



**CITY COUNCIL AGENDA**  
**October 19, 2015**

**6:00 p.m.** **Closed session as provided by Section 2.2-3712 of the Virginia Code**  
*Second Floor Conference Room (CRHA Board Interviews; Boards and Commissions Appointments, City Manager Review, Acquisition of utility easement along McIntire Road.)*

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

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

*Council Chambers*

**AWARDS/RECOGNITIONS ANNOUNCEMENTS** VML Award; Gold Status for HEAL; EPA WaterSense Partner of the Year

**MATTERS BY THE PUBLIC** Public comment permitted for the first 12 speakers who sign up before the meeting (limit 3 minutes per speaker) and at the end of the meeting on any item, provided that a public hearing is not planned or has not previously been held on the matter.

**COUNCIL RESPONSE TO MATTERS BY THE PUBLIC**

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

**passed 5-0 (Szakos/Galvin)**

a. Minutes for October 5

b. **APPROPRIATION:** Virginia Juvenile Community Crime Control Act Grant (VJCCCA) – \$452,704  
(2<sup>nd</sup> of 2 readings)

c. **APPROPRIATION:** Adult Drug Treatment Court Grant Award – \$205,000 (2<sup>nd</sup> of 2 readings)

d. **APPROPRIATION:** State Criminal Alien Assistance Program 2015 Grant – \$7,697 (2<sup>nd</sup> of 2 readings)

e. **APPROPRIATION:** Charlottesville Area Transit FY2016 Grants – \$480,486 (2<sup>nd</sup> of 2 readings)

f. **APPROPRIATION:** Runaway Emergency Shelter Program Grant – \$212,000 (1<sup>st</sup> of 2 readings)

g. **RESOLUTION:** Sidewalk Waiver Request for 219 Lankford Avenue (1<sup>st</sup> of 1 reading)

h. **RESOLUTION:** Initiate ZTA for Microbreweries (1<sup>st</sup> of 1 reading)

i. **RESOLUTION:** VDOT Transportation Alternative Program Grant Application for Water Street Shared Use Path (1<sup>st</sup> of 1 reading)

j. **ORDINANCE:** Short Term Rental Tax amendment (2<sup>nd</sup> of 2 readings)

k. **ORDINANCE:** Increase Limit of Maximum Financial Worth for Rent Relief Program (2<sup>nd</sup> of 2 readings)

l. **ORDINANCE:** Franchise Agreement with Intellifiber (formerly Dominion Telecom) (2<sup>nd</sup> of 2 readings)

**2. PUBLIC HEARING / RESOLUTION\*** McGuffey Art Center Lease (1<sup>st</sup> of 1 reading) **passed 5-0 (Galvin/Szakos)**

**3. PUBLIC HEARING / ORDINANCE\*** Specimen Tree Designation in McIntire Park (1<sup>st</sup> of 2 readings) **carried (Smith/Szakos)**

**4. PUBLIC HEARING / ORDINANCE\*** Ragged Mountain Natural Area Rules of Use (2<sup>nd</sup> of 2 readings) **table until bio blitz is completed 3-2 (Szakos, Galvin no); approve shared use in concept 3-2 (Fenwick, Smith no)**

**5. PUBLIC HEARING / ORDINANCE\*** Easement to RWSA for Water Line in Towe Park (1<sup>st</sup> of 2 readings) **carried (Galvin/Szakos)**

**6. RESOLUTION\*** Market Plaza Utility Agreement between City and CEDA (1<sup>st</sup> of 1 reading) **passed 5-0**

**7. RESOLUTION\*** Market Plaza Lease for City Market (1<sup>st</sup> of 1 reading) **passed 5-0**

**8. ORDINANCE\*** Sale of City Property at 200 2nd Street SW (Market Plaza) (2<sup>nd</sup> of 2 readings) **passed 5-0**

**9. ORDINANCE\*** Development Code Changes for Application Review Process (2<sup>nd</sup> of 2 readings) **passed 4-1 (Fenwick no)**

**10. REPORT ONLY** Solar Energy (**written report only**; no verbal presentation)

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

\*ACTION NEEDED

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

**APPROPRIATION.**  
**Virginia Juvenile Community Crime Control Act Grant (V.J.C.C.C.A.)**  
**\$452,704.**

**WHEREAS**, the City of Charlottesville has been awarded \$292,058 from the Virginia Department of Juvenile Justice; and

**WHEREAS**, this grant requires local maintenance of effort funds in the amount of \$52,231 from Albemarle County and \$108,415 from the City; and

**WHEREAS**, the grant award covers the period from July 1, 2015 through June 30, 2016.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$452,704 is hereby appropriated in the following manner:

**Revenue – \$452,704**

\$292,058	Fund: 220	Cost Center: 3523001000	G/L Account: 430080
\$52,231	Fund: 220	Cost Center: 3523001000	G/L Account: 432030
\$108,415	Fund: 220	Cost Center: 3523001000	G/L Account: 498010

**Expenditures - \$452,704**

\$ 52,035	Fund: 220	Cost Center: 3523001000	G/L Account: 519999
\$400,669	Fund: 220	Cost Center: 3523001000	G/L Account: 530010

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$292,058 from VA Department of Juvenile Justice, and \$52,231 from Albemarle County.

**APPROPRIATION.**  
**Charlottesville/Albemarle Adult Drug Treatment Court Grant Award**  
**\$205,000.**

**WHEREAS**, the Supreme Court of Virginia awarded the Byrne Grant in the amount of \$205,000 for the Charlottesville/Albemarle Drug Court Treatment Court in order to fund salaries, benefits, and operating expenses; and

**WHEREAS**, the City of Charlottesville serves as the fiscal agent for this grant program; and

**WHEREAS**, the City of Charlottesville and Albemarle County both have dedicated local matches to this grant, totaling \$121,316; and

**WHEREAS**, the grant award covers the period July 1, 2015 through June 30, 2016.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$205,000, received as a grant from the Supreme Court of Virginia, is hereby appropriated in the following manner:

**Revenues**

\$205,000      Fund: 209      Internal Order: 1900255      G/L Account: 430120

**Expenditures**

\$205,000      Fund: 209      Internal Order: 1900255      G/L Account: 530550

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$205,000 from the Supreme Court of Virginia.

**APPROPRIATION.**  
**State Criminal Alien Assistance Program (S.C.A.A.P.) Grant for 2015**  
**\$7,697.**

**WHEREAS**, the State Criminal Alien Assistance Program (S.C.A.A.P.) grant, providing federal payments for correctional officer salary costs incurred for incarcerating certain undocumented criminals has been awarded the City of Charlottesville, on behalf of the Albemarle-Charlottesville-Nelson Regional Jail, in the amount of \$7,697.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that a total of \$6,004 be appropriated and passed through to the Albemarle-Charlottesville-Nelson Regional Jail and \$1,693 be appropriated and passed through to Justice Benefits, Inc.

**Revenues**

\$7,697	Fund: 211	Internal Order: 1900241	G/L Account: 431110
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**Expenses**

\$6,004	Fund: 211	Internal Order: 1900241	G/L Account: 530550
\$1,693	Fund: 211	Internal Order: 1900241	G/L Account: 530670

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$7,697 from the U. S. Bureau of Justice Assistance.

## APPROPRIATION

Appropriation of F.Y. 2016 Transit Grants \$(480,486)

**WHEREAS**, a Federal Operating Grant of \$1,630,775 and State Operating Grant of \$1,481,019 have been awarded to the City of Charlottesville, and the previously unbudgeted Federal J.A.R.C. Operating Grant of \$138,781 has been awarded, the combined amounts of operating grants are \$3,066 more than previously budgeted; and

**WHEREAS**, a Federal Grant has been awarded to JAUNT in the amount of \$488,319 and these funds must pass through the City of Charlottesville; and

**WHEREAS**, a Federal Capital Grant of \$515,875 and a State Capital Grant of \$103,175 have been awarded to the City of Charlottesville, and the combined amounts of capital grants are \$971,932 less than the amount budgeted; and

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

**Revenue (Operating)**

\$ 114,653	Fund: 245	Cost Center: 2801001000	G/L: 430080 St Assist.
\$(250,320)	Fund: 245	Cost Center: 2801001000	G/L: 431010 Fed Assist.
\$ 138,781	Fund: 245	Cost Center: 2801001000	G/L: 431505 JARC Asst.

**Expenditures (Operating)**

\$ 3,114	Fund: 245	Cost Center: 2801001000	G/L: 599999 Lump Sum
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**Revenue (JAUNT)**

\$488,332	Fund: 245	Cost Center: 2821002000	G/L: 431010 Fed Assist.
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**Expenditures (JAUNT)**

\$ 488,332	Fund: 245	Cost Center: 2821002000	G/L: 540365 JAUNT Pymt
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**Revenue (Capital)**

\$(161,989)	Fund: 245	Cost Center: 2804001000	G/L: 430110 St Grant
\$(809,943)	Fund: 245	Cost Center: 2804001000	G/L: 431110 Fed Grant

**Expenditures (Capital)**

\$(971,932)	Fund: 245	Cost Center: 2804001000	G/L: 541040 Acq. Com-Veh.
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**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$1,584,194 from the Virginia Department of Rail and Public Transportation and \$2,773,702 from the Federal Transit Administration.

**RESOLUTION**  
**Denying a Sidewalk Waiver Request for**  
**219 Lankford Avenue**

**WHEREAS**, application has been made by Donald Martin, owner of property located at 219 Lankford Avenue, identified on City Tax Map 25 as Parcel 72 (“Subject Property”), seeking a waiver of the sidewalk requirement set forth within City Code Sec. 34-1124(b) with respect to development of the single family lot at 219 Lankford Avenue, upon which a new single family home was built; and

**WHEREAS**, City staff has submitted to Council comments and a recommendation to deny the sidewalk waiver request, and Council has reviewed the staff recommendations and the information and materials submitted with the application;

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

**BE IT RESOLVED** by the Council for the City of Charlottesville, Virginia, that the requested sidewalk waiver is denied.

**RESOLUTION  
INITIATING A ZONING TEXT AMENDMENT  
TO UPDATE PROVISIONS FOR SMALL BREWERIES AND  
MICRO-PRODUCTION OF OTHER ALCOHOLIC BEVERAGES**

**WHEREAS**, the Director of Economic Development has asked this City Council to consider a zoning text amendment that would facilitate a successful local business's desire to expand and remain within the City of Charlottesville; and

**WHEREAS**, it appears that the trend across the country is for localities to take advantage of the retail and tourist opportunities created by small-scale production of beer and distilled alcohol brewing and distilling, as well as small-batch wine production;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Charlottesville that the zoning text amendments attached to this Resolution are hereby initiated by City Council, and the Planning Commission is directed to review the proposed text amendments, conduct a joint public hearing, and then report its findings and recommendations back to City Council within 100 days of the date of this Resolution.

## DISCUSSION DRAFT ZONING TEXT AMENDMENTS

### FOR PLANNING COMMISSION'S CONSIDERATION, MODIFICATIONS AND RECOMMENDATIONS:

#### Use Matrix

- ***Current:*** **Microbrewery** is currently **excluded** from: all residential zoning districts; B1, ES, CH, AND NCC. **BUT allowed by right**, as a “general and commercial” use, **in all other zoning districts**  
***Proposed:*** In each Use Matrix, **substitute “Brewery (small) and micro-producers”**. Allow these facilities by right, in the same districts where “Microbrewery” is currently allowed.
- ***Current:*** **beverage or food processing, packaging and bottling plants** are currently **allowed in M-1 and I-C**, BUT are excluded from all other zoning districts.  
***Proposed:*** no change
- ***Current:*** **brewery and bottling facility** is currently **allowed in the M-1 and I-C districts**, BUT are excluded from all other zoning districts  
***Proposed:*** no change

#### DEFINITIONS—PROPOSED TEXT AMENDMENTS

***Beverage or food processing packaging and bottling plants***—means a ~~business/industrial~~ manufacturing facility where foods and/or beverages are processed and packaged for local, regional or national distribution. This definition does not include a facility engaged in the brewing ~~and~~ bottling of beverages (see brewery and bottling facilities)

***Brewery***—means a facility in which beer is manufactured by a person licensed by the Commonwealth of Virginia as a brewery.

***Brewery (small)***—means a brewery (i) that produces **fewer than X barrels per year of beer**, and (ii) the brewery sells directly to the consumer on-site within a retail shop, bar, tap- room, or restaurant.

***Brewery and bottling facility***—means a ~~business/industrial~~ manufacturing facility where beverages are brewed and bottled for local, regional or national distribution. Samples may be offered to individuals visiting the premises, for on-site consumption, but there are no retail or other sales directly to consumers within any tap-rooms, bars, restaurants, or similar facilities.

***Microbrewery***—means a facility for the production and packaging of malt beverages of low alcoholic content for distribution, retail, or wholesale, on or off premise, with a capacity of not more than 15,000 barrels<sup>1</sup> per year. ~~The development may include other uses such as a standard restaurant, bar or live entertainment as otherwise permitted in the zoning district.~~

***Micro-producers***—means a facility in which wine or distilled alcohol is manufactured and bottled for sale, where (i) the area devoted to the manufacturing, bottling and warehouse/ distribution functions, collectively, is is 3,000 square feet (GFA) or less, and (ii) 25% or more of such production is sold directly to the consumer on-site, within a bar, tasting room, or restaurant.

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<sup>1</sup> Examples of “regional” breweries, with production of over 15,000 barrels per year, include Devil’s Backbone (Lexington) and Starr Hill (Crozet).

## Transportation Alternatives Project Endorsement Resolution

Whereas, in accordance with the Commonwealth Transportation Board construction allocation procedures, it is necessary that a resolution be received from the sponsoring local jurisdiction or agency requesting the Virginia Department of Transportation to establish a Transportation Alternatives project in the City of Charlottesville.

Now, Therefore, Be It Resolved, that the City of Charlottesville, requests the Commonwealth Transportation Board to establish a project for the improvement of the Water Street Shared Use Path.

Be It Further Resolved, that the City of Charlottesville hereby agrees to provide a minimum 20 percent matching contribution for this project.

Be It Further Resolved, that the City of Charlottesville hereby agrees to enter into a project administration agreement with the Virginia Department of Transportation and provide the necessary oversight to ensure the project is developed in accordance with all state and federal requirements for design, right of way acquisition, and construction of a federally funded transportation project.

Be It Further Resolved, that the City of Charlottesville will be responsible for maintenance and operating costs of any facility constructed with Transportation Alternatives Program funds unless other arrangements have been made with the Department.

Be It Further Resolved, that if the City of Charlottesville subsequently elects to cancel this project the City of Charlottesville hereby agrees to reimburse the Virginia Department of Transportation for the total amount of costs expended by the Department through the date the Department is notified of such cancellation. The City of Charlottesville also agrees to repay any funds previously reimbursed that are later deemed ineligible by the Federal Highway Administration.

Adopted this 19th day of October, 2015, Virginia

By: Ysaige Urice  
Clerk of Council

Attest

**AN ORDINANCE AMENDING AND RE-ORDAINING  
SECTION 30-320, ARTICLE XI, CHAPTER 30  
OF THE CODE OF THE CITY OF CHARLOTTESVILLE, 1990, AS AMENDED,  
RELATING TO SHORT-TERM RENTAL TAX**

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia that Section 30-320, Article XI, Chapter 30 of the Charlottesville City Code, 1990, as amended, is hereby amended and re-ordained as follows:

**Section 30-320. Collection, return and remittance generally.**

Any person engaged in the short-term rental business shall collect the rental tax levied by this article from the lessee of the property at the time of the rental. The lessor of the daily rental property shall transmit a quarterly return to the commissioner of revenue, indicating the gross proceeds derived from the short term rental business ~~and shall remit therewith the payment of such tax as is due for the quarter. The quarterly returns and payment of tax shall be filed with the commissioner of revenue~~ on or before the ~~twentieth~~ fifteenth day of each of the months of April, July, October and January, representing, respectively, the gross proceeds and taxes collected during the preceding calendar quarters ending March 31, June 30, September 30 and December 31. The return shall be upon such forms and setting forth such information as the commissioner may require, showing the amount of gross receipts and the tax required to be collected. The commissioner of the revenue shall assess the tax due, and the short-term rental business shall pay the tax so assessed to the treasurer no later than the last day of the month following the end of the calendar quarter. The taxes required to be collected under this article shall be deemed to be held in trust by the person required to collect such taxes until remitted as required in this article.

**AN ORDINANCE AMENDING AND RE-ORDAINING  
SECTION 25-58, ARTICLE III, CHAPTER 25  
OF THE CODE OF THE CITY OF CHARLOTTESVILLE, 1990, AS AMENDED,  
RELATING TO QUALIFICATIONS FOR GRANTS FOR RENTAL RELIEF  
FOR ELDERLY AND DISABLED PERSONS**

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia that Section 25-58, Article III, Chapter 25 of the Charlottesville City Code, 1990, as amended, is hereby amended and re-ordained as follows:

**Section 25-58. Qualifications for Grant.**

Grants pursuant to this article shall be made to persons complying with the following provisions:

- (1) The applicant has paid rent for his dwelling within the city during the grant year and was a resident of the city on December thirty-first of the grant year;
- (2) The applicant, or his spouse if they reside together, is sixty-five (65) years of age or older, or permanently and totally disabled, as of December thirty-first of the grant year;
- (3) The dwelling for which the rental relief grant is sought was occupied as of December thirty-first of the grant year as the sole dwelling place of the applicant.
- (4) The gross combined income during the grant year from all sources of such applicant and all relatives of the applicant living in such dwelling does not exceed the sum of fifty thousand dollars (\$50,000.00); provided that the first seven thousand five hundred dollars (\$7,500.00) of any income, (a) received by the applicant, or the applicant's spouse if they reside together, and classified as permanent disability compensation, or (b) received by any applicant who is at least sixty-five (65) years of age, is permanently and totally disabled, and can show that he or she did receive permanent disability compensation for at least twenty-four (24) consecutive months immediately prior to his or her sixty-fifth birthday, shall be excluded from such total; and provided, that the first eight-thousand five hundred dollars (\$8,500.00) of income of each relative other than spouse of such applicant who is living in such dwelling and does not qualify for rent relief shall be excluded from such total. If the applicant has been a resident of the city for less than the full grant year, the gross combined income for such year and the maximum allowable income shall be prorated for the period of actual residency.
- (5) The net combined financial worth of such applicant and relatives of such applicant living in such dwelling as of December thirty-first of the grant year does not exceed one hundred twenty-five thousand dollars (~~\$100,000.00~~ 125,000.00). Net combined financial worth shall include all assets, including equitable interests.

**AN ORDINANCE  
GRANTING A TELECOMMUNICATIONS FRANCHISE TO  
INTELLIFIBER NETWORKS, 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 INTELLIFIBER NETWORKS, LLC (the “Company”), its successors and assigns, is hereby granted a telecommunications franchise for a period of five (5) years from the effective date hereof be and is hereby authorized and empowered to erect, maintain and operate certain telephone lines and associated equipment, including posts, poles, cables, wires and all other necessary overhead or underground apparatus and associated equipment on, over, along, in, under and through the streets, alleys, highways and other public places of the City of Charlottesville, Virginia (the “City”) as its business may from time to time require; provided that:

**ARTICLE I**

**SECTION 101 PURPOSE AND SCOPE**

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

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

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

This Ordinance granting a telecommunications franchise is created to manage and regulate the Company’s use of the City’s Public Rights-of-Way along city roads pursuant to the authority

granted to the City under Sections 15.2-2015, 56-460, and 56-462(A) of the Virginia Code and other applicable state and federal statutory, administrative and common law.

This Ordinance and any right, privilege or obligation of the City or Company hereunder, shall be interpreted consistently with state and federal statutory, administrative and common law, and such statutory, administrative or common law shall govern in the case of conflict. This Ordinance shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce other general ordinances necessary to protect the health, safety, and welfare of the public.

### **SECTION 103 DEFINITIONS**

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

**103.2 COMPANY** means Intellifiber Networks, LLC, including its successors and assigns.

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

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

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

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

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

## **ARTICLE II**

### **SECTION 201 INITIAL INSTALLATION**

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

### **SECTION 202 SUBSEQUENT INSTALLATION**

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

Additional Facilities installed within the PROW may be placed overhead or underground

pursuant to an approved request by the Company made pursuant to Article III, and in accordance with such generally applicable ordinances or regulations governing such installations that have been adopted by the City from time to time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE III**

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

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

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

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

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

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

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

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

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

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

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

## **SECTION 305 MAPPING DATA**

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

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

## **ARTICLE IV**

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

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

## **ARTICLE V**

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

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

any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

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

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

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

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

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

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

maintenance, shall not apply to the extent another company, franchisee, licensee, permittee, other entity or person, or the City disturbs or damages the same area, or a portion thereof, of the Public Rights-of-Way.

- 502.5 DUTY TO CORRECT DEFECTS:** The Company shall correct defects in patching, or restoration performed by it or its agents. Upon notification from the City, the Company shall correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of the notice from the Director within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure.
- 502.6 FAILURE TO RESTORE:** If the Company fails to restore the Public Rights-of-Way in the manner and to the condition required by the Director pursuant to Section 502.5, or fails to satisfactorily and timely complete all restoration required by the Director pursuant to the foregoing, the City shall notify the Company in writing of the specific alleged failure or failures and shall allow the Company at least ten (10) days from receipt of the notice to cure the failure or failures, or to respond with a plan to cure. In the event that the Company fails to cure, or fails to respond to the City's notice as provided above, the City may, at its election, perform the necessary work and the Company shall pay to the City its reasonable costs for such restoration within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such restoration.
- 502.7 DAMAGE TO OTHER FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY:** The Company shall be responsible for the cost of repairing any Facilities existing within the Public Rights-of-Way that it or the Facilities owned by the Company damage. If the Company damages the City's Facilities within the Public Rights-of-Way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, the Company shall correct the damage within a prompt period after receiving written notification from the City. If the Company does not correct the City's damaged Facilities pursuant to the foregoing, the City may make such repairs as necessary and charge all of the reasonable costs of such repairs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within such thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such repair.
- 502.8 DIRECTOR'S STANDARD:** All determinations to be made by the Director with respect to the manner and extent of restoration, patching, repairing and similar activities under the franchise granted by this Ordinance, shall be reasonable and shall not be unreasonably

conditioned, withheld, or delayed. The Company may request additional time to complete restoration, patching, repair, or other similar work as required under the franchise granted by this Ordinance, and the Director shall not unreasonably withhold, condition, or delay consent to such requests.

## ARTICLE VI

### SECTION 601 INDEMNIFICATION AND LIABILITY

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

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

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

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

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

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

## **SECTION 603 INSURANCE**

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

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

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

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

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

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

## **ARTICLE VII**

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

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

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

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

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

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

The Performance Bond shall serve as security for:

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

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

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

**704.2 APPEAL:** The Company may, upon written request within thirty (30) days of the City's decision to assess a fee or penalty and for reasons of good cause, ask the City to reconsider its imposition of a fee or penalty pursuant to this Ordinance unless another period is provided for in applicable law. The City shall schedule its review of such request to be held within forty-five (45) days of receipt of such request from the Company. The City's decision on the Company's appeal shall be in writing and supported by written findings establishing the reasonableness of the City's decision. During the pendency of the appeal before the City or any subsequent appeal thereafter, the Company shall place any such fee or penalty in an interest-bearing escrow account.

Nothing herein shall limit the Company's right to challenge such assessment or the City's decision on appeal, in a court of competent jurisdiction.

## **ARTICLE VIII**

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

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

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

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

### **SECTION 802 FRANCHISING COSTS**

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

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

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

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

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

**ARTICLE IX**

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

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

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

**SECTION 902 SEVERABILITY**

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

## **ARTICLE X**

### **SECTION 1001 MAINTENANCE OBLIGATION**

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

### **SECTION 1002 TREE TRIMMING**

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

## **ARTICLE XI**

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

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

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

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

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

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

## ARTICLE XII

### SECTION 1201 NOTICE

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

**To the Company:**

Intellifiber Networks, LLC.  
Attn: Franchises & Easements  
11101 Anderson Drive  
Little Rock, AR 72212

**To the City:**

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

**With a copy to:**

Intellifiber Networks, LLC.  
Attn: Legal  
4001 N. Rodney Parham Road  
Little Rock, AR 72212

**With a copy to:**

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

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

### SECTION 1202 EMERGENCY NOTIFICATION

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

**To the Company:**

Jerry Richardson  
(804) 422-4258 (office)  
(804) 641-0240  
(804) 422-4506 (office  
fax)

Glen Esenwein, Manager  
– OSP Engineering  
(610) 404-6239 (office)  
(610) 587-3653 (cell)  
(610) 404-6366 (office  
fax)

**To the City:**

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

Judith Mueller, Director of Public Works  
(434) 970-3301 (office)  
(434) 970-3817 (facsimile)  
(434) 971-6645 (home)

## **SECTION 1203 REGISTRATION OF DATA**

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

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

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

## **ARTICLE XIII**

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

The franchise granted by this Ordinance may be terminated:

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

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

## **ARTICLE XIV**

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

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

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

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

## **ARTICLE XV**

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

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

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

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

Notwithstanding Section 1501, the Company may assign, transfer, or sublet its rights, without the consent of the City, to any person or entity that controls, is controlled by or is under common

control with the Company, any company or entity with which or into which the Company may merge or consolidate, to any lender of the Company provided the City is advised of the action prior to enactment. Any successor(s) of the Company shall be entitled to all rights and privileges of this franchise granted by this Ordinance and shall be subject to all the provisions, obligations, stipulations and penalties herein prescribed.

## **ARTICLE XVI**

### **SECTION 1601 NONEXCLUSIVE FRANCHISE**

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

## **ARTICLE XVII**

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

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

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

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

## **ARTICLE XVIII**

### **SECTION 1801 NO DISCRIMINATION**

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

**ARTICLE XIX**

**SECTION 1901 FORCE MAJEURE**

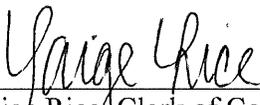
Neither the Company nor the City shall be liable for any delay or failure in performance of any part of the franchise granted by this Ordinance from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government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

**ARTICLE XX**

**SECTION 2001 EFFECTIVE DATE**

This Ordinance shall be effective upon its passage.

Adopted by the Council of the City of Charlottesville on the 19<sup>th</sup> day of October, 2015.

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

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

INTELLIFIBER NETWORKS, LLC

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

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

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

## **RESOLUTION**

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

Lease Agreement between the City of Charlottesville and the McGuffey Arts Association, Inc. for the lease of property at 201 2<sup>nd</sup> Street, N.W. from November 1, 2015 to October 31, 2020.

## **RESOLUTION**

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

Funding Agreement between the City of Charlottesville and the Economic Development Authority of the City of Charlottesville, setting forth the terms of an agreement to share the costs of undergrounding utilities for the Market Plaza project.

## **RESOLUTION**

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

Lease Agreement between the City of Charlottesville (Lessee) and Market Plaza, LLC (Lessor) for the lease of property within the Market Plaza development on Water Street and South Street, to serve as the permanent location of the City Market.

**AN ORDINANCE**

**AUTHORIZING THE CONVEYANCE OF APPROXIMATELY 0.81 ACRES OF LAND BOUNDED BY WATER STREET, SOUTH STREET, FIRST STREET, SOUTH, AND SECOND STREET, SW, AND FURTHER IDENTIFIED ON CITY REAL PROPERTY TAX MAP 28 AS PARCELS 71, 72, 73, 74 AND 75, AND A PORTION OF THE FIRST STREET, SOUTH, RIGHT-OF-WAY BETWEEN WATER STREET AND SOUTH STREET, CONTAINING APPROXIMATELY 0.18 ACRES, TO MARKET PLAZA LLC, FOR A MIXED USE DEVELOPMENT THAT CONTAINS THE FUTURE SITE OF THE CITY MARKET**

**WHEREAS**, in December 2013 the City issued a Request for Proposals (“RFP”) to purchase and develop the real property identified on City Real Property Tax Map 28 as Parcels 71, 72, 73, 74 and 75, which development would be required to incorporate and provide a permanent location for the City Market; and,

**WHEREAS**, the RFP provided that the City would also consider the sale of the adjoining First Street, South, right-of-way if needed for the development; and,

**WHEREAS**, Market Plaza LLC was selected by the City Council as the potential purchaser and developer of the five City-owned parcels and the adjoining First Street right-of-way, referred to herein collectively as “the Property”; and,

**WHEREAS**, representatives of Market Plaza and City staff have negotiated a proposed Sales Agreement for the Property, and a long term lease of a portion of the Property for the operation of the City Market and other City-sponsored events; and,

**WHEREAS**, in accordance with the requirements of Virginia Code Sections 15.2-1800(B) and Section 15.2-1813, a public hearing was duly advertised and held to give interested members of the public the opportunity to comment on the proposed conveyance of the Property; and,

**WHEREAS**, construction of the mixed use development project will provide additional infill residential and commercial space, will replace the off street parking currently provided on the Property and also provide underground parking to support the development, will generate additional tax revenue to the City, and provide a permanent improved location in Downtown Charlottesville for the operation of the City Market for a term of 99 years.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia that the City Manager is hereby authorized to execute the “Agreement for the Sale of Real Property Between the City of Charlottesville, as Seller, and Market Plaza LLC, as Purchaser”, a copy of which is attached hereto, and a deed, all in form approved by the City Attorney, for conveyance of the above-described Property to Market Plaza LLC. The City Attorney is hereby authorized to take whatever steps are necessary to effect the closing of said conveyance.

**ORDINANCE**  
**AMENDING CHAPTER 29 (SUBDIVISION OF LAND) AND CHAPTER 34 (ZONING)**  
**OF THE CODE OF THE CITY OF CHARLOTTESVILLE (1990), AS AMENDED, TO**  
**MODIFY THE PROCESS BY WHICH CERTAIN ZONING AND DEVELOPMENT**  
**APPLICATIONS ARE SUBMITTED AND REVIEWED**

**WHEREAS**, this City Council desires to enhance opportunities for citizens to obtain information about proposed developments within the City, and to allow expanded opportunities for public discussions of development applications; and

**WHEREAS**, Council believes that revising its established application review processes for certain types of applications will have the effect of improving citizens' opportunities to understand, review and comment on applications seeking development approvals, and will assure that Council, the Planning Commission, the BAR and other public bodies can make their decisions based on more detailed application materials and public comments, and

**WHEREAS**, Council desires to expedite the time frame in which changes to the City's procedures for review of development applications can be implemented; and

**WHEREAS**, a joint public hearing on the zoning and subdivision ordinance text amendments that are the subject of this Ordinance was held before the City Council and Planning Commission on May 12, 2015, following notice to the public as required by law; and

**WHEREAS**, legal notice of the public hearing held on May 12, 2015 was advertised in accordance with Va. Code Sec. 15.2-2204; and

**WHEREAS**, on May 12, 2015, the Planning Commission voted to recommend approval of the proposed zoning and subdivision ordinance text amendments, finding that such amendments are required by the public necessity, convenience, general welfare or good zoning practice, and this Council concurs with the Planning Commission's recommendation and hereby adopts the Planning Commission's findings as its own; **NOW THEREFORE**,

**BE IT ORDAINED THAT** Council hereby adopts, amends and re-ordains the Charlottesville City Code, Chapters 34 (Zoning) and 29 (Subdivision of Land), to approve and incorporate the amendments set forth following below:

**CHAPTER 34. ZONING**

**ARTICLE I. ADMINISTRATION**

**Sec. 34-8. Disclosure of real parties in interest.**

(a) An applicant for a special exception, a special use permit, an amendment to the zoning ordinance or a variance shall make complete disclosure of the equitable ownership (i.e., the real parties in interest) of the real estate to be affected. The applicant shall provide the names

and addresses of all of the real parties in interest, including, without limitation: each of the stockholders, officers and directors of a corporate entity (corporations, professional corporations, limited liability companies, professional limited liability companies, etc.). However, the requirement of listing names of stockholders shall not apply to a corporation whose stock is traded on a national or local stock exchange and which corporation has more than five hundred (500) shareholders.

- (b) All petitions initiated by property owners or the agents thereof, shall be sworn to under oath before a notary public, stating: (i) whether or not any member of the planning commission, or their immediate family member, has any personal interest in the property or transaction that is the subject of the application; and (ii) whether or not any member of the city council, or their immediate family member, has any such interest. A personal interest arises when a financial benefit or liability may accrue to a member of the planning commission or city council, or their immediate family member, as a result of an individual or business interest in the subject application. For the purposes of this section, the term "personal interest" shall have the meaning set forth within the State and Local Government Conflicts of Interests Act, Code of Virginia, § 2.2-3101, and may refer to an interest accruing to a person individually, as a result of business or professional relationships.

...

#### **Sec. 34-41. Amendments to the zoning ordinance.**

- (a) Whenever the public necessity, convenience, general welfare or good zoning practice require, the city council may, by ordinance, amend, supplement or change the city's zoning district regulations, district boundaries or zoning district classifications of property. Any such amendments may be initiated by:
- (1) Resolution of the city council;
  - (2) Motion of the planning commission; or
  - (3) Petition of any person who is the owner, owner's agent, or contract purchaser (with the owner's written consent) of property, where such petition proposes a change of the zoning district classification of such property ("zoning map amendments"). For purposes of this section, the term zoning map amendment includes, without limitation: petitions seeking to establish or to amend a planned unit development; petitions to amend established proffers; and petitions for approval of a special use permit.
- (b) Petitions for zoning map amendments shall be made in writing, shall be addressed to the city council, and shall be filed in the department of neighborhood development services., and shall be submitted to the city's department of neighborhood development services at least forty nine (49) days prior to a regular meeting of the planning commission. Each application shall be accompanied by the required application fee, as set forth within the most recent fee schedule adopted by city council. Each application shall be composed of a completed city-provided application form and supplemental information required in order

for the city to review and act on the application. At a minimum, a complete application shall include:

- (1) Verification of the applicant's attendance at a pre-application meeting with a City planner, at which the applicant was provided a list of the application materials, including required supplemental information, required for an application;
- (2) A city-provided application form, signed by the owner of the property. Alternatively, the application form may be signed by the owner's authorized representative, if the application form is accompanied by the owner's written authorization;
- (3) Written certification of compliance with sec. 34-10(b);
- (4) The required application fee, as set forth within the most recent fee schedule adopted by city council;
- (5) All information required by any provision of this zoning ordinance (including, without limitation: sec. 34-158 and any other applicable city ordinances, or state law;
- (6) All required supplemental information.

The director of neighborhood development services shall establish and maintain appropriate uniform application forms for zoning map amendments. documents and informational requirements for making such petition, as well as a list identifying all materials required to be submitted along with the petition, which shall include any information the director deems necessary for the planning commission and city council to adequately evaluate the request which is the subject of the petition. Upon receipt of an application, the director shall within ten (10) business days review the application for completeness. Incomplete applications shall be rejected and shall not proceed for review or decision, and the applicant shall be notified in writing of the rejection and the reasons therefor.

- (c) All petitions initiated by property owners, contract purchasers, or the agents thereof, shall be sworn to under oath before a notary public, stating: (i) whether or not any member of the planning commission, or his immediate family member, has any personal interest in the property or transaction that is the subject of the application; and (ii) whether or not any member of the city council, or his immediate family member, has any such interest. A personal interest arises when a financial benefit or liability may accrue to a member of the planning commission or city council, or his immediate family member, as a result of an individual or business interest in the subject application. For the purposes of this section, the term "personal interest" shall have the meaning set forth within the State and Local Government Conflicts of Interests Act, Code of Virginia, § 2.2-3101, and may refer to an interest accruing to a person individually, as a result of business or professional relationships. Following receipt of a complete application for a zoning map amendment:

- (1) Either the city council or the director may request work sessions or other public presentations to be scheduled before the city council, the planning commission, the board of architectural review ( if property is within an historic district), or other public bodies, as the director determines to be appropriate, taking into consideration the nature of the approval requested, the acreage affected, potential impacts of an approved application, applicable legal requirements, and any other factors consistent with good zoning practices. The purpose of a work session or other public presentation is to allow an applicant to present a proposed project, to allow the department of neighborhood development services to present a preliminary scoping of major issues, to seek directions as to the board's or commission's expectations in addressing those issues, and to allow the board or commission to receive public comments. The applicant's consent to a work session is required, if the work session would extend the time for action by the board or commission beyond applicable deadlines established by law.
  
- (2) The applicant shall hold a community meeting for the application. The purposes of a community meeting are to provide citizens an opportunity to receive information about a proposed project, about applicable zoning processes and procedures, about applicable policies of the comprehensive plan and city ordinances or regulations that may apply to the project, and to give citizens an opportunity to ask questions about the project. The director of neighborhood development services is authorized to establish written guidelines pertaining to which applications should have community meetings, when in the process such meetings should be conducted, the manner in which the meeting should be conducted, and how (and to whom) notice of the community meeting should be given. The applicant's consent to a community meeting is required, if the community meeting cannot, due to no fault of the applicant, be scheduled in sufficient time to allow action by the board or planning commission within applicable deadlines established by law. The director may waive the requirement for a community meeting, in accordance with the approved zoning regulations for community meetings, upon a determination that the meeting is not likely to achieve the public purposes intended to be served, after consideration of the following: (i) the nature of the approval requested, the acreage affected, the proposed density, the proposed scale, and potential impacts, (ii) any other factors deemed relevant upon applying sound zoning principles, (iii) whether other public work sessions or meetings have already been held regarding the application, so as to make a community meeting unreasonably duplicative.
  
- (3) Unless otherwise directed by city council, upon the director's receipt of proof by the applicant that a community meeting has been held in accordance with applicable policies and procedures, the director is authorized to refer the matter to the planning commission for review in accordance with sec. 34-42(c), by written notice given to the planning commission chair.
  
- (d) Once a proposed amendment has been initiated as set forth within this section, it shall be deemed referred by the city council to the planning commission for study and recommendation reviewed by the director of neighborhood development for completeness.

~~Incomplete applications shall be rejected and shall not proceed for review or decision.~~ For each application for a zoning map amendment, the director may require supplemental information to be submitted along with the application. In determining what supplemental information must be submitted, the director shall consider the proposed use, the proposed density, the proposed zoning district classification, and other considerations the director determines to be relevant according to sound zoning practices. Required supplemental information may consist of any or all of the following:

- (1) *Project Proposal Narrative*, consisting of a detailed written statement of the proposal, its public need or benefit, and of how the project satisfies the purpose, intent or objectives of the applicable zoning district classification.
- (2) *Comprehensive Plan Analysis*, consisting of a detailed written statement of the project's consistency with the comprehensive plan, including the land use map and any small area, strategic investment area or other plan for the applicable development area.
- (3) *Impacts on Public Facilities and Infrastructure*. A detailed narrative statement detailing the project's impacts on public facilities and infrastructure, including, without limitation: sidewalks and other pedestrian facilities; bicycle, public transit and motor vehicle transportation facilities; storm sewers; existing platted rights-of-way which have not previously been improved or accepted by the city for maintenance, etc.
- (4) *Maps*. One or more maps showing the proposed project's neighborhood context, existing natural and man-made conditions, and existing topography. If the proposal is to amend an existing planned unit development district, and the proposed amendment would affect less area than the entire district, the applicant shall submit a map showing the entire existing PUD and identifying any area to be added to or deleted from the district, or identifying the area to which the amended PUD plan or any amended proffers, would apply. If the proposal is for a special use permit, and the area proposed to be subject to the special use permit is less than an entire lot (or less than an entire PUD, if applicable) a map shall be provided showing the area proposed to be subject to the special use permit.
- (5) *Impacts on Environmental Features*. A narrative of environmental features of the property that would be affected by the project, including, without limitation: trees, existing pervious surfaces, steep slopes, streams, etc. Photographs shall be provided of features described in the narrative.
- (6) *Project Concept Plan*. For any zoning map amendment to establish a conventional zoning district (i.e., a district other than a PUD) or seeking approval of a special use permit, a conceptual plan shall be provided showing, as applicable: (i) street network, including circulation within the project and connections to existing and planned streets within and outside the project; (ii) general location of pedestrian and bicycle facilities;

(iii) building envelopes; (iv) parking envelopes; (v) public spaces and amenities; (vi) conceptual stormwater management facility locations and types; (vii) conceptual grading; (viii) conceptual landscape plan; (ix) topography, and identification of the source of the topographical information, supplemented where necessary by spot elevations, and identification of areas of the site containing slopes in excess of 25%; (x) general location of central features or major elements within the project that are essential to the design of the project, such as parking areas and structures, civic areas, open spaces, green spaces, recreation areas and other amenities.

- (7) *PUD Concept Plan.* In addition to any information required by City Code sec. 34-517, a PUD concept plan shall include: (i) typical cross-sections to show proportions, scale, and streetscape/cross-sections/ circulation; (ii) conceptual stormwater management facility locations and types; (iii) conceptual grading; (iv) a use table listing the specific uses to be included by right, and the number of dwelling units, by type; (v) building envelopes; (vi) topography, and identification of the source of the topographical information, supplemented where necessary by spot elevations, and identification of areas of the site containing slopes in excess of 25%; (vii) general layout for water and sewer systems; (viii) the general location of central features or major elements within the project that are essential to the design of the project, such as parking areas and structures, civic areas, open spaces, green spaces, recreation areas and other amenities; (ix) a code of development identifying standards for proposed yards, open space characteristics, and any landscape or architectural characteristics relating to scale, proportions, and massing; and (x) a conceptual lot layout.
- (8) *Proposed Proffers to Address Impacts,* consisting of a written statement of conditions, limitations, restrictions or amenities that the property owner offers as a means of mitigating impacts of a project or enhancing the public benefits of a project.
- (9) *Other Information,* including, without limitation, special studies or documentation, identified by the director as being necessary for a full and complete review of the proposed zoning map amendment consistent with good zoning practices.

**Sec. 34-42. Commission study and action.**

(a) . . .

(b) . . .

(c) The planning commission shall review the proposed amendment and shall report its findings and recommendations to the city council, along with any appropriate explanatory materials, within one hundred (100) days after the proposed amendment was referred to the commission for review. Owner-initiated petitions for zoning map amendments shall be deemed referred to the commission as of the date on which: (i) city council, by motion or by resolution, refers an amendment to the commission for review, or (ii) the first planning commission meeting following the referral acceptance of the petition by the director of neighborhood development

services pursuant to sec. 31-41(c)(3). Failure of the commission to report to city council within the ~~100 one hundred~~-day period shall be deemed a recommendation of approval, unless the petition is withdrawn. In the event of and upon such withdrawal, processing of the proposed amendment shall cease without further action.

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**Sec. 34-158. Application generally.**

(a) The procedure for filing and consideration of an application for a special use permit is the same as that required by sec. 34-41 for an owner-initiated rezoning petition for a zoning map amendment, except that ~~each~~ a complete application for a special use permit shall also include:

(b) ...

...

**Sec. 34-160. Review and action on application.**

(a) ...

(b) The planning commission shall review and make recommendations to city council in the same manner as provided within sec. 34-41 for an owner-initiated petition for a zoning map amendment ~~rezoning application~~. The planning commission may concurrently approve a preliminary site plan, subject to city council's approval of a special use permit, and subject to any necessary amendments to the site plan as a result of the city council's action. Alternatively, the planning commission may choose to defer consideration of a site plan until after council has rendered a final decision on the application for a special use permit.

**ARTICLE V. PLANNED UNIT DEVELOPMENT DISTRICTS**

**Sec. 34-515. Pre-~~a~~Application review process.**

(a) ...

(b) Upon confirmation by the director that all materials and information submitted by the applicant satisfy the requirements referenced within paragraph (c), below, in this section, the ~~pre-application will be scheduled for a preliminary discussion to be held at a regular planning commission meeting~~ application will be reviewed and acted upon in the manner prescribed within sec. 34-41.

- (c) Each application shall ~~be accompanied by the required fee, as set forth within the most recent fee schedule adopted by city council~~ satisfy the requirements of sec. 34-41 as well as all of the requirements of this article.

## ARTICLE VII. SITE PLANS

### **Sec. 34-804. Pre-application ~~conference~~ requirements.**

- (a) No application seeking approval of a site plan, preliminary or final, for property that will be used for any commercial or industrial purpose, or that will contain six (6) or more residential dwelling units, shall be accepted for review, unless and until the applicant has participated in a pre-application conference and has held a community meeting in accordance with guidelines established by the director of neighborhood development services in accordance with sec. 34-41(c)(2). Any application that fails to demonstrate compliance with these requirements shall be rejected as incomplete. The director may waive the requirement for a community meeting, if a community meeting was previously held for the same development at the time of city council's consideration of an application for approval of a special use permit or petition for a zoning map amendment. The purpose of a pre-application conference is to discuss the required site plan, its contents, and the various city requirements pertaining to zoning, erosion and sedimentation control, building code regulations, and to consider preliminary features of a proposed site. Prior to submission of a preliminary site plan, an applicant for site plan review should meet with the director to determine whether a site plan will be required and what information and materials must be provided in either case.
- (b) The purpose of a pre-application conference is to discuss the required site plan, its contents, and the various city requirements pertaining to zoning, erosion and sedimentation control, building code regulations, and to consider preliminary features of a proposed site. At a pre-application conference, the director will verify whether a site plan will be required for a proposed development and if so, what information and application materials must be provided. As part of the pre-application conference the developer shall confer with the director to determine if the site plan should include provision for the reservation and/or dedication of suitable areas for parks, open space and other public facilities, utilities and uses as recommended in the comprehensive plan. The developer shall also confer with the director and/or other appropriate public officials of the city, to ascertain if, and when, and in what manner, any such areas should be reserved for acquisition by the city. Nothing in this provision shall be construed to preclude the dedication of any property for public use which is not included in the comprehensive plan, provided such property is acceptable to the city for dedication and maintenance.

## CHAPTER 29. SUBDIVISION OF LAND

### ARTICLE II. ADMINISTRATION

#### **Sec. 29-59. Review and approval.**

- (a) No application seeking approval of a subdivision, preliminary or final, that would divide any parcel(s) of land into six (6) or more lots, or involving a new street, shall be accepted for

review, unless and until the applicant has participated in a pre-application conference and has held a community meeting in accordance with guidelines established by the director of neighborhood development services in accordance with sec. 34-41(c)(2). Any application that fails to demonstrate compliance with these requirements shall be rejected as incomplete. The director may waive the requirement for a community meeting, if a community meeting was previously held for the same development as part of city council's consideration of an application for approval of a special use permit or a petition for approval of a zoning map amendment. Within fourteen (14) days of receipt of such ~~plans~~ an applicant's official submission of a complete application for approval of a subdivision, the agent shall forward copies to the affected city departments for their review and comments.

(b) . . .

(c) . . .

**AND, BE IT FURTHER ORDAINED THAT,** no later than two (2) years after the date on which the ordinance is adopted by City Council, the Director shall make a report to City Council as to the effectiveness of the community meeting process, as implemented pursuant to this Ordinance.