

CITY COUNCIL AGENDA
Monday, March 18, 2019



5:30 p.m. Closed session as provided by Section 2.2-3712 of the Virginia Code
Second Floor Conference Room (Boards & Commissions; Personnel)

6:30 p.m. Regular Meeting - CALL TO ORDER
Council Chambers

PLEDGE OF ALLEGIANCE
ROLL CALL
ANNOUNCEMENTS
PROCLAMATIONS

Statement of Solidarity
Virginia Festival of the Book

1. CONSENT AGENDA* (Items removed from consent agenda will be considered at the end of the regular agenda)
- 5-0 (GALVIN/HILL) with item "b" pulled for discussion later in the meeting
- a. MINUTES: March 4, 2019 Special Meeting; March 6, 2019 Special Meeting; March 7, 2019 Special Meeting
- b. ~~APPROPRIATION: State Criminal Alien Assistance Program (SCAAP) Grant for 2019 - \$14,086 - 1st of 2 readings -~~
Pulled for discussion later in the meeting per Ms. Walker
- c. APPROPRIATION: Domestic Violence Services Coordinator Grant - \$49,336 (1st of 2 readings)
- d. APPROPRIATION: Virginia Behavioral Health Docket Grant - \$50,000 (1st of 2 readings)
- e. RESOLUTION: Capital Funding Transfer for Smith Recreation Center Air Quality Project - \$300,000 (1st of 1 reading)
- f. RESOLUTION: 10th & Page Park – land acquisition - \$60,800 (1st of 1 reading)
- g. RESOLUTION: VDOT – Programmatic Project Administration Agreement (1st of 1 reading)
- h. ORDINANCE: Imposition of Fee for Fire Department Inspections (2nd of 2 readings)
- i. ORDINANCE: Telecommunications Franchise to MCI Communications (2nd of 2 readings)

CITY MANAGER RESPONSE TO COMMUNITY MATTERS (FROM PREVIOUS MEETINGS)

- COMMUNITY MATTERS Public comment is provided for up to 16 speakers at the beginning of the meeting (limit 3 minutes per speaker.) Pre-registration is available for up to 8 spaces, and pre-registered speakers are announced by noon the day of the meeting. The number of speakers is unlimited at the end of the meeting.
- APPOINTMENTS Region 10 – Linda Hanson and Andre Lewis 5-0 (HILL/SIGNER)
2. PUBLIC HEARING Proposed Real Estate Tax Rate for FY2020
3. PUBLIC HEARING City Manager's Proposed Budget for FY2020
4. PUBLIC HEARING/
ORDINANCE Proposed Meals Tax Rate for FY2020 (1st of 2 readings)
5. PUBLIC HEARING/
ORDINANCE Proposed Lodging Tax Rate for FY2020 (1st of 2 readings)
6. PUBLIC HEARING/
ORDINANCE* Rezone 918 Nassau Street (Hogwaller Farm) to Mixed Use Highway Corridor (2nd of 2 readings)
DENIAL 3-2 (GALVIN/HILL; No-)
7. PUBLIC HEARING/
RESOLUTION* Special use permit for 918 Nassau Street (Hogwaller Farm) for increased density (1st of 1 reading) No ACTION as rezoning request was denied.
8. REPORT: Bennett's Village Playground

- CONSENT AGENDA ITEM B.
APPROPRIATION: State Criminal Alien Assistance Program (SCAAP) Grant for 2019 - \$14,086 – 1st of 2 readings –
Pulled for discussion per Ms. Walker. APPROVED 5-0 (HILL/BELLAMY)

OTHER BUSINESS

MATTERS BY THE PUBLIC

*ACTION NEEDED

RESOLUTION

**Transfer for Smith Recreation Center Indoor Air Quality Project
\$300,000**

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the funding for the Smith Recreation Center Indoor Air Quality project is hereby transferred in the following manner:

Transfer From:

\$300,000 *Fund: 426* *WBS: CP-080* *G/L Account: 599999*

Transfer To

\$300,000 *Fund: 426* *WBS: P-01011* *G/L Account: 599999*

**RESOLUTION
APPROVING THE ACQUISITION OF LAND
ON 8th STREET LANE AND PAGE STREET
FOR PASSIVE PARK PROJECT**

WHEREAS, the Norfolk Southern Railway Company (the “Railroad”), the owner of land on Page Street and 8th Street Lane, identified on the attached review plat as Parcels A and B, hereinafter the “Property”, has indicated a willingness to convey the Property to the City of Charlottesville for creation of a passive park to serve the 10th and Page Street neighborhood; and

WHEREAS, the Railroad has agreed to convey to the City the Property for the purchase price of \$60,800.00; and

WHEREAS, funds are available for the purchase and development of these parcels through the Community Development Block Grant program; and

WHEREAS, the Department of Neighborhood Development Services seeks the endorsement of City Council to proceed with the purchase of the above-described land at a purchase price of \$60,800.00, with funding supplied through the CDBG Fund; and

WHEREAS, an Agreement for the conveyance of said land has been reviewed and approved by the City Attorney’s Office; now, therefore,

BE IT RESOLVED, by the Council of the City of Charlottesville that it hereby authorizes the purchase of the above-described Property on 8th Street Lane and Page Street for creation of a passive park to serve the 10th and Page Street neighborhood. The City Manager is hereby authorized to execute the above-referenced Agreement, and the Mayor is hereby authorized to sign a deed of conveyance, both in form approved by the City Attorney or his designee. The City Attorney’s Office shall take whatever actions are necessary to effect the acquisition of the above-described Property, pursuant to the terms and conditions set forth in the aforementioned Agreement.

RESOLUTION
AFFIRMING COMMITMENT TO FUND THE LOCALITY SHARE OF PROJECTS
UNDER AGREEMENT WITH THE VIRGINIA DEPARTMENT OF TRANSPORTATION
AND PROVIDE SIGNATURE AUTHORITY

WHEREAS, the City of Charlottesville is a recipient of Virginia Department of Transportation funds under various grant programs for transportation-related projects; and

WHEREAS, the Virginia Department of Transportation requires each locality, by resolution, to provide assurance of its commitment to funding its local share; and

THEREFORE, IT IS HEREBY RESOLVED, by the City of Charlottesville hereby commits to fund its local share of preliminary engineering, right-of-way, and construction (as applicable) of the project(s) under agreement with the Virginia Department of Transportation in accordance with the project financial document(s); and

BE IT FURTHER RESOLVED, that the City and/or his designees is authorized to execute all agreements and/or addendums for any approved projects with the Virginia Department of Transportation.

In witness whereof, the forgoing was adopted by City Council of Charlottesville, Virginia on March 18, 2019.

(locality seal)

Kyna Thomas, City Clerk

**RESOLUTION
APPROVING VIRGINIA'S
STATE-WIDE PROGRAMMATIC PROJECT ADMINISTRATION AGREEMENT
FOR REVENUE SHARING PROJECTS (PPAA)
THROUGH FISCAL YEARS FY2020, FY2021, AND FY2022 FOR PROJECTS WITHIN
THE CITY OF CHARLOTTESVILLE**

WHEREAS, the Virginia Department of Transportation (VDOT) and the City of Charlottesville (City) need to entered into an agreement allowing the City to locally administer certain state-funded projects, said agreement being referred to as the state-wide Programmatic Project Administration Agreement for Revenue Sharing projects within the City of Charlottesville funded solely with revenue sharing funds (hereinafter, said agreement being referred to as the "PPAA"). The parties agreed that the PPAA would be and remain in effect for a term of three fiscal years (FY2020, FY2021, and FY2022), but the PPAA expressly provides an option allowing the parties to extend the term for an additional three fiscal years (through June 30, 2025); and,

WHEREAS, VDOT requests the City to enter into a written agreement (PPAA), and further requests the City of Charlottesville to provide assurance of its commitment to funding its local share for each PPAA Project for fiscal years FY2020, FY2021, FY2022 and to otherwise verify its commitment to meeting its financial obligations under the PPAA;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that said Council hereby approves the execution of the PPAA through the end of FY2022, and Council hereby commits to fund its local share of preliminary engineering, right-of-way and construction, as applicable, for the project(s) administered under agreement with the Virginia Department of Transportation, in accordance with the PPAA and applicable project financial document(s); and

BE IT FURTHER RESOLVED by Council that the Charlottesville City Manager is hereby authorized to execute the PPAA consistent with this Resolution on behalf of, and as the agent of, the Charlottesville City Council.

This resolution shall be effective upon passage.

READ AND ADOPTED: _____

TESTE: _____
Kyna Thomas, City Clerk

Approved as to Form:

Office of the City Attorney

**RESOLUTION
APPROVING AN ADDENDUM TO VIRGINIA'S
STATE-WIDE PROGRAMMATIC PROJECT ADMINISTRATION AGREEMENT
FOR REVENUE SHARING PROJECTS (PPAA)
TO EXTEND THE TERM OF THE PPAA THROUGH FISCAL YEARS FY2023,
FY2024, AND FY2025 FOR PROJECTS WITHIN THE CITY OF CHARLOTTESVILLE**

WHEREAS, the Virginia Department of Transportation (VDOT) and the City of Charlottesville (City) have entered into an agreement allowing the City to locally administer certain state-funded projects, said agreement being referred to as the state-wide Programmatic Project Administration Agreement for Revenue Sharing projects within the City of Charlottesville funded solely with revenue sharing funds (hereinafter, said agreement being referred to as the "PPAA"). The parties agreed that the PPAA would be and remain in effect for a term of three fiscal years (FY2020, FY2021, and FY2022), but the PPAA expressly provided an option allowing the parties to extend the term for an additional three fiscal years (through June 30, 2025); and,

WHEREAS, in order to extend their agreement for three additional fiscal years, in accordance with the PPAA, VDOT requests the City to enter into a written Addendum to the PPAA, and further requests the City of Charlottesville to provide assurance of its commitment to funding its local share for each PPAA Project for fiscal years FY2023, FY2024, FY2025 and to otherwise verify its commitment to meeting its financial obligations under the PPAA for an extended period of time;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that said Council hereby approves the extension of its obligations under the PPAA through the end of FY2025, and in connection with the extension Council hereby commits to fund its local share of preliminary engineering, right-of-way and construction, as applicable, for the project(s) administered under agreement with the Virginia Department of Transportation, in accordance with the PPAA and applicable project financial document(s); and

BE IT FURTHER RESOLVED by Council that the Charlottesville City Manager is hereby authorized to execute an Addendum to the PPAA consistent with this Resolution on behalf of, and as the agent of, the Charlottesville City Council.

This resolution shall be effective upon passage.

READ AND ADOPTED: March 18, 2019_____

TESTE: _____
Kyna Thomas, City Clerk

Approved as to Form:

Office of the City Attorney

ORDINANCE

WHEREAS, the City of Charlottesville (hereinafter “City”) adopted the Virginia Statewide Fire Prevention Code (hereinafter “VSFPC”) by enacting Charlottesville City Code §12-31; and

WHEREAS, Virginia Code §27-98 and Charlottesville City Code §12-31 authorize the City to levy fees to enforce the VSFPC.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE, that the Charlottesville City Council adopts the Charlottesville Fire Department Office of the Fire Marshall Fee Schedule attached to this Ordinance as Exhibit A.

CHARLOTTESVILLE FIRE MARSHAL PERMIT AND INSPECTION FEE SCHEDULE - Effective TBD

DESCRIPTION	PERMIT REQUIRED (YES OR NO)	PERMIT FEE	INSPECTION FEE
Dry Cleaning Plants			
An operational permit is required to engage in the business of dry cleaning or to change to a more hazardous cleaning solvent used in existing dry cleaning equipment.	YES (Annual/Per Location)	\$200	See Inspection Fee Below
Explosives, Fireworks & Pyrotechnics			
An operational permit is required for the manufacture, storage, handling, sale or use of any quantity of explosive, explosive materials, fireworks, pyrotechnic special effects, or pyrotechnic special effects material within the scope of Chapter 56. Exception: Storage in Group R-3 or R-5 occupancies of smokeless propellant, black powder and small arms primers for personal use, not for resale, and in accordance with the quantity limitations and conditions set forth in Section 5601.1, exception numbers four and twelve. VSFPC 2012	YES (Annual/Per Location)	\$200	See Inspection Fee Below
Exception: Storage in Group R-3 or R-5 occupancies of smokeless propellant, black powder and small arms primers for personal use, not for resale, and in accordance with the quantity limitations and conditions set forth in Section 5601.1, exception numbers four and twelve. VSFPC 2012	Fixed Facility: YES (Annual/Per Location)	\$200	See Inspection Fee Below
Note: Manufacture, storage, handling, sale of explosives, explosive materials and pyrotechnics requires annual permit and facility inspection with associated fees.	Site Storage: in addition to use (30 days)	\$200	See Inspection Fee Below
Use of explosives/blasting requires a use permit every 30 days with associated fees.	Use/Blasting: YES (Per Event - 30 days <u>maximum/location</u>)	\$500	NO
Fireworks and Pyrotechnic Special effects rule either wholesale (60 days retail or use/display per event-1 day).	Wholesale/Retail (fireworks): YES (60 days/location)	\$500	See Inspection Fee Below
	Display/Use (fireworks): YES (per event 1 day/location)	\$600	NO

CHARLOTTESVILLE FIRE MARSHAL PERMIT AND INSPECTION FEE SCHEDULE - Effective TBD

DESCRIPTION	PERMIT REQUIRED (YES OR NO)	PERMIT FEE	INSPECTION FEE																		
Hazardous Materials - (Annual/Per Location)																					
<p>Compressed gas. An operational permit is required for the storage, use or handling at normal temperature and pressure (NTP) of compressed gases in excess of the amounts listed below. Exception: Vehicles equipped for and using compressed gas as a fuel for propelling the vehicle.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: center;">PERMIT AMOUNTS FOR COMPRESSED GASES</th> </tr> <tr> <th style="text-align: center;">TYPES OF GAS</th> <th style="text-align: center;">AMOUNT (cubic feet at NTP)</th> </tr> </thead> <tbody> <tr> <td>Corrosive</td> <td style="text-align: center;">200</td> </tr> <tr> <td>Flammable</td> <td style="text-align: center;">200</td> </tr> <tr> <td>Highly toxic</td> <td style="text-align: center;">Any Amount</td> </tr> <tr> <td>Inert and simple asphyxiant</td> <td style="text-align: center;">6,000</td> </tr> <tr> <td>Oxidizing (including oxygen)</td> <td style="text-align: center;">504</td> </tr> <tr> <td>Pyrophoric</td> <td style="text-align: center;">Any Amount</td> </tr> <tr> <td>Toxic</td> <td style="text-align: center;">Any Amount</td> </tr> </tbody> </table>	PERMIT AMOUNTS FOR COMPRESSED GASES		TYPES OF GAS	AMOUNT (cubic feet at NTP)	Corrosive	200	Flammable	200	Highly toxic	Any Amount	Inert and simple asphyxiant	6,000	Oxidizing (including oxygen)	504	Pyrophoric	Any Amount	Toxic	Any Amount	YES (Annual/Per location)	\$200	See Inspection Fee Below
PERMIT AMOUNTS FOR COMPRESSED GASES																					
TYPES OF GAS	AMOUNT (cubic feet at NTP)																				
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Oxidizing (including oxygen)	504																				
Pyrophoric	Any Amount																				
Toxic	Any Amount																				
Hot Work Operations - (Annual/Per Location)																					
<p>An operational permit is required for hot work including but not limited to:</p> <ol style="list-style-type: none"> 1. Public exhibitions and demonstrations where hot work is conducted. 2. Use of portable hot work equipment inside a structure. Exception: Work that is conducted under a construction permit. 3. Fixed-site hot work equipment such as welding booths. 4. Hot work conducted within a hazardous fire area. 5. Application of roof coverings with the use of an open-flame device. 6. When approved, the fire official shall issue a permit to carry out a Hot Work Program. This program allows approved personnel to regulate their facility hot work operation. The approved personnel shall be trained in the fire safety aspects denoted in this chapter and shall be responsible for issuing permits requiring compliance with the requirements found in this chapter. These permits shall be issued only to their employees or hot work operations under their supervision. 	YES (Annual/Per location)	\$200	See Inspection Fee Below																		
	YES (Annual/Per location)	\$200	See Inspection Fee Below																		
	Other: Per Event/Location YES (30 Day/Location)	\$100	NO																		

CHARLOTTESVILLE FIRE MARSHAL PERMIT AND INSPECTION FEE SCHEDULE - Effective TBD

DESCRIPTION	PERMIT REQUIRED (YES OR NO)	PERMIT FEE	INSPECTION FEE				
Open Flames & Candles							
An operational permit is required to use open flames or candles in connection with, out door events, assembly areas, dining areas of restaurants or drinking establishments.	YES (Annual/Per Location)	\$200 (Annual if Sole Permit) \$100 (If Ancillary to another Permit)	See Special Use/Event Permit Fee Below				
Temporary Membrane Structures and Tents							
<p>An operational permit is required to operate an air-supported temporary membrane structure or a tent.</p> <p>EXCEPTIONS:</p> <ol style="list-style-type: none"> 1. Tents used exclusively for recreational camping purposes. 2. Tents and air-supported structures that cover an area of 900 square feet or less, including all connecting areas or spaces with a common means of egress or entrance and with an occupant load of 50 or less persons. <p>Note: (permit good for 30 days with a maximum of 5 renewals (total of 180 days within a 12 month period allowed before tent must come down))</p>	YES (Per Event - Good for 30 Days)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">\$100 IF Application received 30 days before event</td> </tr> <tr> <td style="padding: 2px;">\$150 IF Application received 15-29 days before event</td> </tr> <tr> <td style="padding: 2px;">\$200 IF Application received 8-15 days before event</td> </tr> <tr> <td style="padding: 2px;">\$300 IF Application received 7 days before event</td> </tr> </table>	\$100 IF Application received 30 days before event	\$150 IF Application received 15-29 days before event	\$200 IF Application received 8-15 days before event	\$300 IF Application received 7 days before event	NO
\$100 IF Application received 30 days before event							
\$150 IF Application received 15-29 days before event							
\$200 IF Application received 8-15 days before event							
\$300 IF Application received 7 days before event							

CHARLOTTESVILLE FIRE MARSHAL INSPECTION

FEE SCHEDULE - Effective TBD

PURPOSE	DESCRIPTION	FEE
Facility Inspection Fees (in any fixed facility requiring a permit in Table 107.2 of the Fire Prevention Code)	Annual Inspection	First hours NO Charge \$100/hr. thereafter
Required Fire Inspection for Social Service License (Ex: Daycare/Adult Care etc.)	1 - 8 persons 9 - 20 persons 21 - 50 persons 51 - 100 persons 101 - 150 persons 151 - 200 persons 201 or more persons	\$25 \$50 \$100 \$200 \$300 \$400 (\$500 + \$50 for every 100 person over 201)
Re-Inspection Fee	After initial inspection, if ALL violations are corrected NO Charge. If not, each re-inspection incurs a fee until an agreement on remediation is reached or ALL violations are corrected.	\$0 (Violations Corrected \$100 (Per Inspection)
City Charlottesville Fire Marshal Office Plan Review Fee	Site Plans Sprinkler Plans Review Site Plan Meeting at NDS - (NO Fee) Fire Protection Site Inspections Special Use/Event Permit All Other	\$100 (per Set of Plans) \$100 (per Set of Plans) \$0 \$100 (per Inspection) \$50 (per Application) \$75 (per Event)
Mobile Food Units	Annual Inspection	\$100
Request for Fire Code Variance/Modification and City Charlottesville Fire Code Board of Appeals Request.	Similar to the Zoning Variance and Appeals Process to offset Cost of the Fire Board of Appeals Operations	\$350 (Application Fee)

**AN ORDINANCE
GRANTING A TELECOMMUNICATIONS FRANCHISE TO
MCI COMMUNICATIONS SERVICES, INC., 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 MCI Communications Services, Inc. (the “Company”), its successors and assigns, is hereby granted a telecommunications franchise for a period of five (5) years from the effective date hereof and is hereby authorized and empowered to erect, maintain and operate certain communications 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 MCI Communications Services, Inc., including its subsidiaries, 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, including 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

Upon the effective date of this Ordinance, the Company already has Facilities installed, and the location of major or significant installation of equipment, lines, cables or other Facilities by the Company is a mixture of overhead and underground in the Public Rights-of-Way as depicted in Exhibit A, attached hereto, and as may have been or may hereafter be modified, and incorporated by reference.

Section 202 Subsequent Installation

202.1 SUBSEQUENT INSTALLATION MADE PURSUANT TO AN APPROVED PROW PLAN:

Additional Facilities installed within the PROW may be placed overhead or underground pursuant to an approved request by the Company made pursuant to Article III, and in accordance with such generally applicable ordinances or regulations governing such installations that have been adopted by the City from time to time.

202.2 GENERAL PREFERENCE FOR UNDERGROUND FACILITIES: As a matter of policy, the City prefers that the installation of any Facility within the PROW occur underground.

Notwithstanding this preference, the City recognizes that in some circumstances the placement of Facilities underground may not be appropriate. Any substantial, additional installation of lines, cable, equipment, or other Facilities shall be underground unless it shall be determined by the Director, pursuant to Article III that it is not feasible to do so.

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

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

202.5 CONDITIONS FOR RELOCATING UNDERGROUND: The Company agrees that if, at some future time, the telephone and other utility lines on the posts, poles, and other overhead apparatus upon which the Company has placed some or all of its Facilities in the City's PROWs are relocated voluntarily and in the Company's sole discretion 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 travel upon the public roadways by 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 written 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 person whose facilities occasioned the emergency. The costs associated with the City's response shall be borne by the person whose facilities occasioned the emergency.

Section 304 Decision on PROW Plan by the Director

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

304.2 APPEAL: Upon written request within thirty (30) days of the Director’s decision, the Company may have the denial of a PROW Plan reviewed by the City Manager. The City Manager will schedule its review of the Director’s decision within forty-five (45) days of receipt of such 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 for the purpose of enabling improved utility services, public works services or roadway enlargement, 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 to all utilities or other parties who disturb the PROW. 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 industry standards which may be reasonably determined by, and with the materials determined to be industry standard 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 as set forth above.

502.4 GUARANTEES: The Company guarantees its restoration work shall meet industry standards and that such restoration work shall be of a standard free of any defects for at least 24 months following such restoration including sufficient restoration of plantings and turf such that these plantings shall be viable for a period of at least 12 months. Restoration 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 Right 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 and to a standard approved 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, actual and documented costs of such repairs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City

within such thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative overhead, mobilization, material, labor, and equipment related to such repair.

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

Article VI

Section 601 Indemnification and Liability

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

- (a) the Company's use of the streets, alleys, highways, sidewalks, rights-of-way and other public places of the City pursuant to the franchise granted by this Ordinance;
- (b) the acquisition, erection, installation, maintenance, repair, operation and use of any poles, wires, cables, conduits, lines, manholes, facilities and equipment by the Company, its authorized agents, subagents, employees, contractors or subcontractors; or
- (c) the exercise of any right granted by or under the franchise granted by this Ordinance or the failure, refusal or neglect of the Company to perform any duty imposed upon or assumed by the Company by or under the 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, and provided the suit or claim is not based upon the negligence of the City. 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, conditioned 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 commercial general liability insurance in a form reasonably satisfactory to the City Attorney, which must provide:

- (a) evidence that an insurance policy has been issued to the Company by an insurance company licensed, permitted or authorized to do business in the State of Virginia;
- (b) evidence that the Company is insured against claims for bodily injury, including death and property damage arising out of (i) the use and occupancy of the Public Rights-of-Way by the Company and its employees including products/completed operations, and damage of underground Facilities and collapse of property;
- (c) verification that the policy has a combined single limit coverage of two million dollars (\$2,000,000) per occurrence for bodily injury and property damage and two million dollars (\$2,000,000) general aggregate.

The policy shall include the City as an additional insured party as their interest may appear under this Agreement, and the Company shall provide the City Attorney with a certificate of such coverage upon execution of this franchise.

The Company shall provide the City with thirty (30) days prior written notice of cancellation of any required coverage.

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, defend and hold harmless the City, its agents, or employees, for the negligence or intentional acts of the City, its Council members, its agents or employees, or a permittee of the City.

Article VII

SECTION 701 GENERAL REQUIREMENT OF A PERFORMANCE BOND

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

SECTION 702 CHANGED AMOUNT OF THE PERFORMANCE BOND

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

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

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

SECTION 703 PURPOSE OF PERFORMANCE BOND

The Performance Bond shall serve as security for:

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

Section 704 Fees or Penalties for Violations of the Ordinance

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

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

Article VIII

SECTION 801 COMPENSATION/PROW USE FEE.

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

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

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

SECTION 802 RESERVED

SECTION 803 NO CREDITS OR DEDUCTIONS

The compensation and other payments to be made pursuant to Article VIII: (a) shall not be deemed to be in the nature of a tax, and (b) except as may be otherwise provided by Section 56-468.1 of the Code of Virginia, shall be in addition to any and all taxes or other fees or charges

that the Company shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company.

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

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

Article IX

Section 901 Reservation of All Rights and Powers

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

Also, nothing in this Ordinance or agreement is intended to alter, amend, modify or expand the taxes or fees that may be lawfully assessed on Company pursuant to existing statutes, regulations or ordinances. And nothing in this Ordinance or agreement is intended to waive or eliminate any right Company may have pursuant to statute, regulation, case law or contract for reimbursement of costs concerning relocation of facilities, or concerning public grants or funding.

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:

MCI Communications Services, Inc.
Attn: General Counsel
One Verizon Way
Basking Ridge, NJ 07920

To the City:

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

Copy To
Mike Yancey
Verizon – Network Engineering
1146 5th Street
Charlottesville, VA 22902

Copy to: City of Charlottesville
Attn: City Attorney
605 East Main Street
Charlottesville, VA 22902

All correspondence shall be by registered mail, certified mail or overnight carrier 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:

Emergency contact for
afterhours/weekends/holidays:

Verizon Network Management Center
800-873-7866; Option #1 then Option #2

Senior Manager for Mid-Atlantic:
Mike Yancey
Cell: (571) 436-3530
Email: m.yancey1@verizon.com

To the City:

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

Paul Oberdorfer, 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 upon prior request a copy of the insurance policy.

The Company shall 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 18th day of March, 2019.

Kyna Thomas, Clerk of Council

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

MCI COMMUNICATIONS SERVICES, INC.

By _____

Its _____

Date _____