



**CITY COUNCIL AGENDA**  
**Monday, November 21, 2016**

**6:00 p.m.** **Closed session as provided by Section 2.2-3712 of the Virginia Code**  
*Second Floor Conference Room*

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

**AWARDS/RECOGNITIONS ANNOUNCEMENTS** Virginia Film Festival; Small Business Saturday; Public Safety Smoke Alarm Project

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

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

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

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

- a. Minutes for November 7
- b. **APPROPRIATION:** Grant for Construction of Water Street Trail – \$318,730 (2<sup>nd</sup> of 2 readings)
- c. **APPROPRIATION:** Supplemental Nutrition Assistance Program Funding – \$34,584 (2<sup>nd</sup> of 2 readings)
- d. **APPROPRIATION:** Local Emergency Management Performance Grant – \$7,500 (2<sup>nd</sup> of 2 readings)
- e. **APPROPRIATION:** State Criminal Alien Assistance Program Grant for 2016 – \$10,375 (2<sup>nd</sup> of 2 readings)
- f. **APPROPRIATION:** CHS Check & Connect Student Engagement Grant – \$50,000 (2<sup>nd</sup> of 2 readings)
- g. **APPROPRIATION:** Disproportionate Minority Contact Research Project - \$100,000 (2<sup>nd</sup> of 2 readings)
- h. **APPROPRIATION:** Virginia Department of Health Child and Adult Care Food Program – \$32,000 (2<sup>nd</sup> of 2 readings)
- i. **APPROPRIATION:** New Sidewalk, ADA Improvements, & Bicycle Improvements – \$295,000 (1<sup>st</sup> of 2 readings)
- j. **APPROPRIATION:** U.S. Department of Justice Bullet Proof Partnership Grant – \$6,737.50 (1<sup>st</sup> of 2 readings)
- k. **RESOLUTION:** Approval of Council Meeting Calendar for 2017 (1<sup>st</sup> of 1 reading)
- l. **ORDINANCE:** Technology Zone Reauthorization (2<sup>nd</sup> of 2 readings)
- m. **ORDINANCE:** Sunrise Park Development Amendment (2<sup>nd</sup> of 2 readings)
- n. **ORDINANCE:** Agreement to Allow Installation of Fiberoptic Cable Over Ivy Road (2<sup>nd</sup> of 2 readings)

**2. PUBLIC HEARING / APPROPRIATION\*** Appropriation of \$715,436.19 from Rivanna Water and Sewer Authority (RWSA) for Reimbursement of Utility Betterment for Route 250 Bypass (1<sup>st</sup> of 2 readings)

**Carried (Bellamy / Fenwick)**

**3. PUBLIC HEARING / APPROPRIATION\*** Appropriation of \$1,614,157.22 to Virginia Department of Transportation (VDOT) for Overpayment of Funds Received for Route 250 Bypass (1<sup>st</sup> of 2 readings)

**Carried (Galvin / Fenwick)**

**4. RESOLUTION\*** Acquisition of 801 – 805 East Market Street (1<sup>st</sup> of 1 reading)

**Passed 5-0 (Szakos / Fenwick)**

**5. RESOLUTION\*** Revenue Sharing Program Applications:  
\$9 million Belmont Bridge Replacement & \$2 million Multi-Modal Improvements (1<sup>st</sup> of 1 reading)

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

**6. REPORT\*** Thomas Jefferson Planning District **Passed 5-0 as presented (Szakos / Galvin)**  
& City Legislative Package **Passed 5-0 as presented (Galvin / Bellamy)**

**7. REPORT\*** Housing Study Recommendations

**8. REPORT** Region 10 / Mohr Center Update

**OTHER BUSINESS**

**MATTERS BY THE PUBLIC**

**APPROPRIATION**

**MAP-21 Grant for Construction of Water Street Trail**  
**\$318,730**

**WHEREAS**, the City of Charlottesville, through Parks and Recreation, has been awarded \$254,984 from the Virginia Department of Transportation to construct a bicycle and pedestrian trail along Water Street; and

**WHEREAS**, the City will match this grant in the amount of \$29,746 from the Trail Fund, PR-001/P-00662-04, \$24,000 from the BikePed fund CP-083, and \$10,000 from urban forestry fund P-00428.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$316,984 is hereby appropriated in the following manner:

**Revenue**

\$254,984      Fund: 426                      WBS: P-00925                      G/L Account: 430120

**Expenditures**

\$254,984      Fund: 426                      WBS: P-00925                      G/L Account: 599999

**Transfer From**

\$29,746      Fund: 426                      WBS: PR-001                      G/L Account: 599999

\$24,000      Fund: 426                      WBS: CP-083                      G/L Account: 599999

\$10,000      Fund: 426                      WBS: P-00428                      G/L Account: 599999

**Transfer To**

\$63,746      Fund: 426                      WBS: P-00925                      G/L Account: 599999

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$254,984 from the Virginia Department of Transportation.

**APPROPRIATION**  
**Funding for SNAP E&T Pilot Program \$34,584**

**WHEREAS**, The Charlottesville Department of Social Services has received Federal and State funding in the amount of \$34,584 to be used for the SNAP E&T Pilot Project.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$34,584 is hereby appropriated in the following manner:

**Revenue – \$34,584**

Fund: 212                      Cost Center: 3301009000                      G/L Account: 430080

**Expenditures - \$34,584**

Fund: 212	Cost Center: 3301009000	G/L Account: 510030 - \$18,408
Fund: 212	Cost Center: 3301009000	G/L Account: 510161 - \$ 129
Fund: 212	Cost Center: 3301009000	G/L Account: 511010 - \$ 1,408
Fund: 212	Cost Center: 3301009000	G/L Account: 511030 - \$ 142
Fund: 212	Cost Center: 3301009000	G/L Account: 511040 - \$ 4,045
Fund: 212	Cost Center: 3301009000	G/L Account: 520010 - \$ 1,500
Fund: 212	Cost Center: 3301009000	G/L Account: 520030 - \$ 2,000
Fund: 212	Cost Center: 3301009000	G/L Account: 525251 - \$ 635
Fund: 212	Cost Center: 3301009000	G/L Account: 530030 - \$ 300
Fund: 212	Cost Center: 3301009000	G/L Account: 530050 - \$ 1,640
Fund: 212	Cost Center: 3301009000	G/L Account: 530100 - \$ 500
Fund: 212	Cost Center: 3301009000	G/L Account: 530101 - \$ 200
Fund: 212	Cost Center: 3301009000	G/L Account: 530130 - \$ 363
Fund: 212	Cost Center: 3301009000	G/L Account: 530150 - \$ 539
Fund: 212	Cost Center: 3301009000	G/L Account: 530160 - \$ 1,124
Fund: 212	Cost Center: 3301009000	G/L Account: 530320 - \$ 1,651

**APPROPRIATION**  
**2016 Local Emergency Management Performance Grant (LEMPG)**  
**\$7,500**

**WHEREAS**, the City of Charlottesville has received funds from the Virginia Department of Emergency Management in the amount of \$7,500 in federal pass through funds and \$7,500 in local in-kind match, provided by the Charlottesville-UVA-Albemarle Emergency Communications Center Office of Emergency Management; and

**WHEREAS**, the funds will be used to support programs provided by the Office of Emergency Management; and

**WHEREAS**, the grant award covers the period from July 1, 2016 through June 30, 2017;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$7,500 is hereby appropriated in the following manner:

**Revenue – \$7,500**

\$7,500          Fund: 209          I/O: 1900275          G/L: 430120 State/Fed pass thru

**Expenditures - \$7,500**

\$7,500          Fund: 209          I/O: 1900275          G/L: 510010 Salaries

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$7,500 from the Virginia Department of Emergency Management, and the matching in-kind funds from the Charlottesville-UVA-Albemarle Emergency Communications Center Office of Emergency Management.

**APPROPRIATION**  
**State Criminal Alien Assistance Program (SCAAP) Grant for 2016**  
**\$10,375**

**WHEREAS**, the State Criminal Alien Assistance Program (SCAAP) 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 Regional Jail, in the amount of \$10,375.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that a total of \$8,092.50 be appropriated and passed through to the Albemarle-Charlottesville Regional Jail and \$2,282.50 be appropriated and passed through to Justice Benefits, Inc.

**Revenues**

\$10,375	Fund: 211	Internal Order: 1900263	G/L Account: 431110
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**Expenses**

\$8,092.50	Fund: 211	Internal Order: 1900263	G/L Account: 530550
\$2,282.50	Fund: 211	Internal Order: 1900263	G/L Account: 530670

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$10,375 from the U. S. Bureau of Justice Assistance.

**APPROPRIATION**  
**Charlottesville City School's Check and Connect Student Engagement Grant**  
**\$50,000**

**WHEREAS**, the City of Charlottesville has been awarded \$45,000 in Federal Funds from the Virginia Department of Criminal Justice Services, and \$5,000 in Matching Funds from the Charlottesville City Schools for a total award of \$50,000 for the Check and Connect Student Engagement Program; and

**WHEREAS**, the grant award covers the period from October 1, 2016 through September 30, 2017.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$50,000 is hereby appropriated in the following manner:

**Revenue – \$50,000**

\$ 45,000	Fund: 209	Cost Center: 3413013000	G/L Account: 430120
\$ 5,000	Fund: 209	Cost Center: 3413013000	G/L Account: 432030

**Expenditures - \$50,000**

\$45,737	Fund: 209	Cost Center: 3413013000	G/L Account: 519999
\$ 4,263	Fund: 209	Cost Center: 3413013000	G/L Account: 599999

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$45,000 from the Virginia Department of Criminal Justice Services, and \$5,000 from the Charlottesville City Schools.

**APPROPRIATION**  
**Charlottesville City School's Check and Connect Student Engagement Grant**  
**\$100,000**

**WHEREAS**, the City of Charlottesville has been awarded \$90,000 in Federal Funds from the Virginia Department of Criminal Justice Services, and \$10,000 in Matching Funds from the Charlottesville Department of Human Services for a total award of \$100,000 for the Disproportionate Minority Contact in the Charlottesville/Albemarle Criminal Justice System Research Project; and

**WHEREAS**, the grant award covers the period from October 1, 2016 through September 30, 2017.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$100,000 is hereby appropriated in the following manner:

**Revenue**

\$ 90,000	Fund: 209	Cost Center: 1900276	G/L Account: 430120
\$ 10,000	Fund: 209	Cost Center: 1900276	G/L Account: 498010

**Expenditures**

\$ 100,000	Fund: 209	Cost Center: 1900276	G/L Account: 530670
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**Transfer**

\$ 10,000	Fund: 213	Cost Center: 3411001000	G/L Account: 561209
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**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$90,000 from the Virginia Department of Criminal Justice Services.

**APPROPRIATION**  
**Virginia Department of Health Special Nutrition Program**  
**Child and Adult Care Food Program**  
**\$32,000**

**WHEREAS**, the City of Charlottesville, through Parks and Recreation, has received approval for reimbursement up to \$32,000 from the Virginia Department of Health Special Nutrition Program to provide free dinner to children attending select drop-in afterschool centers; and

**WHEREAS**, the grant award covers the period from period October 1, 2016 through September 30, 2017;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that the sum of \$32,000, received from the Virginia Department of Health Special Nutrition Program is hereby appropriated in the following manner:

**Revenue – \$ 32,000**

Fund: 209                      Internal Order: 1900274                      G/L Account: 430120

**Expenditures - \$32,000**

Fund: 209                      Internal Order: 1900274                      G/L Account: 530670

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$16,184 from the Virginia Department of Health Special Nutrition Program.



**RESOLUTION**  
**Approval of City Council Regular Meeting Schedule for 2017**

**BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that the following dates are approved for regularly scheduled Council meetings for 2017:

January 3, 2017	July 3, 2017
<i>Tuesday, January 17, 2017</i>	July 17, 2017
February 6, 2017	August 7, 2017 – <b>no meeting</b> (summer break)
<i>Tuesday, February 21, 2017</i>	August 21, 2017
March 6, 2017	<i>Tuesday, September 5, 2017</i>
March 20, 2017	September 18, 2017
April 3, 2017	October 2, 2017
April 17, 2017	October 16, 2017
May 1, 2017	November 6, 2017
May 15, 2017	November 20, 2017
June 5, 2017	December 4, 2017
June 19, 2017	December 18, 2017

*Italics* indicate an adjusted date due to a holiday.

**BE IT FURTHER RESOLVED** that these dates will be published on the City’s calendar at [www.charlottesville.org](http://www.charlottesville.org) and posted at the Clerk of Council’s office; and

**BE IT FURTHER RESOLVED** that should Council have a compelling reason to amend the schedule during the year, they may do so with a majority vote; should such a change occur, it will be publicized with a City press release, updated on the City’s calendar, and posted at the Clerk of Council’s office.

**AN ORDINANCE AMENDING AND RE-ORDAINING CHAPTER 14  
(LICENSES), SECTION 14-24 (TAX INCENTIVES FOR TECHNOLOGY  
BUSINESSES) TO EXTEND ELIGIBILITY PERIOD FOR FIVE YEARS TO  
DECEMBER 31, 2021**

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia that Section 14-24 of Chapter 14 of the Charlottesville City Code, 1990, as amended, is hereby amended and reordained, as follows:

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

(a) A "qualified technology business" is a business which meets each of the following criteria:

- (1) The business must constitute a "technology business," as that term is defined within City Code Chapter 2, Article XIV;
- (2) The business must not be operating under a certificate of public convenience issued by the Virginia State Corporation Commission;
- (3) The business must not be engaged in the provision of a "utility service" as that term is defined within section 30-221 of the City Code;
- (4) The business must certify that it expects to be engaged in a technology business throughout the tax year for which a reduction is sought (or, for new technology businesses which had not commenced doing business as of January 1 of the tax year for which application is made, for the balance of the tax year); and
- (5) The business must have submitted an application for qualification to the commissioner of revenue, on or before March 1st of the tax year for which a reduction of taxes is sought under this section. A separate application shall be required for each tax year. A business seeking to obtain a reduction of taxes under this section shall have the burden of demonstrating, to the satisfaction of the commissioner, that it meets the definition of a technology business and that it meets all applicable criteria for a reduction.

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

- (1) For a qualified technology business whose gross receipts from a technology business subject to licensure are fifty thousand dollars (\$50,000.00) or less, any license fee which would otherwise be required

by this chapter shall be reduced by one hundred (100) percent for no more than seven (7) ~~five (5)~~ years.

- (2) A qualified technology business whose gross receipts from a technology business subject to licensure are more than \$50,000 shall receive a fifty (50) percent reduction of any taxes owed pursuant to this chapter for no more than seven (7) ~~five (5)~~ years.

Where a qualified technology business' license tax is determined pursuant to section 14-13(c) of this chapter, the commissioner shall determine the appropriate reduction based on the actual tax owed by the business for a tax year, as may be corrected by the commissioner.

(c) Except as otherwise specifically provided, nothing set forth within this section shall affect a technology business's status or classification for tax purposes, its obligation to report gross receipts and to file tax returns, or to pay any license issuance fees or local taxes under this chapter. Nothing contained in this section shall relieve any technology business from its obligation to comply with the requirements of section 14-11, or any other section, of this chapter.

(d) The tax incentives provided by this section shall be available to qualified technology businesses through the tax year ending on December 31, ~~2016~~ 2021. A qualified technology business shall receive the applicable tax reduction for no more than seven (7) ~~five (5)~~ tax years.

Approved by Council  
November 21, 2016

A handwritten signature in cursive script, reading "Yaiqe Rice", is written over a horizontal line.

Clerk of Council

**ORDINANCE**  
**AMENDING THE DEVELOPMENT PLAN FOR THE SUNRISE PUD**  
**(“AMENDED SUNRISE PUD”)**

**WHEREAS**, Sunrise Park, LLC (“Applicant”), is the owner of certain land, consisting of approximately 2.44 acres and identified on City Tax Map 56 as Parcels 84.1, 84.2, 84.3, 84.4, 84.5, 84.6, 84.7, 84.8, 84.9, 84.101, 84.110, 84.12, 84.13, 84.14, 84.15, 84.16, 84.17, 85A, 85B, 85C, 85D, 85E, 85F, 85G, 85H, 85I, 85J, 85K, 85L, 85M, 85N, 85O, 85P, 85Q, 85R, 85S, 85T, 85U, 85V, 85W, 85.1, 85.1A, 86A, 86B, 86C, 86D, 86E, 86F, 86G, 86H (“Subject Property”), which was rezoned to the Planned Unit Development (PUD) zoning district, subject to an approved development plan (“PUD Development Plan”) and proffered development conditions approved by City Council in 2009, as previously amended; and

**WHEREAS**, the Applicant has requested the City to approve a zoning amendment, in order to make changes to the Land Use Plan and other details of the previously-revised PUD Development Plan and proffered conditions for the Sunrise Planned Unit Development; and

**WHEREAS**, the proposed rezoning (Application No. ZM 16-00004) proposes to change various elements of the PUD Development Plan, as described within **(i)** the contents of a proposed amended PUD Development Plan (rev. August 19, 2016) set forth within a proposal titled “Sunrise Park—A Planned Unit Development (27 pages, total) dated August 2009 (previous revision dates: Rev. 9/22/2009; 10/05/2009; 4/26/2011; 12/22/2015; and 8/15/2006), prepared in accordance with City Code §34-517 (hereinafter, the “2016 Revised PUD Development Plan”), and **(ii)** an amended statement of final proffered development conditions dated as of October 11, 2016 (“2016 Revised Proffers”) (together, the 2016 Revised PUD Development Plan and the 2016 Revised Proffers set forth the proposed “Rezoning”); and

**WHEREAS**, following a joint public hearing before this Council and the Planning Commission, duly advertised and held October 11, 2016, the Planning Commission reviewed the proposed Rezoning and transmitted its recommendation for approval of this application to City Council; and

**WHEREAS**, this Council finds and determines that the proposed Rezoning is required by public necessity, convenience, general welfare or good zoning practice, and conforms to the criteria and requirements set forth within Chapter 34, Article V of the City Code; and

**WHEREAS**, Council further finds and determines that the proposed Rezoning is consistent with the City’s adopted Comprehensive Plan; NOW THEREFORE,

**BE IT ORDAINED** that the proposed Rezoning is approved, and hereafter, the use and development of the Subject Property shall be in accordance with all of the following: **(i)** the 2016 Revised PUD Development Plan; **(ii)** the specific requirements or limitations set forth within Chapter 34 (Zoning) Article V (Planned Unit Development Districts) of the Charlottesville City Code, any generally applicable zoning requirements set forth in Chapter 34 of the City’s Zoning Ordinance which are not inconsistent with 2016 Revised PUD Development Plan, and **(iii)** the 2016 Revised Proffers, which are as follows:

1. The hours of operation for all non-residential uses of the property shall be limited to the hours between 7 a.m. and 10 p.m.
2. Not more than twenty one (21) principle buildings shall be erected on the property, of which, not more than nine (9) buildings shall be erected in the SW block nor more than ten (10) buildings in the SE blocks. All structures, including buildings, will cover no more than thirty five percent (35%) of the property
3. The highest point of any parapet, or the midpoint of any sloped roof, constructed in the NE block shall not extend above a level horizontal plane extending from the highest point of the parapet of the building constructed in the NW block. The Owner shall establish this dimension and any site plan (preliminary or final) for proposed development of the NE block shall depict the horizontal plane as determined in relation to both the NE block and the building constructed in the NW block.
4. Not more than seventy (70) dwelling units may be constructed on the property.
5. Not more than 12,800 square feet of the total building square footage shall be non-residential.
6. The rezoned property shall be landscaped in general accordance with the General Development Plan prepared by Roudabush, Gale & Associates and dated July 27, 2016. All plantings in each phase shall be planted prior to the issuance of a certificate of occupancy for the structure to be erected on the rezoned property. All landscaping and plantings shall be maintained and replaced on an annual basis as necessary.
7. The applicant shall construct a sidewalk in conformance with City standards along Midland Street in the location shown on the PUD Development Plan.
8. Ingress to, and egress from, the property shall be as shown on the PUD Development Plan. Individual driveway entrances to single family attached units from Carlton Avenue, Rives Street, Nassau Street, and Midland Street are strictly prohibited.
9. Commemoration of the structure located at 1106 Carlton Avenue shall be constructed on site.
10. Not less than four (4) units shall be designated as deeply affordable rental housing or affordable homeownership opportunities in the multifamily building on the NW block. The initial annual rent for each deeply affordable rental unit shall not exceed thirty percent (30%) of twenty-five percent (25%) of the then current AMI. A for-sale, affordable unit is defined as a residential unit affordable to households with incomes less than sixty percent (60%) AMI. Both the designated deeply affordable rental and affordable homeownership units in the multifamily building on the NW block shall be subject the terms and conditions of the PUD Development Plan and shall remain deeply affordable or affordable through December 31, 2025.
11. Not less than twenty (20) units total shall be designated as affordable housing. These units may be created as a for-sale, affordable unit or a designated affordable rental unit. A for-sale, affordable unit is defined as a residential unit affordable to households with incomes less than sixty percent (60%) AMI. The initial annual rent for a designated affordable rental unit shall not exceed thirty percent (30%) of sixty percent (60%) of the then current AMI. In each subsequent calendar year, the monthly “net rent” (i.e., the amount of rent that does not include tenant paid utilities) may be increased by three percent (3%). A designated affordable rental shall be subject the terms and conditions of the PUD Development Plan and remain affordable, as described above, through December 31, 2025.

12. In order to ensure that the site functions as a cohesive, unified project, a site plan shall be submitted for the entire property. This proffer does not prohibit the Owner from constructing the planned improvements in multiple phases.
13. In order to ensure that the proposed buildings are harmonious with the character of the adjacent properties, the Owner shall submit preliminary architecture with the site plan. The preliminary architecture will be considered part of the site plan submittal and will be subject to review and approval by the Planning Commission.

**AN ORDINANCE  
GRANTING A TELECOMMUNICATIONS FRANCHISE TO  
SHENTEL COMMUNICATIONS, 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 SHENTEL COMMUNICATIONS, 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 Shentel Communications, 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:**

**To the City:**

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

**With a copy to:**

**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:**

**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)

## **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,

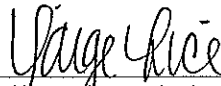
explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions.

**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 21<sup>st</sup> day of November, 2016.

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

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

SHENTEL COMMUNICATIONS, LLC

Date: \_\_\_\_\_, 2016

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

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

## **RESOLUTION**

**BE IT RESOLVED** by the Council for the City of Charlottesville, Virginia that the Real Estate Purchase Agreement dated October 26, 2016 between the City of Charlottesville, as purchaser, and PJB Market, LLC, as seller, is hereby approved, and the City Manager is authorized to execute any necessary documents, in form approved by the City Attorney, as may be necessary to consummate the purchase of 801 – 805 East Market Street by the City of Charlottesville, pursuant to the terms and conditions set forth in the aforementioned Real Estate Purchase Agreement.

## **RESOLUTION**

### **Revenue Sharing Program - \$5.5 million**

At a regularly scheduled meeting of the Charlottesville City Council held on November 21, 2016, on a motion by Ms. Galvin, seconded by Ms. Szakos, the following resolution was adopted by a vote of 5 to 0;

WHEREAS, the Charlottesville City Council desires to submit two application for an allocation of funds of up to \$5.5 million through the Virginia Department of Transportation Fiscal Year 2017-18, Revenue Sharing Program; and,

WHEREAS, \$4.5 million of these funds are requested to fund the Belmont Bridge Replacement project; and,

WHEREAS, \$1 million of these funds are requested to fund the Multi-Modal Improvements; and,

NOW, THEREFORE, BE IT RESOLVED THAT: The Charlottesville City Council hereby supports this application for an allocation of \$5.5 million through the Virginia Department of Transportation Fiscal Year 2017-18 Revenue Sharing Program.

BE IT FURTHER RESOLVED THAT the Charlottesville City Council hereby grants authority for the City Manager to execute project administration agreements for any approved revenue sharing projects.

ADOPTED this 21<sup>st</sup> day of November 2016.