



## CITY COUNCIL AGENDA January 19, 2021

### Members

Nikuyah Walker, Mayor  
Sena Magill, Vice Mayor  
Heather D. Hill  
Michael K. Payne  
J. Lloyd Snook, III

### 5:30 p.m. Closed session as provided by Sections 2.2-3711 and 2.2-3712 of the Virginia Code (Legal consultation)

Virtual/electronic meeting

### 6:30 p.m. Regular Meeting

Register at [www.charlottesville.gov/zoom](http://www.charlottesville.gov/zoom). Virtual/electronic meeting in accordance with the local ordinance to ensure continuity of government and prevent the spread of disease. NOTE: Individuals with disabilities who require assistance or special arrangements to participate in the public meeting may call the ADA Coordinator at (434) 970-3182 or submit a request via email to [ada@charlottesville.gov](mailto:ada@charlottesville.gov). The City of Charlottesville requests that you provide a 48 hour notice so that proper arrangements may be made.

### CALL TO ORDER

### MOMENT OF SILENCE

### ROLL CALL

### AGENDA APPROVAL **APPROVED 5-0 (HILL/SNOOK)**

### ANNOUNCEMENTS

### CONSENT AGENDA\* **APPROVED 5-0 (HILL/MAGILL)**

1. Minutes: November 10 Joint Council-Planning Commission Work Session; November 12 Budget Work Session; November 16 Special, Closed and Regular Meetings; November 20 Special Meeting; December 7 Regular Meeting; December 10 Budget Work Session; December 21 Special Meeting; January 6 Emergency Meeting 1; January 6 Emergency Meeting 2; January 8 Emergency Meeting; January 11 Emergency Meeting  
**\*Dec. 21 Minutes pulled for separate vote: APPROVED 4-0-1 (Walker abstained)**
2. **Appropriation:** Virginia Department of Social Services One-Time Funding for Benefits Programs - \$16,877.19 (2nd reading)  
**#A-21-002**
3. **Appropriation:** Staffing for Adequate Fire and Emergency Response (SAFER) Grant - \$3,498,300.00 (2nd reading )  
**#A-21-003**
4. **Appropriation:** COVID-19 Municipal Utility Relief Program to Assist Customers - \$182,801.59 (2nd reading)  
**#A-21-004**
5. **Appropriation:** Charlottesville City Schools Budget Amendment – Grant Funding - \$2,787,563 (2nd reading)  
**#A-21-005**
6. **Appropriation:** Interest Accrual on Coronavirus Aid, Relief, and Economic Security (CARES) Act Funds - \$7,000.00 (2nd reading)  
**#A-21-006**
7. **Appropriation:** Appropriation of Community Development Block Grant (CDBG)/HOME Investment Partnerships Program (HOME) Budget Allocations for FY 2020-2021 and Minor Amendment for Action Plan 2020-2021  
**Walker pulled for separate vote. APPROVED 4-1 (Walker opposed)**
  - a. **Appropriation:** Appropriation of funds for the 2020-2021 Community Development Block Grant - \$419,303.00 (2nd reading)  
**#A-21-007**
  - b. **Appropriation:** Appropriation of funds for the 2020-2021 HOME funds - \$121,186.97 (2nd reading)  
**#A-21-008**

- 8. **Appropriation:** Appropriation of funds for the 2020-2021 CDBG 10th and Page Priority Neighborhood (2nd reading)  
#A-21-009
- 9. **Ordinance:** Eagle franchise agreement renewal (2nd reading)  
#O-21-010
- 10. **Resolution:** Letter of Endorsement for House Bill (HB) 1965 regarding No/Low Emission Vehicles (1 reading)  
#R-21-011
- 11. **Resolution:** Resolution in recognition of lives lost to Covid-19 (1 reading)  
#R-21-012

**CITY MANAGER RESPONSE TO COMMUNITY MATTERS (FROM PREVIOUS MEETINGS)**

**COMMUNITY MATTERS** Public comment for up to 16 speakers (limit 3 minutes per speaker). Preregistration available for up to 8 spaces; preregistered speakers announced by Noon the day of the meeting. Additional public comment period at end of meeting. Public comment will be conducted through electronic participation as City Hall is closed to the public. Participants can register in advance at [www.charlottesville.gov/zoom](http://www.charlottesville.gov/zoom).

**ACTION ITEMS**

- 12. Public Hearing/App.: Public Hearing of the FY2020-2021 Substantial Action Plan Amendment, Budget Appropriation and Approval of the Community Development Block Grant Coronavirus 3 (CDBG-CV3) Budget
  - a. **Resolution\*:** FY2020-2021 Substantial Action Plan Amendment (1 reading)  
#R-21-013 **APPROVED 5-0 (HILL/MAGILL)**
  - b. Appropriation: Substantial Action Plan CDBG-CV3 Budget (1st of 2 readings)
- 13. Appropriation: Approval and Appropriation of CDBG and HOME Budget Allocations for FY2021-2022
  - a. Appropriation: CDBG 2021-2022 budget allocations (1st of 2 readings)
  - b. Appropriation: HOME 2021-2022 budget allocations (1st of 2 readings)
- 14. Ordinance: Human Rights Commission Ordinance Recommended Amendments (1st of 2 readings)
- 15. **Resolution\*:** Acquisition of land at Ragged Mountain Reservoir - \$65,000 (1 reading)  
#R-21-014 **APPROVED 5-0 (HILL/SNOOK)**

**GENERAL BUSINESS**

- 16. Report: Update on the Climate Action Plan Development Process

**OTHER BUSINESS**

**MATTERS BY THE PUBLIC**

\*Action Needed

**APPROPRIATION**  
**Virginia Department of Social Services One-Time Funding for Benefits Programs**  
**\$16,877.19**

**WHEREAS**, The Charlottesville Department of Social Services has received Federal and State funding in the amount of \$16,877.19 to be used for benefits programs staffing and operations.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the sum of \$16,877.19 is hereby appropriated in the following manner:

**Revenue – \$16,877.19**

Fund: 212                      Cost Center: 9900000000                      G/L Account: 430080

**Expenditures - \$16,877.19**

Fund: 212                      Cost Center: 3301005000                      G/L Account: 510030

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the receipt of \$16,877.19 from the Virginia Department of Social Services.

**APPROPRIATION**

**Staffing for Adequate Fire and Emergency Response (SAFER) Grant Program  
\$3,498,300.00**

**WHEREAS**, the Department of Homeland Security/Federal Emergency Management Agency has awarded a grant to the Fire Department, through the City of Charlottesville, specifically for firefighter hiring;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that a total of \$3,498,300.00 be appropriated in the following manner:

**Revenues - \$3,498,300**

\$3,498,300    Fund: 211                    I/O:    3201005100                    G/L Account: 431110

**Expenditures - \$3,498,300**

\$3,498,300    Fund: 211                    I/O:    3201005100                    G/L Account: 519999

**BE IT FURTHER RESOLVED**, that this appropriation is conditioned upon the continual reimbursement for hours worked during the period of performance and shall be considered a continuing appropriation unless further altered by Council.



**APPROPRATION**  
**Charlottesville City Schools Budget Amendment – Grant Funding**  
**\$2,787,563**

**WHEREAS**, the Charlottesville City Schools has received grant funds to help offset the costs associated with its COVID response during the 2020-21 school year;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that the Charlottesville City Schools budget be amended by \$2,787,563 as follows:

| <u>Budget</u>        | <u>General Fund</u> | <u>Special Revnue</u> | <u>Total</u>  |
|----------------------|---------------------|-----------------------|---------------|
| Appropriated         | \$ 74,452,362       | \$ 14,440,726         | \$ 88,893,088 |
| Amendment            | -                   | 2,787,563             | 2,787,563     |
| Total Amended Budget | \$ 74,452,362       | \$ 17,228,289         | \$ 91,680,651 |

**APPROPRIATION**  
**Interest Accrued on Coronavirus Aid, Relief, and Economic Act (CARES) Funds**  
**\$7,000.00**

WHEREAS, the City has accrued interest income in the amount of approximately \$7,000.00 on Coronavirus Aid Relief and Economic Security (CARES) Act funds allocated to the City address the COVID-19 pandemic;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the following amount of accrued interest (or the actual amount earned as of December 30, 2020) is hereby appropriated in the following manner which conform with the conditions and guidance established by the Commonwealth, U.S. Treasury, and the City:

**Revenue**

\$7,000.00                      Fund: 208              Cost Center: 9900000000              G/L Account: 450010

**Expenditures**

\$7,000.00                      Fund: 208              Order: 1900353                                      G/L Account: 599999

**APPROPRIATION OF FUNDS FOR  
THE CITY OF CHARLOTTESVILLE'S 2020-2021  
COMMUNITY DEVELOPMENT BLOCK GRANT - \$419,303**

**WHEREAS**, the City of Charlottesville has been advised of the approval by the U.S Department of Housing and Urban Development of a Community Development Block Grant (CDBG) for the 2020-2021 fiscal year in the total amount of \$432,691 that includes the new entitlement from HUD, dated February 18, 2020, amounting to \$419,367, and previous entitlement made available through reprogramming of \$13,324;

**WHEREAS**, City Council has received recommendations for the expenditure of funds from the CDBG/HOME Taskforce, the SAT; and has conducted a public hearing thereon as provided by law;

**WHEREAS**, the City of Charlottesville has been notified of the formula calculation error of the Community Development Block Grant (CDBG) program stemming from HUD field offices, dated October 22, 2020, with the corrected entitlement of \$419,303;

**BE IT RESOLVED** by the City Council of Charlottesville, Virginia, that the sums hereinafter set forth are hereby appropriated from funds received from the aforesaid grant to the following individual expenditure accounts in the Community Development Block Grant Funds for the respective purposes set forth; provided, however, that the City Manager is hereby authorized to transfer funds between among such individual accounts as circumstances may require, to the extent permitted by applicable federal grant regulations.

**Priority Neighborhood**

Ridge Street Priority Neighborhood \$201,884.12

**Economic Development**

Community Investment Collaborative Scholarships \$14,997.71

**Public Service Programs (15% EN)**

TJACH- Coordinated Entry Systems \$53,346.44

**Housing Projects**

AHIP-Homeowner Rehab \$78,538.13

**Administration and Planning (20% EN)**

Admin & Planning \$83,860.60

**New Entitlement Amount** \$419,303

**Reprogramming** \$13,324

**Grand Total** **\$432,627.00**



**Expenditures**

| <i>Program</i>                     | <i>Amount</i> | <i>Fund</i> | <i>Internal order/Cost center</i> | <i>G/L Account</i> |
|------------------------------------|---------------|-------------|-----------------------------------|--------------------|
| Ridge Street Priority Neighborhood | \$201,884.12  | 218         | 1900361                           | 530670             |
| Community Investment Collaborative | \$14,997.71   | 218         | 1900362                           | 530670             |
| TJACH                              | \$53,346.44   | 218         | 1900363                           | 530670             |
| AHIP Homeowner Rehab               | \$78,538.13   | 218         | 1900364                           | 530670             |
| Admin & Planning                   | \$83,860.60   | 218         | 3914004000                        | 530670             |

**Revenue**

| <i>Program</i>                     | <i>Amount</i> | <i>Fund</i> | <i>WBS Element</i>             | <i>G/L Account</i> |
|------------------------------------|---------------|-------------|--------------------------------|--------------------|
| Ridge Street Priority Neighborhood | \$201,884.12  | 218         | P-0001 HUD<br>IDIS<br>Drawdown | 431110             |
| Community Investment Collaborative | \$14,997.71   | 218         | P-0001 HUD<br>IDIS<br>Drawdown | 431110             |
| TJACH                              | \$53,346.44   | 218         | P-0001 HUD<br>IDIS<br>Drawdown | 431110             |
| AHIP Homeowner Rehab               | \$78,538.13   | 218         | P-0001 HUD<br>IDIS<br>Drawdown | 431110             |
| Admin & Planning                   | \$83,860.60   | 218         | P-0001 HUD<br>IDIS<br>Drawdown | 431110             |

**BE IT FURTHER RESOLVED** that the amounts so appropriated as grants to other public agencies and private non-profit, charitable organizations (subrecipients) are for the sole purpose stated. The City Manager is authorized to enter into agreements with those agencies and organizations as he may deem advisable to ensure that the grants are expended for the intended purposes, and in accordance with applicable federal and state laws and regulations; and The City Manager, the Directors of Finance or Neighborhood Development Services, and staff are authorized to establish administrative procedures and provide for mutual assistance in the execution of the programs.

**APPROPRIATION OF FUNDS FOR  
THE CITY OF CHARLOTTESVILLE'S 2020-2021  
HOME FUNDS \$121,186.97**

**WHEREAS**, the City of Charlottesville has been advised of the approval by the U.S. Department of Housing and Urban Development of HOME Investment Partnerships (HOME) funding for the 2020-2021 fiscal year;

**WHEREAS**, it is a requirement of this grant that projects funded with HOME initiatives money be matched with local funding in varying degrees;

**WHEREAS**, the City of Charlottesville has been notified of the formula calculation error of the HOME Investment Partnerships Program (HOME) stemming from HUD field offices, dated October 22, 2020, with the corrected entitlement of \$80,575.13;

**BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that the local match for the above listed programs will be covered by the a surplus of match from previous appropriations from the Charlottesville Housing Fund (account CP-0084 in SAP system) in the amount of \$20,143.78. Project totals also include previous entitlement made available through program income of \$20,468.06. The total of the HUD money, program income, and the local match, equals \$121,186.97 and will be distributed as shown below.

| <b>PROJECTS</b>          | <b>HOME EN</b>     | <b>PI</b>          | <b>MATCH</b>       | <b>TOTAL</b>        |
|--------------------------|--------------------|--------------------|--------------------|---------------------|
| AHIP-Homeowner Rehab     | \$33,498.40        | \$13,234.03        | \$10,071.89        | \$56,804.32         |
| Habitat for Humanity-DPA | \$47,076.73        | \$7,234.03         | \$10,071.89        | \$64,382.65         |
| <b>Total</b>             | <b>\$80,575.13</b> | <b>\$20,468.06</b> | <b>\$20,143.78</b> | <b>\$121,186.97</b> |

\* includes Program Income which does not require local match.

**Expenditures**

| <i>Program</i>             | <i>Amount</i> | <i>Fund</i> | <i>Internal Order/Cost Center</i> | <i>G/L Account</i> |
|----------------------------|---------------|-------------|-----------------------------------|--------------------|
| AHIP – Homeowner Rehab     | \$56,804.32   | 210         | 1900365                           | 530670             |
| Habitat for Humanity - DPA | \$64,382.65   | 210         | 1900366                           | 530670             |

**Revenue**

| <i>Program</i>                     | <i>Amount</i> | <i>Fund</i> | <i>Internal Order</i> | <i>G/L Account</i> |
|------------------------------------|---------------|-------------|-----------------------|--------------------|
| Thomas Jefferson Planning District | \$33,498.40   | 210         | 1900365               | 432170             |
| Thomas Jefferson Planning District | \$47,076.73   | 210         | 1900366               | 432170             |
| City Match                         | \$20,143.78   | 210         | CP-0084               | 498010             |
| Program Income                     | \$26,468.06   | 210         | 1900280               | 451070             |

**BE IT FURTHER RESOLVED** the amounts so appropriated as grants to other public agencies and private non-profit, charitable organizations (subrecipients) are for the sole purpose stated. The City Manager is authorized to enter into agreements with those agencies and organizations as he may deem advisable to ensure that the grants are expended for the intended purposes, and in accordance with applicable federal and state laws and regulations; and

The City Manager, the Directors of Finance or Neighborhood Development Services, and staff are authorized to establish administrative procedures and provide for mutual assistance in the execution of the programs.

**APPROPRIATION OF FUNDS FOR  
THE CITY OF CHARLOTTESVILLE'S 2020-2021  
CDBG 10TH AND PAGE PRIORITY NEIGHBORHOOD**

**WHEREAS**, the City of Charlottesville has been advised of the approval by the U.S Department of Housing and Urban Development of a Community Development Block Grant (CDBG) for the 2020-2021 fiscal year in the total amount of \$432,303 that includes the new entitlement from HUD, dated October 22, 2020;

**WHEREAS**, City Council has received recommendations for the expenditure of funds from the 10<sup>th</sup> and Page Priority Neighborhood Taskforce, CDBG/HOME Taskforce, the SAT; and has conducted a public hearing thereon as provided by law;

**WHEREAS**, the City of Charlottesville must carry out its program in a timely manner, as measured by the rate of expenditure of funds from the grantee's line of credit (LOC) in accordance to 24 CFR 570.902(a);

**BE IT RESOLVED** by the City Council of Charlottesville, Virginia, that the sums hereinafter set forth are hereby appropriated from funds received from the aforesaid grant to the following individual expenditure accounts in the Community Development Block Grant Funds for the respective purposes set forth; provided, however, that the City Manager is hereby authorized to transfer funds between among such individual accounts as circumstances may require, to the extent permitted by applicable federal grant regulations.

|   |              |
|---|--------------|
| <b>Priority Neighborhood</b>                    |              |
| Ridge Street Priority Neighborhood              | \$85,830.95  |
| <b>Priority Neighborhood</b>                    |              |
| 10 <sup>th</sup> and Page Priority Neighborhood | \$116,053.17 |
| <b>Program Income</b>                           |              |
| CDBG Program Income                             | \$17,952.83  |

**Expenditures**

| <i>Program</i>                                  | <i>Amount</i> | <i>Fund</i> | <i>Internal order/Cost center</i> | <i>G/L Account</i> |
|---|---------------|-------------|-----------------------------------|--------------------|
| Ridge Street Priority Neighborhood              | \$85,830.95   | 218         | 1900361                           | 530670             |
| 10 <sup>th</sup> and Page Priority Neighborhood | \$134,006     | 218         | P-0001-05-19                      | 530670             |

**Revenue**

| <i>Program</i>                                  | <i>Amount</i> | <i>Fund</i> | <i>WBS Element</i>             | <i>G/L Account</i> |
|---|---------------|-------------|--------------------------------|--------------------|
| Ridge Street Priority Neighborhood              | \$85,830.95   | 218         | P-0001 HUD<br>IDIS<br>Drawdown | 431110             |
| 10 <sup>th</sup> and Page Priority Neighborhood | \$116,053.17  | 218         | P-0001 HUD<br>IDIS<br>Drawdown | 431110             |
| CDBG Program Income                             | \$17,952.83   | 218         | P-0001-05-19                   | 451070             |

**BE IT FURTHER RESOLVED** that the amounts so appropriated as grants to other public agencies and private non-profit, charitable organizations (subrecipients) are for the sole purpose stated. The City Manager is authorized to enter into agreements with those agencies and organizations as he may deem advisable to ensure that the grants are expended for the intended purposes, and in accordance with applicable federal and state laws and regulations; and The City Manager, the Directors of Finance or Neighborhood Development Services, and staff are authorized to establish administrative procedures and provide for mutual assistance in the execution of the programs.

**AN ORDINANCE  
GRANTING A 5-YEAR FRANCHISE TO  
EAGLE REAL ESTATE, LLC  
TO USE THE STREETS AND OTHER PUBLIC PLACES  
OF THE CITY OF CHARLOTTESVILLE, VIRGINIA  
TO INSTALL POLES, WIRES, CONDUITS, CABLES AND FIXTURES WITHIN  
PUBLIC STREET RIGHTS OF WAY**

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia, that **EAGLE REAL ESTATE, LLC**, (“Company”), its successors and assigns, is hereby granted a 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 facilities and equipment within public rights of way owned by the City of Charlottesville, Virginia (the “City”) as further set forth within this franchise 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 authorize use of the City’s public right-of-way by the Company for communications infrastructure. This Ordinance imposes regulations on the placement and maintenance of Company’s Facilities within the City’s PROW and requires the Company to bear financial responsibility for their Facilities. This Ordinance is intended to complement, and not replace, the regulatory roles of state and federal agencies.

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

This Ordinance is enacted pursuant to the authority granted to the City under its Charter as well as the authority conferred within Virginia Code Sections 15.2-2015, 15.2-2100, 56-460, 56-462(A), and other applicable federal and state statutory and administrative law provisions.

This Ordinance and any right, privilege or obligation of the City or Company hereunder, shall be interpreted consistently with federal and state 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 Eagle Real Estate, LLC, including its successors and assigns.

**103.3 DIRECTOR** means the Charlottesville City Manager, including any public officials or City employees to whom the City Manager delegates any responsibilities for administration or enforcement of this Ordinance.

**103.4 FACILITY** means any infrastructure, equipment or other tangible asset required to provide a utility service, which includes but is not limited to: cable television, electric, natural gas, communications, 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 PROWincluding 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 entire width between the boundary lines of land owned by the City of Charlottesville, or in which the City has a property interest, that is used or dedicated for use for purposes of vehicular, bicycle, or pedestrian travel, regardless of whether such area is paved or unpaved, including airspace above and ground below such land. This definition does not include any state highway system owned or regulated by the Commonwealth Transportation Board.

## **ARTICLE II**

### **SECTION 201 INITIAL INSTALLATION**

The initial installation of Company's Facilities shall be in the locations shown on a PROW Drawing approved by the Director. Any additional installation of equipment, lines, cables or other Facilities shall be underground unless it shall be determined by the Director that it is not feasible to do so, in accordance with Article III.

### **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.

**202.2 GENERAL PREFERENCE FOR UNDERGROUND FACILITIES:** Company's Facilities shall be installed underground; however, the City recognizes that in some circumstances the placement of Facilities underground may not be feasible. In appropriate circumstances the Director may, in accordance with Article III, approve an above-ground installation.

**202.3 INSTALLATION OF OVERHEAD FACILITIES:** Whenever Company proposes new above ground Facilities, those Facilities shall be attached to or otherwise incorporated into existing above-ground Facilities, either the Company's or those of another utility. 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 above-ground Facilities, and explanation of why undergrounding is not appropriate or feasible, in accordance with 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:** 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 state law.

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

The Company shall make work within the PROW available to the City and other government authorities for inspection at all reasonable times.

### **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 PROW 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**

Company's Facilities shall be placed in a manner that will not interfere with other utilities, public or privately-owned, and that will not adversely affect the safety and convenience of persons traveling through, on, or over, the City's Public Rights-of-Way.

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

The nature and placement of all Facilities within the PROW shall be limited to the details and information clearly specified within an approved PROW plan.

**206.1 REMOVAL OF OBSTRUCTIONS:** Any use or occupancy of the PROW that is not in accordance with an approved PROW plan shall be deemed an Obstruction that 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 the 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 in and through natural waterways, or through any gutters, culverts, ditches tiles or other conveyance.

**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 City Manager is the public official charged with general supervision and control of City streets and PROW. The City Manager may delegate to appropriate public officials and personnel responsibility for administration and enforcement of this Ordinance.

#### SECTION 302 SUBMISSION OF PROW PLAN

At least thirty (30) days before beginning any installation, removal or relocation of its Facilities, the Company shall submit detailed construction plans to the Director for 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 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 shall, within thirty (30) days, either approve the Company's construction plans or inform the Company of the reasons for disapproval. The Company shall designate a responsible contact person with whom the Director can communicate on all matters relating to the Company's Facilities.

## **SECTION 305 MAPPING DATA**

Within thirty (30) days of the installation, relocation or removal of its Facilities within the PROW, Company shall provide to the City such geographic information as the City may deem necessary for 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 all appurtenances.

## **ARTICLE IV**

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

This Ordinance shall in no way relieve the Company of its duty to obtain all other necessary permits, licenses, and permissions, or to pay all fees required by any applicable state or federal rule, law or regulation. Company shall comply with and fulfill all applicable federal, state and local laws and regulations, including ordinances, regulations and requirements of the City, regarding excavations and any other work in or affecting the PROW. The Company shall

perform all work in conformance with all applicable safety codes and regulations of governmental authorities having jurisdiction over the Facilities. By installing its Facilities within the PROW Company assumes responsibility for all work conducted by the Company, or any entity or person acting on its behalf.

## **ARTICLE V**

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

Upon written notice from the Director of a planned improvement or alteration of the PROW, including, without limitation, any proposed relocation of City-owned utilities that will necessitate relocation of Company's Facilities, the Company shall relocate its Facilities, at its own expense, and shall complete the required relocation 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 PROW, the Director shall have the authority to determine the manner and extent of the restoration of the PROW. In exercising this authority, the Director shall be guided by the following considerations:

- (a) the number, size, depth and duration of the excavations, disruptions or damage to the PROW;
- (b) the traffic volume carried by the PROW; the character of the neighborhood surrounding the PROW;
- (c) the pre-excavation condition of the PROW 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 PROW; and
- (e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the PROW 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 PROW must be completed promptly. Unless otherwise specified by the Director, patching and restoration shall be performed in accordance with requirements of the City's Standards and Design Manual.
- 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 PROW.
- 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 Director, 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 PROW 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, the Director shall notify the Company in writing of the deficiency and shall allow the Company at least ten (10) days from receipt of the notice to cure the deficiency, or to respond with a plan to cure. In the event that the Company fails to cure, or fails to respond to the Director'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 Director may bring an action in the name of the City for the recovery of 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 damage to land or improvement within the ROW caused by its actions or Facilities. If the Company damages City-owned facilities or improvements (such as, but not limited to: culverts, road surfaces, curbs and gutters, or tile lines) the Company shall correct the damage promptly after receiving

written notification from the Director. If the Company does not promptly correct the damage to the satisfaction of the Director, the Director may make such repairs as necessary and may charge all of the reasonable costs of such repairs to the Company. The Director shall provide the Company with an itemized statement of the City's reasonable costs incurred to repair the damage and a demand for payment. If payment is not received from the Company within thirty (30) days after sending the itemized statement and demand for payment, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such repair.

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

## ARTICLE VI

### SECTION 601 INDEMNIFICATION AND LIABILITY

**601.1 SCOPE OF INDEMNIFICATION:** Subject to the following, the Company agrees and binds itself to indemnify, keep and hold the City, City Council members, City officials and 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 City's PROW pursuant to 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 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 this Ordinance.

**601.2 DUTY TO INDEMNIFY, DEFEND AND HOLD HARMLESS:** If a suit arising out of subsection (a), (b), (c) of Section 601.1, claiming such injury, death, or damage shall be brought or threatened against the City, its officers, or employees, either independently or jointly with the Company, the Company will defend, indemnify and hold the City harmless from and against any liability, cost, expense or judgment, of any nature whatsoever, resulting from

or in connection with 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 defend the suit through counsel of its own choosing provided that the Company must obtain the prior written approval of City of any settlement of such claims against the City, which approval shall not be unreasonably withheld or delayed more than thirty (30) days. If, in such a suit, a final judgment is obtained against the City, its officers, or employees, either independently or jointly with the Company, the Company will pay the judgment, including all reasonable costs, and will hold the City harmless therefrom.

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

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

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

## **SECTION 603 INSURANCE**

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

- (a) verification that an insurance policy has been issued to the Company by an insurance company licensed to do business in the Commonwealth of Virginia, or a form of self insurance acceptable to the City Attorney;
- (b) verification that the Company is insured against claims for personal injury, including death, as well as claims for property damage arising out of (i) the use and occupancy of the PROW by the Company, its agents, employees and permittees, and (ii) placement and use of Facilities owned by the Company in the PROW by the Company, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;
- (c) verification that the City Attorney will be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;



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

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

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

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

Nothing herein contained shall be construed to render the Company liable for or obligated to indemnify the City, its agents, or employees, for the gross negligence or intentional acts of the City, its Council members, its agents or employees, or another franchisee or 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 ten thousand dollars (\$10,000). 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 may be subject to a fee or a penalty for violation of this Ordinance as provided for in applicable law. In addition, the City hereby reserves the right to bring suit for specific performance of Company's obligations hereunder, or other civil remedies as may be available to the City at law or in equity.



**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, to the extent said Act applies to Company's Facilities):

- (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 right herein conferred upon Company allowing it to use and occupy the City's PROW.

The Company shall be obligated to remit the PROW Use Fee and/or 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, as required by Section 56-468.1(G) of the Code of Virginia) appropriate notice of the PROW Use Fee. 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 Company's use of the PROW.

### **SECTION 802 RESERVED**

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

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

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

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

**ARTICLE IX**

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

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

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

**SECTION 902 SEVERABILITY**

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

**ARTICLE X**

**SECTION 1001 MAINTENANCE OBLIGATION**

The Company will maintain all of its Facilities 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 PROW 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 and in compliance with the pruning standards of the National Arborists Association, as currently in effect, or other standard required by the Director.

## **ARTICLE XI**

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

If the Company wishes to maintain its equipment within the City and to continue the operation of the system beyond the term referenced in Section 1101, then Company shall give written notice to the Director at least one hundred twenty (120) days before expiration of the term. Such written notice shall include a report verifying the location of all of the Facilities owned by the Company within the City's PROW, and shall contain sufficient information necessary to allow the Director to verify the financial responsibility of the Company at the time of said request.

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

While an application pursuant to Section 1102 is pending the Company may continue operations of its existing Facilities under this franchise Ordinance, until such time as final action is taken by City Council upon the application. Nothing herein shall be construed to grant the Company a perpetual franchise.

## **ARTICLE XII**

### **SECTION 1201 NOTICE**

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

**To the Company:**  
Eagle Real Estate, LLC  
1020 Harris Street  
Charlottesville, VA 22903

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

All correspondences shall be by U.S. 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 written notice given in accordance with this Ordinance.

## **SECTION 1202 EMERGENCY NOTIFICATION**

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

**To the Company:**  
Amy Ezell or David Paulson  
(434) 971-2686 (office)

**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 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 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 PROW**

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 the franchise granted by this Ordinance, or by such other reasonable time prescribed by the Director, whichever is later. No such removal will be required while any application provided for in Section 1102 is pending. If an application pursuant to Section 1102 is denied, the six (6) month period provided above shall commence on the date of denial or the expiration of the term of this franchise, whichever date 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 PROW for the purpose of removing its Facilities pursuant to this paragraph.

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

The Facilities owned by the Company may be abandoned in place, without removal, upon request by the Company and approval by the City. The City's approval may be granted subject to conditions deemed by the Director to be in the best interests of 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 advance written approval of the City, which shall not be unreasonably or discriminatorily conditioned, withheld or delayed.

In addition, the City agrees that nothing in this Ordinance shall be construed to require the Company to obtain approval from the City in order to lease any Facilities owned by the Company or any portion thereof in, on, or above the PROW, or grant an indefeasible right of use (“IRU”) in the Facilities owned by the Company, or any portion thereof, to any entity or person. The lease or grant of an IRU in such Facilities owned by the Company, or any portion or combination thereof, shall not be construed as the assignment or transfer of any franchise rights granted under this Ordinance. Notwithstanding the foregoing, Company shall grant no lease or right of use that is in conflict with the terms of 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 franchises to other parties.

## **ARTICLE XVII**

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

Subject to the foregoing, no waiver of any provisions of the franchise granted by this Ordinance shall be effective and binding only if it is made in writing and signed by duly authorized representatives of the City and the Company.

**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 \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_  
Clerk of Council

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

**EAGLE REAL ESTATE, LLC**

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

Its     Member/ Managing Member

Date    \_\_\_\_\_



**RESOLUTION  
ENDORISING CORRESPONDENCE  
SUPPORTING HB1965**

**WHEREAS**, Delegate Lamont Bagby has introduced HB 1965 in the Virginia House of Delegates to increase the availability of low and zero emissions vehicles; and

**WHEREAS**, a group of localities is endorsing a letter urging the Virginia General Assembly to enact legislation similar to HB 1965.

**NOW, THEREFORE, BE IT RESOLVED** that the Council of the City of Charlottesville, Virginia hereby agrees to add its endorsement of the letter attached to this Resolution.

**RESOLUTION  
OF REMEMBRANCE FOR  
THOSE LOST TO COVID-19**

**WHEREAS**, the Centers for Disease Control and Prevention (CDC) reported the first case of the 2019 Novel Coronavirus (COVID-19) in the United States on January 21, 2020; and

**WHEREAS**, COVID-19 has taken the lives of 385,000 Americans since January 21, 2020; and

**WHEREAS**, COVID-19 has taken the lives of over 30 Charlottesville residents since January 21, 2020; and

**WHEREAS**, President-elect Joe Biden has asked the nation to come together on January 19, 2021 in a nationwide public moment of recognition of lives lost to COVID-19.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that it hereby honors the memory of all the lives lost to the COVID-19 global pandemic and recognized January 19, 2021 as a citywide Day of Remembrance in honor of those who have perished since the pandemic began.

**RESOLUTION**  
**Approval of FY 2020-2021 Substantial Action Plan Amendment**

**BE IT RESOLVED**, that the Charlottesville City Council hereby approves the FY 2020-2021 Substantial Action Plan Amendment of the 2018-2022 Consolidated Plan as presented at the May 4, 2020 City Council Meeting. All CDBG-CV3 projects shall be included into City of Charlottesville CDBG/HOME 2020-2021 Program.

**RESOLUTION**  
**APPROVING THE ACQUISITION OF LAND AT**  
**RAGGED MOUNTAIN RESERVOIR**  
**(5.0 ACRES – TMP 75, PARCEL 47A)**

**WHEREAS**, Stanislaw J. Makielski and Valerie Jean Conner, Trustees of the Stanislaw J. Makielski and Valerie Jean Conner Family Trust (“Owners”) are the owners of land designated on Albemarle County, Virginia Real Estate Tax Map 75 as Parcel 47A, and have indicated a willingness to convey a portion of the subject land to the City of Charlottesville for creation of parkland; and

**WHEREAS**, the land to be conveyed, hereinafter the “Property”, is described as follows:

All that certain tract or parcel of land situate in the County of Albemarle, Virginia containing approximately 5.00 acres, and described “The Makielski Property” on that certain plat entitled “Plat Showing Boundary Survey of Tax Map 75 Parcel 47A”, prepared by P. Timothy Stanley, Jr., dated June 19, 2018, attached hereto and recorded in the Circuit Court Clerk’s Office of Albemarle County, Virginia, simultaneously herewith.

**WHEREAS**, Owner has agreed to convey to the City the Property for the purchase price of \$95,000.00; and

**WHEREAS**, funds are available for the purchase of the Property from a grant award from the Virginia Outdoors Foundation in the amount of \$65,000.00; grant award funding from USDA in the amount of \$31,039.00, and approved USDA surplus grant funding to cover the remaining balance.

**WHEREAS**, the Department of Parks and Recreation seeks the endorsement of City Council to proceed with the purchase of above-described Property at a purchase price of \$95,000.00 with the funding supplied through the above-described grant funding sources; and

**WHEREAS**, the Warranty Deed of Sale which contains Exhibit A, Notice of Grant 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 for creation of parkland. The City Manager is hereby authorized to execute the above-referenced Exhibit A, Notice of Grant Agreement attached to the Warranty Deed of Sale, and the Mayor is hereby authorized to sign the Warranty Deed of Sale, both in form approved by the City Attorney or her designee. The City Attorney’s Office shall take whatever actions are necessary to effect the acquisition of the above-described Property.