5) years from the effective date hereof 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 provisions.

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 Shenandoah Mobile, 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. Any additional installation of lines, cable, equipment or other Facilities shall be underground unless it shall be determined by the Director, pursuant to Article III, that it is not feasible to do so.

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

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

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

SECTION 203 INSPECTION BY THE CITY

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

SECTION 204 AUTHORITY OF THE CITY TO ORDER CESSATION OF EXCAVATION

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

SECTION 205 LOCATION OF POSTS, POLES, CABLES AND CONDUITS

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

SECTION 206 OBSTRUCTION OF THE PROW

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

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

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

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

ARTICLE III

SECTION 301 ADMINISTRATION OF THE PUBLIC RIGHTS OF WAY

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

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 a detailed PROW Plan of the proposed action to the Director for review and approval.

SECTION 303 GOOD CAUSE EXCEPTION

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

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

If the City becomes aware of an emergency regarding the Company's facilities, the City will attempt to contact the Company's emergency representative as indicated in Section 1202. In any event, the City shall take whatever action it deemed necessary by the Director to make an appropriate and reasonable response to the emergency. The costs associated with the City's response shall be borne by the 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 sixty (60) days, either approve the Company's plans for proposed action as described in Section 302 or inform the Company of the reasons for disapproval. The Company shall designate a responsible contact person with whom officials of the Department of Public Works can communicate on all matters relating to equipment installation and maintenance.

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

SECTION 305 MAPPING DATA

Upon completion of each installation within the PROW, the Company shall provide to the City such information necessary to document the location and elevation of the installation, 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 and location of above-ground appurtenances.

ARTICLE IV

SECTION 401 COMPLIANCE WITH ALL LAW AND REGULATIONS

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

ARTICLE V

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

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

SECTION 502 RIGHTS-OF WAY PATCHING AND RESTORATION

502.1 RESTORATION STANDARD: Where the Company disturbs or damages the Public Rights-of-Way, the Director shall have the authority to determine the manner and extent of the

restoration of the Public Rights-of-Way, and may do so in written procedures of general application or on a case-by-case basis. In exercising this authority, the Director will consult with any state or federal standards for rights-of-way restoration and shall be further guided by the following considerations:

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

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

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

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

502.5 DUTY TO CORRECT DEFECTS: The Company shall correct defects in patching, or restoration performed by it or its agents. Upon notification from the City, the Company shall correct all restoration work to the extent necessary, using the method determined by

the Director. Such work shall be completed after receipt of the notice from the Director within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure.

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

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

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

ARTICLE VI

SECTION 601 INDEMNIFICATION AND LIABILITY

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

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

601.2 DUTY TO INDEMNIFY, DEFEND AND HOLD HARMLESS: If a suit arising out of subsection (a), (b), (c) of Section 601.1, claiming such injury, death, or damage shall be brought or threatened against the City, its officers, or employees, 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, its officers, or employees, either independently or jointly with the Company, the Company will pay the judgment, including all reasonable costs, and will hold the City harmless therefrom.

SECTION 602 WAIVER BY THE CITY

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

- (a) elects to conduct its own defense against such claim;
- (b) fails to give prompt notice to the Company of any such claim such that the Company’s ability to defend against such claim is compromised;

- (c) denies approval of a settlement of such claim for which the Company seeks approval; or
- (d) fails to approve or deny a settlement of such claim within thirty (30) days of the Company seeking approval.

SECTION 603 INSURANCE

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

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

The policy shall include the City as an additional insured party, and the Company shall provide the City Attorney with a certificate of such coverage before execution of this franchise in a form acceptable to the City Attorney.

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

SECTION 604 NEGLIGENCE AND INTENTIONAL ACTS

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

ARTICLE VII

SECTION 701 GENERAL REQUIREMENT OF A PERFORMANCE BOND

Prior to the Effective Date of this Ordinance, the Company has deposited with the City a Performance Bond made payable to the city in the amount of twenty-five thousand dollars (\$25,000). The bond shall be written by a corporate surety acceptable to the City and authorized to do business in the Commonwealth of Virginia. The Performance Bond shall be maintained at this amount through the term of this franchise.

SECTION 702 CHANGED AMOUNT OF THE PERFORMANCE BOND

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

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

SECTION 703 PURPOSE OF PERFORMANCE BOND

The Performance Bond shall serve as security for:

- (a) the faithful performance by the Company of all terms, conditions and obligations of this Ordinance;
- (b) any expenditure, damage or loss incurred by the City occasioned by the Company's failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Ordinance;

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

SECTION 704 FEES OR PENALTIES FOR VIOLATIONS OF THE ORDINANCE

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

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

ARTICLE VIII

SECTION 801 COMPENSATION/PROW USE FEE.

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

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

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

SECTION 802 RESERVED

SECTION 803 NO CREDITS OR DEDUCTIONS

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

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

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

ARTICLE IX

SECTION 901 RESERVATION OF ALL RIGHTS AND POWERS

The City reserves the right by ordinance or resolution to establish any reasonable regulations for the convenience, safety, health and protection of its inhabitants under its police powers, consistent with state and federal law. The rights herein granted are subject to the exercise of such police powers as the same now are or may hereafter be conferred upon the City. Without

limitation as to the generality of the foregoing the City reserves the full scope of its power to require by ordinance substitution of underground service for overhead service, or the transfer of overhead service from the front to the rear of property whenever reasonable in all areas in the City and with such contributions or at such rates as may be allowed by law.

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

SECTION 902 SEVERABILITY

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

ARTICLE X

SECTION 1001 MAINTENANCE OBLIGATION

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

SECTION 1002 TREE TRIMMING

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

ARTICLE XI

SECTION 1101 INITIAL TERM OF TELECOMMUNICATIONS FRANCHISE

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

SECTION 1102 APPLICATION FOR NEW TELECOMMUNICATIONS FRANCHISE

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

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

Upon a timely request by the Company prior to the expiration of its initial franchise, the Company shall be permitted to continue operations of the Facilities owned by the Company within the City under the terms of the franchise granted by this Ordinance until the City acts upon the Company's request. 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:
Shenandoah Mobile, LLC
Attn: Industry Affairs & Regulatory
500 Shentel Way
Edinburg, VA 22824

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

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

SECTION 1202 EMERGENCY NOTIFICATION

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

To the Company:
Shenandoah Mobile, LLC
Network Operations Center
(540) 984-5531

To the City:
Gas Dispatchers
(434) 970-3800 (office)
Emergency (434)293-9164 (leaks)
(434) 970-3817 (facsimile)

Steven Hicks
Director of Public Works
(434) 970-3536 (office)
(434) 970-3817 (facsimile)

SECTION 1203 REGISTRATION OF DATA

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

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

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

ARTICLE XIII

SECTION 1301 TERMINATION OF TELECOMMUNICATIONS FRANCHISE

The franchise granted by this Ordinance may be terminated:

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

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

ARTICLE XIV

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

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

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

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

ARTICLE XV

SECTION 1501 PRIOR WRITTEN CONSENT FOR ASSIGNMENT

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

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

SECTION 1502 SUCCESSORS AND ASSIGNS

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

ARTICLE XVI

SECTION 1601 NONEXCLUSIVE FRANCHISE

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

ARTICLE XVII

SECTION 1701 ALL WAIVERS IN WRITING AND EXECUTED BY THE PARTIES

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

SECTION 1702 NO CONSTRUCTIVE WAIVER RECOGNIZED

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

ARTICLE XVIII

SECTION 1801 NO DISCRIMINATION

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

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

ARTICLE XIX

SECTION 1901 FORCE MAJEURE

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

ARTICLE XX

SECTION 2001 EFFECTIVE DATE

This Ordinance shall be effective upon its passage.

Adopted by the Council of the City of Charlottesville on the 18th day of March, 2024.

Kyna Thomas
Clerk of Council

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

SHENANDOAH MOBILE, LLC
By Chris Kyle
Its VICE PRESIDENT
Date 2/2/2024

RESOLUTION

Authorizing a refund of \$10,941.56, plus an as yet to be determined amount of interest, to a taxpaying entity or business, for business tangible personal property taxes paid in error for 2023

WHEREAS, the Commissioner of the Revenue has determined that a taxpaying entity or business paid 2023 Business Personal Property Tax to the City of Charlottesville in error; and

WHEREAS, that taxpaying entity or business has requested a refund of the amount paid in error; and

WHEREAS, the Commissioner of the Revenue has certified that a refund of taxes paid is due in the amount of \$10,941.56; and

WHEREAS, an amount of interest that is dependent on the actual date of the refund will also be due; and

WHEREAS, City Code Section 30-6(b) requires City Council approval for any tax refund exceeding \$10,000.00; now, therefore,

BE IT RESOLVED by the Council for the City of Charlottesville, Virginia, that the City Council hereby authorizes the City Treasurer to issue a refund of \$10,941.56, plus an as yet to be determined amount of interest (approximately \$275), payable to that taxpaying entity or business.

**RESOLUTION APPROVING LEASE OF PROPERTY
ON THE MARKET STREET PARKING GARAGE
TO CELLCO PARTNERSHIP (T/A VERIZON WIRELESS)**

WHEREAS, Cellco Partnership, trading as Verizon Wireless ("Verizon"), proposes to renew and amend its existing lease of certain property on the Market Street Parking Garage structure, for the purpose of installing telecommunications equipment ("Lease");

WHEREAS, City Staff and Verizon have negotiated proposed terms and conditions for the Lease, as set forth within the draft proposed Lease Agreement submitted for City Council's consideration at a public hearing duly advertised and conducted on March 18, 2024; and

WHEREAS, upon consideration of the recommendations of staff and of the terms and conditions of the proposed Lease Agreement, this Council finds that the proposed Lease Agreement is in the public interest, will promote the public welfare, safety and convenience, will promote economic development and tourism in Downtown Charlottesville, and contains terms that are satisfactory and mutually advantageous;

NOW, THEREFORE, BE IT RESOLVED by the Council for the City of Charlottesville, Virginia that the City Manager is hereby authorized to execute a final Lease Agreement consistent with the terms and conditions of the proposed Lease Agreement considered by Council at the March 18, 2024 Council meeting, which final Lease Agreement must be approved by the City Attorney as to form prior to signature.

RESOLUTION

Resolution to Approve the 2024 BEACON Shared-Use Commercial Kitchen Infrastructure Enhancements Program and to Award Associated Community Development Block Grant Funds to New Hill Development Corporation, in the Amount of \$89,896.51

WHEREAS the City of Charlottesville is and has been an Entitlement Community, as designated by the U.S. Department of Housing and Urban Development (HUD), and as such Council has previously approved the appropriation of \$89,896.51 within the Community Development Block Grant (CDBG) Fund to support Public Facilities & Infrastructure activities within the City of Charlottesville; and

WHEREAS activities that foster economic development within entitlement communities are a core priority for HUD and constitute a major category of eligible activities for CDBG programs; and

WHEREAS the proposed infrastructure enhancements outlined within the current proposal are anticipated to support the economic development of the local community with specific benefits for low- and moderate-income city residents seeking to obtain or enhance employment opportunities within the food and beverage industry;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the proposed BEACON Commercial Kitchen Infrastructure Enhancements Program, as presented here before Council today, is approved and that the Office of Community Solutions (OCS) is hereby authorized to begin working with the staff of the New Hill Development Corporation (NHDC) to implement the approved program; and

BE IT FURTHER RESOLVED that in support of this program appropriations previously approved by Council (#R-23-084) to the following expenditure account(s) in the CDBG Fund be awarded for use by the New Hill Development Corporation in support of the proposal approved today by Council:

Fund	SAP Account Code	New Funded Program	Amount of Award
218	1900520	BEACON Commercial Kitchen Infrastructure Enhancements Program (NHDC)	\$89,896.51

Subtotal, Previously Approved Appropriation to be Awarded = \$89,896.51

As these funds were previously approved and appropriated by City Council on June 5, 2023, no new appropriations are called for in order to enact this program.

Approved by City Council on 3/18/2024

#O-24-033

**WANRACK, LLC
TELECOMMUNICATIONS FRANCHISE**

TABLE OF CONTENTS

ARTICLE I 1

SECTION 101 PURPOSE AND SCOPE 1

SECTION 102 AUTHORITY TO MANAGE THE RIGHT OF WAY 1

SECTION 103 DEFINITIONS 2

ARTICLE II 2

SECTION 201 INITIAL INSTALLATION 2

SECTION 202 SUBSEQUENT INSTALLATION 2

SECTION 203 INSPECTION BY THE CITY 3

SECTION 204 AUTHORITY OF THE CITY TO ORDER CESSATION OF EXCAVATION 3

SECTION 205 LOCATION OF POSTS, POLES, CABLES AND CONDUITS 3

ARTICLE III 4

SECTION 301 ADMINISTRATION OF THE PUBLIC RIGHTS OF WAY 4

SECTION 302 SUBMISSION OF PROW PLAN 5

SECTION 303 GOOD CAUSE EXCEPTION 5

SECTION 304 DECISION ON PROW PLAN BY THE DIRECTOR 5

SECTION 305 MAPPING DATA 5

ARTICLE IV 6

SECTION 401 COMPLIANCE WITH ALL LAW AND REGULATIONS 6

ARTICLE V 6

SECTION 501 RELOCATION OF COMPANY FACILITIES WITHIN THE PUBLIC RIGHTS-OF WAY 6

SECTION 502 RIGHTS-OF WAY PATCHING AND RESTORATION 6

ARTICLE VI 8

SECTION 601 INDEMNIFICATION AND LIABILITY 9

SECTION 602 WAIVER BY THE CITY 9

SECTION 603 INSURANCE 10

SECTION 604 NEGLIGENCE AND INTENTIONAL ACTS 10

ARTICLE VII 11

SECTION 701 GENERAL REQUIREMENT OF A PERFORMANCE BOND 11

SECTION 702 CHANGED AMOUNT OF THE PERFORMANCE BOND 11

SECTION 703 PURPOSE OF PERFORMANCE BOND 11

SECTION 704 FEES OR PENALTIES FOR VIOLATIONS OF THE ORDINANCE 12

ARTICLE VIII 12

SECTION 801 COMPENSATION/PROW Use FEE 12

SECTION 802 FRANCHISING COSTS 13

SECTION 803 NO CREDITS OR DEDUCTIONS 13

SECTION 804 REMITTANCE OF COMPENSATION/LATE PAYMENTS, INTEREST ON LATE PAYMENTS 13

ARTICLE IX	13
SECTION 901 RESERVATION OF ALL RIGHTS AND POWERS	13
SECTION 902 SEVERABILITY	14
ARTICLE X	14
SECTION 1001 MAINTENANCE OBLIGATION	14
SECTION 1002 TREE TRIMMING	14
ARTICLE XI	14
SECTION 1101 INITIAL TERM OF TELECOMMUNICATIONS FRANCHISE	14
SECTION 1102 APPLICATION FOR NEW TELECOMMUNICATIONS FRANCHISE	15
SECTION 1103 OPERATION OF FACILITIES OWNED BY THE COMPANY WHILE RENEWAL IS PENDING	15
ARTICLE XII	15
SECTION 1201 NOTICE	15
SECTION 1202 EMERGENCY NOTIFICATION	15
SECTION 1203 REGISTRATION OF DATA	16
ARTICLE XIII	16
SECTION 1301 TERMINATION OF TELECOMMUNICATIONS FRANCHISE	16
ARTICLE XIV	17
SECTION 1401 REMOVAL OF FACILITIES FROM THE PUBLIC RIGHTS-OF-WAY	17
SECTION 1402 ABANDONMENT OF FACILITIES OWNED BY THE COMPANY IN THE PUBLIC RIGHTS-OF-WAY	17
ARTICLE XV	17
SECTION 1501 PRIOR WRITTEN CONSENT FOR ASSIGNMENT	17
SECTION 1502 SUCCESSORS AND ASSIGNS	18
ARTICLE XVI	18
SECTION 1601 NONEXCLUSIVE FRANCHISE	18
ARTICLE XVII	18
SECTION 1701 ALL WAIVERS IN WRITING AND EXECUTED BY THE PARTIES	18
SECTION 1702 NO CONSTRUCTIVE WAIVER RECOGNIZED	18
ARTICLE XVIII	18
SECTION 1801 NO DISCRIMINATION	18
ARTICLE XIX	19
SECTION 1901 FORCE MAJEURE	19
ARTICLE XX	19
SECTION 2001 EFFECTIVE DATE	19

**AN ORDINANCE
GRANTING A TELECOMMUNICATIONS FRANCHISE TO
WANRACK, 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 WANRACK, LLC (the “Company”), its successors and assigns, is hereby granted a telecommunications franchise for a period of five (5) years from the effective date hereof 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 provisions.

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 WANRack, 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. Any additional installation of lines, cable, equipment or other Facilities shall be underground unless it shall be determined by the Director, pursuant to Article III, that it is not feasible to do so.

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

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

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

SECTION 203 INSPECTION BY THE CITY

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

SECTION 204 AUTHORITY OF THE CITY TO ORDER CESSATION OF EXCAVATION

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

SECTION 205 LOCATION OF POSTS, POLES, CABLES AND CONDUITS

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

SECTION 206 OBSTRUCTION OF THE PROW

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

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

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

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

ARTICLE III

SECTION 301 ADMINISTRATION OF THE PUBLIC RIGHTS OF WAY

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

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 a detailed PROW Plan of the proposed action to the Director for review and approval.

SECTION 303 GOOD CAUSE EXCEPTION

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

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

If the City becomes aware of an emergency regarding the Company's facilities, the City will attempt to contact the Company's emergency representative as indicated in Section 1202. In any event, the City shall take whatever action it deemed necessary by the Director to make an appropriate and reasonable response to the emergency. The costs associated with the City's response shall be borne by the 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 sixty (60) days, either approve the Company's plans for proposed action as described in Section 302 or inform the Company of the reasons for disapproval. The Company shall designate a responsible contact person with whom officials of the Department of Public Works can communicate on all matters relating to equipment installation and maintenance.

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

SECTION 305 MAPPING DATA

Upon completion of each installation within the PROW, the Company shall provide to the City such information necessary to document the location and elevation of the installation, 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 and location 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 the Facilities owned by the Company and lines to accommodate same, the Company shall relocate at its own expense any such Facilities within one hundred eighty (180) days of receipt of the notice. At Company's request, the city may consent to a longer period, such consent not to be unreasonably or discriminatorily withheld, conditioned or delayed. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

SECTION 502 RIGHTS-OF WAY PATCHING AND RESTORATION

502.1 RESTORATION STANDARD: Where the Company disturbs or damages the Public Rights-of-Way, the Director shall have the authority to determine the manner and extent of the

restoration of the Public Rights-of-Way and may do so in written procedures of general application or on a case-by-case basis. In exercising this authority, the Director will consult with any state or federal standards for rights-of-way restoration and shall be further guided by the following considerations:

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

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

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

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

502.5 DUTY TO CORRECT DEFECTS: The Company shall correct defects in patching, or restoration performed by it or its agents. Upon notification from the City, the Company shall correct all restoration work to the extent necessary, using the method determined by

the Director. Such work shall be completed after receipt of the notice from the Director within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure.

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

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

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

601.2 DUTY TO INDEMNIFY, DEFEND AND HOLD HARMLESS: If a suit arising out of subsection (a), (b), (c) of Section 601.1, claiming such injury, death, or damage shall be brought or threatened against the City, its officers, or employees, 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, its officers, or employees, either independently or jointly with the Company, the Company will pay the judgment, including all reasonable costs, and will hold the City harmless therefrom.

SECTION 602 WAIVER BY THE CITY

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

- (a) elects to conduct its own defense against such claim;
- (b) fails to give prompt notice to the Company of any such claim such that the Company's ability to defend against such claim is compromised;

- (c) denies approval of a settlement of such claim for which the Company seeks approval; or
- (d) fails to approve or deny a settlement of such claim within thirty (30) days of the Company seeking approval.

SECTION 603 INSURANCE

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

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

The policy shall include the City as an additional insured party, and the Company shall provide the City Attorney with a certificate of such coverage before execution of this franchise in a form acceptable to the City Attorney.

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

SECTION 604 NEGLIGENCE AND INTENTIONAL ACTS

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

ARTICLE VII

SECTION 701 GENERAL REQUIREMENT OF A PERFORMANCE BOND

Prior to the Effective Date of this Ordinance, the Company has deposited with the City a Performance Bond made payable to the city in the amount of twenty-five thousand dollars (\$25,000). The bond shall be written by a corporate surety acceptable to the City and authorized to do business in the Commonwealth of Virginia. The Performance Bond shall be maintained at this amount through the term of this franchise.

SECTION 702 CHANGED AMOUNT OF THE PERFORMANCE BOND

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

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

SECTION 703 PURPOSE OF PERFORMANCE BOND

The Performance Bond shall serve as security for:

- (a) the faithful performance by the Company of all terms, conditions and obligations of this Ordinance;
- (b) any expenditure, damage or loss incurred by the City occasioned by the Company's failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Ordinance;

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

SECTION 704 FEES OR PENALTIES FOR VIOLATIONS OF THE ORDINANCE

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

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

ARTICLE VIII

SECTION 801 COMPENSATION/PROW USE FEE.

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

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

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

SECTION 802 RESERVED

SECTION 803 NO CREDITS OR DEDUCTIONS

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

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

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

ARTICLE IX

SECTION 901 RESERVATION OF ALL RIGHTS AND POWERS

The City reserves the right by ordinance or resolution to establish any reasonable regulations for the convenience, safety, health and protection of its inhabitants under its police powers, consistent with state and federal law. The rights herein granted are subject to the exercise of such police powers as the same now are or may hereafter be conferred upon the City. Without

limitation as to the generality of the foregoing the City reserves the full scope of its power to require by ordinance substitution of underground service for overhead service, or the transfer of overhead service from the front to the rear of property whenever reasonable in all areas in the City and with such contributions or at such rates as may be allowed by law.

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

SECTION 902 SEVERABILITY

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

ARTICLE X

SECTION 1001 MAINTENANCE OBLIGATION

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

SECTION 1002 TREE TRIMMING

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

ARTICLE XI

SECTION 1101 INITIAL TERM OF TELECOMMUNICATIONS FRANCHISE

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

SECTION 1102 APPLICATION FOR NEW TELECOMMUNICATIONS FRANCHISE

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

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

Upon a timely request by the Company prior to the expiration of its initial franchise, the Company shall be permitted to continue operations of the Facilities owned by the Company within the City under the terms of the franchise granted by this Ordinance until the City acts upon the Company's request. 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:

WANRack, LLC
Attn: Legal Department
4550 West 109th Street, Suite 115
Overland Park, KS 66211

To the City:

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

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

SECTION 1202 EMERGENCY NOTIFICATION

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

To the Company:

Ryan Hook
Regional Construction Manager
(240) 346-9956
ryan.hook@wanrack.com

To the City:

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

Steven Hicks
Director of Public Works
(434) 970-3536 (office)
(434) 970-3817 (facsimile)

SECTION 1203 REGISTRATION OF DATA

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

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

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

ARTICLE XIII

SECTION 1301 TERMINATION OF TELECOMMUNICATIONS FRANCHISE

The franchise granted by this Ordinance may be terminated:

- (a) by the Company, at its election and without cause, by written notice to the City at least sixty (60) days prior to the effective date of such termination; or
- (b) by either the Company or the City, after thirty (30) days written notice to the other party of the occurrence or existence of a default of the franchise granted by this

Ordinance, if the defaulting party fails to cure or commence good faith efforts to cure, such default within sixty (60) days after delivery of such notice.

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

ARTICLE XIV

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

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

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

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

ARTICLE XV

SECTION 1501 PRIOR WRITTEN CONSENT FOR ASSIGNMENT

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

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

granted under this Ordinance.

SECTION 1502 SUCCESSORS AND ASSIGNS

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

ARTICLE XVI

SECTION 1601 NONEXCLUSIVE FRANCHISE

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

ARTICLE XVII

SECTION 1701 ALL WAIVERS IN WRITING AND EXECUTED BY THE PARTIES

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

SECTION 1702 NO CONSTRUCTIVE WAIVER RECOGNIZED

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

ARTICLE XVIII

SECTION 1801 NO DISCRIMINATION

The Company's rights, privileges and obligations under the franchise granted by this Ordinance shall be no less favorable than those granted by the City to and shall not be interpreted by the

City in a less favorable manner with respect to any other similarly situated entity or person or user of the City's Public Rights-of-Way.

ARTICLE XIX

SECTION 1901 FORCE MAJEURE

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

ARTICLE XX

SECTION 2001 EFFECTIVE DATE

This Ordinance shall be effective upon its passage.

Adopted by the Council of the City of Charlottesville on the 18th day of March, 2024.

Kyna Thomas
Clerk of Council

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

WANRACK, LLC

DocuSigned by:
By Michael L. Brigman
224ACC6D178D4C7...

Its President

Date 3/7/2024

APPROVED AS TO FORM:

Jacob P. Stroman
Jacob P. Stroman, City Attorney

RESOLUTION
Approving Amendments to the City Council Rules and Procedures

BE IT RESOLVED by the Council of the City of Charlottesville, that City Council’s Rules and Procedures are amended as follows:

Charlottesville City Council Rules and Procedures

These *Charlottesville City Council Rules and Procedures* are designed to help City Council conduct its affairs in a timely and efficient manner, while encouraging a robust and meaningful dialogue with members of the community.

I. MEETINGS

A. Generally

1. Regular meetings. Council will adopt a schedule for its regular meetings at its first regular meeting in January each year. Changes to the date, time, or location(s) of regular meetings during the calendar year may be made by resolution of Council.
2. Special meetings. Special meetings, including emergency meetings, may be scheduled, and held in addition to the schedule of regular meetings. Public notice and procedural requirements for special meetings are governed by the Virginia Freedom of Information Act (FOIA) and City Code § 2-42.

For special meetings, the purpose and nature of the meeting will dictate whether public comment will be allowed. Time for public comment may or may not be allocated depending on the nature of the meeting and at the discretion of Council.
3. Organizational Meeting. At the first meeting of January in each even numbered year, an Organizational Meeting shall be conducted to select the Mayor and Vice Mayor. The City Manager shall preside at the Organizational Meeting until election of the new Mayor. The City Manager shall accept nominations from Councilors for the position of Mayor. The City Manager will then accept a motion to close the nomination process.

After a motion to close the nomination process is approved by the Council, each Councilor will be provided five minutes to speak about the Mayoral nominees. After all Councilors have concluded their remarks, the Clerk of Council will then call the roll and each Councilor shall state their choice for the position of Mayor. At the conclusion of the Council’s Mayoral election, the newly elected Mayor will preside over the election of Vice Mayor. The Mayor shall accept nominations from Councilors for the position of Vice Mayor. The Mayor will then accept a motion to close the nomination process. After a motion to close the nomination process is approved by the Council, each Councilor will be provided five minutes to speak about the Vice Mayoral nominees.

After all Councilors have concluded their remarks, the Clerk of Council will then call the roll and each Councilor shall state their choice for the position of Vice Mayor. The Mayor and Vice Mayor shall be elected for terms of two years.

4. Continuance of Regular Meetings Due to Weather or Other Hazardous Conditions. At its first meeting each year, City Council may fix the day or days to which a regular meeting will be continued, if the mayor (or vice-mayor, if the mayor is unavailable or unable to act) issues a declaration that weather or other conditions are such that it is hazardous for members to attend the regular meeting. If no such

provisions are set out in the annual resolution establishing regular meeting dates, then the declaration shall state the date and time to which the meeting shall be continued, and public notice of the continued meeting shall be given contemporaneously with notice given to city Councilors. (See Va. Code 15.2-1416).

5. At a work session conducted in January of each even numbered year, the City Manager and Clerk of Council will coordinate a Council orientation for all City Councilors providing training and education on City operations and City Council Policies and Procedures.

B. Agenda and Materials

1. The City Manager shall prepare a proposed agenda nine business days before the meeting for review by the Mayor. The proposed agenda for a regular meeting, and related agenda packets/ materials, shall be “finalized” on the Wednesday immediately preceding the regular meeting date (the proposed agenda does not actually become final until approved by City Council at the meeting). The Clerk may update materials provided for a regular meeting once, on the Friday preceding the regular meeting date.

Any staff or Council member who seeks to add items to a meeting agenda should notify the City Manager and the Mayor at least ten business days before the date of the meeting. Last minute submissions are discouraged but may occur from time to time when a matter that requires action expeditiously was not known in time to be presented during the normal agenda development process.

Citizens may suggest an item for consideration on a Council meeting agenda by submitting the suggestion in writing to the City Manager.

Subject to applicable FOIA requirements, last minute additions to a regular meeting agenda shall be prepped and provided to Councilors, but City Council must vote as to whether the item will be added to the agenda, during the “approval of the agenda” portion of the meeting.

2. The Order of Business at each regular meeting of Council shall be as follows (the opening session of each meeting will begin at the regular meeting start-time specified in the Annual Meeting Resolution, as amended. Additionally, times may be also identified within a meeting agenda as approximate starting time(s) for specific portions of the agenda):

Opening Session

- i. Call to order
- ii. Roll call (establish quorum)
- iii. Agenda Approval
- iv. Work Session (Reports or Work Session items)

Closed Meeting (if called) or Recess

Business Session

- i. Moment of Silence
- ii. Announcements (including Council reports of meeting attendance)
- iii. Special Recognitions (if any)
- iv. Community Matters
- v. City Manager Report
- vi. Consent Agenda

- vii. Action Items (Items pulled from the Consent Agenda for discussion move to the end of Action Items.)
- viii. General Business i) Includes any reports submitted as written only; it also includes items of a general nature to be considered by Council. After the presiding officer has stated the item for consideration, staff may be asked to provide a brief summary. With the Council's consent, items may be added to the agenda under General Business to respond to situations and/or questions of a critical nature which have arisen after the deadline has passed for items to be placed on the agenda.

Community Matters (Two)

Adjournment

3. The City Manager will provide appropriate agenda materials for the Council. The proposed agenda and agenda packets/materials for upcoming City Council meetings shall be made available for public inspection by appointment in the Clerk of Council's Office at the same time the materials are furnished to Councilors. Posting on the City's website is not required by FOIA, but agenda packets/materials timely received by the date set for finalizing an agenda shall also be posted on the City's website. Reasonable efforts will be made by the Clerk of Council to post late-received submissions on the City's website, but time commitments of the Clerk may not permit re-formatting and re-publication of materials on the website, particularly when multiple late submissions are involved. (Va. Code §2.2-3707(F), FOIA Advisory Council AO-05-12)

4. Council may defer any item for which all relevant information has not been provided to the Clerk within the times set forth within these procedures.

5. Agenda Items.

- Consent Agenda: the consent agenda may be used for eligible items and may include, but is not limited to, routine and noncontroversial appropriations, grant applications, contracts, resolutions, ordinances, second readings, and the minutes. Any item may be removed at the request of a Councilor. If any Councilor requests that an item be removed from the consent agenda for further discussion, the item shall be added to the end of the regular action item agenda for discussion and action. If a Councilor requests a separate vote on an item but does not wish to have further discussion on the item, the item will be voted upon after the remainder of the consent agenda is acted upon.

Approval of Consent Agenda: Those items not removed from the consent agenda shall be acted upon by a single vote of Council.

- Once the Agenda is approved at the beginning of the meeting, all of the Agenda items shall be heard in the order in which they appear on the approved Agenda. A majority of Councilors may agree to take out of sequence any listed on the approved agenda. At any time, a regular meeting may be adjourned from day to day, or from time to time, or from place to place (but not beyond the time fixed for commencement of the next regular meeting, until all the business set forth on a regular meeting agenda is completed. Notice of any meeting continued under this provision shall be reasonable and shall be given to the public in accordance with FOIA. (Va. Code § 15.2-1416(C))

- Each agenda item shall be given an approximate time limit. Generally, the total time allocated to any agenda item that does not include a scheduled public hearing shall not exceed twenty (20) minutes, unless the presiding officer, after consultation with the other Councilors, determines otherwise.

- Opening presentations for agenda items shall be limited to ten (10) minutes, unless the presiding officer, in consultation with the other Councilors, determines otherwise.
- For each agenda item, an individual or Councilor shall be designated as the main Presenter who will introduce the item to Council; however other presenters may also be recognized during Council's consideration of an Agenda Item (for example, and without limitation: rezoning applicants or their consultants, staff members, City/staff consultants, etc.) After presentation of the item, Councilors may ask clarifying questions of any presenter, if necessary. If a public hearing is scheduled, the public hearing will be conducted before any motion is initiated by a Councilor.

C. Transaction of Business

1. General.

- Unless otherwise specifically provided by law, Council may conduct business and vote upon any matter properly before it, at any meeting at which a quorum is present.
- Informal discussion of a subject is permitted while no motion is pending.
- In making motions and transacting its business, Council shall follow the rules set forth within these Meeting Procedures. If a question of procedure arises that cannot be resolved by the provisions within these Procedures, the Parliamentarian will consult Robert's Rules of Order and apply them to a resolution of the question.
- If in speaking, any member violates these Rules, the presiding officer will call the member to order. If there is no appeal, the decision of the presiding officer shall be submitted to. If the decision is in favor of the member who was called to order, they may proceed; otherwise, they shall not proceed except by leave of the Council. (City Code §2-70)

2. Motions, generally.

- Any member, including the presiding officer, may make a motion. A member may make only one motion at a time.
- Except as otherwise noted, all motions require a second; a motion dies for lack of a second.
- Except as otherwise noted, each member is required to obtain the floor, by addressing the presiding officer, before making motions or speaking either to other Councilors or to members of the public.

3. Substantive Motions.

- A substantive motion is any motion that deals with the merits of an item of business and that is within the Council's legal powers, duties, and responsibilities.
- A substantive motion is out of order while another substantive motion is pending.

4. Procedural Motions.

- A procedural motion is a motion that Council may use to "act upon" a substantive motion, by amending it, delaying consideration of it, and so forth. Procedural motions are in order while a substantive motion is pending and at other times, except as otherwise noted.

- Only the following procedural motions, and no others are in order. Procedural motions are listed below in their order of priority. If a procedural option is not listed below, then it is unavailable.

Procedural Motions

- i. Appeal a Procedural Ruling of the Presiding Officer (an appeal is in order immediately after a decision is announced and at no other time; the maker need not be recognized by the presiding officer, the motion does not require a second, and if made in a timely manner, the motion may not be ruled out of order.)
- ii. Motion to Adjourn, to be made without preliminary remarks, and to be decided without debate
- iii. Take a brief recess
- iv. Suspend the rules (City Code Sec. 2-66: 4/5 vote is required)
- v. Defer consideration of a Substantive Matter (“lay on the table”), to be decided without debate
- vi. To postpone, either indefinitely, or to a day or hour certain
- vii. Call the question, subject to the provisions of City Code § 2-76 (not in order until each member has had an opportunity to speak once; the motion is not amendable or debatable)
- viii. Motion to amend (a motion may be amended no more than twice; once a motion has received a second, it is up to the entire group to decide whether or not it should be changed by amendment; prior to receiving a second, a motion may be amended with the permission of the person who made the motion)
- ix. Substitute motion (no more than one substitute motion may be made; if a substitute motion is adopted and replaces the original motion, no further substitute motions may be made)
- x. Withdrawal of motion (a motion may be withdrawn by its maker any time before it is amended, or before the presiding officer puts the motion to a vote, whichever occurs first)
- xi. Motion to reconsider, subject to the restrictions set forth within City Code §§2-73 and 2-74 (provided, however, that this motion may not be used in a land use decision involving a rezoning or a special use permit)
- xii. Other motions expressly referenced in City Code §2-72.

5. Debate.

- In the event that conflicts arise among members as to the order for speaking, the presiding officer shall apply the following rules: the maker of a motion is entitled to speak first, if he/she/they wishes to do so; a member who has not spoken on an issue shall be recognized before someone who has already spoken.
- The presiding officer may participate in the debate prior to declaring a matter ready for a vote.
- Council members shall not engage in electronic communications among themselves during a meeting, regarding any motion that is on the floor for debate.

- In making a motion, a member shall endeavor to state the basis of the motion within a period not more than 5 minutes. In debating a motion, or in proposing amendments or substitute motions, each member shall try to state the basis of that procedural motion within a period of less than 3 minutes. In asking a question of a speaker, Council members should take not more than 3 minutes to phrase the question. When a question is under debate, no motion shall be entertained unless specifically provided for, except for the motions listed in City Code §2-72.

- In debate, speakers shall be collegial in their language and shall avoid all reference to personalities. No member shall interrupt another without the consent of the presiding officer, except when making a point of order.

6. Voting.

- The presiding officer shall call the question, either: (i) after a motion to call the question has received a second and has been voted upon, or (ii) at their discretion, any time after each member has had at least one opportunity to speak during debate. After the vote is taken, the presiding officer shall announce that the motion is adopted or failed and the vote count.

- If any member abstains from voting, the reason for the abstention shall be included in the minutes of the meeting.

- In the event that a substantive matter does not require a recorded vote, then the presiding officer may call for approval of that matter by voice vote or acclamation. (Generally, this process should be used only when a matter is simple, clear to all present and requires no discussion.)

7. Officers.

a. Mayor: the Mayor shall preside at all meetings of City Council (“presiding officer”). The Vice Mayor shall be the presiding officer in the Mayor’s absence.

Meetings of City Council shall be governed according to these Meeting Procedures, except where provided otherwise by the Virginia Code or the Code of the City of Charlottesville. Matters not addressed within by one of those sources shall be resolved in accordance with Robert’s Rules of Order.

- At each Council meeting, the presiding officer shall preserve order and decorum, and shall have the authority:

i. To decide questions of order (City Code Sec. 2-69);

ii. To determine whether a speaker is compliant with these Rules of Procedure, and to entertain and rule on objections from other members on this ground;

iii. To entertain and answer questions of procedure;

iv. To call a brief recess at any time;

v. To adjourn in an emergency

- A decision by the presiding officer on any matter listed in C.i. through C.iii. above may be appealed to Council upon the question “Shall the decision of the chair be sustained as the decision of the Council?”. Such a motion is in order immediately after the presiding officer announces his/her/their decision, and at no other time. Upon an appeal, no debate shall be allowed if the question pertains to a question of “decorum”, and the question shall immediately be voted upon. But if the question relates to

the priority of business, or to relevancy or applicability of propositions, the appeal may be debated among Councilors prior to a vote. (City Code Sec.2-69)

- The presiding officer shall ensure that individuals address their comments to City Council at appropriate times, in accordance with the meeting agenda and these Rules of Procedure. Otherwise, no person shall address City Council until leave to do so has been granted by the City Council or until invited to do so by the presiding officer. Remarks shall at all times be addressed directly to Council, and not to staff, the audience, or the media. (City Code sec.2-71)

- Remarks and actions that disrupt the progress of the Council meeting, and remarks from persons other than Councilors, the City Manager, the City Attorney, or a Presenter for an Agenda Item are not permitted, other than within the portions of a meeting Agenda set aside for “Community Matters”, comment on a Consent Agenda item, or a public hearing.

The presiding officer shall call an individual to order, including a Councilor, when that individual goes afoul of these rules. The following are examples of remarks and behavior that are not permitted:

- i. Interrupting a speaker who is addressing Council at the speaker’s microphone, or interrupting a speaker who has otherwise been invited to address Council during Community Matters or a Public Hearing;
- ii. Interrupting a Councilor who is speaking;
- iii. Shouting, and talking (either individually or in concert with others) in a manner that prevents a speaker or a Councilor from being heard or that otherwise hinders the progress of the meeting;
- iv. Blocking paths for emergency exit from the meeting room; engaging in any conduct that prevents a member of the audience from seeing or hearing Councilors during a meeting; standing on chairs or tables within the Council meeting room;
- v. Threats or incitement of violence toward Councilors, City staff or members of the public;
- vi. Engaging in conduct that is a criminal offense under the City Code or the Virginia Code;
- vii. Campaigning for elected office;
- viii. Promotion of private business ventures;
- ix. Using profanity or vulgarity;
- x. Personal attacks against Councilors, City staff or members of the public; or
- xi. Behavior which tends to intimidate others

During a City Council meeting the presiding officer shall have control of the Council Chambers and the connecting halls and corridors within City Hall, and any other venue where a Council meeting is being held. In case of any conduct described above, the presiding officer may take measures deemed appropriate, including but not limited to suspending the meeting until order is restored, ordering areas to be cleared by the Sergeant at Arms, or requiring any individual to exit the meeting room and adjacent premises (connecting halls and corridors.)

b. City Attorney:

The City Attorney shall serve as the Parliamentarian for the purposes of interpreting these Meeting Procedures, and the Code of Virginia (1950), as amended, and Robert's Rules of Order, as may be directed by the presiding officer, or as required as a result of a point of order raised by one or more Councilors.

c. City Clerk:

The City Clerk shall prepare and publish the agenda and prepare minutes. The City Clerk shall also prepare the list of speakers for the Community Matters sections of the Agenda.

d. Sergeant at Arms:

Pursuant to City Code § 2-43, the Sergeant at Arms shall assist the Presiding Officer in maintaining order at Council Meetings.

8. Any person who has been expelled from a Council meeting shall be barred by the presiding officer, from reentering the Council meeting from which he/she/they was expelled, subject to appeal to Council or motion passed by Council.

D. Community Matters, Public Hearings and Other Comment Opportunities

1. Community Matters – Time shall be reserved during each regular City Council meeting for Community Matters. The purpose of Community Matters is to offer individuals an opportunity to state a position, provide information to City Council, comment on the services, policies, and affairs of the City, or present a matter that, in the speaker's opinion, deserves the attention of City Council.

a. At Council's regularly scheduled meetings, two Community Matters opportunities will be afforded for members of the public. One Community Matters opportunity will be offered early in the meeting, prior to taking up matters on a consent agenda, action items agenda, or items for General Business. At this first Community Matters period, up to sixteen (16) individuals may speak, as follows:

- i. up to 8 individuals selected randomly from a list of people who have signed up in advance, and
- ii. up to 8 individuals who have raised their hand as directed by the presiding officer at the designated time during the meeting on a first-come/first-served basis.

A second Community Matters session will be offered as the final agenda item at each regular meeting, during which individuals who did not speak during the first Community Matters period may be given an opportunity to address Council.

b. Each person who speaks during a Community Matters segment will have up to three (3) minutes.

- i. Speakers may concede their allotted time; the person whose name is written on the speaker sheet must be the person who begins speaking, although they may be accompanied by others to the podium and may share their time with them. Each speaker shall begin by clearly stating his/her/their name and place of residence (or, if speaking on behalf of a business, by giving the location of the business).
- ii. Written materials presented at Community Matters must be given to the Clerk prior to speaking and will be distributed to the Council. For distribution of hard copies to Councilors, eight copies should be provided; however, electronic distribution is preferred and may be sent to

Council@charlottesville.gov. Electronic presentations cannot be accommodated during Community Matters.

- iii. Issues raised in Community Matters may be referred to the City Manager by the presiding officer, with a request that the City Manager bring back a suggested response to issues raised in Community Matters.
2. Public hearings – From time to time, Council will conduct public hearings on specific topics as required by law or as Council otherwise deems appropriate. The purpose of a public hearing is for Council to receive public comments on a specific topic.

The order of public hearings shall be as follows:

- i. The presiding officer shall open the public hearing
 - ii. Hearings shall begin with a brief presentation from a staff member. The presentation shall summarize the facts about the issue and any staff or other recommendation (such as the Planning Commission in the case of land use matters). Council members may seek clarification during the presentation.
 - iii. In land use cases, the applicant or their representative shall have an opportunity to speak following staff. The presentation shall be limited to ten (10) minutes.
 - iv. The presiding officer shall then solicit comments from the public. Each speaker must clearly state their name and address. There shall be a time limit of three (3) minutes for each individual speaker.
 - v. After public comments have been received in a land use case, the applicant or their representative may respond with a rebuttal limited to no more than five (5) minutes.
 - vi. Upon the conclusion of public comments, or the applicant's rebuttal in a land use case, the presiding officer shall close the public hearing. Following the closing of the public hearing, the presiding officer will ask for a motion. Following a motion and a second, the presiding officer will ask for discussion. Following the conclusion of discussion, Council will vote on the pending motion.
3. Written Comments – To provide an additional mechanism to communicate with Council, an "Online Matters by the Public" form is provided on the City website for electronically submitting comments. These comments are distributed to all Council members. Citizens may also contact Councilors via their City email addresses (available on the City's website) or by written correspondence sent in care of the Clerk of Council.

E. Recess

1. By motion, Council may take a brief recess during the meeting, or the Presiding Office may declare a recess at their discretion.
2. The Council's goal at regular meetings is to adjourn no later than 11:00p.m.
3. Suspension of Meeting Procedures
 - No rule set forth within these Meeting Procedures can be suspended except by the consent of four Council members. Suspension of the rules may be made by a motion. (*City Code section 2- 66*)

F. Miscellaneous

1. Persons with disabilities may request reasonable accommodations by contacting ada@charlottesville.gov or (434) 970-3182. Persons are encouraged to make requests in advance.
2. All regular City Council meetings are broadcast live on Charlottesville's TV10. Streaming video of the meetings is available for viewing online at the time of the meeting and as an archived video on the next business day following a meeting. Archived meetings can be downloaded in audio or video format from the City website. Charlottesville TV 10 runs repeats of the most recent meeting throughout the month on Mondays, Wednesdays, and Fridays at 7:00 p.m. and Tuesdays, Thursdays, and Saturday mornings at 9:00 a.m. until the next meeting is held.
3. These City Council Meeting Rules and Procedures will be posted on the City's website.
4. These Council Meeting Rules and Procedures are adopted by the Council pursuant to the Charter of the City of Charlottesville and Section 2-66 of the City Code, and effective upon adoption these Rules supersede prior rules. The rules and procedures set forth within this document do not create substantive rights for third parties or participants in proceedings before City Council, and City Council reserves the right to suspend or amend the rules in the manner provided in the City Code. The failure of City Council to strictly comply with the provisions of this document shall not invalidate any action of City Council.

G. Policy for Electronic Participation by Councilors in Council meetings

1. **Purpose and Applicability.** It is the policy of the City Council of the City of Charlottesville that individual members of the Council may participate in Council meetings by electronic means as permitted by Virginia Code Section 2.2-3708.3 (B). The purpose of the policy is to comply with the requirements of Section 2.2-3708.2 of the Code of Virginia and to allow for and govern participation by one or more Councilors in Council meetings by electronic communication means. All proceedings pursuant to this policy shall be performed in accordance with Virginia Code Section 2.2-3708.3 (B), as that statute may hereafter be amended. This policy shall apply to the entire City Council membership without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.
2. **Quorum Required.** The City Council may consider a request for participation by electronic communication means only if a quorum of the Council is physically assembled at the primary or central meeting location, and there is an arrangement for the voice of the remote participant to be heard by all persons at the primary or central meeting location.
3. **Permissible Reasons for Electronic Participation.** Participation by a Councilor in a meeting by electronic communication means shall only be allowed for one of the reasons set forth within Virginia Code Section 2.2-3708.3 (B) (1), (2), or (4). Each Councilor shall be limited each calendar year to participation by electronic means for personal reasons (Virginia Code Section 2.2-3708.3(B)(4)) in two meetings, or twenty-five percent (25%) of the meetings held by City Council per calendar year, rounded up to the next whole number, whichever is greater.
4. **Approval.** Individual participation from a remote location shall be approved unless such participation would violate this policy or the provisions of the Virginia Freedom of Information Act. If a Councilor's participation from a remote location is challenged, then the City Council shall vote whether to allow such participation. If the City Council votes to disapprove the Councilor's participation because such participation would violate this policy, such disapproval shall be recorded in the Council's minutes with specific reasons cited for the disapproval.

5. Approval Process. No Councilor may participate in a meeting by electronic communications means unless the Councilor requests and the Council approves the participation in accordance with this policy.

- A Councilor may request to participate in a meeting by electronic communication means if the Councilor notifies the Mayor and the Clerk of Council on or before the day of the meeting that the Councilor is unable to attend due to the following:

- i. Personal (Va. Code §2.2-3708.3(B)(4)): an emergency or personal matter, provided that the Councilor identifies with specificity the nature of the emergency or personal matter, or

- ii. Temporary or Permanent Disability, or Medical Condition (Va. Code §2.2-3708.3(B)(1) or (2)): a Councilor has a temporary or permanent disability or other medical condition that prevents the Councilor's physical attendance, or a medical condition of a member of a Councilor's family requires the Councilor to provide care that prevents the Councilor's attendance.

- The Councilor must also notify the Clerk of Council of the remote location from which the Councilor would participate by electronic communication means.

- At the meeting, the Clerk of Council shall announce the information received from the absent Councilor. If the Council member's request is in all respects compliant with this policy, then by motion and majority vote of the quorum of Councilors physically assembled at the central meeting location, City Council may approve or disapprove the absent Councilor's request. If participation by a member through electronic communication means is approved the Clerk of Council shall record in the minutes of the meeting the remote location from which the Councilor participated; however, the remote location need not be open to the public and may be identified in the minutes by a general description. If participation is approved pursuant to subdivision 1 or 2 of Va. Code §2.2-3708.3(B), the Clerk of Council shall also include in the meeting minutes the fact that the member participated through electronic communication means due to a (i) temporary or permanent disability or other medical condition that prevented the member's physical attendance or (ii) family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance. If participation is approved pursuant to subdivision 4 of Va. Code §2.2-3708.3(B), the Clerk of Council shall also include in the meeting minutes the specific nature of the personal matter cited by the member.

- Upon adoption of a motion to approve the Councilor's participation by electronic communication means, the Councilor shall be allowed to fully participate in the meeting by electronic communication means.

- If a Councilor's participation from a remote location pursuant to this subsection is disapproved because such participation would violate the policy set forth above, such disapproval shall be recorded in the minutes with specificity, inclusive of the following information:

- i. the motion;

- ii. the vote thereon;

- iii. the specific nature of the emergency or personal matter or temporary or permanent disability or other medical condition;

- iv. the remote location from which the Councilor would participate in the meeting; and

v. the specific aspect of this policy that would be violated by the Councilor’s proposed participation by electronic communication means, as summarized by the quorum of Councilors physically present.

II. THE COUNCIL – MANAGER RELATIONSHIP

A. Per City Code §2-157 and in the interests of efficient management, if Council members seek answers from City staff, they should generally attempt to do so through the City Manager. In any event, when asking questions of staff, Council members should advise the City Manager of same.

B. Members of the City Council, including the Mayor, shall represent the official policies or positions of the City Council to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, Council members shall explicitly state they do not represent their body or the City, nor will they allow the inference that they do. No member of City Council may purport to speak on behalf of the City on matters that have not been voted on by Council or that do not represent official City policy unless authorized by vote of the City Council.

C. If a Councilor wishes to convene a gathering that will involve the use of City meeting space or the assistance of non-Council staff, the gathering must be approved by the City Manager, with notice given to the Clerk of Council and other Councilors of the date, time, place, and purpose of the gathering.

D. If any Councilor convenes or plans to attend an event or gathering to which any other Councilors may also be invited, he/she/they shall advise the Clerk of Council and the City’s FOIA Officer at least one day in advance of the time and place of the event or gathering.

E. Council members shall respect and adhere to the Council/Manager structure of Charlottesville City government as outlined in the Charlottesville City Code. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by City staff, Boards and Commissions, and the public. Except as provided by the City Code, Council members shall not interfere with the administrative functions of the City or the professional duties of City staff; nor shall they impair the ability of staff to implement Council policy decisions.

Ref. City Charter, §5.01, §5.02

Ref. City Code §2-36; 2-39; 2-146 through 2-158

III. CITY COUNCIL EXPENDITURES

A. Each fiscal year, as part of Council’s approval of the annual budget for the City, or as amended during the year, Council appropriates a certain amount of public funds for expenditure by “City Council/ Clerk of Council” and for “City Council Strategic Initiatives”. Public funds appropriated in these categories may be expended by City Council in accordance with this Council Procedure document, as follows:

1. **Council-authorized purchases and expenditures**—public funds within City Council’s budget appropriation, including any discretionary funds contemplated to be expended for uses specifically designated by individual Councilors within Council’s budget appropriation, may be expended for lawful purposes specifically approved by a vote of City Council, including, without limitation:

i. Charitable donations authorized by state statute;

ii. Compensation to individuals serving on a City-Council created advisory agency, as defined in Va. Code §2.2-3101 (task force, commission or other group - regardless of name). (Note: If City Council creates an advisory agency, City Council may specifically authorize members of the advisory agency to be compensated for their attendance at regularly scheduled meetings and in training. Compensation may be paid to an individual member, only if the City Council action which established the advisory agency: (i) specifically authorizes the amount of compensation to be paid, (ii) designates the manner in which compensation may be paid (City-issued check, cash-equivalent (e.g., gift card), or other form of payment), and (iii) identifies the fund or budget expenditure line item from which the compensation is to be paid.) Ref. Va. Code §15.2- 1411.

iii. Purchases of goods or services for a City Council meeting, function, or retreat, or purchase of office supplies, travel reservations for an individual Councilor, etc., arranged by the Clerk of Council in his/her/their role as “decentralized buyer” for the City (for example: a facilitator for a Council workshop; catering and meals for a City Council meeting or retreat; consulting services for a City Council initiative, etc.).

iv. Emergency travel expenses, which may be arranged and authorized by the City Manager, in circumstances where an individual Councilor’s credit card fails to function while the Councilor is traveling on City business.

v. Payment for the expenditures listed in (i)-(iii), above, shall be arranged by the Clerk of Council or City Manager, on behalf of City Council, using the credit card issued by the City to the Clerk or by other form of payment used by the City in the normal course of business. Individual Councilors’ credit cards shall not be used to pay for those expenditures.

2. **Reimbursement of individual Councilors’ and Council-staff members’ City-business expenses** —pursuant to Va. Code §15.2-1414.6 each individual Councilor is eligible to be reimbursed for any expenses incurred by such individual Councilor for official City business (“Reimbursables”). Any such Reimbursables must be itemized and documented by stamped “paid” receipts to the extent feasible.

i. Following are examples of authorized Reimbursables:

- registration fees, meals and/or travel and parking expenses for attendance at official functions, general assembly sessions, or ceremonies/special events to which City Council, or an individual Councilor, or a Council staff member, is invited or is required to attend;
- individual dues for membership in organizations related to Council duties, and travel to seminars and meetings of those organizations (e.g., VML, Virginia First Cities, National League of Cities, etc.);
- meals or refreshments for an individual Councilor himself/herself/themself, while meeting with one or more constituents, if receipts are supported by documentation meeting IRS standards for allowable business expenses (identification of the purpose of the meeting, the topic(s) discussed, the person(s) participating in the meeting, etc.);
- home office supplies for individual Councilors, such as copier paper, “cloud” storage for records, office furniture, pens, etc.

ii. In lieu of incurring a Reimbursable expense and then submitting a reimbursement request to the City, any individual Councilor or Council staff may use a city credit card issued to such

Councilor/ staff member to purchase Reimbursables. Requirements for documentation of purchases made with a City-issued credit card, as well as daily per- diems and mileage reimbursement rates, shall be the same as established by the City Manager/ Director of Finance for City employees.

- iii. No credit card issued to an individual City Councilor shall be used to purchase any goods, services or items other than:
 - a) Reimbursables
 - b) Tokens of sympathy or appreciation for the Clerk of Council and his/her/their staff, the City Manager and his/her/their deputies and assistants, and the Finance Director and his/her/their deputies and assistants, to recognize birthdays, work anniversaries, sympathy for the loss of a family member, and similar circumstances). The value of a credit card transaction for any such purchase shall not exceed \$50
 - c) Goods, services or items approved by City Council, as a body, to be purchased with an individual Councilor's card (*for example, City Council may vote to authorize an individual Councilor who is leading a City- Council sponsored trip to charge certain group expenses to the City credit card issued to that Councilor*).
 - d) If any individual Councilor desires to use a City credit card that is issued to him/her/them, but is not sure whether or not a particular purchase constitutes a Reimbursable, as defined above, it shall be the responsibility of the Councilor to seek guidance (from Council, as a body, the Clerk of Council, the Finance Director, or the City Attorney's Office) prior to using the credit card to make the purchase.

Inquiry shall be made regardless of whether similar purchase(s) have previously been made prior to the adoption of these Council Rules and Procedures.

3. **Prohibited Expenditures, by Credit Card and Otherwise:** the following expenditures of City funds are PROHIBITED and are UNAUTHORIZED as to every individual Councilor and each member of Council's staff:

No City funds shall be used to obtain, purchase, or pay for any of the following—whether the purchase or payment is made or obtained by means of a City-issued credit card, expense reimbursement request, City-issued check, cash, or cash equivalent (gift card) or otherwise:

- i. Alcoholic beverages,
- ii. Smoking products and paraphernalia,
- iii. Personal items and services (i.e., goods, services, or items other than Reimbursables) for an individual Councilor or any other individual,
- iv. Gifts or donations to any individual(s),
- v. Non-essential services and gratuities: mini-bar fees, service gratuities in excess of 20% for meals or transportation services, movies, personal telephone calls made from a hotel phone, etc.,
- vi. Vehicle fuel,
- vii. Cash (cash advances, wire transfers, money orders, credits for returned merchandise, etc.),

- viii. Any purchase or expenditure that exceeds funding that is available within City Council’s fiscal year budget at the time of the purchase or obligation of City funds,
- ix. All other unauthorized purchases and expenditures—meaning any purchase or expenditure other than one specifically authorized within these Council Rules and Procedures.

B. Oversight of Council Expenditures

1. The Clerk of Council shall send quarterly budget-to-actual expenditure reports to City Council, reporting all expenditures from City Council’s budget for the preceding month (inclusive of credit card purchases), as well as the total amount of funds remaining to be spent during the fiscal year. It shall be the responsibility of City Council, as a body, to review the budget-to-actual expenditure reports and to address any apparent concerns as a group, with Council staff and each other.

2. If any Councilor or Council staff member has a question about whether any credit card purchase or other expenditure complies with this Council Procedure, they may seek assistance from the Finance Director or City Attorney, as needed. If the question cannot be resolved by Council, as a body, the matter shall be reviewed by the City Attorney in consultation with the City Manager and Director of Finance and/or reported to law enforcement for investigation.

Notwithstanding the foregoing: if Council as a body fails to promptly take action, or if there is cause to believe that a violation of the requirements of this Council Procedure is knowing or intentional and a financial loss in excess of \$300 (ref. City Code §2-45) will occur to the City while awaiting a response by Council, any City official or Council staff shall have a right to seek review of the matter by law enforcement.

3. Any City Councilor who uses a credit card, or otherwise obligates City funds to be expended, for purposes not authorized by this Council Procedure may be subject to civil fines, payment of reimbursement to the City, and/ or criminal prosecution (ref. City Code §2-45, City Code §22-33, and Va. Code §18.2-112).