CITY COUNCIL AGENDA
June 17, 2024
CERTIFICATIONS

4:00 PM OPENING SESSION

Call to Order/Roll Call Mayor Wade absent for travel.

Agenda Approval
Item #10 moved per request of Payne to Action Item for discussion.
APPROVED as amended 4-0 (PAYNE/OSCHRIN)

Reports

1. Report: State of Homelessness

5:30 PM CLOSED MEETING
Vote to meet in closed meeting APPROVED 4-0 (OSCHRIN/SNOOK)
Vote to certify closed meeting APPROVED 4-0 (OSCHRIN/PAYNE)

6:30 PM BUSINESS SESSION

Moment of Silence

Announcements

Recognitions/Proclamations

Community Matters

Consent Agenda* APPROVED 4-0 (SNOOK/OSCHRIN)

2. Minutes: March 5 regular meeting
3. Resolution: **R-24-067** Resolutions to appropriate $130,713 from the 2024 City Climate Protection Program – Program Support Grant with LEAP (2nd reading)
   a. Resolution: **#R-24-068** Resolution to authorize the city manager to sign a Memorandum of Understanding between the City and the Local Energy Alliance Program (LEAP) for grant funds to support the Climate Protection Program and promote energy performance improvements (2nd reading)
4. Resolution: **#R-24-069** Resolution to appropriate $172,182 from the Virginia Department of Social Services to serve clients who are receiving auxiliary grants, adoption assistance, and independent living services (2nd reading)
5. Resolution: **#R-24-070** Resolution appropriating $7,988 received from the Virginia Department of Social Services for the Percentage of Income Payment Program (2nd reading)
6. Resolution: **#R-24-071** Resolution to transfer $9,064,654 to the City's Retirement Fund (2nd reading)
7. Resolution: **#R-24-072** Resolution appropriating $45,567 from the Virginia Department of Social Services to use for overtime for Medicaid unwinding (2nd reading)
8. Resolution: **#R-24-073** Resolution to appropriate $10,000 for The Tonsler League (2nd reading)
9. Ordinance: **#O-24-074** Ordinance to amend and reordain Chapter 31 (Utilities) of the Code of the City of Charlottesville, 1990, as amended, to establish new utility rates and service fees for City gas, water and sanitary sewer (2nd reading)

10. Ordinance: Ordinance to amend and reordain Chapter 31 (Utilities) of the Code of the City of Charlottesville, 1990, as amended, to establish a connection fee for new gas service (2nd reading)
Item was moved per request of Payne to Action Items for discussion.

11. Resolution: **#R-24-075** Resolution to reprogram prior year CDBG funds to support ADA accessibility enhancements at a community playground, Minor Budget Amendment of approximately $46,000 (2nd reading)

12. Ordinance: **#O-24-076** Ordinance authorizing a Forgivable Loan to Piedmont Housing Alliance to support redevelopment of Kindlewood/Friendship Court Phase 2 for the purpose of producing new housing for low and moderate income persons (2nd reading)

13. Ordinance: **#O-24-077** Ordinance to create and enact Level 3 Communications Franchise Agreement (2nd reading)

14. Ordinance: **#O-24-078** Ordinance to create and enact Crown Castle Franchise Agreement (2nd reading)

15. Ordinance: **#O-24-079** Ordinance to create and enact Brightspeed Franchise Agreement (2nd reading)

16. Resolution: **#R-24-080** Resolution for a Water and Wastewater Leak Credit for 2PIC LLC - $18,212.63.

City Manager Report

- Report: City Manager Report

Action Items

17. Ordinance: **#O-24-081** Ordinance amending and reordaining Chapter 10 (Water Protection) of the Code of the City of Charlottesville, to establish a Virginia Erosion and Stormwater Management Program consistent with the Code of Virginia
APPROVED 4-0 (PAYNE/OSCHRIN)

18. Ordinance: **#O-24-082** Ordinance amending and reordaining Chapter 10 (Water Protection) of the Code of the City of Charlottesville, to update the City's Stormwater Utility Program consistent with Section 15.2-2114 of the Code of Virginia
APPROVED 4-0 (PAYNE/OSCHRIN)

19. Resolution: **#R-24-083** Resolution authorizing the adoption of the Transit Strategic Plan
APPROVED 4-0 (PAYNE/OSCHRIN)

20. Resolution: **#R-24-084** Resolution authorizing a minor budget amendment to Community Development Block Grant Program Year 2024-25 funding awards to reflect an increase in final HUD funds available
APPROVED 4-0 (OSCHRIN/PAYNE)

10. Ordinance: **#O-24-085** Ordinance to amend and reordain Chapter 31 (Utilities) of the Code of the City of Charlottesville, 1990, as amended, to establish a connection fee for new gas service (2nd reading)
This item was moved from the Consent Agenda for discussion.
APPROVED 3-1 (SNOOK/PINKSTON; Payne opposed)

General Business

21. Written Report: Sister Cities Commission Annual Report

Community Matters (2)

Adjournment

#R-24-067

RESOLUTION
2024 Climate Protection Program Support Grant
$130,713

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Charlottesville, Virginia that the sum of $130,713 is hereby paid to LEAP from previously appropriated funds in the Gas Fund, Environmental Sustainability Cost Center as follows:

$130,713 Fund: 631 Cost Center: 2711001000 G/L Account: 599999

	Aye	No
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#R-24-068

RESOLUTION

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

Memorandum of Understanding (MOU) between the City and the Local Energy Alliance Program (LEAP) for grant funds to support the Climate Protection Program and promote energy performance improvements.

MEMORANDUM OF UNDERSTANDING
2024 CLIMATE PROTECTION PROGRAM SUPPORT

This Memorandum of Understanding ("MOU") is made this ___ of _____, 2024, by and among the City of Charlottesville, Virginia and the Local Energy Alliance Program.

Whereas, the City of Charlottesville, Virginia, (hereafter, the City) wishes to increase energy performance of Charlottesville homes and non-residential buildings, and to reduce the greenhouse gas associated with community-wide energy use, and;

Whereas, the Local Energy Alliance Program (hereafter, LEAP) wishes to serve our local community to conserve energy in existing buildings, to promote cost savings, job creation, sustainability, local economic development, and environmental stewardship, and;

Whereas, LEAP wishes to provide access to expertise and action steps for energy efficiency and renewable energy implementation;

Whereas, the parties agree that the intended use and release of City funds should be authorized in a mutually agreed fashion, in furtherance of these shared goals;

Now, Therefore, the City and LEAP jointly agree that upon execution of this MOU, LEAP will be granted an amount of One Hundred and Thirty Thousand Seven Hundred Thirteen ($130,713) the source of which is already appropriated funds in Fund 631, Cost Center 2711001000, for the purpose of providing 2024 Climate Protection Program support focused on providing access to expertise and action steps for improved energy performance and making the energy efficiency actions process streamlined, easy to understand, and financially attractive, affordable, and accessible. The parties agree to the terms and conditions of this MOU as set forth below:

1. Use of Funds: The parties agree that funds may be used only for the following purposes as covered in the 2024 Climate Protection Program Support proposal.
2. Program Parameters: Upon receipt of the grant, LEAP agrees to provide the proposed program support to promote energy performance improvements.
3. Program Progress Reports: LEAP acknowledges the City's desire to receive progress reports regarding the accomplishments of the program. Both parties agree to the value of monthly meetings to ensure that pursuit of common goals is on track, using metrics outlined in the 2024 proposal. A final report will be provided at the completion of the program support scope Progress updates may be provided to LEAP board members.
4. Modification Terms
   This MOU may be supplemented, modified, or amended by mutual agreement as set forth in writing.

In Witness Whereof, the City of Charlottesville and the Local Energy Alliance Program have executed this MOU effective the last date written below.

CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____

Title: _____

Date: _____

Approved as to Form:

_____
City Attorney

Funds are Available:

_____
Director of Finance, or designee

LOCAL ENERGY ALLIANCE PROGRAM

By: _____

Title: _____

Date: _____

	Aye	**No**
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#R-24-069

RESOLUTION
Appropriating Funding Received from the Virginia Department of Social Services
In the amount of $172,182

WHEREAS, the Charlottesville Department of Social Services has received an allocation of $172,182 in the Fiscal Year 2024 budget from the Virginia Department of Social Services to be used for clients receiving auxiliary grants, adoption assistance, and independent living services.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of $172,182, upon receipt by the City, is hereby appropriated for expenditure within the FY24 budget in the following manner:

Revenue – $172,182

Fund: 212	Cost Center: 9900000000	G/L Account: 430080	$172,182

Expenditures - $172,182

Fund: 212	Cost Center: 3311002000	G/L Account: 540060	$20,000
Fund: 212	Cost Center: 3311004000	G/L Account: 540060	$40,000
Fund: 212	Cost Center: 3311007000	G/L Account: 540060	$60,000
Fund: 212	Cost Center: 3333006000	G/L Account: 540060	$47,182
Fund: 212	Cost Center: 3343008000	G/L Account: 540060	$5,000

	Aye	No
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#R-24-070

RESOLUTION
Appropriating Funding Received from the Virginia Department of Social Services to administer the Percentage of Income Payment Program (PIPP)
In the amount of $7,988

WHEREAS, the Charlottesville Department of Social Services has received an allocation of $7,988 in the Fiscal Year 2024 budget from the Virginia Department of Social Services to be used to administer the Percentage of Income Payment Program (PIPP).

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of $7,988, upon receipt by the City, is hereby appropriated for expenditures within the FY24 budget in the following manner:

Revenue – $7,988

Fund: 212	Cost Center: 9900000000	G/L Account: 430080	$7,988

Expenditures - $7,988

Fund: 212	Cost Center: 3301005000	G/L Account: 510010	$7,988

	Aye	No
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#R-24-071

RESOLUTION
Appropriating the transfer of $9,064,654 from the CIP Contingency fund to the City's Retirement Fund

WHEREAS, implementation of the collective bargaining contracts and the class and compensation changes for unaffiliated employees will exceed the projected annual pension cost;

WHEREAS, best practice for pension plan management is to ensure that the pay changes implemented in FY 25 are fully funded at the time they are granted;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the following is hereby transferred from CIP Contingency funds in the following manner:

Transfer From

$9,064,654	Fund: 426	WBS: CP-080	G/L Account: 561869

Transfer To

$9,064,654	Fund: 869	Cost Center: 1921001000	G/L Account: 498426

	Aye	No
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#R-24-072

RESOLUTION
Appropriating Funding Received from the Virginia Department of Social Services to provide overtime for Medicaid unwinding
In the amount of $45,567

WHEREAS, the Charlottesville Department of Social Services has received an allocation of $45,567 in the Fiscal Year 2024 budget from the Virginia Department of Social Services to be used to provide overtime for Medicaid unwinding.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of $45,567, upon receipt by the City, is hereby appropriated for expenditures within the FY24 budget in the following manner:

Revenue – $45,567

Fund: 212	Cost Center: 9900000000	G/L Account: 430080	$45,567

Expenditures - $45,567

Fund: 212	Cost Center: 3301005000	G/L Account: 510060	$45,567

	Aye	No
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#R-24-073

RESOLUTION
Appropriating the amount of $10,000
for the Tonsler League

WHEREAS Council has appropriated funding for outside and nonprofit agencies as part of the FY 25 competitive Vibrant Community Fund (VCF) process;

AND WHEREAS for FY 25, there was a remaining unallocated balance of $12,000;

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of $10,000 is hereby appropriated to provide funding to the Tonsler League as follows:

Expenditures:
$10,000 Fund: 105 Cost Center: 9743056000 G/L Account: 540100

	Aye	No
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#O-24-074

AN ORDINANCE
AMENDING AND REORDAINING CHAPTER 31 (UTILITIES) OF THE CODE OF THE CITY OF CHARLOTTESVILLE, 1990, AS AMENDED, TO ESTABLISH NEW UTILITY RATES AND SERVICE FEES FOR CITY GAS, WATER AND SANITARY SEWER.

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia, that:

1. Sections 31-56, 31-57, 31-60, 31-61, 31-62, 31-102, 31-106, 31-153, 31-156 and 31-158 of Chapter 31, of the Code of the City of Charlottesville, 1990, as amended, are hereby amended and reordained as follows:

CHAPTER 31. UTILITIES

ARTICLE II. GAS

DIVISION 2. TYPES OF SERVICE; SERVICE CHARGES

Sec. 31-56. Rates - Generally.

The firm service gas rates based on monthly meter readings shall be as follows:

Basic Monthly Service Charge	$ 10.00	
First 3,000 cubic feet, per 1,000 cubic feet	~~$9.2491~~	$9.7813
Next 3,000 cubic feet, per 1,000 cubic feet	~~$8.7216~~	$9.1798
Next 144,000 cubic feet, per 1,000 cubic feet	~~$8.1941~~	$8.5784
All over 150,000 cubic feet, per 1,000 cubic feet	~~$7.6666~~	$7.9769

Sec. 31-57. Air conditioning…

Sec. 31-60. Interruptible sales service (IS).

(a) *Conditions*. . . .

(b) *Customer's agreement as to discontinuance of service*. . . .

(c) *Basic monthly service charge*. The basic monthly charge per meter for interruptible sales service ("IS gas") shall be sixty dollars ($60.00).

(d) *Rate*. For all gas consumed by interruptible customers the rate shall be ~~$7.2264~~ $7.3466 per one thousand (1,000) cubic feet for the first six hundred thousand (600,000) cubic feet, and ~~$6.6275~~ $6.6850 per one thousand (1,000) cubic feet for all volumes over six hundred thousand (600,000) cubic feet.

(e) *Annual Minimum Quantity*. Interruptible rate customers shall be obligated to take or pay for a minimum quantity of one million two hundred thousand (1,200,000) cubic feet of gas annually. Each year, as of June 30, the director of finance shall calculate the total consumption of each interruptible customer for the preceding twelve (12) monthly billing periods and shall bill any customer that has consumed less than the minimum quantity for the deficient amount at the rate of ~~$7.2264~~ $7.3466 per one thousand (1,000) cubic feet. Any new customer shall be required to enter into a service agreement with the City prior to the start of service. If an interruptible customer terminates service, the annual minimum requirement shall be prorated on the basis of one hundred thousand (100,000) cubic feet per month for each month the customer has received service since the last June 30 adjustment.

(f) *Contract required.* . . .

Section 31-61. Interruptible Transportation Service (TS).

(a) *Generally*. ...

(b) *Rates*. The rates for interruptible transportation service ("TS gas") shall be as follows:

(1) ~~$3.0147~~ $3.2827 per dekatherm for a customer receiving only TS gas, and

(2) ~~$1.8088~~ $1.9696 per dekatherm, for customers who transport 35,000 or more dekatherms per month ("large volume transportation customers"), regardless of whether such large volume transportation customer receives only TS gas, or also receives IS service.

(c) *Basic Monthly Service Charges*. …
(d) *Special terms and conditions.* …
(e) *Extension of facilities*. . . .
(f) *Billing month*. . . .
(g) *Lost and unaccounted-for gas.* . . .
(h) *Combined IS and TS customer using more than provided or scheduled by customer....*
(i) *TS Customer providing more gas, or less gas, than customer's usage.* …
(j) *Other terms and conditions.* . . .

Section 31-62. Purchased gas adjustment.

In computing gas customer billings, the basic rate charges established under sections 31-56, 31-57, 31-60 and 31-61 shall be adjusted to reflect increases and decreases in the cost of gas supplied to the city. Such increases or decreases shall be computed as follows:

(1) For the purpose of computations herein, the costs and charges for determining the base unit costs of gas are:

a. Pipeline tariffs;
b. Contract quantities; and
c. Costs of natural gas, in effect or proposed as of ~~April 1st, 2022,~~ May 1st, 2023.

(2) Such base unit costs are ~~$3.9740~~ $3.7668 per one thousand (1,000) cubic feet for firm gas service and ~~$2.2350~~ $1.8332 per one thousand (1,000) cubic feet for interruptible gas service.

(3) In the event of any changes in pipeline tariffs, contract quantities or costs of scheduled natural gas, the unit costs shall be recomputed on the basis of such change in accordance with procedures approved by the city manager. The difference between the unit costs so computed and the base unit costs shall represent the purchased gas adjustment to be applied to all customer bills issued beginning the first billing month after each such change.

ARTICLE IV. WATER AND SEWER SERVICE CHARGES

Sec. 31-153. Water rates generally.

(a) Water rates shall be as follows:

(1) Monthly service charge.

Water Meter Size (inches)	Fee
5/8	~~$6.50~~ $7.50
3/4	~~$6.50~~ $7.50
1	~~$16.25~~ $18.75
1 ½	~~$32.50~~ $37.50
2	~~$52.00~~ $60.00
3	~~$104.00~~ $120.00
4	~~$162.50~~ $187.50
6	~~$325.00~~ $375.00
14	~~$2,128.75~~ $2,456.25

	May-September	October-April
(2) Metered water consumption, per 1,000 cu. ft.	~~$86.86~~ $88.83	~~$66.82~~ $68.33

(b) This section shall not apply to special contracts for the consumption of water which have been authorized by the city council.

Sec. 31-156. Sewer service charges generally.

(a) Any person having a connection directly or indirectly, to the city sewer system shall pay therefor a monthly charge as follows:

(1) Monthly service charge.

Water Meter Size (inches)	Fee
5/8	~~$6.50~~ $7.50
3/4	~~$6.50~~ $7.50
1	~~$16.25~~ $18.75
1 ½	~~$32.50~~ $37.50
2	~~$52.00~~ $60.00
3	~~$104.00~~ $120.00
4	~~$162.50~~ $187.50
6	~~$325.00~~ $375.00
14	~~$2,128.75~~ $2,456.25

(2) An additional charge ~~of eighty-eight dollars and thirty-four cents ($88.34)~~ ninety-two dollars and fifty-five cents ($92.55) per one thousand (1,000) cubic feet of metered water consumption.

(b) Any water customer not discharging the entire volume of water used into the city's sanitary sewer system shall be allowed a reduction in the charges imposed under this section, provided such person installs, at his expense, a separate, City-approved water connection to record water which will not reach the City sewer system. The cost and other terms of City Code section 31-102 shall apply. For customers with monthly water consumption in excess of thirty thousand (30,000) cubic feet, where the director of finance considers the installation of a separate meter to be impracticable, the director may establish a formula which will be calculated to require such person to pay the sewer charge only on that part of the water used by such person which ultimately reaches the city sewers.

2. The foregoing amendments shall become effective July 1, 2024.

	Aye	**No**
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#R-24-075

RESOLUTION TO APPROPRIATE FUNDS
Resolution to Approve the Program Year 2023-24 Community Playground ADA Enhancements Program at Johnson Elementary School and to Appropriate Associated CDBG Funds from Prior Years, in the Amount of $46,000

WHEREAS the City of Charlottesville ('City') is and has been an Entitlement Community, as designated by the U.S. Department of Housing and Urban Development ('HUD'), and as such Council has previously approved the appropriation of certain sums of federal grant receipts to specific accounts in the Community Development Block Grant ('CDBG') Fund; and

WHEREAS a balance of unspent CDBG funds from prior years exists that can be reprogrammed to meet important and current community needs, and

WHEREAS full and unfettered access to public amenities by all, especially for persons with mobility impairments, is a public benefit of immense value and an essential part of the City's work to foster high quality living environments for all;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the proposed *2024 ADA Accessibility Enhancements Program at Johnson Elementary Playground* as presented here today before Council is approved and that the Office of Community Solutions ("OCS") is hereby authorized to begin work to implement said program;

BE IT FURTHER RESOLVED that, in support of this program, appropriations made to the following expenditure account(s) in the CDBG Fund be amended by the respective amounts shown below:

SAP Fund	*Funding Source*	*SAP Expenditure Account (Internal Order #)*	*Proposed Reduction*
218	CDBG Closed Program	1900306	-$1,090.00
218	CDBG Closed Program	1900308	-$1,291.49
218	CDBG Closed Program	1900330	-$13,324.00
218	CDBG Closed Program	1900361	-$22,741.37
218	CDBG Closed Program	1900362	-$15.00
218	CDBG Closed Program	1900363	-$8.14
		Total proposed reductions to prior year accounts =	*$38,470.00*

BE IT FURTHER RESOLVED that, in support of this program, appropriations made to the following revenue account in the CDBG Fund be amended by the respective amounts shown below:

Program Year	*Account/Internal Order #*	*SAP Revenue Account(s)*	*Current Balance*	*Proposed Addition*	*Proposed New Balance*
2023-24	1900527	CDBG PY23+ ADA at Johnson Elementary	$7,530	$38,470	$46,000

As the funds to be appropriated in support of this program have been previously awarded to the City by HUD in prior program years and have also previously been appropriated by Council in support of approved CDBG activities, this proposal does not involve the appropriation of any new funds from the City's general budget.

BE IT FURTHER RESOLVED that the amounts appropriated above within this resolution will be provided as a grant to a public agency ('subrecipient') and shall be utilized by this subrecipient solely for the purpose stated within their approved Memorandum of Understanding and Scope of Work agreements with OCS.

The City Manager is hereby authorized to enter into agreements with such subrecipients as deemed advisable so as to ensure that the grant is expended for its intended purposes and in accordance with applicable federal and state laws and regulations.

To this end, the City Manager, the Director of Finance, and public officers to whom any responsibility is delegated by the City Manager pursuant to City Code Section 2-147, are authorized to establish administrative procedures and provide for guidance and assistance in subrecipients' execution of the funded program.

	Aye	**No**
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#O-24-076

ORDINANCE
AUTHORIZING A FORGIVABLE LOAN TO PIEDMONT HOUSING ALLIANCE TO SUPPORT REDEVELOPMENT OF FRIENDSHIP COURT/KINDLEWOOD PHASE 2 FOR THE PURPOSE OF PRODUCING NEW HOUSING FOR LOW AND MODERATE INCOME PERSONS

WHEREAS, the production of new housing for persons of low and moderate income is a public purpose and use for which public money may be spent, and such production is a governmental function of concern to the Commonwealth of Virginia; and

WHEREAS, pursuant to Virginia Code §15.2-958 the City of Charlottesville may, by ordinance, make grants or loans to the owners of residential rental property occupied, or to be occupied, following construction, by persons of low or moderate income, for the purpose of producing such property; and

WHEREAS, Piedmont Housing Alliance ("PHA") is a private, nonprofit 501(c)(3) organization (corporation) organized and operating under the laws of the Commonwealth of Virginia, having as its mission the creation of affordable housing opportunities by developing new housing and by preserving existing affordable housing; and

WHEREAS, PHA and its joint venture partner are planning the redevelopment of Friendship Court into a new development named Kindlewood, such redevelopment to be done in multiple phases, funded by Low Income Housing Tax Credits, private donations, grants, local government funding from the City of Charlottesville, and a mortgage; and

WHEREAS, PHA has requested the City of Charlottesville (the "City") to award local public funding for the Project, in an amount sufficient to subsidize the projected cost of constructing the required public infrastructure for the Project as well as the construction of for-rent and for-sale affordable units within Phase 2 (defined below) of the Project (defined below), the City desires to make a Loan to PHA pursuant to and in consideration for PHA's activities in compliance with this Agreement and the Amended Declaration of Affordable Housing Covenants, to be approved by the City prior to recordation; and

WHEREAS, PHA will make a subordinate loan to the owners of the second phase of the development in an amount not to exceed the loan from the City to PHA (the "Sponsor Loan"), which the Phase 2 owners will use to undertake the improvements described herein (defined below); and

WHEREAS, the Sponsor Loan will be secured by a subordinate interest in the land for Phase 2 of the Project and such subordinate interest shall be assigned to the City as security for this loan; and

NOW, THEREFORE, BE IT ORDAINED by the Charlottesville City Council that local public funding is hereby approved for Piedmont Housing Alliance to support the Project, subject to the following terms and conditions, which shall be set forth within a written agreement that shall be executed by duly authorized agents of the City and Piedmont Housing Alliance ("Loan Agreement" or "Agreement"):

Section 1. Public purpose of the Loan

This Loan is provided to Piedmont Housing Alliance ("Recipient" or "PHA") for the public purposes of providing for construction of streets, utilities, a portion of a future city park, and other site improvements necessary for the Project, and to assist the construction of new for-rental and for-sale housing units within the property known as Friendship Court and to be identified as Kindlewood upon completion of the redevelopment project, as part of a multi-phased redevelopment of that property ("Subject Property" or "Project"). Phase 2 and subsequent phases of the Project shall be diligently prosecuted by the Recipient, to the end that, upon completion of construction, **one hundred percent (100%) of the dwelling units within the Project will be for rental or for ownership by low- and moderate-income persons, for a period not less than ninety-nine (99) years**.

Section 2. Representations and Warranties by the Recipient

To induce the City to make the Loan, Recipient makes the following as its representations and warranties to the City:

(A) Recipient is a corporation organized under the laws of the Commonwealth of Virginia, active and in good standing as of the date of its execution of this Agreement.

(B) Recipient is a nonprofit 501(c)(3) organization whose 501(c)(3) status remains in effect as of the date of its execution of this Agreement.

(C) Recipient will use its best efforts to ensure the Loan funds will be used only for the public purposes referenced in Section 1. Recipient may expend the Loan funds itself, or Recipient may loan the funds to a third party who is legally obligated to use the funds only for the public purpose referenced in Section 1. A loan to a third party shall be secured by a lien on the land within Phase 2. Recipient shall execute an assignment of such lien and interests as further security for the Loan from the City to the Recipient, subject to certain requirements of lenders and the investor member of Phase 2 Project Owner, including this Agreement and the Master Affordable Housing Covenant (or any phase-specific replacement covenants) being subordinate and subject to the lien of all lenders to the Project and including the forbearance

of certain creditor's rights and remedies during the applicable federal tax credit "compliance period" when the investor member has an ownership interest in the Phase 2 Project Owner.

(D) Recipient shall in good faith take all measures necessary to ensure that one hundred percent (100%) of the dwelling units constructed within the Project will be Rental Affordable Units and For-Sale Affordable Units for low- and moderate-income persons, in accordance with the Master Affordable Housing Covenant, previously recorded, and any amendments thereto.

(E) Recipient will use its best efforts to ensure the number of newly constructed affordable dwelling units constructed within subsequent phases of the development are in accordance with the Master Site Requirements attached as an Exhibit to the Master Affordable Housing Covenant.

At all times within the Subject Property there will be one hundred fifty (150) for-rent affordable dwelling units subject to project-based federal Section 8 operating subsidies, including a combination of pre-existing and new units. This represents the current number of units existing within the Subject Property as of the date of this Agreement.

(F) Recipient recorded a Master Affordable Housing Covenant for the Project on December 10, 2021 in the land records of Charlottesville Circuit Court as instrument number 2021-00006048 (the "Covenant"). The Phase 2 specific Affordability Covenants shall be recorded in the land records of Charlottesville Circuit Court. The City Manager and City Attorney shall approve the Phase 2 specific Affordability Covenants prior to recordation.

(G) To the best of its knowledge, NHTE Piedmont Garrett Square Limited Partnership (the "Landowner") currently owns all right, title and interest in and to the land comprising the development site of the Project, and Recipient has verified that the Landowner does not intend to transfer or convey title to any such land to any third party, other than the Phase 2 project owners, until the Phase 2 Amended Affordable Housing Covenants have been recorded in the City's land records.

(H) Recipient will use its best efforts to ensure the development of all phases of the Project shall be consistent with the Master Plan developed by the Recipient with public input from the community, a copy of which is depicted in ***Illustration 1***, following below, as may be amended from time to time consistent with the provisions of the Master Affordable Housing Covenant and the public purposes for which this Loan is offered pursuant to Virginia Code §15.2-958.

Illustration 1.

(I) Recipient will execute any and all documents reasonably requested by the City to finalize the Loan authorized by this Ordinance, including, without limitation, any note, deed of trust, security agreement or guaranty.

(J) The representations set forth within paragraphs (A) through (H) preceding above are material provisions of this Agreement.

Section 3. Authorized Expenditures; Budget

(A) The Project is planned as a multi-phased redevelopment of land currently identified by Tax Parcel Identification No. 280112000, currently assigned the street address of 400-426 Garrett Street, Charlottesville, Virginia. As of the date of this Agreement, Phase 1 is substantially complete and Phase 2 is being approved for construction. As subsequent phases are designed,

the parties may amend this Agreement as necessary or desirable to reflect additional public funding for the Project.

(B) Phase 2 shall include no fewer than one hundred four (104) for-rent or for-sale affordable dwelling units, of which: (i) fifty-four (54) will be subject to project-based federal Section 8 operating subsidies; and **(ii)** a minimum of forty-six (46) additional For-Rent dwelling units will be provided for rental to households having incomes from thirty percent (30%) to eighty percent (80%) AMI; and (iii) a minimum of four (4) For-Sale dwelling units will be land trust for-sale homes for sale to households having incomes from thirty percent (30%) to eighty percent (80%) AMI as mutually agreed to by the City and the Recipient on or before [any disbursement of Loan funds]. The average AMI of the four (4) For-Sale dwelling units will not exceed 60% AMI. See Exhibit A for a legal description for Phase 2.

(C) Phase 2 shall include a portion of a park ultimately intended to be conveyed to City ownership as a public City park. Completion of construction of the park is anticipated to be completed at the end of Phase 3 of the overall redevelopment of Friendship Court. A separate agreement will be established, prior to the start of Phase 3, to identify all terms associated with the limits, design, construction, conveyance and maintenance of the park. Nothing in this agreement shall obligate the City to take ownership, or provide maintenance of the potential park.

(D) The City will provide $5,750,000 in Loan proceeds for Phase 2. Loan proceeds may be expended as follows:

i. Up to **$5,225,000.00** shall be expended for site work (demolition of existing buildings, grading, erosion, and sediment control measures, etc.), the installation, construction, or reconstruction of public streets (inclusive of sidewalk, curb and gutter, stormwater, landscaping), utilities, and park(s), essential to the Project ("Public Infrastructure" or "Public Infrastructure Construction"), and for construction of new Phase 2 housing units for rental and for sale to low- and moderate-income persons, which may include tenant relocation costs ("ADU Construction").

ii. Up to **$525,000.00** is expected to cover "soft costs" associated with the planning and design for construction of infrastructure for the Project and/or construction of Rental and For-Sale Affordable Units within Phase 2 of the Project. Any portion of this amount not expended for Soft Costs may be expended in accordance with (i), above;

(E) Construction will commence within six months following loan closing on Phase 2 of the Project, and be diligently prosecuted by Recipient to completion.

(F) Phase 2 Project Owners, with consultation from Recipient, shall establish a Budget for Public Infrastructure Construction for the Project and for construction of Rental Affordable Units and For-Sale Affordable Units within Phase 2, and will submit the Budget to the City for approval. Once the Budget is approved by the City, all material changes to the Budget shall be subject to the prior written approval of the City. Whenever any change order is under consideration by Recipient which would materially increase the cost of any aspect of construction, a Budget amendment shall be prepared for the City's approval prior to execution of the change order.

(G) [Reserved.]

(H) The Budget shall establish stand-alone line items for Public Infrastructure Construction. The Budget shall also include line items for a Construction Contingency Amount, soft costs and other reserves acceptable to the City.

Section 4. Disbursement of Loan Proceeds

(A) Preconditions, General

Prior to the first disbursement of any Loan proceeds for expenses incurred pursuant to Section 3(D)(i) or (ii), the Recipient shall furnish all of the following documents to the City for Phase 2 of the Project, in a form acceptable to the City in all respects, for the City's approval:

i. A Public Infrastructure Plan: providing for construction of public streets, sidewalks, curb and gutter, utilities, stormwater, landscaping, park, and street lights ("Public Infrastructure") for the Project, prior to commencement of construction of any building(s) or structure(s) within Phase 2, or providing for the phased construction of Public Infrastructure, by **(a)** delineating sections within the Project in which infrastructure will be constructed in coordination with housing that will be served by that infrastructure, **(b)** within each delineated section, establishing a schedule for completion of construction of the Public Infrastructure, within that section in relation to the completion of construction and occupancy of dwelling units within that section; **(c)** providing a Cost Estimate establishing the cost of constructing the Public Infrastructure in each section, and **(d)** in the event that Public Infrastructure within a delineated section has been substantially constructed but has not met all requirements necessary for final acceptance into the City's public system for maintenance, then Recipient shall provide a maintenance and indemnifying bond, with surety acceptable to the City, in an amount sufficient for and conditioned upon the maintenance of the Public Infrastructure until such time as the Public Infrastructure is accepted into the City's public system for maintenance.

ii. A Resident Relocation Plan establishing a schedule, consistent with the schedule established within the construction plan referenced in (i) above: **(a)** identifying how many of the newly constructed units in each section will be occupied by then-current residents of Friendship Court, (ii) establishing a budget for the relocation of Friendship Court residents, and (iii) setting forth how the Recipients will determine what Friendship Court residents will be relocated first, etc. The relocation plan shall demonstrate zero displacement.

iii. A Construction Schedule that implements construction of the Rental or For Sale Affordable Units in Phase 2, in all aspects, in accordance with paragraphs (i) – (ii) preceding above.

iv. The Budget required by Section 3, above.

v. Phase 2 Affordable Housing Covenants, approved by the City prior to execution by Recipient and recorded within the land records of the Circuit Court for the City of Charlottesville.

If the above-referenced documents demonstrate the adequacy of the Budget to complete the Public Infrastructure and the Rental and For-Sale Affordable Units within Phase 2, and if the Construction Schedule is realistic, then the City's approval shall not unreasonably be withheld.

(B) Disbursements for Infrastructure and for Costs of Tenant Relocation and Construction of Affordable Housing

i. Following the date on which the Phase 2 Affordable Housing Covenants are recorded within the City's land records, the Recipient may request disbursements of the Loan funds, and disbursements may be made by the City from time to time during construction of the Public Infrastructure and/or construction of new Rental or For-Sale Affordable Units, as such construction progresses, no more frequently than once per calendar month, until the City has disbursed the aggregate amount specified within Section 3(D)(i) above (and upon request, any amount(s) not previously disbursed under Section 3(D)(ii)).

ii. As a condition precedent to each disbursement of loan proceeds for the Public Infrastructure, the Recipient shall furnish or cause to be furnished to the City all of the following documents for each disbursement, in form and substance satisfactory to the City: **(a)** a Disbursement Certification in a form approved in advance by the City; **(b)** copies of payment approval forms, certified by an architect or engineer

authorizing payment of specific amount(s), and documentation that such amount(s) have actually been paid to construction contractor(s) and subcontractor(s), for work completed; **(c)** as-built drawings, certified by a professional engineer licensed by the Commonwealth of Virginia, certifying that construction of the improvements and facilities that are the subject(s) requested of loan disbursements is in conformity with the approved final plan and applicable city standards; **(d)** a budget-to-actual expenditure report for the Public Infrastructure, current through the date of the disbursement request; **(e)** a Construction Schedule report, documenting the actual progress of construction (inclusive of Public Infrastructure and housing) compared with the approved Construction Schedule. In the aggregate, items (a)-(e) shall constitute a "Disbursement Request".

iii. As a condition precedent to each disbursement of loan proceeds for relocation and construction of new units of Rental or For-Sale Affordable Housing, the Recipient shall furnish or cause to be furnished to the City all of the following documents for each disbursement, in form and substance satisfactory to the City: **(a)** a Disbursement Certification in the form approved in advance by the City; **(b)** copies of payment approval forms, certified by an architect or engineer authorizing payment(s) which have been made by the Phase 2 Project Owner or Recipient, together with documentation of amount(s) actually paid to construction contractor(s) and subcontractor(s), for completed work referenced within such payment approval forms; **(c)** a budget-to-actual expenditure report, current through the date of the disbursement request, for the relocation and housing construction Budget line items; **(d)** a Construction Schedule report, documenting the actual progress of construction compared with the approved Construction Schedule; **(e)** documentation of amount(s) actually paid by the Phase 2 Project Owner or Recipient to relocate tenants into a new affordable housing unit for which a certificate of occupancy (non-temporary) has been issued. In the aggregate, items (a)-(d) shall constitute a "Disbursement Request" for reimbursement of construction costs, and items (a), (c) and (e) shall constitute a "Disbursement Request" for reimbursement of relocation expenditures.

iv. Following receipt of a complete Disbursement Request, the City shall issue payment of Loan proceeds to the Recipient reimbursing amounts documented within the Disbursement Request as having actually been paid to construction contractor(s) and subcontractor(s) or to relocate tenants. Payment shall be made within 30 days of the City's receipt of a complete Disbursement Request.

(C) Disbursements for Soft Costs

Following the date on which the Phase 2 Affordable Housing Covenants are recorded within the City's land records, the Recipient may request disbursements of the Loan funds for the purposes

referenced in Section 3(D)(ii), above. As a condition precedent to each disbursement of loan proceeds for Soft Costs, the Recipient shall furnish or cause to be furnished to the City all of the following documents for each disbursement, in form and substance satisfactory to the City ("Disbursement Request"): (i) a Disbursement Certification in a form approved in advance by the City; and (ii) documentation evidencing expenditure of the Soft Costs to one or more independent contractors for work or services associated with the planning or design for construction of the Public Infrastructure or the For Rent or For-Sale Affordable Units within Phase 2 of the Project.

Following receipt of a complete Disbursement Request, the City shall issue payment of Loan proceeds to the Recipient for the amounts documented within the Disbursement Request as having actually been paid to independent contractors. Payment shall be made within 30 days of the City's receipt of a complete Disbursement Request.

(D) Execution of Loan Instruments

This Loan is in the amount of the total disbursements made by the City to the Recipient, pursuant to Section 4(B), 4(C) preceding above. Disbursement shall be made up to the Loan maximum specified in Section 3(D), above. All disbursements shall be added to the principal of the Loan, and interest at the rate of this Loan shall accrue thereon from the date each disbursement is made. The City shall not disburse any loan proceeds to the Recipient unless and until the Recipient has executed and delivered to the City all documents or legal instruments deemed by the City to be necessary to effectuate the Loan and to secure the City's ability to enforce the requirements of this Loan Agreement. The following terms and conditions are material to the City's agreement to enter into this Loan Agreement and shall be requirements of this Agreement enforceable in accordance with this Loan Agreement as well as through any documents or legal instruments that effect and secure the Loan of public funds to the Recipient:

(i) Recipient will use commercially available best efforts to negotiate provisions in a subordination agreement with the senior lender for the development of Phase 2 that provide the City with the right to cure a default and exercise rights pursuant to a collateral assignment of Recipient's interest in Phase 2 under a Deed of Trust securing the Sponsor Loan, with wording acceptable to the City Manager and City Attorney. The income, rent and use restrictions required by this Agreement shall terminate upon a foreclosure of the Sponsor Loan, except: (i) twenty percent (20%) of the units within the Project may remain at sixty percent (60%) of area median income following such a foreclosure, and (ii) VHDA may permit additional units at 60% AMI to survive such a foreclosure, provided that VHDA determines, in its sole discretion, that the development will achieve a targeted debt service coverage rate (DCSR) of at least 1.25 while subject to such additional set-aside. The City Manager, after consultation with the City Attorney's Office, is the City official hereby designated as having authority as the agent of City Council to renegotiate

income, rent and use restrictions required by this Agreement and the Master Affordable Housing Covenant, and any amendments thereto, and to enter into a binding amendment of this Agreement, if such renegotiation or amendment is necessary to facilitate Recipient's receipt of financing from VHDA, provided that (i) the renegotiated terms are no less than those VHDA itself requires in its own Lending Policy and (ii) in accordance with Virginia Code §15.2-958, a minimum of twenty percent (20%) of the housing units within Phase 2 shall be Rental or For Sale Affordable Units for a minimum of ten (10) years.

(ii) Deferred Payment Loan; Payment Date. This Loan shall be a deferred payment loan. The deferral period shall commence on the Commencement Date specified in subparagraph (iii), below, and shall expire at midnight on December 31 of the fortieth (40^{th}) calendar year thereafter ("Deferral Period"). Interest shall accrue during the Deferral Period, in the amount specified in subparagraph (iv) following below.

(iii) Each Disbursement of funds made by the City to the Recipient shall constitute loan proceeds (individually and collectively, the "Loan") of the Loan that is the subject of this Agreement. The term of the Loan shall be forty (40) years, commencing on the date of the final disbursement of Loan proceeds by the City to the Recipient pursuant to this Agreement ("Commencement Date"). If the Project is completed and operated continuously in accordance with the requirements of this Agreement and the Master Affordable Housing Covenant, and any amendments thereto, throughout the entire Deferral Period (i.e., continuously from the Commencement Date through the expiration of the Deferral Period) then the Loan shall be forgiven. Recipient will grant to the City, as security for the Loan, an assignment of its subordinate interest in Phase 2, which secures its Sponsor Loan to the Phase 2 Project Owner. The assignment shall be subordinate to loans from VHDA or any federal agency.

(iv) Interest shall accrue on outstanding amounts of the Loan, at the annual rate of three percent (3%), beginning on the Commencement Date specified in (iii), above. If the Project is completed and operated continuously in accordance with the requirements of this Agreement and the Master Affordable Housing Covenant, and any amendments thereto, throughout the entire Deferral Period referenced in paragraph (ii) preceding above (i.e., continuously from the Commencement Date through the expiration of the Deferral Period) then the accrued interest shall be forgiven.

(v) Payment. All Loan proceeds disbursed to the Recipient shall immediately become due and owing to the City in full, in each case following any applicable notice and cure period:

a. on the date of any Uncured Event of Default on the Loan;

b. upon the insolvency or dissolution of the Recipient;

c. on the date of any foreclosure of Phase 2; or

d. upon the sale or transfer of the Phase 2 property, or any portion(s) thereof, to any person other than a related entity, or other assignee, who has been approved by the City in advance. For purposes of this Agreement, the term "related entity" means any transferee that is controlled by the Recipient, the Landowner, or both.

(vi) For so long as the City Loan proceeds are subsidizing Phase 2, Recipient, on behalf of itself and its heirs, successors and assigns (collectively, "Owner") agree that, prior to the first refinancing of the senior lien debt, or prior to the next new tax credit financing (but subject to any senior lender approvals, in their sole discretion, if such new tax credit financing does not include a refinancing of the senior debt) it will propose an Affordability Analysis to the City for the City's review and approval. The Affordability Analysis will determine and detail if any qualified tenants have incomes permitted under the federal low income housing tax credit program that are in excess of one hundred thousand dollars ($100,000) and the Owner will agree either (a) to escrow such rents that exceed thirty percent (30%) of such tenants' income above $100,000 and to use such reserves when sufficient and with the approval of the City to target deeper income restrictions on future tenancies of the other restricted units by providing a rental subsidy to such tenants, or (b) to propose further income restriction to the other restricted units to the reasonable satisfaction of the City.

(vii) **Default**. If any Event of Default shall occur pursuant to this Phase 2 Loan Agreement and is not cured within sixty (60) days from the date that written notice of such Event of Default is given by the City to the Recipient or such longer period as was reasonably necessary for cure, provided the Recipient requested an extension prior the expiration of the 60-day cure period and the City approved the request in writing ("Uncured Event of Default", the Loan shall immediately become due and payable in full to the City. Each of the following shall constitute an Event of Default:

a. Use of Loan funds for any purpose(s) other than those articulated within Section One of this Ordinance;
b. Failure to comply with the terms and conditions of this Loan Agreement that apply to Phase 2;
c. Failure to comply with the requirements of the Master Affordable Housing Covenant, and any amendments thereto, as it may be amended, or any phase-specific replacement covenant thereto;
d. Failure to perform any of Recipient's obligations under this Loan Agreement with respect to construction of the Public Infrastructure or construction of units of housing within Phase 2;
e. Failure to perform any of Recipient's obligations under the Master Affordable Housing Covenant, and any amendments thereto, as it may be amended or any phase-specific replacement covenant thereto;
f. A successful legal challenge initiated by the Landowner, PHA, NHT Communities or any Project Owner, asserting that the Master Affordable Housing Covenant, and any amendments thereto, is invalid or unenforceable, in whole or as applied to such person;
g. Failure to perform as required by any document that secures this Loan and relates to Phase 2;
h. Failure of Recipient to give the City notice of any anticipated sale of all or any portion of the Project to any person that is not controlled by the Recipient, the Landowner, or both and who will use it for any purpose other than that specified within Section 1 of this Agreement;

(viii) **Remedies for Default**. If Recipient fails to pay the Loan or fails to cure any Event of Default prior to the end of the 30-day notice period, the City may invoke foreclosure of this Loan Agreement or any other remedy allowed by the Loan Agreement, any document related to this Loan, or by the laws of the Commonwealth of Virginia. All of the City's rights and remedies are distinct and cumulative to any other rights and remedies under this Agreement, or otherwise at law, and may be exercised concurrently, independently, or successively.

(ix) **No Waiver**. No forbearance by the City in exercising any right or remedy hereunder, or otherwise afforded by Virginia law, shall constitute a waiver of, nor shall forbearance preclude the exercise of, any right or remedy.

Section 5. General Terms and Conditions

(A) Non-Appropriations Condition: The obligations of the City as to any funding beyond the end of Fiscal Year 2024 (June 30, 2024) are expressly made subject to the availability of and appropriation by the City Council of sufficient public funds to support continued performance of this agreement by the City in succeeding fiscal years. When public funds are not appropriated or are otherwise unavailable to support continuation of payment(s) by the City to Recipient in a subsequent fiscal year, the City's obligations hereunder shall automatically expire, without liability or penalty to the City. Within a reasonable time following City Council's adoption of a budget, the City shall provide the Recipient with written notice of any non-appropriation or unavailability of funds affecting this Loan agreement.

(B) Assignments. The City reserves the right to approve in advance any assignment of this Agreement by the Recipient to any individual or entity, and the ownership and membership of any such entity must be disclosed to the City. Any change in the Recipient's organizational structure, and any change in the Recipient's status or Recipient's relationship to either the Landowner, the Project Owner or the Phase 2 Project Owner shall also be subject to approval by the Authority. Any such assignee shall be bound by all the terms and conditions of this Agreement.

(C) Public Disclosure of Agreement Documents: The Recipient acknowledges and understands that this agreement, and all related public proceedings and records, shall be open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (Va. Code §2.2-3700 et seq.) and the Virginia Public Procurement Act (Va. Code §2.2-4300 et seq.) to the extent that either of those laws applies.

(D) No Waiver of Rights: No failure on the part of the City to enforce any of the terms or conditions set forth in this agreement shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the City of any default or failure to perform by the Recipient shall be construed as or deemed to be a waiver of any other and/or subsequent default or failure to perform. The acceptance of the performance of all or any part of this Agreement by the City, for or during any period(s) following a default or failure to perform by the Recipient, shall not be construed as or deemed to be a waiver by the City of any rights hereunder, including, without limitation, the City's right to terminate this Agreement.

(E) Force Majeure. All dates in this Agreement shall be extended for a period of time equal to the period of any delay directly affecting such date which is caused by fire, earthquake or

other acts of God, strike, lockout, acts of public enemy, riot, insurrection, pandemic, disease, work shortages, acts beyond the control of the parties, declared state of emergency or public emergency, government mandated quarantine or travel ban, government shutdown or governmental regulation. All federal extensions permitted due to any pandemic, declared state of emergency or public emergency, government mandated quarantine or travel ban, or any other similar event, shall also apply to the dates in this Loan Agreement.

(F) Severability**:** In the event that any term, provision, or condition of this Agreement, or the application thereof to any person or circumstance shall be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and the application of any term, provision or condition contained herein to any person or circumstance other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

(G) Governing Law: This Agreement shall be governed by the laws of the Commonwealth of Virginia, and, in the event of litigation, jurisdiction and venue shall be in the Circuit Court of the City of Charlottesville, Virginia, and all legal actions involving this Agreement shall be brought only in such court. All parties hereto agree that in the event of any action brought to enforce the terms and provisions hereof, the prevailing party shall be entitled to reimbursement of reasonable attorney's fees and court costs. All parties to this Agreement have standing to enforce any covenants, terms, provisions, and agreements set forth herein.

(H) Entire Agreement: This Agreement is the entire agreement between the parties hereto, sets forth all of promises, agreements, conditions, and understandings between the parties respecting the subject matter hereof and supersedes all prior and contemporaneous negotiations, conversations, discussions, correspondence, memoranda, and agreements between the parties concerning such subject matter.

(I) Authorized City Signature: By its approval of this ordinance, the Charlottesville City Council authorizes the Charlottesville City Manager to execute Agreements to effectuate the requirements herein on its behalf.

(J) Amendments. Except as otherwise specified within Section 5(E) of this Ordinance, the City Manager is hereby authorized to modify terms and conditions set forth within this Ordinance, without Council review and approval, but only if such amendment(s) do **not** materially modify: **(i)** the number of affordable dwelling units to be provided by Recipient, or the length of the Affordability Period, **(ii)** the requirement that Recipient provide a one-for-one replacement of all of the 150 for-rent, Section 8 subsidized dwelling units existing within Friendship Court as of the date of this Agreement (divided among all phases of the

Project), **(iii)** the layout of land uses, or the general or approximate location of the public streets, as depicted in *Illustration 1*, above, within this Agreement, or **(iv)** the dollar amount(s) of the Loan, as set forth within Section 3(D) of this Agreement. Any amendments of the terms referenced in clauses (i) – (iv) preceding above within this paragraph must be approved by ordinance of City Council in the same manner as this Agreement.

(K) Notices. All notices required under this Agreement shall be given in writing, and shall be deemed to be received five (5) business days after being mailed by first class mail, postage prepaid, return receipt requested, or one (1) business day after being placed for next day delivery with a nationally recognized overnight courier service, or upon receipt when delivered by hand, addressed as follows: (i) if given to the City—to the City Manager, with a copy to the City Attorney, each to: 605 East Main Street, Second Floor, City Hall (P.O. Box 911), Charlottesville, Virginia, 22902, or (ii) if given to the Recipient—to Piedmont Housing Alliance, Attention: Executive Director, 682 Berkmar Circle, Charlottesville, Virginia, 22901, with a copy to Erik T. Hoffman, Klein Hornig, LLP, 1325 G Street, N.W., Suite 770, Washington, DC, 20005 and a copy to the Project Lender at an address provided by the Recipient.

AND BE IT FURTHER ORDAINED BY THIS CITY COUNCIL THAT the City Manager is hereby authorized to execute a Loan Agreement containing the terms and conditions consistent with those set forth within this Ordinance, and other documents and instruments necessary to complete this Loan transaction, subject to approval by the City Attorney's Office as to the form of all such documents and instruments.

EXHIBIT A

Legal Description of Property (Phase 2)

DESCRIPTION OF PORTIONS OF TMP 28-112, NHTE PIEDMONT GARRETT SQUARE LIMITED, 'FRIENDSHIP COURT' PHASE 2 LANDS:

ALL THAT CERTAIN PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE CITY OF CHARLOTTESVILLE, VIRGINIA, TO BE PHASE 2 LANDS OF THE REDEVELOPMENT OF FRIENDSHIP COURT, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND IRON ROD ALONG THE NORTH LINE OF MONTICELLO AVENUE, AN 84' WIDE PUBLIC RIGHT OF WAY, APPROXIMATELY 305' WEST OF INTERSECTION WITH 6TH STREET, SE, THENCE WITH THE NORTH LINE OF MONTICELLO AVENUE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 606.12', A CENTRAL ANGLE OF 2°48'04", A CHORD BEARING N23°13"05" W, A CHORD LENGTH OF 29.63' A DISTANCE OF 29.63' ALONG THE ARC OF SAID CURVE TO A POINT, **SAID POINT BEING THE POINT OF BEGINNING (P.O.B.)**;

THENCE WITH THE NORTH LINE OF MONTICELLO AVENUE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 606.12', A CENTRAL ANGLE OF 13°53'42", A CHORD BEARING N31°33'58" W, A CHORD LENGTH OF 146.53' A DISTANCE OF 146.99' ALONG THE ARC OF SAID CURVE TO A POINT;

THENCE CONTINUING WITH THE NORTH LINE OF MONTICELLO AVENUE N38°30'49"W 164.85' TO A POINT;

THENCE LEAVING THE NORTH LINE OF MONTICELLO AVENUE AND THROUGH THE LANDS OF NHTE PIEDMONT GARRETT SQUARE LIMITED ('NHTE') THE FOLLOWING COURSES:

N51°29'11"E 78.00' TO A POINT;

S71°50'35"E 11.83' TO A POINT;

S38°30'49"E 29.59' TO A POINT;

N51°29'11"E 27.00' TO A POINT;

S38°30'49"E 8.81' TO A POINT;

N51°30'59"E 51.15' TO A POINT;

S38°29'01"E 21.93' TO A POINT;

N50°50'02"E 122.44' TO A POINT;

S71°01’37”E 96.02’ TO A POINT;

N19°29’33” E 95.09’ TO A POINT;

S70°49’15”E 58.97’ TO A POINT;

S22°48’25”E 54.32’ TO A POINT;

A CURVE TO THE RIGHT, HAVING A RADIUS OF 165.00’, A CENTRAL ANGLE OF 21°59’19”, A CHORD BEARING S11°48’45" E, A CHORD LENGTH OF 62.93’ A DISTANCE OF 63.32’ ALONG THE ARC OF SAID CURVE TO A POINT;

S0°46’29”E 9.27’ TO A POINT IN THE WEST LINE OF CITY PID 280112001 IN THE NAME OF FC PHASE 1, LLC (‘PHASE 1’);

THENCE CONTINUING WITH THE WEST LINE OF PHASE 1 THE FOLLOWING COURSES:

A CURVE TO THE RIGHT, HAVING A RADIUS OF 340.74’, A CENTRAL ANGLE OF 30°33’40”, A CHORD BEARING S14°43’10" W, A CHORD LENGTH OF 179.60’ A DISTANCE OF 181.75’ ALONG THE ARC OF SAID CURVE TO A POINT;

S29°57’42”W 83.93’ TO A POINT;

A CURVE TO THE RIGHT, HAVING A RADIUS OF 65.00’, A CENTRAL ANGLE OF 37°23’36”, A CHORD BEARING S48°39’30" W, A CHORD LENGTH OF 41.67’ A DISTANCE OF 42.42’ ALONG THE ARC OF SAID CURVE TO A POINT;

A CURVE TO THE RIGHT, HAVING A RADIUS OF 40.00’, A CENTRAL ANGLE OF 33°05’24”, A CHORD BEARING S83°54’00" W, A CHORD LENGTH OF 22.78’ A DISTANCE OF 23.10’ ALONG THE ARC OF SAID CURVE TO A POINT;

S61°31’51”W 66.09’ TO A POINT AT THE NORTHEAST CORNER OF THE FUTURE ‘PCLT’ PARCEL;

THENCE LEAVING THE WEST LINE OF PHASE 1 AND WITH THE NORTH LINE OF THE FUTURE PCLT PARCEL N29°45’01”W 59.83’ TO A POINT;

THENCE S60°14’59”W 80.10’ **TO THE POINT OF BEGINNING**, AN AREA OF LAND, BEING PHASE 2 LANDS, CONTAINING 2.839 ACRES, MORE OR LESS.

	Aye	**No**
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#O-24-077

AN ORDINANCE
GRANTING A TELECOMMUNICATIONS FRANCHISE TO LEVEL 3 COMMUNICATIONS, LLC, ITS SUCCESSORS AND ASSIGNS TO USE THE STREETS AND OTHER PUBLIC PLACES OF THE CITY OF CHARLOTTESVILLE, VIRGINIA FOR ITS POLE, WIRES, CONDUITS, CABLES AND FIXTURES, FOR A PERIOD OF FIVE (5) YEARS

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia, that LEVEL 3 COMMUNICATIONS, LLC, (the "Company"), its successors and assigns, is hereby granted a telecommunications franchise for a period of five (5) years from the effective date hereof and is hereby authorized and empowered to erect, maintain and operate certain telephone lines and associated equipment, including posts, poles, cables, wires and all other necessary overhead or underground apparatus and associated equipment on, over, along, in, under and through the streets, alleys, highways and other public places of the City of Charlottesville, Virginia (the "City") as its business may from time to time require; provided that:

ARTICLE I

SECTION 101 PURPOSE AND SCOPE

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

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

SECTION 102 AUTHORITY TO MANAGE THE RIGHT OF WAY

This Ordinance granting a telecommunications franchise is created to manage and regulate the Company's use of the City's Public Rights-of-Way along city roads pursuant to the authority granted to the City under Sections 15.2-2015, 56-460, and 56-462(A) of the Virginia Code and other applicable state and federal statutory, administrative and common law provisions.

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

SECTION 103 DEFINITIONS

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

103.2 COMPANY means Level 3 Communications, LLC, including its successors and assigns.

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

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

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

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

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

ARTICLE II

SECTION 201 INITIAL INSTALLATION

The initial installation of equipment, lines, cables or other Facilities by the Company shall be located at 324 W Main St, Charlottesville, VA 22903, as shown on the approved PROW Plan for the Facilities, a copy of which shall be maintained by the Director within a file within the Department of Public Works. Any additional installation of equipment, lines, cables or other Facilities shall be underground unless it shall be determined by the Director as set forth in Article III that it is not feasible to do so.

SECTION 202 SUBSEQUENT INSTALLATION

202.1 SUBSEQUENT INSTALLATION MADE PURSUANT TO AN APPROVED PROW PLAN:

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

202.2 GENERAL PREFERENCE FOR UNDERGROUND FACILITIES: As a matter of policy, the City prefers that the installation of any Facility within the PROW occur underground. Notwithstanding this preference, the City recognizes that in some circumstances the placement of Facilities underground may not be appropriate. Any additional installation of lines, cable, equipment or other Facilities shall be underground unless it shall be determined by the Director, pursuant to Article III, that it is not feasible to do so.

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

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

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

SECTION 203 INSPECTION BY THE CITY

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

SECTION 204 AUTHORITY OF THE CITY TO ORDER CESSATION OF EXCAVATION

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

SECTION 205 LOCATION OF POSTS, POLES, CABLES AND CONDUITS

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

SECTION 206 OBSTRUCTION OF THE PROW

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

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

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

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

ARTICLE III

SECTION 301 ADMINISTRATION OF THE PUBLIC RIGHTS OF WAY

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

SECTION 302 SUBMISSION OF PROW PLAN

At least thirty (30) days before beginning any installation, removal or relocation of underground or overhead Facilities, the Company shall submit a detailed PROW Plan of the proposed action to the Director for review and approval.

SECTION 303 GOOD CAUSE EXCEPTION

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

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

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

SECTION 304 DECISION ON PROW PLAN BY THE DIRECTOR

304.1 DECISION: The Director, or his or her authorized representative, shall, within sixty (60) days, either approve the Company's plans for proposed action as described in Section 302 or inform the Company of the reasons for disapproval. The Company shall designate a responsible contact person with whom officials of the Department of Public Works can communicate on all matters relating to equipment installation and maintenance.

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

SECTION 305 MAPPING DATA

Upon completion of each installation within the PROW, the Company shall provide to the City such information necessary to document the location and elevation of the installation, including but not limited to:

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

(b) the outer dimensions of such Facilities; and

(c) a description and location of above-ground appurtenances.

ARTICLE IV

SECTION 401 COMPLIANCE WITH ALL LAW AND REGULATIONS

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

ARTICLE V

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

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

SECTION 502 RIGHTS-OF WAY PATCHING AND RESTORATION

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

(a) the number, size, depth and duration of the excavations, disruptions or damage to the Public Rights-of-Way;

(b) the traffic volume carried by the Public Rights-of-Way; the character of the neighborhood surrounding the right-of-way;

(c) the pre-excavation condition of the Public Rights-of-Way and its remaining life expectancy;

(d) the relative cost of the method of restoration to the Company balanced against the prevention of an accelerated deterioration of the right-of-way resulting from the excavation, disturbance or damage to the Public Rights-of-Way; and

(e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the Public Rights-of-Way that would otherwise take place.

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

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

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

502.5 DUTY TO CORRECT DEFECTS: The Company shall correct defects in patching, or restoration performed by it or its agents. Upon notification from the City, the Company shall correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of the notice from the Director within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure.

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

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

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

ARTICLE VI

SECTION 601 INDEMNIFICATION AND LIABILITY

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

(a) the Company's use of the streets, alleys, highways, sidewalks, rights-of-way and other public places of the City pursuant to the franchise granted by this Ordinance;

(b) the acquisition, erection, installation, maintenance, repair, operation and use of any poles, wires, cables, conduits, lines, manholes, facilities and equipment by the Company, its authorized agents, subagents, employees, contractors or subcontractors; or

(c) the exercise of any right granted by or under the franchise granted by this Ordinance or the failure, refusal or neglect of the Company to perform any duty imposed upon or assumed by the Company by or under the franchise granted by this Ordinance.

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

SECTION 602 WAIVER BY THE CITY

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

(a) elects to conduct its own defense against such claim;

(b) fails to give prompt notice to the Company of any such claim such that the Company's ability to defend against such claim is compromised;

(c) denies approval of a settlement of such claim for which the Company seeks approval; or

(d) fails to approve or deny a settlement of such claim within thirty (30) days of the Company seeking approval.

SECTION 603 INSURANCE

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

(a) verification that an insurance policy has been issued to the Company by an insurance company licensed to do business in the State of Virginia, or a form of self insurance acceptable to the City Attorney;

(b) verification that the Company is insured against claims for personal injury, including death, as well as claims for property damage arising out of (i) the use and occupancy of the Public Rights-of-Way by the Company, its agents, employees and permittees, and (ii) placement and use of Facilities owned by the Company in the Public Rights-of-Way by the Company, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;

(c) verification that the City Attorney will be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;

(d) verification that comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City Attorney in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Ordinance; and

(e) verification that the policy has a combined single limit coverage of not less than two million dollars ($2,000,000).

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

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

SECTION 604 NEGLIGENCE AND INTENTIONAL ACTS

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

ARTICLE VII

SECTION 701 GENERAL REQUIREMENT OF A PERFORMANCE BOND

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

SECTION 702 CHANGED AMOUNT OF THE PERFORMANCE BOND

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

(a) material changes in the net worth of the Company;

(b) changes in the identity of the Company that would require the prior written consent of the City;

(c) material changes in the amount and location of Facilities owned by the Company;

(d) the Company's recent record of compliance with the terms and conditions of this Ordinance; and

(e) material changes in the amount and nature of construction or other activities to be performed by the Company pursuant to this Ordinance.

SECTION 703 PURPOSE OF PERFORMANCE BOND

The Performance Bond shall serve as security for:

(a) the faithful performance by the Company of all terms, conditions and obligations of this Ordinance;

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

(c) payment of compensation required by this Ordinance;

(d) the payment of premiums for the liability insurance required pursuant to this Ordinance ;

(e) the removal of Facilities owned by the Company from the Streets at the termination of the Ordinance, at the election of the City, pursuant to this Ordinance;

(f) any loss or damage to the Streets or any property of the City during the installation, operation, upgrade, repair or removal of Facilities by the Company;

(g) the payment of any other amounts that become due to the City pursuant to this Ordinance or law;

(h) the timely renewal of any letter of credit that constitutes the Performance Bond; and

(i) any other costs, loss or damage incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Ordinance.

SECTION 704 FEES OR PENALTIES FOR VIOLATIONS OF THE ORDINANCE

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

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

ARTICLE VIII

SECTION 801 COMPENSATION/PROW USE FEE.

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

(a) a PROW Use Fee in accordance with Section 56-468.1(G) of the Code of Virginia, and/or

(b) any other fee or payment that the City may lawfully impose for the occupation and use of the Streets.

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

SECTION 802 RESERVED

SECTION 803 NO CREDITS OR DEDUCTIONS

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

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

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

ARTICLE IX

SECTION 901 RESERVATION OF ALL RIGHTS AND POWERS

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

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

SECTION 902 SEVERABILITY

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

ARTICLE X

SECTION 1001 MAINTENANCE OBLIGATION

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

SECTION 1002 TREE TRIMMING

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

ARTICLE XI

SECTION 1101 INITIAL TERM OF TELECOMMUNICATIONS FRANCHISE

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

SECTION 1102 APPLICATION FOR NEW TELECOMMUNICATIONS FRANCHISE

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

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

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

ARTICLE XII

SECTION 1201 NOTICE

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

To the Company:
Attn: NIS/ROW
Lumen
1025 Eldorado Blvd
Broomfield, CO 80021

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

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

SECTION 1202 EMERGENCY NOTIFICATION

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

To the Company:
LEVEL3/LUMEN NOC
(855) 244-6468

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

Shawn Deyo
Sr Network Implementation
Program Manager
(804) 298-7195 (office)
(804) 400-7413 (cell)

Steven Hicks
Director of Public Works
(434) 970-3301 (office)
(434) 970-3817 (facsimile)

SECTION 1203 REGISTRATION OF DATA

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

(a) Name, address and e-mail address if applicable, and telephone and facsimile numbers;

(b) Name, address and e-mail address if applicable, and telephone and facsimile numbers of a local representative that is available for consultation at all times. This information must include how to contact the local representative in an emergency; and

(c) A certificate of insurance as required under Article VI, Section 603 of this telecommunications franchise, and a copy of the insurance policy.

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

ARTICLE XIII

SECTION 1301 TERMINATION OF TELECOMMUNICATIONS FRANCHISE

The franchise granted by this Ordinance may be terminated:

(a) by the Company, at its election and without cause, by written notice to the City at least sixty (60) days prior to the effective date of such termination; or

(b) by either the Company or the City, after thirty (30) days written notice to the other party of the occurrence or existence of a default of the franchise granted by this Ordinance, if the defaulting party fails to cure or commence good faith efforts to cure, such default within sixty (60) days after delivery of such notice.

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

ARTICLE XIV

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

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

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

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

ARTICLE XV

SECTION 1501 PRIOR WRITTEN CONSENT FOR ASSIGNMENT

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

In addition, the City agrees that nothing in this Ordinance shall be construed to require the Company to obtain approval from the City in order to lease any Facilities owned by the Company or any portion thereof in, on, or above the PROW, or grant an indefeasible right of use ("IRU") in the Facilities owned by the Company, or any portion thereof, to any entity or person.

The lease or grant of an IRU in such Facilities owned by the Company, or any portion or combination thereof, shall not be construed as the assignment or transfer of any franchise rights granted under this Ordinance.

SECTION 1502 SUCCESSORS AND ASSIGNS

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

ARTICLE XVI

SECTION 1601 NONEXCLUSIVE FRANCHISE

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

ARTICLE XVII

SECTION 1701 ALL WAIVERS IN WRITING AND EXECUTED BY THE PARTIES

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

SECTION 1702 NO CONSTRUCTIVE WAIVER RECOGNIZED

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

ARTICLE XVIII

SECTION 1801 NO DISCRIMINATION

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

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 17th day of June, 2024.

Kyna Thomas
_____
Clerk of Council

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

LEVEL 3 COMMUNICATIONS, LLC

By _____

Its _____

Date _____

	Aye	No
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas
_____
Kyna Thomas, MMC
Clerk of Council

#O-24-078

AN ORDINANCE GRANTING A TELECOMMUNICATIONS FRANCHISE TO CROWN CASTLE FIBER LLC, ITS SUCCESSORS AND ASSIGNS TO USE THE STREETS AND OTHER PUBLIC PLACES OF THE CITY OF CHARLOTTESVILLE, VIRGINIA FOR ITS POLES, 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 Crown Castle Fiber LLC (the "Company"), its successors and assigns, is hereby granted a telecommunications franchise for a period of five (5) years from the effective date hereof and is hereby authorized and empowered to erect, maintain and operate certain telecommunications facilities 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 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 Crown Castle Fiber LLC, including its successors and assigns.

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

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

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

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

103.7 PUBLIC RIGHTS-OF-WAY or PROW means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, 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

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

SECTION 202 NEW INSTALLATION

202.1 INSTALLATION MADE PURSUANT TO AN APPROVED PROW PLAN: 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 LIKE-FOR-LIKE FACILITIES: As a matter of policy, in areas where undergrounding of other Facilities has occurred, the City prefers that the installation of any new Facility also occur underground. Notwithstanding this preference, the City recognizes that in some circumstances the placement of Facilities underground may not be appropriate. Any additional installation of lines, cable, equipment or other Facilities in these areas of the PROW shall be underground unless it shall be determined by the Director, pursuant to Article III, that it is not appropriate or feasible to do so.

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

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

202.5 CONDITIONS FOR RELOCATING UNDERGROUND: The Company agrees that if, at some future time, the telephone and other utility lines on the posts, poles, and other overhead apparatus upon which the Company has placed some or all its Facilities in the City's PROWs are relocated underground, the Company will also, at such time, relocate its Facilities on those posts, poles, and other overhead apparatus underground at its expense, unless it shall be determined that it is not appropriate or feasible to do so. 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 wellbeing of the public.

SECTION 205 LOCATION OF POSTS, POLES, CABLES AND CONDUITS

In general, all posts, poles, equipment, 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 removed by the Company in a reasonably prompt period at the discretion of the Director 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, as well as other circumstances including whether the PROW can be accessed by the Company, particularly during times of emergency. If the Company has not removed its obstruction from the PROW within the time designated within the notice, the City, at its election, will make such removal and the Company shall pay to the City its reasonable costs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the removal and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to administrative overhead, mobilization, material, labor, and equipment related to removing the obstruction.

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

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

ARTICLE III

SECTION 301 ADMINISTRATION OF THE PUBLIC RIGHTS OF WAY

The Director is the principal City official responsible for the administration of this Ordinance granting a telecommunications franchise to the Company and any of its PROW Plans. The Director may delegate any or all the duties hereunder to an authorized 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 pursuant to Section 1202 of any event regarding its facilities that it considers to be an emergency. The Company will proceed to take whatever actions are necessary to respond to the emergency, or as directed by the Director.

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

SECTION 304 DECISION ON PROW PLAN BY THE DIRECTOR

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

304.2 APPEAL: Upon written request within thirty (30) days of the Director's decision, the Company may have the denial of a PROW Plan reviewed by the City Manager. The City Manager will schedule its review of the Director's decision within forty-five (45) days of

receipt of such a request. A decision by the City Manager will be in writing and supported by written findings establishing the reasonableness of its decision.

SECTION 305 MAPPING DATA

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

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

(b) the outer dimensions of such Facilities; and

(c) a description of above ground appurtenances.

ARTICLE IV

SECTION 401 COMPLIANCE WITH ALL LAW AND REGULATIONS

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

ARTICLE V

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

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

conditioned or delayed. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

SECTION 502 RIGHTS-OF WAY PATCHING AND RESTORATION

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

(a) the number, size, depth and duration of the excavations, disruptions or damage to the Public Rights-of-Way.

(b) the traffic volume carried by the Public Rights-of-Way; the character of the neighborhood surrounding the right-of-way.

(c) the pre-excavation condition of the Public Rights-of-Way and its remaining life expectancy;

(d) the relative cost of the method of restoration to the Company balanced against the prevention of an accelerated deterioration of the right-of-way resulting from the excavation, disturbance or damage to the Public Rights-of-Way; and

(e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the Public Rights-of-Way that would otherwise take place.

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

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

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

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

502.5 DUTY TO CORRECT DEFECTS: The Company shall correct defects in patching, or restoration performed by it or its agents. Upon notification from the City, the Company shall correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of the notice from the Director within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure.

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

502.7 DAMAGE TO OTHER FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY: The Company shall be responsible for the cost of repairing any Facilities existing within the Public Rights-of-Way that it or the Facilities owned by the Company damage. If the Company damages the City's Facilities within the Public Rights-of-Way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, the Company shall correct the damage within a prompt period after receiving written notification from the City. If the Company does not correct the City's damaged Facilities pursuant to the foregoing, the City may make such repairs as necessary and charge all the reasonable, 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. 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. If, in such a suit, a final judgment is obtained against the City, either independently or jointly with the Company, the Company will pay the judgment, including all reasonable costs, and will hold the City harmless therefrom.

SECTION 602 WAIVER BY THE CITY

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

(a) elects to conduct its own defense against such claim.

(b) fails to give prompt notice to the Company of any such claim such that the Company's ability to defend against such claim is compromised;

(c) denies approval of a settlement of such claim for which the Company seeks approval; or

(d) fails to approve or deny a settlement of such claim within thirty (30) days of the Company seeking approval.

SECTION 603 INSURANCE

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

(a) verification that an insurance policy has been issued to the Company by an insurance company licensed to do business in the State of Virginia, or a form of self-insurance acceptable to the City Attorney;

(b) verification that the Company is insured against claims for personal injury, including death, as well as claims for property damage arising out of (i) the use and occupancy of the Public Rights-of-Way by the Company, its agents, employees and permittees, and (ii) placement and use of Facilities owned by the Company in the Public Rights-of-Way by the Company, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;

(c) verification that the City Attorney will be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;

(d) verification that comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City Attorney in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Ordinance; and

(e) verification that the policy has a combined single limit coverage of not less than two million dollars ($2,000,000).

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

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, and/or

(b) any other fee or payment that the City may lawfully impose for the occupation and use of the Streets.

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

SECTION 802 RESERVED

SECTION 803 NO CREDITS OR DEDUCTIONS

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

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

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

ARTICLE IX

SECTION 901 RESERVATION OF ALL RIGHTS AND POWERS

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

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

SECTION 902 SEVERABILITY

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

ARTICLE X

SECTION 1001 MAINTENANCE OBLIGATION

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

SECTION 1002 TREE TRIMMING

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

ARTICLE XI

SECTION 1101 INITIAL TERM OF TELECOMMUNICATIONS FRANCHISE

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

SECTION 1102 APPLICATION FOR NEW TELECOMMUNICATIONS FRANCHISE

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

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

Upon a timely request by the Company prior to the expiration of its initial franchise, the Company shall be permitted to continue operations of the Facilities owned by the Company within the City under the terms of the franchise granted by this Ordinance until the City acts. 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:
Crown Castle Fiber LLC
Attn: Contracts Administration
2000 Corporate Drive
Canonsburg, PA 15317-8564

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

Copy to: Crown Castle Fiber LLC
Attn: Teddy Adams, General Counsel
200 Corporate Drive
Canonsburg, PA 15317-8564

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

SECTION 1202 EMERGENCY NOTIFICATION

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

To the Company:
Emergency contact for
afterhours/weekends/holidays:
Network Operations Center
1-888-230-4404, Option 2

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

Steven Hicks, Director of Public Works
(434) 970-3301 (office)
(434) 970-3817 (facsimile)

SECTION 1203 REGISTRATION OF DATA

The Company, including any sublease 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 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 17th day of June, 2024.

Kyna Thomas

Kyna Thomas, Clerk of Council

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

CROWN CASTLE FIBER LLC

By _____

Its _____

Date _____

	Aye	**No**
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

AN ORDINANCE
GRANTING A TELECOMMUNICATIONS FRANCHISE TO BRIGHTSPEED OF VIRGINIA LLC, ITS SUCCESSORS AND ASSIGNS TO USE THE STREETS AND OTHER PUBLIC PLACES OF THE CITY OF CHARLOTTESVILLE, VIRGINIA FOR ITS POLES, 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 Brightspeed of Virginia LLC (the "Company"), its successors and assigns, is hereby granted a telecommunications franchise for a period of five (5) years from the effective date hereof and is hereby authorized and empowered to erect, maintain and operate certain telecommunications facilities 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 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 Brightspeed of Virginia LLC, including its successors and assigns.

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

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

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

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

103.7 PUBLIC RIGHTS-OF-WAY or PROW means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, 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

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

SECTION 202 NEW INSTALLATION

202.1 INSTALLATION MADE PURSUANT TO AN APPROVED PROW PLAN: 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 LIKE-FOR-LIKE FACILITIES: As a matter of policy, in areas where undergrounding of other Facilities has occurred, the City prefers that the installation of any new Facility also occur underground. Notwithstanding this preference, the City recognizes that in some circumstances the placement of Facilities underground may not be appropriate. Any additional installation of lines, cable, equipment or other Facilities in these areas of the PROW shall be underground unless it shall be determined by the Director, pursuant to Article III, that it is not appropriate or feasible to do so.

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

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

202.5 CONDITIONS FOR RELOCATING UNDERGROUND: The Company agrees that if, at some future time, the telephone and other utility lines on the posts, poles, and other overhead apparatus upon which the Company has placed some or all its Facilities in the City's PROWs are relocated underground, the Company will also, at such time, relocate its Facilities on those posts, poles, and other overhead apparatus underground at its expense, unless it shall be determined that it is not appropriate or feasible to do so. 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 wellbeing of the public.

SECTION 205 LOCATION OF POSTS, POLES, CABLES AND CONDUITS

In general, all posts, poles, equipment, 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 removed by the Company in a reasonably prompt period at the discretion of the Director 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, as well as other circumstances including whether the PROW can be accessed by the Company, particularly during times of emergency. If the Company has not removed its obstruction from the PROW within the time designated within the notice, the City, at its election, will make such removal and the Company shall pay to the City its reasonable costs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the removal and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to administrative overhead, mobilization, material, labor, and equipment related to removing the obstruction.

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

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

ARTICLE III

SECTION 301 ADMINISTRATION OF THE PUBLIC RIGHTS OF WAY

The Director is the principal City official responsible for the administration of this Ordinance granting a telecommunications franchise to the Company and any of its PROW Plans. The Director may delegate any or all the duties hereunder to an authorized 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 pursuant to Section 1202 of any event regarding its facilities that it considers to be an emergency. The Company will proceed to take whatever actions are necessary to respond to the emergency, or as directed by the Director.

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

SECTION 304 DECISION ON PROW PLAN BY THE DIRECTOR

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

304.2 APPEAL: Upon written request within thirty (30) days of the Director's decision, the Company may have the denial of a PROW Plan reviewed by the City Manager. The City Manager will schedule its review of the Director's decision within forty-five (45) days of

receipt of such a request. A decision by the City Manager will be in writing and supported by written findings establishing the reasonableness of its decision.

SECTION 305 MAPPING DATA

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

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

(b) the outer dimensions of such Facilities; and

(c) a description of above ground appurtenances.

ARTICLE IV

SECTION 401 COMPLIANCE WITH ALL LAW AND REGULATIONS

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

ARTICLE V

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

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

conditioned or delayed. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

SECTION 502 RIGHTS-OF WAY PATCHING AND RESTORATION

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

(a) the number, size, depth and duration of the excavations, disruptions or damage to the Public Rights-of-Way.

(b) the traffic volume carried by the Public Rights-of-Way; the character of the neighborhood surrounding the right-of-way.

(c) the pre-excavation condition of the Public Rights-of-Way and its remaining life expectancy;

(d) the relative cost of the method of restoration to the Company balanced against the prevention of an accelerated deterioration of the right-of-way resulting from the excavation, disturbance or damage to the Public Rights-of-Way; and

(e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the Public Rights-of-Way that would otherwise take place.

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

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

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

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

502.5 DUTY TO CORRECT DEFECTS: The Company shall correct defects in patching, or restoration performed by it or its agents. Upon notification from the City, the Company shall correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of the notice from the Director within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure.

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

502.7 DAMAGE TO OTHER FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY: The Company shall be responsible for the cost of repairing any Facilities existing within the Public Rights-of-Way that it or the Facilities owned by the Company damage. If the Company damages the City's Facilities within the Public Rights-of-Way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, the Company shall correct the damage within a prompt period after receiving written notification from the City. If the Company does not correct the City's damaged Facilities pursuant to the foregoing, the City may make such repairs as necessary and charge all the reasonable, 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. 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. If, in such a suit, a final judgment is obtained against the City, either independently or jointly with the Company, the Company will pay the judgment, including all reasonable costs, and will hold the City harmless therefrom.

SECTION 602 WAIVER BY THE CITY

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

(a) elects to conduct its own defense against such claim.

(b) fails to give prompt notice to the Company of any such claim such that the Company's ability to defend against such claim is compromised;

(c) denies approval of a settlement of such claim for which the Company seeks approval; or

(d) fails to approve or deny a settlement of such claim within thirty (30) days of the Company seeking approval.

SECTION 603 INSURANCE

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

(a) verification that an insurance policy has been issued to the Company by an insurance company licensed to do business in the State of Virginia, or a form of self-insurance acceptable to the City Attorney;

(b) verification that the Company is insured against claims for personal injury, including death, as well as claims for property damage arising out of (i) the use and occupancy of the Public Rights-of-Way by the Company, its agents, employees and permittees, and (ii) placement and use of Facilities owned by the Company in the Public Rights-of-Way by the Company, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;

(c) verification that the City Attorney will be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;

(d) verification that comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City Attorney in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Ordinance; and

(e) verification that the policy has a combined single limit coverage of not less than two million dollars ($2,000,000).

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

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, and/or

(b) any other fee or payment that the City may lawfully impose for the occupation and use of the Streets.

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

SECTION 802 RESERVED

SECTION 803 NO CREDITS OR DEDUCTIONS

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

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

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

ARTICLE IX

SECTION 901 RESERVATION OF ALL RIGHTS AND POWERS

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

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

SECTION 902 SEVERABILITY

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

ARTICLE X

SECTION 1001 MAINTENANCE OBLIGATION

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

SECTION 1002 TREE TRIMMING

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

ARTICLE XI

SECTION 1101 INITIAL TERM OF TELECOMMUNICATIONS FRANCHISE

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

SECTION 1102 APPLICATION FOR NEW TELECOMMUNICATIONS FRANCHISE

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

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

Upon a timely request by the Company prior to the expiration of its initial franchise, the Company shall be permitted to continue operations of the Facilities owned by the Company within the City under the terms of the franchise granted by this Ordinance until the City acts. 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:
Brightspeed of Virginia LLC
4701 Cox Rd Ste 285
Glen Allen, VA, 23060

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

Copy to:
Brightspeed
Attn: Legal
1120 S Tryon St Ste 700
Charlotte, NC, 28203

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

SECTION 1202 EMERGENCY NOTIFICATION

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

To the Company:
Emergency contact for
afterhours/weekends/holidays:
833-692-7773 (MYBRSPD)
Brightspeed.com

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

Steven Hicks, Director of Public Works
(434) 970-3301 (office)
(434) 970-3817 (facsimile)

SECTION 1203 REGISTRATION OF DATA

The Company, including any sublease 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 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 17th day of June, 2024.

Kyna Thomas

Kyna Thomas, Clerk of Council

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

BRIGHTSPEEED OF VIRGINIA LLC

By _____

Its _____

Date _____

	Aye	No
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

Approved as to form:

Deputy City Attorney

#R-24-080

RESOLUTION
Approval of a Compromise of Claim in the Form of a Leak Credit of $18,212.63 for Water and Wastewater Charges to the Utility Account of 2PIC LLC."

WHEREAS, the Director of Finance, City Attorney, and City Manager concur that circumstances associated with a leak at 178 Zan Road warrant a credit in the amount of $18,212,.63 for water and wastewater charges, and in accordance with City Code Sec. 11-132(4), City Council has authority to grant such a compromise of claim; now, therefore

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the Director of Finance is hereby authorized to apply a credit of $18,212.63 to the utility account of "2PIC LLC".

	Aye	No
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#O-24-081

AN ORDINANCE AMENDING AND REORDAINING CHAPTER 10 (WATER PROTECTION) OF THE CODE OF THE CITY OF CHARLOTTESVILLE, TO ESTABLISH A VIRGINIA EROSION AND STORMWATER MANAGEMENT PROGRAM

WHEREAS, the Council of the City of Charlottesville, Virginia (the "Council") has adopted ordinances for the regulation of land disturbing activity within the City of Charlottesville (the "City"), and to protect local and state waters and the general health, safety, and welfare of the citizens of the City, which ordinances are codified in Chapter 10 of the City Code, known as the city's Water Protection Ordinance; and

WHEREAS, ordinances for the control of erosion and sediment, codified in Article II of Chapter 10, and for stormwater management, codified in Article III of Chapter 10, are critical components of the Water Protection Ordinance and the Council's efforts to protect local and state waters; and

WHEREAS, the Virginia Erosion and Stormwater Management Act, which is Article 2.3 (§ 62.1-44.15:24 *et seq.*) of Chapter 3.1 of Title 62.1 of the Code of Virginia, as amended, and the implementing state regulations found at 9 Va. Admin. Code 25-875-10 *et seq.* (collectively the "VESMA") become effective July 1, 2024 and create a combined statutory and regulatory framework applicable to the City's erosion and sediment control and stormwater management; and

WHEREAS, amendments to Chapter 10 are necessary in order for the City to implement a Virginia Erosion and Stormwater Management Program ("VESMP") consistent with the requirements of the VESMA; and

WHEREAS, certain cross-references within Article IV of Chapter 10 also need to be amended to correctly refer to the VESMA; and

WHEREAS, on June 17, 2024 the Council held a duly noticed public hearing on the adoption of an ordinance to amend Chapter 10 to establish a VESMP consistent with the VESMA and to establish local fees; and

WHEREAS, the Council finds that adoption of this ordinance and establishment of a VESMP is in the best interests of the City and its citizens and further protects the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from land-disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources.

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that Chapter 10 (Water Protection) of the Code of the City of Charlottesville is hereby amended and reordained as follows:

Amend Article I, by amending Sections 10-2, 10-3, 10-5, 10-6, 10-9, and 10-10;

Amend Article II by renaming to Virginia Erosion and Stormwater Management Program, and deleting Sections 10-21 to 10-43, and adding new Sections 10-21 to 10-39, and reserving Sections 10-40 to 10-49;

Amend Article III by deleting and reserving Sections 10-50 to 10-70; and

Amend Article IV by amending Section 10-73.

All as shown, stated, and ordained below:

CHAPTER 10. WATER PROTECTION

ARTICLE I. IN GENERAL

…

Sec. 10-2. Authority.

This chapter is adopted pursuant to authority conferred by: (i) the Virginia State Water Control Law, set forth within the Virginia Code, Title 62.1, Chapter 3.1, as amended ~~(§§ 62.1-44.2 through 62.1-44.34:28), including, without limitation, §§ 62.1-44.15:27 and 62.1-44.15:54~~; (ii) Virginia Code, Title 15.2, Chapters 21 and 22; and (iii) the federal Clean Water Act (33 U.S.C. § 1251 et seq.).

Sec. 10-3. Purpose.

The purposes of this chapter are:

(1) To ensure the general health, safety, and welfare of the citizens of the City of Charlottesville by (i) protecting the quality and quantity of state waters from the potential harm of unmanaged erosion and stormwater, including protection from land-disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced, and (ii) preventing degradation of properties, stream channels, waters and other natural resources of the city, by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff; and

(2) To provide a framework for the administration, implementation, and enforcement of the provisions of the Virginia Erosion and Stormwater Management Act ~~and the Virginia Erosion and Sediment Control Law~~, and to delineate the procedures and requirements to be followed in connection with permits issued by the city, acting as a VESMP ~~and VESCP~~ authority~~, respectively~~; and

(3) To establish procedures whereby the requirements of the city's VESMP~~, VESCP~~ and MS4 programs shall be enforced in conjunction with one another, and to ensure integration of those program requirements with flood insurance, floodplain management and other programs requiring compliance prior to authorization of construction, in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the city and for those persons responsible for compliance with the programs.

…

Sec. 10-5. Definitions.

In addition to the definitions set forth within the Virginia Administrative Code (VAC) at 9VAC25-8~~40~~75-~~1~~20, as amended ~~9VAC25-850-10 and 9VAC25-870-10~~, which are expressly adopted and incorporated herein by reference, the following words and terms used in this chapter shall have the following meanings unless otherwise specified herein. In the event of a conflict between any definition incorporated by reference and any definition following below, the definition incorporated by reference shall have precedence.

~~*Act* means, according to the context of its use, (1) the Stormwater Management Act set forth within Title 62.1, Chapter 3.1, Article 2.3 (§ 62.1-44.15:24 et seq.) of the Virginia Code or (2) the Erosion and Sediment Control Law set forth within Title 62.1, Chapter 3.1, Article 2.4 (§ 62.1-44.15:51 et seq.) of the Virginia Code.~~

"Adequate channel" means a channel that will convey the designated frequency storm event without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

Administrator means, when referring to a person performing duties relative to the city's ~~VSMP or VESCP~~ programs as set forth within this chapter, the city's designated department ~~of neighborhood development services. The department of neighborhood development services~~ shall have authority to act by and through the director ~~of neighborhood development services~~ and any city official, employee, contractor or other agent designated by the director ~~of neighborhood development services~~ to perform any responsibilities or functions assigned to the ~~VSMP or VESCP~~ Administrator. Whenever the term "administrator" is used within any of the regulations or other VAC sections incorporated by reference into this chapter, the term shall have the meaning assigned within those regulations or VAC sections.

~~*Agreement in lieu of a plan* means (i) a contract between the VESCP administrator and a property owner which specifies conservation measures which must be implemented in the construction of an individual single-family residence, not part of a common plan of development or sale; or (ii) a contract between the VSMP administrator and a property owner which specifies methods that will be implemented to comply with the requirements of Article III of this chapter in the construction of an individual single-family residence, not part of a common plan of development or sale. Such contract may be executed by the administrator in lieu of a formal erosion and sediment control plan or stormwater management plan, as applicable.~~

Agreement in lieu of a plan" means a contract between the VESMP administrator and a property owner that specifies methods that shall be implemented to comply with the requirements of the VESMA and this ordinance for the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; such contract may be executed by the City in lieu of a soil erosion control and stormwater management plan.

Applicant means any person submitting an application for a permit or requesting the issuance of a permit under any provision of this chapter, including a person submitting a soil erosion control and stormwater management plan to a VESMP authority for approval in order to obtain authorization to commence a land-disturbing activity.

~~*Best management practice ("BMP")* means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the runoff volume and pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.~~

"Best management practice" or "BMP" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater systems.

1. "Nonproprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are in the public domain and are not protected by trademark or patent or copyright.

2. "Proprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are privately owned and controlled and may be protected by trademark or patent or copyright.

Board or "state board" means the State Water Control Board.

"Causeway" means a temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

"Channel" means a natural stream or manmade waterway.

"City" means the City of Charlottesville, Virginia.

Clean Water Act or *CWA* means the federal Clean Water Act, 33 U.S.C. 1251 et seq., formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

Clearing means any activity which removes vegetative ground cover, including, but not limited to, root mat removal or top soil removal.

"Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be constructed.

Common plan of development or sale refers to a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

"Comprehensive stormwater management plan" means a plan, which may be integrated with other land use plans or regulations that specifies how the water quality components, quantity components, or both of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

~~*Conservation standards, criteria or specifications* means the criteria, guidelines, techniques, and methods for the control of erosion and sedimentation whether promulgated by the program authority or contained in (1) the Virginia Erosion and Sediment Control Handbook and other regulations promulgated by the State Water Control Board, or (2) the Stormwater Management Handbook and other regulations promulgated by the Virginia Department of Environmental Quality.~~

"Construction activity" means any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.

Control measure means any BMP or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

"CWA and regulations" means the Clean Water Act and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this ordinance, it includes state program requirements.

"Dam" means a barrier to confine or raise water for storage or diversion, to create a hydraulic head, to prevent gully erosion, or to retain soil, rock or other debris.

"Denuded" means a term applied to land that has been physically disturbed and no longer supports vegetative cover.

DEQ and *department* mean the Virginia Department of Environmental Quality.

Development, land development and land development project as used within this chapter each refer to land improved or to be improved as a unit, under single ownership or unified control, such improvement(s) including all of the land disturbance, and the resulting landform, associated with the construction of residential, commercial, industrial, institutional, recreational, transportation, or utility facilities or structures, and or the clearing of land for non-agricultural or non-silvicultural purposes. The term shall include the entire area within a common plan of development or sale. The regulation of discharges from development, for purposes of stormwater management, does not include the exclusions found in 9VAC25-875-860.

"Dike" means an earthen embankment constructed to confine or control water, especially one built along the banks of a river to prevent overflow of lowlands; levee.

Director, as used in each Article ~~V~~ of this chapter, shall mean and include the respective ~~city's~~ director of the city department identified in Section 10-6~~public works and director of neighborhood development services~~, and the employees and agents authorized by either of them to exercise authority or to take enforcement action ~~under the provisions of Article V. The term director as used within Articles II and III of this chapter, shall mean the~~

~~director of neighborhood development services.~~ Whenever the term "director" is used within any of the regulations or other VAC sections incorporated by reference into this chapter, the term shall have the meaning assigned within those regulations or VAC sections.

"Discharge" when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to state waters from any point source; or

2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

"Diversion" means a channel with a supporting ridge on the lower side constructed across or at the bottom of a slope for the purpose of intercepting surface runoff.

"Dormant" means denuded land that is not actively being brought to a desired grade or condition.

"Drainage area" means a land area, water area, or both from which runoff flows to a common point.

"Energy dissipator" means a non-erodible structure which reduces the velocity of concentrated flow to reduce its erosive effects.

"Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

Erosion and sediment control plan means a document containing materials and provisions for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Erosion impact area means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of six thousand (6,000) square feet or less used for residential purposes.

"ESC" means erosion and sediment control.

“ESM plan” means a soil erosion control and stormwater management plan, commonly referred to as the erosion control and stormwater management plan.

Excavating means any digging, scooping, or other method(s) of removing earth materials.

Filling means any depositing or stockpiling of earth materials.

"Flood fringe" means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes the flood or floodway fringe designated by the Federal Emergency Management Agency.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Floodplain" means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes the floodplain designated by the Federal Emergency Management Agency.

"Flood-prone area" means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes the floodway designated by the Federal Emergency Management Agency.

"Flume" means a constructed device lined with erosion-resistant materials intended to convey water on steep grades.

~~*General permit* means the state general permit, defined following below.~~

"General permit" means a permit authorizing a category of discharges under the CWA and the VESMA within a geographical area.

Grading means any excavating or filling, and any combination thereof, including the land in its excavated or filled conditions.

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified as another order.

Illegal discharge and *illicit discharge* each means and refers to any discharge to the ~~city's municipal storm sewer system ("~~MS4~~")~~ that is not composed entirely of stormwater, except: (i) discharges pursuant to a VPDES permit; (ii) discharges resulting from firefighting activities; and (iii) any discharges specifically authorized within Article V of this chapter.

Illicit connection means any connection to the city's ~~municipal storm sewer system ("~~MS4~~")~~ made without the express written approval of an authorized city official.

"Impervious cover" means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Inspection" means an on-site review of the project's compliance with any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the VESMA and applicable regulations.

Land disturbance or *land-disturbing activity* means any a manmade change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land ~~human caused change to the land surface that (i) actually or potentially changes its runoff characteristics, including, without limitation, clearing, grading, or excavation, or (ii) that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, without limitation, clearing, grading, excavating, transporting and filling~~. The entire land area within a common plan of development or sale, as a whole, shall be considered to be a single land-disturbing activity.

"Land-disturbance approval" means an approval allowing a land-disturbing activity to commence issued by the VESMP authority after the requirements of § 62.1-44.15:34 of the Code of Virginia and Chapter 10 of the City Code have been met.

"Large construction activity" means construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

~~*Layout* means a conceptual drawing sufficient to identify and provide for specific stormwater management facilities required at the time of approval.~~

Licensed professional means an individual who is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; (iii) highway construction projects; (iv) construction of stormwater channels and stream restoration activities; and (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

"Live watercourse" means a definite channel with bed and banks within which concentrated water flows continuously.

~~*Local erosion and sediment control program* or *VESCP* means an outline of the various methods employed by the city to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program, including, without limitation, city ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.~~

"Locality" means the City of Charlottesville, Virginia.

"Localized flooding" means smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

"Main channel" means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events.

"Manmade" means constructed by man.

"Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practicable.

Minor modification means, in relation to the state general permit, an amendment to an existing state general permit, before its expiration, not requiring extensive review and evaluation, including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor state general permit modification or amendment is one that does not substantially alter state general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

Mitigation plan means a plan, a component of a stormwater management/BMP plan, an erosion and sediment control plan, or an agreement in lieu of a plan, that describes how encroachments into a stream buffer will be mitigated through runoff treatment, re-vegetation, the addition of extra buffer areas, or other appropriate measures.

MS4 means the city's municipal separate storm sewer system. The terms "municipal separate storm sewer" and "municipal separate storm sewer system" shall have the meanings set forth within 9VAC25-870~~5~~-~~1~~20.

Natural channel design concepts means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or

recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Natural stream" means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams; however, channels designed utilizing natural channel design concepts may be considered natural streams.

"Nonerodible" means a material, e.g., riprap, concrete, plastic, etc., that will not experience surface wear due to natural forces.

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater.

~~*Operator* means the owner or operator of any facility or activity subject to regulation under this chapter.~~

"Operator" means the owner or operator of any facility or activity subject to the VESMA and Article II of this Chapter. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit or VESMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions).

Owner means the owner(s) of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property ~~and, or a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person in control of a property~~. As used herein, "owner" also refers to, in the appropriate context, any person authorized to act as the agent for the owner. Where the context requires within Article II, it shall also mean the same as that term is defined in § 62.1-44.3 of the Code of Virginia.

Peak flow rate means the maximum instantaneous flow from a ~~given~~ prescribed design storm ~~condition~~ at a particular location.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

Permit means any building permit, grading permit, or other permit, including the approval of any site plan or subdivision plat, which is required to be issued by any board, commission, officer, employee or agency of the city as a prerequisite to any land-disturbing activity or development. In relation to the provisions of Article~~s~~ II ~~and III~~ of this chapter the term shall mean an approval issued by the ~~VSMP/VESCP~~ administrator for the initiation of a land-disturbing activity in accordance with this chapter, after evidence of state general permit coverage has been received, and means a VPDES permit issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity where the context requires.

Permittee means the person to whom a permit is issued~~permit authorizing a land-disturbing activity is issued~~, and, in the appropriate context the term may refer to the person who certifies that an approved ~~erosion and sediment control~~ plan will be followed.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

"Point of discharge" means a location at which concentrated stormwater runoff is released.

"Point source" means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant discharge" means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this ordinance.

Pollution prevention plan shall mean a plan for implementing pollution prevention measures during construction activities, which meets the requirements of 9VAC25-870~~5~~-5~~6~~20.

"Post-development" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Predevelopment" refers to the conditions that exist at the time that plans for the land-disturbing activity are submitted to the VESMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the commencement of land-disturbing activity shall establish predevelopment conditions.

"Prior developed lands" means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

Project shall have the same meaning as set forth above for the term development.

Public waters means and refers to the public waters and waterways of the United States and of the Commonwealth of Virginia.

"Qualified personnel" means a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity.

Redevelopment for purposes of this chapter, means and refers to construction of buildings, structures, fixtures or other improvements to land as replacement(s) for existing improvements.

Regulations means ~~(1)~~ in the context of the provisions of Article II, the Virginia Erosion and ~~Sediment Control~~ Stormwater Management Regulations set forth within ~~9VAC25-840-10~~ 9VAC25-875-10 et seq. of the Virginia Administrative Code~~, or (2) in the context of the provisions of Article III, the Virginia Stormwater Management Regulations set forth within 9VAC25-870-10 et seq. of the Virginia Administrative Code~~.

~~*Residential development* means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control, and which is to contain three (3) or more residential dwelling units.~~

~~*Responsible land disturber* or *RLD* means an individual holding a certificate of competence issued by the department, who is responsible for the operations of carrying out land-disturbing activity in accordance with an~~

~~approved erosion and sediment control plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor or any other project or development team member; however, the identity of the RLD must be designated on the approved erosion and sediment control plan or permit.~~

"Responsible land disturber" or "RLD" means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved erosion and sediment control plan or ESM plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the erosion and sediment control plan, ESM plan, or permit as defined in this ordinance as a prerequisite for engaging in land disturbance.

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Runoff characteristics" includes maximum velocity, peak flow rate, volume, and flow duration.

Runoff volume means the volume of water that runs off the land development project from a prescribed storm event.

"Sediment basin" means a temporary impoundment built to retain sediment and debris with a controlled stormwater release structure.

"Sediment trap" means a temporary impoundment built to retain sediment and debris which is formed by constructing an earthen embankment with a stone outlet.

"Sheet flow" (also called overland flow) means shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural conditions.

Site means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. All of the land that is part of a development, or of common plan of development or sale shall be considered as a single site.

"Site hydrology" means the movement of water on, across, through, and off the site as determined by parameters including soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

"Slope drain" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope with an energy dissipator at the outlet end.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The department may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved "total maximum daily load" (TMDL) that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator shall certify to the department that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the

TMDL or provide an equivalent analysis. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the waiver shall be submitted electronically by the owner or operator to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

2. Any other construction activity designated by either the department or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Soil erosion" means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

"Soil erosion control and stormwater management plan," commonly referred to as the erosion control and stormwater management plan, or "ESM plan" means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to the VESMA. The ESM plan may consist of aspects of the erosion and sediment control plan and the stormwater management plan as each is described in this ordinance.

"Stabilized" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

State means the Commonwealth of Virginia, inclusive of its departments, boards, agencies and divisions.

"State application" or "application" means the standard form or forms, including any additions, revisions, or modifications to the forms, approved by the administrator and the department for applying for a permit.

~~*State board* means the Virginia State Water Control Board.~~

State general permit means the state permit titled "General Permit for Discharges of Stormwater From Construction Activities" referenced within the Virginia Administrative Code at 9VAC25-880-1 et seq., authorizing a category of discharges under the CWA and the ~~Act~~ VESMA within a geographical area of the Commonwealth of Virginia.

State permit means an approval to conduct a land-disturbing activity issued by the state board. Under a state permit, the state imposes and enforces requirements pursuant to the federal Clean Water Act and related regulations and the Virginia Erosion and Stormwater Management Act and related regulations.

~~*State waters* means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.~~

State Water Control Law means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Virginia Code.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Storm sewer inlet" means a structure through which stormwater is introduced into an underground conveyance system.

Stormwater and stormwater runoff mean precipitation that is discharged across the land surface or through conveyances to one (1) or more waterways. The term may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater conveyance system" means a combination of drainage components that are used to convey stormwater discharge, either within or downstream of the land-disturbing activity. This includes:

1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;

2. "Natural stormwater conveyance system" means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or

3. "Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

"Stormwater detention" means the process of temporarily impounding runoff and discharging it through a hydraulic outlet structure to a downstream conveyance system.

"Stormwater management facility" means a control measure that controls stormwater runoff and changes the characteristics of that runoff including the quantity and quality, the period of release or the velocity of flow.

~~*Stormwater management plan* means any document(s) containing material that describes method(s) for complying with the requirements of Article III of this chapter.~~

"Stormwater management plan" means a document containing material describing methods for complying with the requirements of the VESMP.

~~*Stormwater pollution prevention plan* or *SWPPP* means a document or set of documents prepared in accordance with good engineering practices, meeting the requirements set forth within 9VAC25-870-54, in which potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from a construction site are described, and control measures are identified.~~

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under the VESMP for construction activities shall identify and require the implementation of control measures and shall include or incorporate by reference an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

Stream buffer means an area of land at or near a tributary streambank and/or nontidal wetland that has an intrinsic water quality value due to the ecological and biological processes it performs or is otherwise sensitive to changes which may result in significant degradation to the quality of state waters.

"Subdivision" means the same as defined in Section 29-3 of the City Code.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. That are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. That are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as surface waters under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

"SWM" means stormwater management.

"Temporary vehicular stream crossing" means a temporary nonerodible structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

"Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedance probability with a 10% chance of being equaled or exceeded in any given year.

Total maximum daily load or *TMDL* means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs may be expressed in terms of either mass per time, toxicity, or other appropriate measures. The TMDL process provides for point source versus nonpoint source trade-offs.

Transporting means any moving of earth materials from one place to another place, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

"Two-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedance probability with a 50% chance of being equaled or exceeded in any given year.

VAC means the Virginia Administrative Code. References to specific sections of the Virginia Administrative Code appear in the following format: e.g., 9VAC25-87~~0~~5-~~1~~20. Whenever reference to a specific VAC section is given, the provisions of that VAC section shall be deemed incorporated into this chapter by reference, as if set forth herein verbatim.

~~*Virginia Erosion and Sediment Control Program* or *VESCP* means a program approved by the state that has been established by the city for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources, and shall include such items, where applicable, as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in Article II of this chapter, and evaluation consistent with the requirements of this chapter and related federal, state and local regulations.~~

~~*Virginia Erosion and Sediment Control Program Authority* or *VESCP Authority* shall mean the City of Charlottesville, acting pursuant to authority granted by the state to operate a VESCP.~~

"Virginia Erosion and Stormwater Management Act" or "VESMA" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1, State Water Control Law, of Title 62.1 of the Code of Virginia, as amended.

"Virginia Erosion and Stormwater Management Program" or "VESMP" means a program established by the VESMP authority for the effective control of soil erosion and sediment deposition and the management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The program shall include such items as local ordinances, rules, requirements for permits and land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement consistent with the requirements of the VESMA.

"Virginia Erosion and Stormwater Management Program authority" or "VESMP authority" means the City of Charlottesville, being approved by the department to operate the VESMP.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the department pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

~~*Virginia Stormwater BMP Clearinghouse Website* means a state website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.~~

"Virginia Stormwater BMP Clearinghouse" means a collection that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the VESMA and associated regulations.

~~*Virginia Stormwater Management Act* means Article 2.4 (§ 62.1-44.15:24 et seq.) of the State Water Control Law and the related state regulations set forth within 9VAC25-870-10 et seq.~~

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the VESMA and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

~~*VSMP* or *Virginia Stormwater Management Program* means a program approved by the state board after September 13, 2011, that has been established by the city to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in Article III, and evaluation consistent with the requirements of Article III.~~

~~*VSMP Authority* or *Virginia Stormwater Management Program Authority* means the City of Charlottesville, acting pursuant to authority granted by the state to operate a VSMP.~~

"Wasteload allocation" or "wasteload" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. Wasteload allocations are a type of water quality-based effluent limitation.

Water dependent facility refers to land development that cannot exist outside the stream buffer and must be located on a shoreline because of the intrinsic nature of its operation, including, without limitation: intake and outfall structures of water and sewage treatment plants and storm sewers; water-oriented recreation areas; and boat docks and ramps.

"Water quality technical criteria" means standards set forth in regulations adopted pursuant to the VESMA that establish minimum design criteria for measures to control nonpoint source pollution.

"Water quantity technical criteria" means standards set forth in regulations adopted pursuant to the VESMA that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

"Wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Sec. 10-6. Program administration.

(a) The city council hereby designates the following departments, acting through its director, ~~of neighborhood development services~~ as its administrator for the programs ~~referenced in Articles II, III, and IV. Administration and enforcement of Article V shall be as set forth within sections 10-92 and 10-93.~~ in this chapter:

(1) Article II – Department of Public Works

(2) Article IV – Department of Neighborhood Development Services

(3) Article V – Department of Utilities

(4) Article VI – Department of Utilities

(b) The administrator shall administer and enforce the provisions of this chapter, acting by and through its director. The director may enter into agreements or contracts with the local soil and water conservation district, an adjacent locality, or another public or private entity, to carry out or assist with the responsibilities of this chapter. The director of the designated department ~~of neighborhood development services~~ shall have authority to assign specific responsibilities or functions of the administrator to authorized agents of such department, such as another city official, employee, or an independent contractor, consistent with requirements of this chapter and applicable state laws and regulations.

(c) The administrator shall establish reasonable regulations and interpretive guidelines for the administration of this chapter, subject to approval of city council. Such regulations and guidelines shall be consistent with this chapter and all applicable federal and state statutes and regulations.

(d) The administrator shall assure that the ~~erosion and sediment control program~~ VESMP set forth in Article II is administered by a certified program administrator, a certified plan reviewer, and a certified project inspector. Such positions may be filled by the same person. The administrator shall assure that persons reviewing stormwater management plans and conducting related inspections shall hold a certificate of competence issued by the board.

(e) The administrator shall take appropriate enforcement actions to achieve compliance with this chapter, and shall maintain a record of enforcement actions for all active land-disturbing activities and developments.

(f) The administrator is authorized to cooperate with any federal or state department, agency, or official in connection with plans for erosion and sediment control or stormwater management. The administrator may also recommend to the city manager any proposed agreement with such agency for such purposes, which agreement shall be executed, if at all, by the city manager on behalf of the city.

…

Sec. 10-9. Compliance with chapter required prior to issuance of permits for development involving land-disturbing activities.

(a) A person shall not commence, conduct or engage in any land-disturbing activity until such person has submitted a permit application to the administrator and has obtained the administrator's approval of a permit authorizing commencement of land-disturbing activity.

(1) The applicant shall submit with the application for a permit:

a. A proposed erosion and sediment control plan;

b. A proposed stormwater management plan, if required;

c. A state general permit registration statement, if required;

d. For the land that is proposed to be disturbed, (i) a valid, approved preliminary site plan that provides a layout, as defined in 9VAC25-870~~5~~-~~10~~670, or a valid approved site plan, (ii) a valid, approved preliminary subdivision plat that provides a layout, as defined in 9VAC25-870~~5~~-~~10~~670, or a valid, approved final subdivision plat, or (iii) for land use or construction not subject to the requirement of an approved site plan or subdivision plat, the applicant shall submit a written certification of the purpose of the proposed land-disturbing activity together with a zoning administrator determination stating that the use sought to be established on the land is permitted under applicable zoning district regulations and will comply with applicable requirements of the city's zoning and other local ordinances;

e. Any request for exception(s) from applicable technical requirements; and

f. Payment of required application fee(s), pursuant to section 10-10.

The administrator shall not issue any approval(s) for commencement of any land-disturbing activity until all such required submissions and plans have been received and approved.

~~(2) The administrator shall act on each plan included within the application, in accordance with the following:~~

~~a. The administrator, or any duly authorized agent of the administrator, shall promptly review the materials submitted with an application. The administrator or their agent shall determine the completeness of the application within fifteen (15) calendar days of receipt, in accordance with the procedure referenced in 9VAC25-870-108(B).~~

~~b. The administrator or their agent shall act on a plan within the time period(s) and in accordance with the procedures referenced within 9VAC25-870-108(B). However, when a proposed erosion and sediment control plan is determined to be inadequate, notice of disapproval, stating the specific reasons for disapproval, will be communicated to the applicant within forty-five (45) days.~~

~~c. Approval or denial of a plan shall be based on compliance with the requirements of this chapter. Any decision shall be communicated in writing to the person responsible for the land-disturbing activity or the person's agent. Where available to the applicant, electronic communication will be deemed communication in writing. If a plan meeting all of the requirements of this chapter is submitted and no action is taken within the required time period, the plan shall be deemed approved. If a plan is not approved, the reasons for not approving the plan shall be provided in writing.~~

~~d. When all requirements have been satisfied and all required plans have been approved, the administrator shall issue a consolidated stormwater management and erosion and sediment control permit, when all of the following requirements have been satisfied:~~

~~1. Upon the development of an online reporting system by DEQ, but no later than July 1, 2014, the administrator shall not issue a permit to authorize any land-disturbing activity until evidence has been obtained of state general permit coverage, where required; and~~

~~2. The administrator must receive the performance guarantee(s) and other instruments and documentation specified in subparagraphs (3) through (6), following below; and~~

~~3. All fees required by section 10-10 shall be paid by the applicant.~~

(~~3~~2) Prior to issuance of any approval or permit, the administrator shall require (or in the case of an agreement in lieu of a plan, may require) the applicant to submit a reasonable performance bond with surety, a cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the administrator (individually, and collectively, "performance guarantee"), to ensure

that measures could be taken by the city at the applicant's expense, upon the applicant's failure, after proper notice, within the time specified, to initiate or maintain appropriate actions which may be required of applicant by the approved plan(s) and permit(s) or permit conditions as a result of applicant's land-disturbing activity. Separate performance guarantees shall be established and required to assure compliance with the approved stormwater management plan and with the erosion and sediment control plan, except as provided in subparagraph (~~c~~b), below.

a. Each performance guarantee shall be effective from a date prior to the issuance of any permit or approval until sixty (60) days after completion of the requirements of approved plan(s) and permit(s) or permit conditions. The instrument(s) of security shall provide that the performance guarantee for stormwater requirements shall be and remain in effect until satisfactory completion of all permit conditions has been achieved. Within sixty (60) days of the satisfactory completion of the requirements of the permit conditions, such security, or the unexpended or unobligated portion thereof, if any, shall be refunded to the applicant or terminated.

b. If approved by the administrator, the applicant may submit any required performance guarantee as part of, or included in, any other performance guarantee(s) required in connection with a site plan, subdivision plat or other required approval. In cases where any such consolidated performance guarantee is authorized, the administrator shall separately establish the specific amount(s) attributable to erosion and sediment control requirements, stormwater management requirements, construction of public facilities and improvements, and other activities for which a performance guarantee is to be provided.

c. The permit and/or instrument(s) of security shall provide the administrator and its authorized agents with a right of entry, for the purpose of initiating or maintaining appropriate actions that are required by the permit, or permit conditions associated with a land-disturbing activity when the applicant, a permittee, or other person responsible for carrying out the land-disturbing activities or the requirements of a permit and permit conditions, after proper notice, has failed to take acceptable action within the time specified.

d. This requirement for performance bonding/ security is in addition to all other provisions and requirements of this article, state law and state regulations, relating to the issuance of permits, and is not intended to otherwise affect the requirements for such permits.

e. If the administrator is required to take action upon a failure of the permittee, the administrator may collect from the permittee the difference should the amount of the reasonable cost of such action exceed the amount of the performance guarantee held by the administrator.

f. The administrator may require submission of other materials and supporting documentation as the administrator deems necessary in order for the applicant to demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.

~~(4) Prior to issuance of any approval or permit for land-disturbing activity involving one (1) or more acres of land, the administrator shall require the applicant to submit a stormwater pollution prevention plan (SWPPP). The SWPPP shall include the content specified by 9VAC25-870-54, 9VAC25-870-55 and 9VAC27-870-56, as well as the requirements and general information specified by 9VAC25-880-70, Section II.~~

~~a. The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.~~

~~b. The SWPPP must be maintained by the operator at a central location at the site of the development. If no onsite location is available, notice of the SWPPP's location must be posted near the main entrance at the development site. Operators shall make the SWPPP available for~~

~~public inspection in accordance with 9VAC25-880-70, Section II, either electronically or paper copy.~~

~~(5) Except as provided in section 10-56(d), prior to issuance of any approval or permit for land-disturbing activity associated with development for which permanent stormwater management facilities are required, the administrator shall require the applicant to submit a proposed written instrument, in a form suitable for recordation in the city's land records, specifying long-term responsibility for and maintenance of the stormwater management facilities and other techniques specified within the proposed stormwater management plan for management of the quality and quantity of runoff.~~

(b) No site plan shall be granted final approval, and no final subdivision plat shall be signed by any city board, commission, agency, department, official or employee, unless and until such final site plan or final subdivision plat includes improvements, facilities and treatments identified within a stormwater management plan approved by the administrator in accordance with this chapter.

(c) No authorization or permit for any construction, land use or development involving any land-disturbing activity, including any grading permit, building permit, foundation permit, demolition permit, or other city-issued development permit, shall be issued by any city board, commission, agency, department, official or employee, unless and until a stormwater management plan has been approved and a permit has been issued by the administrator in accordance with this chapter.

Sec. 10-10. Fees for review and approval of plans.

(a) The city council will, from time to time, approve a schedule of the fees and charges associated with the various applications, actions, inspections, permits and approvals required by this chapter in connection with the review of plans, issuance of VESMP ~~and VESCP~~ Authority permits, issuance of state general permit coverage, and implementation of the VESMP ~~and VESCP~~ related to land-disturbing activities. Prior to the issuance of any permit authorizing commencement of any land-disturbing activity, and prior to conducting any inspection or other action required by this chapter for which a fee is specified, the administrator shall assess, collect and administer the applicable fees and charges set forth within the most recent fee schedule adopted by city council.

(b) The city council hereby adopts and incorporates by reference the statewide fee schedule(s) enacted by the state board pursuant to Virginia Code § 62.1-44.15:28 and 9VAC25-870~~5-700~~5-7001400 et seq., and said fee schedule(s) shall be deemed included within the local fee schedule referenced in paragraph (a), above as if it were restated fully therein. Prior to the issuance of any permit authorizing the commencement of any land-disturbing activity, the administrator shall assess, collect and administer the fees as set forth within 9VAC25-870~~5-700-700~~5-7001400 et seq., including, without limitation:

(1) Fees for the modification or transfer of registration statements from the state general permit issued by the state board; provided, however, that if the state general permit modifications result in changes to stormwater management plans that require additional review by the administrator, then, in addition to the state general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference between the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage. No such modification fee shall be assessed to (i) permittees who request minor modifications to a state general permit, or (ii) permittees whose general permits are modified or amended at the initiative of DEQ (excluding errors in the registration statement identified by the administrator and errors related to the acreage of the site); and

(2) Annual fees for maintenance of the state general permit, including fees on expired permits that have been administratively continued. State general permit maintenance fees shall be paid annually to the city, on or before the anniversary date of general permit coverage. State general permit maintenance fees shall apply, and shall continue to be paid, until state general permit coverage is terminated. No permit will be reissued or automatically continued without payment of the required fee for state general permit coverage.

(3) Payment of the state's portion of the statewide permit fee shall not be required for coverage under the state general permit, for construction activity involving a single-family detached residential structure, when such activity is exempted from such fee pursuant to regulations established by the state board.

State general permit coverage and maintenance fees may apply to each state general permit holder. Persons whose coverage under the state general permit has been revoked shall apply to DEQ for an individual permit for discharges of stormwater from construction activities. All persons seeking approval of a stormwater management plan, all persons seeking coverage under the state general permit, and all permittees who request modifications to or transfers of their existing registration statement for coverage under a state general permit, shall be subject to the fees referenced within this paragraph, in addition to any separate fees that may apply under paragraph (a) of this section.

(c) Fees shall be paid when due, by applicants, permittees, and other persons responsible for carrying out conditions of a permit. An incomplete payment will be deemed a nonpayment. Interest shall be charged for non-payments and for late payments, at the rate set forth in Virginia Code § 58.1-15, calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent account that is more than ninety (90) days past due. The city shall be entitled to all remedies available under the Virginia Code in collecting any past due amount.

ARTICLE II. VIRGINIA EROSION AND ~~SEDIMENT CONTROL~~ STORMWATER MANAGEMENT PROGRAM

~~DIVISION 1. IN GENERAL~~

~~Sec. 10-21. Purpose and authority; applicability.~~

~~(a) The purpose of this article is to prevent degradation of properties, stream channels, waters and other natural resources of the city, by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff, and by establishing procedures by which these requirements shall be administered and enforced.~~

~~(b) This chapter is authorized by the Code of Virginia, Title 62.1, Chapter 3.1 (State Water Control Law) article 2.4, § 62.1-44.15:51 et seq. (Erosion and Sediment Control Law).~~

~~(c) This article shall apply to any land-disturbing activity within the city, except that state agency projects shall be subject to the requirements of Virginia Code § 62.1-44.15:56. Each owner of land within the city shall comply with the requirements of this article, as provided herein:~~

~~(1) Prior to engaging in any land-disturbing activity, or allowing any land-disturbing activity to occur, on such owner's property;~~

~~(2) At all times during any land-disturbing activity until it is completed, including all times when the land-disturbing activity is performed by a contractor engaged in construction work; and~~

~~(3) When notified by the administrator that an erosion impact area exists on such owner's land, and the notice requires the owner to submit an erosion and sediment control plan in order to control erosion and sedimentation.~~

~~(d) This article is intended to be interpreted, administered and enforced in conjunction with the definitions and provisions of Article I. References to "this article", and references to "provisions of this article" shall be deemed to include (i) the provisions of Article I of this chapter, and (ii) the provisions, criteria, and~~

requirements of each federal or state statute, regulation, standard and specification adopted or referred to within Articles I and II of this chapter.

Sec. 10-22. Determination of land-disturbing activity.

(a) The determination of whether an activity is a land-disturbing activity for purposes of this article shall be made by the administrator. Except as may otherwise be required by federal or state law or regulations, the term "land-disturbing activity" shall not include:

(1) Disturbed land areas of less than six thousand (6,000) square feet;

(2) Home gardens, individual home landscaping, repairs or maintenance work;

(3) Individual service connections; administrator;

(4) Installation, maintenance, or repair of any underground public utility lines, when such activity occurs on an existing hard surfaced road, street or sidewalk, provided the activity is confined to the area of the road, street or sidewalk that is hard surfaced;

(5) Septic tank lines or drainage fields, unless included in an overall plan for land-disturbing activity relating to construction of a building to be served by the septic tank system;

(6) Surface or deep mining operations and projects, or oil and gas operations and projects, conducted in accordance with a permit issued pursuant to Code of Virginia Title 45.1; however, such activities shall not be conducted unless allowed by the city's zoning ordinance;

(7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the state Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with Code of Virginia § 10.1-1100 et seq., or is converted to bona fide agricultural or improved pasture use, as described in subsection B of § 10.1-1163. Such activities shall not be conducted unless allowed by the city's zoning ordinance.

(8) Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation. Such activities shall not be conducted unless allowed by the city's zoning ordinance.

(9) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;

(10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

(11) Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and

(12) Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan if there were

no emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of this article.

(b) Upon the determination by the administrator that an activity is a land-disturbing activity the owner shall submit an erosion and sediment control plan to the administrator for review and approval, and shall otherwise take all actions necessary to comply with the requirements of this article.

(c) Whenever land-disturbing activity involves activity at a separate location (including but not limited to borrow and disposal areas), the administrator may either:

(1) Consider the off-site activity as being part of the proposed land-disturbing activity; or

(2) If the off-site activity is already covered by an approved erosion and sediment control plan, the administrator may require the applicant to provide proof of such approval and to certify that the plan will be implemented in accordance with the requirements of this article.

(d) An erosion and sediment control plan shall be submitted and approved for a development and the buildings constructed within, regardless of the phasing of construction.

Sec. 10-23. Determination of erosion impact area.

(a) In order to prevent further erosion, the administrator may require submission and approval of an erosion and sediment control plan for any land determined to be an erosion impact area, regardless of the size of such area. The determination of whether an erosion impact area exists shall be rendered by the administrator.

(b) The administrator shall determine whether an erosion impact area exists on a property. The administrator shall make this determination after an investigation initiated by the administrator or upon the complaint of any citizen.

(c) Upon making a determination that an erosion impact area exists, the administrator shall immediately notify the owner of the property, in writing, of the determination. The notice shall be served by certified mail to the address of the owner based on the most recent tax records of the city, or by personal delivery. The written notice shall (i) instruct the owner to submit an erosion and sediment control plan for review and approval as provided in this article, and (ii) state the date by which the plan must be submitted.

(d) Upon receipt of the notice required by this section the owner shall submit to the administrator for approval an erosion and sediment control plan designed to prevent further erosion, and the owner shall in all other aspects comply with the requirements of the notice and of this article. The owner shall not permit any portion of the land that is the subject of the notice to remain in a condition such that soil erosion and sedimentation causes reasonably avoidable damage or harm to adjacent or downstream property, roads, streams, lakes or ponds.

(e) For good cause shown, the administrator may grant to an owner an extension of time to comply with the requirements of this section and this article.

Secs. 10-24—10-30. Reserved.

DIVISION 2. EROSION AND SEDIMENT CONTROL PLAN FOR LAND-DISTURBING ACTIVITIES

Sec. 10-31. Permit required for land-disturbing activities.

No person shall engage in any land-disturbing activity within the city until an erosion and sediment control plan has been approved and a land-disturbing permit has been issued by the administrator in accordance with

section 10-9 of the city code. The land-disturbing permit is required in addition to any other approval required by this chapter, by the city's zoning or subdivision ordinances, or from the city's building official (including, without limitation, any building permit, foundation permit, or demolition permit).

Sec. 10-32. Responsibilities of owner of land when work to be conducted by contractor.

Whenever a land-disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the required erosion and sediment control plan shall be the responsibility of the owner of the land.

Sec. 10-33. Conformity to state handbook and regulations.

Pursuant to Code of Virginia § 62.1-44.15:54 the city hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the state board, and the City's Design and Standards Manual, for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the Virginia Erosion and Sediment Control Regulations set forth within the Virginia Administrative Code at 9VAC25-840-10 et seq. and the Virginia Erosion and Sediment Control Handbook, including all amendments thereto. The regulations, references, guidelines, standards and specifications referenced within this paragraph shall be used (i) by an applicant when preparing and submitting an erosion and control plan for review and approval of the administrator under the provisions of this article, and (ii) by the administrator, in considering the adequacy of a submitted plan.

Sec. 10-34. Fees.

Fees shall be submitted at the time of filing any erosion and sediment control plan, and thereafter, as specified within the most recent fee schedule approved by city council. Each re-submission of a plan following rejection by the administrator shall constitute a new application requiring an additional application fee.

Sec. 10-35. Erosion and sediment control plan.

(a) No person shall engage in any land-disturbing activity until such person has submitted to the administrator for review and approval an erosion and sediment control plan, along with an application for a land-disturbing permit in accordance with Article I.

(b) The owner shall submit four (4) copies of an erosion and sediment control plan that satisfies the requirements of this section, and a certification stating that all requirements of the approved plan will be complied with.

(c) The standards contained within the regulations, and within the Virginia Erosion and Sediment Control Handbook, as amended, and the City's Standards and Design Manual, shall be used by the applicant in preparing and submitting an erosion and sediment control plan.

(d) The administrator may require additional information as may be necessary for its complete review of the plan.

(e) In lieu of paragraphs (b)—(d), above, where land-disturbing activity will involve land under the jurisdiction of more than one (1) locality's program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the state board or its agent (DEQ) for review and approval, rather than to each locality.

(f) In lieu of paragraphs (b)—(d), above, any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of

mitigation banks, pursuant to a permit issued by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the DEQ for review and approval consistent with guidelines established by the board.

(g) Pursuant to Virginia Code § 62.1-44.15:55(D), electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies shall, and railroad companies shall, and authorities created pursuant to Code of Virginia § 15.2-5102 may, file general erosion and sediment control specifications annually with the Board for review and approval.

Sec. 10-36. Review and approval of erosion and sediment control plan.

Each erosion and sediment control plan submitted pursuant to this article shall be reviewed and approved as provided herein:

(1) The plan shall be submitted along with the application required by section 10-9 of Article I, and shall be reviewed by the administrator to determine its compliance with the requirements of this article and with applicable state laws and regulations.

(2) During review of the plan the administrator may correspond with the owner from time to time to review and discuss the plan with the owner, and may require additional information from the owner as necessary in order for the plan to be approved.

(3) The administrator shall review erosion and sediment control plans submitted, and shall either grant written approval or written notice of disapproval in accordance with the time periods and other requirements set forth within Code of Virginia § 62.1-44.15:55 and Article I of this chapter.

(4) Applicants for land-disturbing permits may be required to provide a performance bond, cash escrow or other financial guarantee, determined in accordance with section 10-9 of this chapter, to ensure that measures could be taken by the administrator at the applicant's expense should the applicant fail, after proper notice, within the time specified, to initiate or maintain appropriate measures required by the approved erosion and sediment control plan as a result of applicant's land-disturbing activity.

(5) If the owner is required to obtain approval of a site plan or subdivision plat for a development, the administrator shall not approve an erosion and sediment control plan or authorize the commencement of any land-disturbing activity, unless and until the site plan or plat has received final approval as provided by law. Notwithstanding the foregoing, the administrator may approve an erosion and sediment control plan and may authorize commencement of land-disturbing activity, prior to approval of a required final site plan or final subdivision plat only in the following circumstances:

a. To correct any existing erosion or other condition conducive to excessive sedimentation which is occasioned by any violation of this chapter or by accident, act of God, or other cause beyond the control of the owner, provided that the activity proposed shall be strictly limited to the correction of such condition;

b. To install underground public utility mains, interceptors, transmission lines and trunk lines for which plans have previously been approved by the operating public utility or public service corporation and have previously been approved by the city as being substantially in accord with the comprehensive plan, where required by Code of Virginia § 15.2-2232.

Sec. 10-36.1. Variances.

The administrator may waive or modify any of the standards that are deemed inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

(1) At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the administrator shall be documented in the plan.

(2) During construction, the person responsible for implementing the approved plan may request a variance in writing from the administrator. The administrator shall respond in writing either approving or disapproving such a request. If the administrator does not approve a variance within ten (10) days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

(3) The administrator shall consider variance requests judiciously, keeping in mind both the need of an applicant to maximize cost effectiveness and the public interest and need to protect off-site properties and resources from damage.

Sec. 10-37. Agreement in lieu of a plan.

(a) If land-disturbing activity is for the purpose of establishing or modifying a single-family detached dwelling, then, in lieu of an erosion and sediment control plan, the administrator may enter into a contract with the property owner that specifies conservation measures that must be implemented in the construction of the single-family dwelling.

(b) In determining whether to allow an agreement in lieu of a plan, the administrator shall consider the potential threat to water quality and to adjacent land resulting from the land-disturbing activity, as well as applicable provisions of state law and regulations. When an agreement in lieu of a plan is authorized and approved by the administrator, the administrator and the owner shall have all of the rights, responsibilities and remedies set forth in this article as though such agreement in lieu of a plan was an erosion and sediment control plan.

(c) The administrator may waive the requirement for a responsible land disturber holding a certificate of competence, in connection with an agreement in lieu of a plan for construction of a single-family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and shall provide the name of an responsible land disturber holding a certificate of competence, as provided by Code of Virginia § 62.1-44.15:55.

Sec. 10-38. Amendment of approved plan.

The administrator may require changes to an approved erosion and sediment control plan, and require an owner to submit an amended plan, in the following circumstances:

(1) An inspection reveals that the plan is inadequate to satisfy the requirements of this article;

(2) The person responsible for carrying out the plan finds that, because of changed circumstances, or for other reasons, the approved plan cannot be effectively carried out and proposed amendments to the plan, consistent with the requirements of this article are agreed to by the administrator and the person responsible for carrying out the plan; or

(3) In the event that land-disturbing activity has not commenced during the one hundred eighty-day period following plan approval, or if land-disturbing activity pursuant to an approved plan has ceased for more than one hundred eighty (180) days, the administrator may evaluate the existing approved erosion and sediment control plan to determine whether the plan still satisfies the requirements of this article and state erosion and sediment control criteria, and to verify that all design factors are still valid. If the administrator finds the previously approved plan to be inadequate, a modified plan shall be submitted for approval by the administrator prior to the commencement or resumption of land-disturbing activity.

Sec. 10-39. Duty to comply, maintain and repair.

Upon approval by the administrator of an erosion and sediment control plan, each owner shall:

(1) Comply with the approved plan when performing, or allowing to be performed, any land-disturbing activities, or activities to correct an erosion impact area;

(2) Maintain and repair all erosion and sediment control structures and systems to ensure continued performance of their intended function;

(3) Comply with all requirements of this article, and with applicable state laws and regulations; and

(4) Provide the name of a responsible land disturber, as defined in Article I of this chapter, who will be in charge of and responsible for carrying out the land-disturbing activity.

Sec. 10-40. Inspection and monitoring.

(a) As a condition of approval of an erosion and sediment control plan, the administrator may require the person responsible for carrying out the plan to monitor the land-disturbing activity as provided herein:

(1) Any monitoring conducted shall be for the purpose of ensuring compliance with the erosion and sediment control plan, and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

(2) The condition requiring monitoring and reporting shall state: (i) the method and frequency of such monitoring, and (ii) the format of the report and the frequency for submitting reports.

(3) The person responsible for carrying out the plan will maintain records of inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

(b) The administrator shall periodically inspect the land-disturbing activity in accordance with 9VAC25-840-60, to assure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation as provided herein. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.

(1) Monitoring, reports and inspections required by the administrator shall be conducted in accordance with the requirements of Code of Virginia § 62.1-44.15:58 and 62.1-44.15:60, and applicable provisions of state regulations.

(2) If the administrator determines that there is a failure to comply with the approved plan, notice shall be served on the permittee or person responsible for carrying out the plan, in accordance with the requirements of Code of Virginia § 62.1-44.15:58. Upon failure to comply within the specified time, the land-disturbing permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article and shall be subject to the penalties provided herein.

(3) Upon determination of a violation of this article the administrator may, in conjunction with or subsequent to a notice to comply, issue an order requiring that all or part of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. In cases where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply. Any such order shall be served in the same manner as a notice to comply. A stop-order shall have the effects, shall remain in effect, as set forth within Code of Virginia § 62.1-44.15:58. Upon completion and approval of corrective action, or obtaining an approved plan and any required permits, the order shall be lifted. Upon failure to comply with any such order

within the specified time, the land-disturbing permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article and shall be subject to the penalties provided herein.

(4) Any person violating or failing, neglecting or refusing to obey an order issued by the administrator may be compelled in a proceeding instituted in the Circuit Court of the City of Charlottesville to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

(5) Nothing in this section shall prevent the administrator from taking any other action authorized by this article.

Sec. 10-41. Determination of noncompliance with plan; stop work orders.

Upon a determination by the administrator that an owner has failed to comply with an approved erosion and sediment control plan, the administrator shall provide notice to a permittee or person responsible for carrying out the erosion and sediment control plan, and may issue an order requiring that all or part of the land-disturbing activities be stopped, in accordance with the provisions of Code of Virginia § 62.1-44.15:58 and applicable state regulations

Sec. 10-42. Program personnel requirements.

(a) An erosion and sediment control plan shall not be approved until it is reviewed by a certified plan reviewer.

(b) Inspections of land-disturbing activities shall be conducted by a certified inspector.

(c) The city's erosion and sediment control program may be carried out by one (1) or more persons; however, at all times the city's program, at a minimum, shall consist of a certified program administrator, a certified plan reviewer and a certified project inspector, who may be the same person.

(d) The certifications required by this section shall be those granted by the state board, as set forth within Code of Virginia § 62.1-44.15:53.

Sec. 10-43. Penalties, injunctions and other legal actions.

(a) Any person violating the provisions of this article shall, upon conviction, be guilty of a Class 1 misdemeanor.

(b) The following may apply to the circuit court for injunctive relief to enjoin a violation or a threatened violation of this article, without the necessity of showing that an adequate remedy at law does not exist:

(1) The city; and

(2) The owner of property that has sustained damage or that is in imminent danger of being damaged; however, an owner of property shall not apply for injunctive relief unless (i) owner has notified in writing both the administrator and the person who has violated the provisions of this article, that a violation of this article has caused, or creates a probability of causing, damage to owner's property, and (ii) neither the person who has violated this article nor the administrator has taken corrective action within fifteen (15) days to eliminate the conditions which have caused, or create the probability of causing, damage to the owner's property.

(c) In addition to any criminal penalties provided under this section, any person who violates any provision of this article may be liable to the city in a civil action for damages.

(d) Any person who violates any provision of this article shall, upon a finding of the Charlottesville General District Court, be issued a civil penalty. The civil penalty for any one (1) violation shall be not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00). The civil penalty for violations listed within the schedule set forth following below shall be as set forth within the schedule. The administrator may issue a summons for collection of any civil penalty.

(1) There is hereby established a schedule of civil penalties for certain violations of this article, and any civil penalty assessed by a court to a person who is found to have violated the sections referenced in the schedule shall be in accordance with the schedule.

Schedule of Violations Subject to Prescribed Civil Penalties	Section	Penalty
Additional measures - failure to install additional measures as deemed necessary by the administrator or their inspector once work has commenced	10-38	$100.00
Bond - failure to obtain bond	10-36	$100.00
E&S plan - failure to submit if required by administrator	10-35	$1,000.00
E&S plan - failure to comply with approved plan	10-35 10-39	$500.00
Corrections - failure to comply with mandatory corrections as issued on an E&S inspection notice or report	10-40	$500.00
Existing conditions - failure to submit plan or provide controls after receipt of notice	10-21 10-23	$500.00
Inspection - failure to request at the time(s) required by approved plan	10-39 10-24	$100.00
Land-disturbing permit or approved plan - commencement of land-disturbing activities without an approved permit or plan	10-31	$1,000.00
Land-disturbing permit or approved plan - failure to comply with provisions	10-39	$500.00
Live waterway - causing silt or debris to enter when engaged in land-disturbing activity without an approved plan and permit	10-31	$500.00
Stop work order - failure to cease work after issuance	10-40	$1,000.00

(2) Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of ten thousand dollars ($10,000.00), except a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site. The assessment of a civil penalty pursuant to this subsection (d) shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor. In any trial for a scheduled violation, it shall be the burden of the city to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose.

(e) Without limiting the remedies which may be obtained under this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars ($2,000.00) for each violation. A civil action for such violation or failure may be brought by the city against such person.

(f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the administrator; any condition of a permit; or any provision of this article or associated regulations, the administrator may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed two thousand dollars ($2,000.00). Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (d) or (e) of this section.

~~(g) Any civil penalties assessed by a court pursuant to this section shall be paid into the city treasury. However, where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.~~

~~Secs. 10-44—10-49. Reserved.~~

Pursuant to § 62.1-44.15:27 of the Code of Virginia, this article is adopted as part of an initiative to integrate the City's stormwater management requirements with the City's erosion and sediment control, flood insurance, and flood plain management requirements into a consolidated erosion and stormwater management program. The erosion and stormwater management program is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities for land-disturbing activities into a more convenient and efficient manner for both the City and those responsible for compliance with these programs.

Section 10-21. Title, Purpose, and Authority

(a) This ordinance shall be known as the "Erosion and Stormwater Management Ordinance of the City of Charlottesville."

(b) The purpose of this ordinance is to ensure the general health, safety, and welfare of the citizens of the City, protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and soil erosion, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.

(c) This ordinance is authorized by § 62.1-44.15:27 of the Code of Virginia.

Section 10-22. Definitions.

The definitions set forth in 9VAC25-875-20, as amended, and Section 10-5 of this Chapter apply to this Article unless the context clearly indicates otherwise.

Section 10-23. Virginia and Erosion Stormwater Management Program Established.

Pursuant to § 62.1-44.15:27 of the Code of Virginia, The City of Charlottesville hereby establishes a Virginia Erosion and Stormwater Management Program for land-disturbing activities and adopts the Virginia Erosion and Stormwater Management Regulation that specify standards and specifications for VESMPs promulgated by the State Water Control Board for the purposes set out in Section 10-21 of this Ordinance. The City Council hereby designates the Department identified in Section 10-6 as its Administrator of the Virginia Erosion and Stormwater Management Program established by this Ordinance.

Section 10-24. Regulated Land Disturbing Activities

(a) Land-disturbing activities that meet one of the criteria below are regulated as follows:

(1) Land-disturbing activity that disturbs 6,000 square feet or more, is less than one acre, and not part of a common plan of development or sale is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation.

(2) Land-disturbing activity that disturbs less than one acre, but is part of a larger common plan of development or sale that disturbs one acre or more, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

(3) Land-disturbing activity that disturbs one acre or more is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

(b) Land-disturbing activities exempt per 9VAC25-875-90 are not required to comply with the requirements of the VESMA unless otherwise required by federal law.

Section 10-25. Review and Approval of Plans (§ 62.1-44.15:34 of the Code of Virginia); Prohibitions.

(a) The City shall review and approve soil erosion control and stormwater management (ESM) plans, except for activities not required to comply with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA), pursuant to § 62.1-44.15:34 of the Code of Virginia. Activities not required to comply with VESMA are defined in 9VAC25-875-90.

(b) A person shall not commence, conduct, or engage in any land-disturbing activity in the City until:

(1) An application that includes a permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required, has been submitted to the City.

(2) The name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 of the Code of Virginia is submitted to the City. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided by the VESMA; and

(3) The City has issued its land-disturbance approval.

(c) The City may require changes to an approved ESM plan in the following cases:

(1) Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or

(2) Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of the Act, are agreed to by the VESMP authority and the owner.

(d) In order to prevent further erosion, the City may require approval of an erosion and sediment control plan and a stormwater management plan for any land it identifies as an erosion impact area. (Va. Code § 62.1-44.15:34)

(e) Prior to issuance of any land-disturbance approval, the City may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement it finds acceptable, to ensure that it can take measures at the applicant's expense should he fail, after proper notice, within the time specified to comply with the conditions it imposes as a result of his land-disturbing activity. If the City takes such action upon such failure by the applicant, it may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of

the completion of the City's conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

(f) The City may enter into an agreement with an adjacent VESMP authority regarding the administration of multijurisdictional projects, specifying who shall be responsible for all or part of the administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.

(g) No exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements shall be granted unless offsite options have been considered and found not available in accordance with subsection D of § 62.1-44.15:35 of the Code of Virginia.

(h) The City is authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities in accordance with § 62.1-44.15:50 of the Code of Virginia.

Section 10-26. Review of a Soil Erosion Control and Stormwater Management Plan (ESM Plan).

This City shall approve or disapprove an ESM plan according to the following:

(1) The City shall determine the completeness of any application within 15 days after receipt and shall act on any application within 60 days after it has been determined by the to be complete.

(2) The City shall issue either land-disturbance approval or denial and provide written rationale for any denial.

(3) Prior to issuing a land-disturbance approval, the City shall be required to obtain evidence of permit coverage when such coverage is required.

(4) The City also shall determine whether any resubmittal of a previously disapproved application is complete within 15 days after receipt and shall act on the resubmitted application within 45 days after receipt.

Section 10-27. Stormwater Permit Requirement; Exemptions.

(a) Except as provided herein, no person may engage in any land-disturbing activity until a permit has been issued by the City in accordance with the provisions of this ordinance and the Regulation.

(b) Notwithstanding any other provisions of this ordinance, the following activities are not required to comply with the requirements of this ordinance unless otherwise required by federal law:

(1) Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;

(2) Installation, maintenance, or repair of any individual service connection;

(3) Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

(4) Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

(5) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;

(6) Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq. of the Code of Virginia) or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of the Code of Virginia;

(7) Installation of fence and signposts or telephone and electric poles and other kinds of posts or poles;

(8) Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the VESMA and the regulations adopted pursuant thereto;

(9) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;

(10) Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the City shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity; and

(11) Discharges to a sanitary sewer or a combined sewer system; that are not from a land-disturbing activity.

(c) Notwithstanding this ordinance and in accordance with the Virginia Erosion and Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:

(1) Where such use is permitted by the city's zoning regulations: single-family residences separately built and disturbing less than one (1) acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;

(2) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;

(3) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and

(4) Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

Section 10-28. Stormwater Pollution Prevention Plan; Contents of Plans. (9VAC25-875-500)

(a) A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for

regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection D of this section.

(b) A soil erosion control and stormwater management (ESM) plan consistent with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA) and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the City in accordance with the VESMA, this ordinance, and attendant regulations.

(c) A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.

(d) In addition to the requirements of subsections A through C of this section, if a specific wasteload allocation for a pollutant has been established in an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the wasteload allocation.

(e) The stormwater pollution prevention plan must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a state permit:

(1) Control stormwater volume and velocity within the site to minimize soil erosion;

(2) Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

(3) Minimize the amount of soil exposed during construction activity;

(4) Minimize the disturbance of steep slopes;

(5) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

(6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;

(7) Minimize soil compaction and, unless infeasible, preserve topsoil;

(8) Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the VESMP authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VESMP authority; and

(9) Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.

(f) The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

Section 10-29. Stormwater Management Plan; Contents of Plan. (9VAC25-875-510)

(a) A stormwater management plan shall be developed and submitted to the City. The stormwater management plan shall be implemented as approved or modified by the City and shall be developed in accordance with the following:

(1) A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this ordinance and Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities.

(2) A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

(b) A complete stormwater management plan shall include the following elements:

(1) Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and post-development drainage areas;

(2) Contact information including the name, address, telephone number, and email address of the owner and the tax reference number and parcel number of the property or properties affected;

(3) A narrative that includes a description of current site conditions and final site conditions or if allowed by the VESMP authority, the information provided and documented during the review process that addresses the current and final site conditions;

(4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;

(5) Information on the proposed stormwater management facilities, including (i) detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary ESC measure; (ii) the type of facilities; (iii) location, including geographic coordinates; (iv) acres treated; and (v) the surface waters or karst features into which the facility will discharge;

(6) Hydrologic and hydraulic computations, including runoff characteristics;

(7) Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations;

(8) A map of the site that depicts the topography of the site and includes:

a. All contributing drainage areas;

b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

d. Current land use including existing structures, roads, and locations of known utilities and easements;

e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;

f. The limits of clearing and grading, and the proposed drainage patterns on the site;

g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

h. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including planned locations of utilities, roads, and easements;

(9) If an operator intends to meet the requirements established in 9VAC25-875-580 or 9VAC25-875-600 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and

(10) If the City requires payment of a fee with the stormwater management plan submission, the fee and the required fee form in accordance with Section 5-8 of this ordinance must have been submitted.

(c) All final plan elements, specifications, or calculations of the stormwater management plans whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1- 2200 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside his area of professional competence.

Section 10-30. Pollution Prevention Plan; Contents of Plans. (9VAC25-875-520)

(a) A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

(1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

(b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):

(1) Wastewater from washout of concrete, unless managed by an appropriate control;

(2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

(3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

(4) Soaps or solvents used in vehicle and equipment washing.

(c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c).

Section 10-31. Erosion and Sediment Control Plan; Contents of Plans. (9VAC25-875-550)

(a) An erosion and sediment control plan, which is a component of the ESM plan, shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit or

units of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:

(1) Appropriate maps;

(2) An appropriate soil and water plan inventory and management information with needed interpretations; and

(3) A record of decisions contributing to conservation treatment.

(b) The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the City.

(c) If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan, an Agreement in Lieu of a Plan. An Agreement in Lieu of a Plan must signed by the property owner.

(d) Land-disturbing activity of less than 6,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA if the total land-disturbing activity in the development is equal to or greater than 6,000 square feet.

Section 10-32. Technical Criteria for Regulated Land Disturbing Activities.

(a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the City hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part V of 9VAC25-875 expressly to include 9VAC25-875-580 [water quality design criteria requirements]; 9VAC25-875-590 [water quality compliance]; 9VAC25-875-600 [water quantity]; 9VAC25-875-610 [offsite compliance options]; 9VAC25-875-620 [design storms and hydrologic methods]; 9VAC25-875-630 [stormwater harvesting]; 9VAC25-875-640 [linear development project]; and, 9VAC25-875-650 [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to this ordinance, except as expressly set forth in Subsection B of this Section.

(b) Any land-disturbing activity shall be considered grandfathered and shall be subject to Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation provided:

(1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the City to be equivalent thereto (i) was approved by the City prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-875-670, (iii) will comply with the technical criteria of Article 4 of Part V of 9VAC25-875, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;

(2) A permit has not been issued prior to July 1, 2014; and

(3) Land disturbance did not commence prior to July 1, 2014.

(c) Locality, state, and federal projects shall be considered grandfathered by the City and shall be subject to the technical criteria of Article 4 of Part V of 9VAC25-875 provided:

(1) There has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;

(2) A permit has not been issued prior to July 1, 2014; and

(3) Land disturbance did not commence prior to July 1, 2014.

(d) Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the technical criteria of Article 4 of Part V of 9VAC25-875for one additional permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

(e) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Article 4 of Part V of 9VAC25-875.

(f) Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.

Section 10-33. Long-Term Maintenance of Permanent Stormwater Facilities.

(a) The operator shall submit a construction record drawing for permanent stormwater management facilities to the City in accordance with 9VAC25-875-535. The record drawing shall contain a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 of Title 54.1 of the Code of Virginia, stating that to the best of their knowledge, the construction record drawing shows all adjustments and revisions to the Stormwater Management Plan made during construction and serve as a permanent record of the actual location of all constructed elements.

(b) The administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of stormwater. Such requirements shall be set forth in an instrument recorded in the local land records prior to permit issuance. Every such instrument shall:

(1) Be submitted to the City for review and approval prior to the approval of the stormwater management plan;

(2) Include an express statement that the maintenance responsibility shall run with the land;

(3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;

(4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the City; and

(5) Be enforceable by all appropriate governmental parties.

(c) Except as provided below, the city shall have no responsibility for maintenance or repair of stormwater management facility, BMP or other technique (individually and collectively, a "facility") designed and implemented to manage the quality and quantity of stormwater. Acceptance or approval of an easement, subdivision plat, site plan or other plan of development shall not constitute acceptance by the city or the administrator of responsibility for the maintenance, repair or replacement of any such facility. As used in this paragraph, "maintenance, repair or replacement" shall include, without limitation, cleaning of the facility, maintenance of property adjacent to the facility, installation, repair or replacement of fencing surrounding a facility, and posting of signs indicating the name of the entity responsible for maintenance of the facility.

(1) In the event that any common interest community, as defined in Virginia Code § 55-528, desires to cede or transfer responsibility for maintenance, repair and replacement of a stormwater management facility, or other technique for management of the quality and quantity of stormwater, to the city, (i) the common interest community and city council must enter into a written contract, or other instrument, executed by both parties, and (ii) prior to execution of any contract or instrument, the city council shall have accepted the responsibility ceded or transferred by the common interest community by resolution.

(2) In the event that any person, including any entity other than a common interest community, desires to cede or transfer responsibility for maintenance, repair and replacement of a facility to the city, the process for the city's approval and acceptance of such responsibility shall be the same as specified in subparagraph (c)(1), preceding above.

(d) No facility shall be identified on any subdivision plat, site plan or other plan of development, as being dedicated for public use, unless such facility is to be constructed as part of the city-owned and -operated public storm sewer system and is subject to a performance guarantee requiring the facility to be designed and constructed in accordance with city standards.

(e) If the administrator (i) has developed a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which such facilities are located, and (ii) is satisfied that there an enforceable mechanism exists by which future maintenance of such facilities will be addressed, then the recorded instrument referenced in paragraph (b), above, need not be required for stormwater management facilities designed for and implemented to treat stormwater runoff from such individual residential lot.

Section 10-34. Monitoring and Inspections.

(a) The City or its duly authorized representative shall inspect the land-disturbing activity during construction for:

(1) Compliance with the approved erosion and sediment control plan;

(2) Compliance with the approved stormwater management plan;

(3) Development, modification, updating, and implementation of a SWPPP, including, without limitation, any component pollution prevention plan, when required; and

(4) Development, modification, updating, and implementation of any additional control measures necessary to address a TMDL.

(b) The City shall conduct periodic inspections on all projects during construction. The City shall either:

(1) Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or

(2) Establish an alternative inspection program which ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:

a. Approved by the department prior to implementation;

b. Established in writing;

c. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and

d. Documented by inspection records.

(c) The City shall establish an inspection program that ensures that permanent stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:

(1) Be approved by the department;

(2) Ensure that each stormwater management facility is inspected by the City, or its designee, not to include the owner, except as provided in subsections D and E of this section, at least once every five years; and

(3) Be documented by records.

(d) The City may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the department.

(e) If a recorded instrument is not required pursuant to 9VAC25-875-130, the City shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the City.

Section 10-35. Hearings and Appeals.

Any permit applicant or permittee, or person subject to the requirements of this ordinance, aggrieved by any action or inaction of the City has the rights set forward in Section 10-8 of this Chapter.

Section 10-36. Right of Entry.

(a) The City or any duly authorized agent thereof may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this ordinance.

(b) In accordance with a permit, performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, the City may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by conditions imposed by the City on a land-disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.

Section 10-37. Enforcement.

(a) If the Administrator determines that there is a failure to comply with the permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings, written warnings, inspection reports, notices of corrective action, consent special orders, notices to comply, and stop work orders. Written warnings, inspection reports, and notices of corrective action shall be served by delivery by any method, including facsimile, email, or other technology. Consent special orders, notices to comply, and stop work orders shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities or to a person previously identified to the City by the permittee or owner.

(1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (2) or the permit may be revoked by the Administrator.

(2) If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Subsection 5.7.C.

(b) In addition to any other remedy provided by this Ordinance, if the Administrator or his designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with State Code, Erosion and Stormwater Regulations, and the local inspection and enforcement policy.

(c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in the circuit court for the City of Charlottesville by the City to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

(d) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the City may be compelled in a proceeding instituted in circuit court for the City of Charlottesville by the Locality to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

(1) Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:

a. No state permit registration;

b. No SWPPP;

c. Incomplete SWPPP;

d. SWPPP not available for review;

e. No approved erosion and sediment control plan;

f. Failure to install stormwater BMPs or erosion and sediment controls;

g. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;

h. Operational deficiencies;

i. Failure to conduct required inspections;

j. Incomplete, improper, or missed inspections; and

k. Discharges not in compliance with the requirements of 9VAC25-880-70.

(2) The Administrator may issue a summons for collection of the civil penalty of up to $32,500 for each violation and the action may be prosecuted in the appropriate court. Each day of violation of each requirement shall constitute a separate offense.

(3) In imposing a civil penalty pursuant to this Subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

(4) Any civil penalties assessed by a court as a result of a summons issued by the City shall be paid into the treasury of the City to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

(e) With the consent of any person who has violated or failed, neglected or refused to obey any provision or requirement of this article or any regulation, statute, ordinance, standard or specification referenced herein, or any permit, any permit condition, or any order of the VESMP authority, the administrator may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Section 10-37(d)(2). Any such civil charges shall be instead of any civil penalty that could be imposed under this section. Any civil charges collected shall be paid into the treasury of the city, to be used as specified within Virginia Code § 62.1-44.15:48(A)(2).

(f) Notwithstanding any other civil or equitable remedy provided by this ordinance or by law, any person who willfully or negligently violates any provision of this ordinance, any order of the Administrator, any condition of a permit, or any order of a court, shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than $2,500 nor more than $32,500, or both.

(g) Any person who knowingly violates any provision of the State Water Control Law, any regulation or order of the Board, any condition of a certificate or land-disturbance approval of the Board, any land-disturbance approval, ordinance, or order of the City, or any condition of a certificate or any order of a court, or who knowingly makes any false statement in any form required to be submitted under the State Water Control Law or knowingly renders inaccurate any monitoring device or method required to be maintained under the State Water Control Law, shall be shall be subject to the penalties set out in Virginia Code § 62.1-44.32(b), as amended.

Section 10-38. Fees.

Fees to cover costs associated with implementation of a VESMP related to land disturbing activities, or any of its components, and issuance of general permit coverage and VESMP authority permits shall be imposed in accordance with the provisions of Section 10-10 of this Chapter. The City adopts the statewide fee schedule(s) enacted by the state board pursuant to Virginia Code § 62.1-44.15:28 and 9VAC25-875-1400 et seq., and said fee schedule(s) shall be deemed included here as if it were fully restated.

Section 10-39. Performance Bond. (9VAC25-875-110)

Prior to issuance of any permit for land disturbance under this Article, the applicant shall be required to submit a reasonable performance bond in accordance with the provisions of Section 10-9 of this Chapter.

Secs. 10-40—10-49. Reserved.

ARTICLE III. ~~STORMWATER MANAGEMENT~~ RESERVED

~~Sec. 10-50. Intent, purpose and authority.~~

~~(a) Pursuant to Virginia Code § 62.1-44.15:27 and 9VAC25-870-20, this article is adopted to establish a Virginia Stormwater Management Program that will integrate stormwater management requirements with the city's erosion and sediment control program, the city's MS4 permit, flood insurance, floodplain management, and related federal and state permits and requirements, into a unified program. This unified program is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner for both the city and those responsible for compliance.~~

~~(b) This article is intended to be interpreted, administered and enforced in conjunction with the definitions and provisions of Article I. References to "this article", and references to "provisions of this article" shall be deemed to include (i) the provisions of Article I of this chapter, and (ii) the provisions, criteria, and requirements of each federal or state statute, regulation, standard and specification adopted or referred to within Articles I and III of this chapter.~~

~~Sec. 10-51. Land-disturbing permit required; exemptions.~~

~~(a) No person shall engage in any land-disturbing activity until a stormwater management plan has been approved and a land-disturbing permit has been issued by the administrator in accordance with section 10-9 of the City Code.~~

~~(b) Except as may otherwise be required by federal law, the following activities are exempt from the provisions of paragraph (a), above:~~

~~(1) Where such uses are permitted by the city's zoning regulations: permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;~~

~~(2) Where such uses are permitted by the city's zoning regulations: the clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;~~

~~(3) Where such use is permitted by the city's zoning regulations: single-family residences separately built and disturbing less than one (1) acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;~~

~~(4) Land-disturbing activities that disturb less than six thousand (6,000) square feet of land area, but only if the land area to be disturbed is not part of a common plan of development or sale;~~

~~(5) Discharges to a sanitary sewer or a combined sewer system;~~

~~(6) Activities under a state or federal reclamation program to return an abandoned property to an open land use, or to an agricultural use where permitted by the city's zoning ordinance;~~

~~(7) Routine maintenance performed to maintain the original line and grade, hydraulic capacity, or original construction of a project. The paving of an existing road with a compacted or impervious surface and~~

reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subparagraph; and

(8) Land-disturbing activities conducted in response to a public emergency, where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the administrator shall be advised of the disturbance within seven (7) days of the commencement of the land-disturbing activity and compliance with the administrative requirements of this chapter is required within thirty (30) days of commencing the land-disturbing activity.

Sec. 10-52. Stormwater management program established.

Pursuant to Virginia Code §§ 62.1-44.15:27 and 62.1-44.15:49, the city hereby establishes a Virginia Stormwater Management Program (VSMP) for land-disturbing activities and adopts the regulations promulgated by the board, specifying standards and specifications for such programs. No grading, building, or other city permit, shall be issued for a property unless a permit has been issued by the administrator pursuant to section 10-9 of this chapter.

Sec. 10-53. Stormwater management plan required; contents.

(a) A person shall not commence, conduct, or engage in any land-disturbing activity until such person has submitted a stormwater management plan to the administrator as part of the application required by section 10-9 and has obtained approval of the plan and a permit from the administrator authorizing the commencement of land-disturbing activity.

(b) Every stormwater management plan shall apply the stormwater management technical criteria set forth in section 10-54 to the entire land-disturbing activity. Individual lots within new residential, commercial or industrial subdivisions and developments shall not be considered separate land-disturbing activities, and the stormwater management plan for the entire subdivision or development shall govern the development of the individual parcels, including parcels developed under any subsequent owner(s).

(c) Every stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to subsurface runoff; and shall include the following:

(1) A general description of the proposed stormwater management facilities and the mechanism through which the permanent facilities will be operated and maintained after construction is complete;

(2) Contact information, including the name, address, and telephone number of the owner and the city tax map reference(s) and parcel number(s) of the property on which the land-disturbing activity is to be conducted;

(3) A narrative that includes (i) a description of current site conditions and (ii) a description of final site conditions upon completion of development;

(4) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the pre-development and post-development drainage areas;

(5) Information on the proposed stormwater management facilities, including:

a. The type of facilities;

b. Location, including the address, latitude and longitude, and the sixth order hydrologic unit code in which the facilities are located;

c. Total area (expressed as acreage) treated;

d. Impervious area (expressed as acreage) treated;

e. Amount of pollutants removed (expressed as a number of pounds of phosphorous per year); and

f. The surface waters or karst features, if present, into which the facility will discharge.

(6) Hydrologic and hydraulic computations, including runoff characteristics;

(7) Documentation and calculations verifying compliance with applicable water quality and quantity requirements. All stormwater runoff controls shall be designed and installed in accordance with the water quality and water quantity design criteria specified in section 10-54, and any additional standards or criteria set forth within the City's Standards and Design Manual;

(8) A map or maps of the site that depicts the topography and other characteristics of the entire area of the land-disturbing activity and proposed development, including:

a. All contributing drainage areas;

b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

d. Current land use, including existing structures, roads, and locations of known utilities and easements;

e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the development site on such adjacent parcels;

f. The limits of clearing and grading, and the proposed drainage patterns on the site;

g. Proposed buildings, roads, parking areas, paved surfaces, utilities, and stormwater management facilities;

h. Proposed land use(s), with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, streets, paved areas, and public and private easements; and

i. A description of the proposed timing and/or phasing of land-disturbing activities and development.

The land area depicted in the map shall include all land within the limits of a valid, approved preliminary or final site plan, or a valid, approved preliminary or final subdivision plat, for the proposed development, and the proposed land use(s) and improvements shown on such site plan or subdivision plat shall be the same as those depicted within the map.

(9) Any other information, materials, requirements or provisions required by state regulations, including, without limitation, 9VAC25-870-55 and the City's Standards and Design Manual.

(10) If an operator intends to meet water quality and/or quantity requirements through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included and the requirements of Virginia Code § 62.1-44.15:35 must be satisfied. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity, except as otherwise allowed by Virginia Code § 62.1-44.15:35.

(11) Signature and seal by a professional, if any elements of the stormwater management plan includes activities within the scope of the practice of architecture, land surveying, landscape architecture, or engineering, or other activities regulated under Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Virginia Code.

(d) If land-disturbing activity is for the purpose of establishing or modifying an individual single-family detached dwelling, then, in accordance with applicable state regulations, the administrator may enter into an agreement in lieu of a plan with a property owner. Any such agreement in lieu of a stormwater management

plan shall refer to specific measures that shall be implemented by the property owner to comply with the requirements of this article for the construction of the dwelling.

Sec. 10-54. Technical criteria for regulated land-disturbing activities.

(a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the city hereby adopts the following technical criteria:

(1) The technical criteria set forth in Part II B of the Regulations, as amended, §§ 9VAC25-870-62 et seq. ("Part II B Technical Criteria"); and

(2) The technical criteria set forth in Part II C of the Regulations, as amended, §§ 9VAC25-870-93 et seq. ("Part II C Technical Criteria").

(b) The Part II B Technical Criteria shall apply to all regulated land-disturbing activities, except as expressly set forth in subparagraphs (c) through (h), following below.

(c) Land-disturbing activity shall be subject to the Part II C Technical Criteria, if coverage under the state general permit was obtained, or land disturbance was otherwise lawfully commenced, prior to July 1, 2014.

(d) Land-disturbing activity shall be considered grandfathered, and therefore subject to the Part II C Technical Criteria, as set forth within the provisions of 9VAC25-870-48.

(e) The administrator may grant exceptions to the Part II B Technical Criteria or Part II C Technical Criteria, provided that (i) the exception is the minimum necessary to afford relief; (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the regulations, and this article are preserved; (iii) granting the exception will not confer any special privileges, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason or justification for granting an exception. Notwithstanding the foregoing, the administrator shall not have authority to approve the following:

(1) Waiver of the requirement of a permit for any land-disturbing activity;

(2) Permission to use any BMP not found on the Virginia Stormwater BMP Clearinghouse Website; or a waiver or exception to the requirement for any control measure specifically approved by the director of DEQ or the board, except in accordance with Virginia Code § 62.1-44.15:33(C). Notwithstanding the foregoing, the administrator may approve the use of BMPs not found on the Virginia Stormwater BMP Clearinghouse Website for projects less than one (1) acre in size; or

(3) Exceptions to, or waiver of, post-development nonpoint nutrient runoff compliance requirements, unless the administrator determines that offsite options permitted pursuant to 9VAC25-870-69 have been considered and found not available.

(f) Nothing in this section shall preclude construction of a stormwater management facility or BMP, or implementation of any technique or practice, to a more stringent standard at the developer's option.

Sec. 10-55. Permit conditions.

(a) Every land-disturbing permit approved by the administrator for activities regulated by this article shall be subject to the following conditions, which shall be deemed incorporated into such permit, as if set forth therein verbatim:

(1) The permittee shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment;

(2) The permittee shall at all times conduct land-disturbing activities in accordance with the approved stormwater management plan and, when required, the SWPPP and all of its component parts and requirements;

(3) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and all related appurtenances, that are constructed, installed or used to achieve compliance with the requirements of this article and the approved stormwater management plan. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures;

(4) The permittee shall promptly furnish to the administrator any information that the administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit, or to determine the effect of a discharge on the quality of state waters, or such other information as the administrator deems necessary to accomplish the purposes of this article;

(5) The permittee shall allow the administrator, or an authorized representative, to:

a. Enter upon the site where regulated land-disturbing activity or stormwater management facility is located, or where records are required to be kept;

b. Have access to and copy, at reasonable times, any records kept by the permittee in relation to the conduct and operations of any land-disturbing activity and the design, specifications, installation, construction, and operation of stormwater management facility;

c. Sample or monitor, at reasonable times, for the purposes of determining compliance with requirements of this article, any substances or parameters at any location within the site;

(6) Samples and measurements taken by the permittee for the purpose of monitoring shall be representative of the monitored activity. Monitoring results must be conducted according to test procedures and methods accepted by the state; analysis or analyses required to be performed by a laboratory shall be performed by an environmental laboratory certified under regulations adopted by the state's department of general services. Monitoring results shall be reported to the administrator on a discharge monitoring report (DMR) form provided by the administrator. If the permittee monitors any pollutant more frequently than required, using test procedures accepted by the state, the results of such monitoring shall be included in the calculation and reporting of data submitted within a required discharge monitoring report;

(7) The permittee shall retain records of all monitoring, including all monitoring information, calibration and maintenance records, and original strip chart recordings for continuous monitoring instrumentation, copies of monitoring reports, and records of all data used to complete any submission required by this article. In addition to the foregoing, records of monitoring shall include:

a. Date, exact place, and time of sampling or measurements;

b. Identity of the individual(s) who performed the sampling or measurements;

c. The date(s) on which analyses were performed;

d. The analytical technique(s) or method(s) used;

e. Results of analysis/ analyses; and

f. Copies of discharge monitoring reports.

(8) The permittee shall give advance notice to the administrator:

a. Of any planned physical alteration(s) or addition(s) to the site or to the stormwater management facilities described within the permit, when such alteration(s) or addition(s) may meet state criteria for determining whether a facility is a new source, or when such alteration(s) or addition(s) could significantly change the nature of, or increase the quantity of, pollutants discharged.

b. Of any planned changes to the stormwater management facilities described within the permit, and

c. Of any activity that may result in noncompliance with the requirements of this article or with any of the conditions set forth within this section;

(9) The permit issued by the administrator is not transferable to any other person, unless the permittee provides evidence to the administrator that the requirements of 9VAC25-870-620 have been satisfied in relation to a transfer of any required state general permit;

(10) Reports of compliance or noncompliance with, or any progress reports in regard to, any compliance schedule established by the administrator shall be submitted no later than fourteen (14) days following each schedule date;

(11) The permittee shall immediately report any noncompliance which may endanger health or the environment. Information regarding any such noncompliance shall be provided orally within twenty-four (24) hours after the permittee becomes aware of the circumstances. The oral report shall be followed by a written report, which must be received by the administrator no later than five (5) days after the permittee became aware of the circumstances. The written report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. Examples of noncompliance that require reports pursuant to this condition include, without limitation: any unanticipated bypass that exceeds an applicable effluent limitation; any upset that exceeds an applicable effluent limitation; and violation of a maximum daily discharge limitation for any pollutants required by the state to be reported within twenty-four (24) hours.

(12) Any noncompliance not reported under conditions (9) or (10), above, shall be reported by the permittee to the administrator in writing at the time the next monitoring report is submitted to the administrator. The report of noncompliance shall contain the same information required for reports made pursuant to condition (10), above;

(13) Where the land-disturbing activity is also subject to coverage under the state general permit, or other state permit, the permittee shall comply with all conditions and requirements of such state permit(s), including, without limitation, those conditions set forth within 9VAC25-870-430. The permittee shall provide to the administrator copies of submissions, reports, and information required to be given to the state, simultaneously with transmittal to the state. In addition to any remedies under state law and the regulations, state permit noncompliance shall be grounds for enforcement action under this article, and for termination, revocation, reissuance or modification of the permit issued by the administrator pursuant to section 10-9 of Article I;

(14) All applications, reports and information submitted to the administrator shall be signed and certified in the manner, and by such person(s) prescribed within 9VAC25-870-370;

(15) In the event the permittee becomes aware that it failed to submit any relevant facts in any application to the administrator for a permit, or that it submitted incorrect information to the administrator in any application, or any other submission, report, or document required by this article, the permittee shall promptly submit the relevant facts or correct information to the administrator;

(16) All stormwater management control devices and facilities, and other techniques for management of the quality and/or quantity of stormwater runoff, shall be designed, installed, implemented, constructed and maintained in accordance with the approved stormwater management plan approved for the development and all other applicable requirements of this article; and

(17) The permit issued by the administrator may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a modification, revocation and reissuance or termination, or a notification of planned changes or anticipated noncompliance, shall not operate as a stay of the permittee's obligation to perform the requirements of any condition referenced in this section.

(b) Within sixty (60) days of the completion of the requirements of all of the permit conditions, the performance guarantee required by section 10-9(3), or the unexpended or unobligated portion thereof, will be refunded or terminated.

Sec. 10-56. Long-term maintenance of permanent stormwater facilities.

(a) The administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of stormwater. Such requirements shall be set forth in an instrument recorded in the local land records prior to permit issuance. Every such instrument shall:

(1) Be submitted to the administrator for review and approval prior to the approval of the stormwater management plan;

(2) Include an express statement that the maintenance responsibility shall run with the land;

(3) Provide a right of ingress and egress to and from stormwater management facilities and other techniques, sufficient to provide all necessary access to the property for purposes of maintenance and regulatory inspections;

(4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the administrator; and

(5) Clearly recognize a right of enforcement by all appropriate public bodies, including state and local authorities.

(b) Except as provided below, the city shall have no responsibility for maintenance or repair of stormwater management facility, BMP or other technique (individually and collectively, a "facility") designed and implemented to manage the quality and quantity of stormwater. Acceptance or approval of an easement, subdivision plat, site plan or other plan of development shall not constitute acceptance by the city or the administrator of responsibility for the maintenance, repair or replacement of any such facility. As used in this paragraph, "maintenance, repair or replacement" shall include, without limitation, cleaning of the facility, maintenance of property adjacent to the facility, installation, repair or replacement of fencing surrounding a facility, and posting of signs indicating the name of the entity responsible for maintenance of the facility.

(1) In the event that any common interest community, as defined in Virginia Code § 55-528, desires to cede or transfer responsibility for maintenance, repair and replacement of a stormwater management facility, or other technique for management of the quality and quantity of stormwater, to the city, (i) the common interest community and city council must enter into a written contract, or other instrument, executed by both parties, and (ii) prior to execution of any contract or instrument, the city council shall have accepted the responsibility ceded or transferred by the common interest community by resolution.

(2) In the event that any person, including any entity other than a common interest community, desires to cede or transfer responsibility for maintenance, repair and replacement of a facility to the city, the process for the city's approval and acceptance of such responsibility shall be the same as specified in subparagraph (b)(1), preceding above.

(c) No facility shall be identified on any subdivision plat, site plan or other plan of development, as being dedicated for public use, unless such facility is to be constructed as part of the city-owned and -operated public storm sewer system, and is subject to a performance guarantee requiring the facility to be designed and constructed in accordance with city standards.

(d) If the administrator (i) has developed a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which such facilities are located, and (ii) is satisfied that there an enforceable mechanism exists by which future maintenance of such facilities will be addressed, then the recorded instrument referenced in paragraph (a),

above, need not be required for stormwater management facilities designed for and implemented to treat stormwater runoff from such individual residential lot.

Sec. 10-57. Monitoring and inspections; information.

(a) The administrator, or any authorized agent of the administrator, shall inspect land-disturbing activity during construction for:

(1) Compliance with the approved erosion and sediment control plan;

(2) Compliance with the approved stormwater management plan and applicable permit conditions;

(3) Development, modification, updating, and implementation of a SWPPP, including, without limitation, any component pollution prevention plan, when required; and

(4) Development, modification, updating, and implementation of any additional control measures necessary to address a TMDL.

(b) Following completion of the installation or construction of stormwater management facilities, the administrator shall conduct periodic inspections, to determine whether measures are being maintained as provided in the approved plan, or to investigate a complaint pertaining to the plan. Such post-construction inspections shall be conducted by the administrator at least once every five (5) years.

(c) A construction record drawing shall be submitted to the administrator upon completion of the installation or construction of any permanent stormwater management facility or facilities, including, without limitation, permanent BMPs. The construction record drawing shall be signed and sealed by a licensed professional, as defined in section 10-5, and shall contain a certification of such professional that the stormwater management facility or facilities have been constructed in accordance with the approved stormwater management plan.

(d) Consistent with the authority conferred within Virginia Code § 62.1-44.15:39, the administrator, or an authorized agent of the administrator, may, at reasonable times and under reasonable circumstances, enter any site or property, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article.

(e) The administrator may also enter any establishment or upon any property, public or private, at reasonable times and under reasonable circumstances, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity, when a permittee, after proper notice, has failed to take acceptable action within the time specified.

(f) Pursuant to Code of Virginia, § 62.1-44.15:40, the administrator may require every permit applicant or permittee, any operator, or any other person subject to permit requirements, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of their discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article.

Sec. 10-58. Modification of approved stormwater management plans.

(a) The administrator may require that an approved stormwater management plan be amended, within a time prescribed by the administrator, to address any deficiencies noted during any inspection.

(b) Any modification(s) of an approved stormwater management plan shall be allowed only after review and written approval of the administrator. Following receipt of a complete request, supported by such information deemed necessary by the administrator to determine compliance with the requirements of this article and Article I, the administrator shall have sixty (60) days to act on the request, either by approval or by disapproval set forth in writing. The administrator's review and decision shall be based on the requirements set forth within the regulations, and those set forth within this article and within Article I.

~~Sec. 10-59. Enforcement.~~

~~(a) If the administrator determines that there is a failure to comply with a permit or any permit conditions, or if the administrator determines there is an unauthorized discharge, the administrator shall serve notice upon the permittee or other person responsible for carrying out the permit conditions, by any of the following: verbal warnings, written inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served by mailing with confirmation of delivery to the address specified in the permit application, or by delivery at the site of the land-disturbing activities, to the agent or employee supervising such activities.~~

~~(1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued, or the permit may be revoked by either the administrator or the board.~~

~~(2) If a permittee fails to comply with a notice issued in accordance with this section within the time specified, the administrator may issue an order ("stop work order") requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit, to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed. A stop work order shall be in writing, and shall become effective upon service on the person (i) by mailing, with confirmation of delivery, sent to the person's address specified in the land records of the city, or (ii) by personal delivery by an agent of the administrator. However, if the administrator finds that any violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or is otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency stop work order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued a stop work order is not complying with the terms thereof, the administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with this section.~~

~~(b) Any person violating or failing, neglecting, or refusing to obey any provision of this article, any order issued hereunder, or any permit condition, may be compelled in a proceeding instituted in the circuit court for the City of Charlottesville to obey same and to comply therewith by injunction, mandamus or other appropriate remedy, as set forth within Virginia Code §§ 62.1-44.15:42 and 62.1-44.15:48(D). If the administrator applies to a court to enjoin a violation or a threatened violation of the provisions of this article, the administrator shall not be required to show that an adequate remedy at law exists.~~

~~(c) A person who violates this article may be subject to criminal prosecution and criminal penalties, as follows:~~

~~(1) Any person who willfully or negligently violates any provision of this article, any regulation or order of the board, any order of the administrator, any order of DEQ, any permit condition, or any order of a court, shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve (12) months and a fine of not less than two thousand five hundred dollars ($2,500.00) nor more than thirty-two thousand five hundred ($32,500.00), either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection be sentenced to pay a fine of not less than ten thousand dollars ($10,000.000.~~

~~(2) Any person who knowingly violates any provision of this article, any regulation or order of the board, any order of the administrator or of DEQ, or any permit condition, or any order of a court issued as herein provided, or who knowingly makes any false statement in any application, form or submission required by this article, or who knowingly renders inaccurate any monitoring device or method required to be maintained, shall be guilty of a felony punishable by a term of imprisonment of not less~~

than one (1) year nor more than three (3) years, or in the discretion of the jury, or the court trying the case without a jury, confinement in jail for not more than twelve (12) months and a fine of not less than five thousand dollars ($5,000.00) or more than fifty thousand dollars ($50,000.00) for each violation. A defendant that is not an individual shall, upon conviction of a violation under this subsection be sentenced to pay a fine of not less than ten thousand dollars ($10,000.00)

(3) Any person who knowingly violates any provision of this article, and who knows at that time that they thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two (2) years or more than fifteen (15) years and a fine of not more than two hundred fifty dollars ($250,000), either or both. A defendant that is not an individual shall, upon conviction of a violation under this provision, be sentenced to pay a fine not exceeding the greater of one million dollars ($1,000,000.00) or an amount that is three (3) times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment, for any subsequent conviction of the same person under this provision.

(d) Any person who violates any provision of this article, any order issued hereunder, or any permit condition, shall be subject to a civil penalty imposed by the administrator, not to exceed thirty-two thousand five hundred dollars ($32,500.00) per day for each violation. Each day a violation continues shall constitute a separate offense. The administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.

(1) Violations for which a penalty may be imposed under this paragraph (e) shall be as follows:

a. No state permit registration;

b. No approved stormwater management plan;

c. No SWPPP; an incomplete SWPPP; SWPPP not available for review at the site;

d. No approved erosion and sediment control plan;

e. Failure to install stormwater BMPs or erosion and sediment controls;

f. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;

g. Failure to conduct land-disturbing activity in accordance with operational requirements established by regulations or by this chapter;

h. Failure to conduct required inspections;

i. Incomplete, improper, or missed inspections; and

j. Discharges not in compliance with the requirements of Section 9VAC50-60-1170 of the state general permit.

(2) Any civil penalties assessed by a court as a result of a civil summons issued by the administrator shall be paid into the treasury of the city, to be used as specified within Virginia Code § 62.1-44.15:48(A).

(e) With the consent of any person who has violated or failed, neglected or refused to obey any provision or requirement of this article or any regulation, statute, ordinance, standard or specification referenced herein, or any permit, or any permit condition, the administrator may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in paragraph (d), above. Any such civil charges shall be instead of any civil penalty that could be imposed under this section. Any civil charges collected shall be paid into the treasury of the city, to be used as specified within Virginia Code § 62.1-44.15:48(A).

Secs. 10-650—10-70. Reserved.

ARTICLE IV. STREAM BUFFERS

Sec. 10-73. Development exempt from stream buffer requirements.

The following types of development shall not be required to retain, establish or manage a stream buffer, provided that the requirements of this section are satisfied:

(1) The construction, installation, operation and maintenance of electric, gas and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, which are accomplished in compliance with the ~~Erosion and Sediment Control Law (Virginia Code § 10.1-560 et seq.)~~ the Virginia Erosion and Stormwater Management Act (Virginia Code (§ 62.1-44.15:24 *et seq.*) and Article II of this Chapter, or an erosion and sediment control plan approved by the Virginia Soil and Water Conservation Board.

(2) *The construction*…

BE IT FURTHER ORDAINED by the Council of the City of Charlottesville, Virginia that this ordinance shall be effective as of July 1, 2024.

	Aye	No
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#O-24-082

AN ORDINANCE AMENDING AND REORDAINING CHAPTER 10 (WATER PROTECTION) OF THE CODE OF THE CITY OF CHARLOTTESVILLE, TO UPDATE THE CITY'S STORMWATER UTILITY PROGRAM CONSISTENT WITH SECTION 15.2-2114 OF THE CODE OF VIRGINIA.

WHEREAS, the Council of the City of Charlottesville, Virginia (the "Council") has adopted ordinances for the management of stormwater resulting from land-disturbing activity and impervious surfaces within the City of Charlottesville (the "City"), which ordinances are codified in Chapter 10 of the City Code, known as the city's Water Protection Ordinance; and

WHEREAS, ordinances establishing a stormwater utility fee for impervious surfaces within the City are codified in Article VI of Chapter 10, and are a critical component of the Water Protection Ordinance and the Council's efforts to protect local and state waters; and

WHEREAS, Article VI of Chapter 10 is authorized under Section 15.2-2114 of the Code of Virginia, which has been amended by the General Assembly since the City established its stormwater utility program; and

WHEREAS, amendments to Chapter 10, Article VI are desirable in order for the City to implement a stormwater utility program consistent with the authority granted by the Code of Virginia; and

WHEREAS, certain cross-references within Chapter 10, Article VI also need to be amended to correctly refer to Virginia Erosion and Stormwater Management Act (Virginia Code § 62.1-44.15:24 *et seq.* as amended and effective July 1, 2024); and

WHEREAS, on June 17, 2024 the Council held a duly noticed public hearing on the adoption of an ordinance to amend Chapter 10, Article VI consistent with Virginia Code §§ 15.2-1427 and 15.2-2114(B); and

WHEREAS, the Council finds that adoption of this ordinance will support the City's stormwater management program, is in the best interests of the City and its citizens, and furthers the protection of state waters, stream channels, and other natural resources from the potential harm of unmanaged stormwater.

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that Chapter 10 (Water Protection) of the Code of the City of Charlottesville is hereby amended and reordained as follows:

Amend Article VI, by amending Sections 10-100, 10-102, 10-103, 10-104, 10-105, and 10-106; all as shown, stated, and ordained below:

Chapter 10 WATER PROTECTION

ARTICLE VI. STORMWATER UTILITY

Sec. 10-100. Authority.

The city is authorized by Virginia Code § 15.2-2114 ~~et seq.~~ to establish a utility and to enact a system of service charges to support a local stormwater management program consistent with ~~the Virginia Stormwater Management Act (Virginia Code § 10.1-603.1 et seq.)~~ Article 2.3 (§ 62.1-44.15:24 *et seq.*) of Chapter 3.1 of Title 62.1 of the Code of Virginia, as amended, or any other state or federal regulation governing stormwater management.

Sec. 10-101. Purpose.

The city council finds…

Sec. 10-102. Definitions.

The following definitions shall apply to this article unless the context clearly indicates otherwise:

Billing unit means five hundred (500) square feet of impervious area.

Director means the director of ~~public works~~utilities or the director's authorized representative.

Impervious area means area covered by hard surfaces such as structures, paving, compacted gravel, concrete, or other human-created features that prevent, restrict, or impede the downward passage of stormwater into the underlying soil.

~~*Impervious area* means area covered by hard surfaces such as structures, paving, compacted gravel, concrete, or other human caused features that prevent, restrict, or impede the downward passage of stormwater into the underlying soil.~~

Sec. 10-103. Stormwater utility fee.

(a) A stormwater utility fee is hereby imposed on every parcel of improved real property in the city that appears on the real property assessment rolls as of December 31 of each year. All stormwater utility fees and other income from the fees shall be deposited into the water resources protection fund.

(b) The rate per billing unit to be used for calculating the stormwater utility fee shall be one dollar twenty cents ($1.20) per month.

(c) Except as otherwise provided in this article, the impervious area for a property shall be determined by the city using aerial photography, as-built drawings, final approved site plans, field surveys or other appropriate engineering and mapping analysis tools.

(d) Notwithstanding subsection (a) above, and consistent with Virginia Code § 15.2-2114, the stormwater utility fee shall be waived in its entirety for the following:

(1) A federal, state, or local government, or public entity, that holds a permit to discharge stormwater from a municipal separate storm sewer system; except that the waiver of charges shall apply only to property covered by any such permit;

(2) For so long as there exists a revenue sharing agreement between the City and the County of Albemarle, Virginia, the waiver authorized by this section shall also apply to the property of each such locality, and to property of each locality's school board that is accounted for within that locality's municipal separate storm sewer system program plan, regardless of whether such property is located within the territorial jurisdiction of the other locality;

(3) Public roads and street rights-of-way that are owned and maintained by state or local agencies including property rights-of-way acquired through the acquisitions process; and,

(4) Unimproved parcels.

Sec. 10-104. Stormwater utility fee calculation.

(a) It is the intent of city council to set the stormwater utility fee at an amount that will be sufficient to provide for a balanced operating and capital improvement budget for the stormwater utility. Income derived from the utility charges shall be dedicated special revenue and may not exceed the actual costs incurred to operate and maintain the city's stormwater management system and implement the city's stormwater management program.

(b) Unless otherwise specified in this article, the monthly stormwater utility fee for all property in the city shall be calculated in the following manner:

(1) Determine the impervious area of each parcel of real property in square feet;

(2) Divide the property's impervious area by the billing unit;

(3) Round the resulting calculation to the next highest whole number to determine the number of billing units and multiply by the rate established in section 10-103(b) to obtain the monthly stormwater utility fee for the property.

(c) The stormwater utility fee applicable to property held by a common interest community association, as defined in Virginia Code § 55-528, shall be charged directly to the association based on the methodology established in subsection (~~a~~b) above, except that the director may develop alternative methodologies for billing fees associated with property held by a common interest community association, including but not limited to dividing the fee among the lots other than the common area that constitute the common interest community.

Sec. 10-105. Stormwater utility fee credits.

(a) The city council shall adopt by resolution a system of credits in accordance with Virginia Code § 15.2-2114.D that provide for full or partial waivers of charges to any person who installs, operates, and maintains a stormwater management facility that achieves a permanent reduction in stormwater flow or pollutant loadings or other such facility, system, or practice whereby stormwater runoff produced by the property is retained and treated on site in accordance with a stormwater management plan approved pursuant to Chapter 3.1 (62.1-44.2 et seq.) of Title 62.1. The amount of the waiver shall be based in part on the percentage reduction in stormwater flow or pollutant loadings, or both, from pre-installation to post-installation of the facility. The credit policy may also, in accordance with Virginia Code § 15.2-2114.E, provide for full or partial waivers of charges to public or private entities that implement or participate in strategies, techniques, or programs that reduce stormwater flow or pollutant loadings, or decrease the cost of maintaining or operating the public stormwater management system.

(b) The department of ~~public works~~utilities will develop written policies to implement the system of credits. No credit will be authorized until the city council approves written policies to implement the system of credits; a copy of the approved policies shall be on file with the

department of ~~public works~~utilities. Nothing shall prevent the city council from modifying the adopted system of credits, and such modifications may apply to holders of existing credits.

Sec. 10-106. Water resources protection fund.

(a) The water resources protection fund is hereby established as a dedicated enterprise fund. The fund shall consist of revenue generated by the stormwater utility fee as well as any other deposits that may be made from time to time by the city council.

(b) The water resources protection fund shall be dedicated special revenue used only to pay for or recover costs for the following:

(1) The acquisition, as permitted in Virginia Code § 15.2-1800, of real and personal property, and interest therein, necessary to construct, operate, and maintain stormwater control facilities;

(2) The cost of administration of the water resources protection program;

(3) Planning, design, engineering, construction, and debt retirement for new facilities and enlargement or improvement of existing facilities, including the enlargement or improvement of dams, levees, floodwalls, and pump stations, whether publicly or privately owned, that serve to control stormwater;

(4) Facility operation and maintenance, including the maintenance of dams, levees, floodwalls, and pump stations, whether publicly or privately owned, that serve to control stormwater;

(5) Monitoring of stormwater control devices and ambient water quality; ~~and~~

(6) Contracts related to stormwater management, including contracts for the financing, construction, operation, or maintenance of stormwater management facilities, regardless of whether such facilities are located on public or private property and, in the case of private property locations, whether the contract is entered into pursuant to a stormwater management private property program adopted in accordance with Virginia Code § 15.2-2114(J) or otherwise; and

(~~6~~7) Other activities consistent with the state or federal regulations or permits governing stormwater management, including, but not limited to, public education, watershed planning, inspection and enforcement activities, and pollution prevention planning and implementation.

Sec. 10-107. Billing, enforcement, and interest.

(a) *The stormwater utility fee shall…*

BE IT FURTHER ORDAINED by the Council of the City of Charlottesville, Virginia that this ordinance shall be effective as of July 1, 2024.

	Aye	**No**
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#R-24-083

A RESOLUTION TO
ACCEPT THE TRANSIT STRATEGIC PLAN ("TSP")

WHEREAS, the Charlottesville Area Transit system receives funding assistance from the Virginia Department of Rail and Public Transportation, hereafter referred to as the **STATE**, for public transportation; and

WHEREAS, the **STATE** requires that the governing body of the transit system, hereafter referred to as the **CITY COUNCIL**, adopt and submit a Transit Strategic Plan to identify projects, expansions, and capital expenditures that the Charlottesville Area Transit system anticipates pursuing for the following ten-year period; and

WHEREAS, the Charlottesville Area Transit staff have spearheaded the development of the Transit Strategic Document and input has been solicited in collaboration with the Thomas Jefferson Planning District Commission, stakeholders, partners, current and potential patrons; and

WHEREAS, adoption of this plan does not obligate or commit the **CITY COUNCIL** to the recommendations or expenditures of the plan; and

WHEREAS, the **CITY COUNCIL** hereby adopts the Transit Strategic Plan prepared by Kimley-Horn and Associates, Inc.

BE IT RESOLVED by **CITY COUNCIL** that the Transit Director is authorized, for and on behalf of the City of Charlottesville's City Manager and **CITY COUNCIL** to submit to the **STATE**, the completed Transit Strategic Plan covering fiscal years 2024 through 2034.

	Ave	**No**
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#R-24-084

RESOLUTION

Appropriating Community Development Block Grant (CDBG) Funds Anticipated from the U.S. Department of Housing and Urban Development for Program Year 2024-25, in the Approximate Amount $438,617

WHEREAS the City of Charlottesville has been advised by the U.S. Department of Housing and Urban Development (HUD) is expected to receive an anticipated Community Development Block Grant (CDBG) allocation for the 2024-25 program year in the approximate amount of $438,617; and

WHEREAS City Council has received recommendations for the expenditure of funds from the city's CDBG/HOME Taskforce, as reviewed and approved by the City's Planning Commission at a public hearing on May 14, 2024, as provided by law; and

WHEREAS appropriation resolution #R-24-061, approved by Council on June 3, 2024, approved the correct CDBG total allocation of $438,617 but did not accurately reflect the specific amounts proposed to be awarded and therefore did not accurately reflect the full award for each approved subrecipient program; now, therefore,

BE IT RESOLVED by the City Council of Charlottesville, Virginia, that upon receipt of anticipated CDBG funding from the U.S. Department of Housing and Urban Development, said funds are hereby appropriated to the following individual expenditure accounts in the Community Development Block Grant Fund in accordance with the respective purposes set forth; provided, however, that the City Manager is hereby authorized to transfer funds between and among such individual accounts as circumstances may require, to the extent permitted by applicable federal grant regulations, as set forth below:

Economic Development Activities

Fund	*Account/Internal Order #*	*Funding Recommendation*	*Revised Award*
218	1900550	CIC Entrepreneur Programs	$20,168.87
218	1900552	CRHA Economic Opportunity Program Coordinator	$72,607.93

Housing Activities

Fund	*Account/Internal Order #*	*Funding Recommendation*	*Revised Award*
218	1900553	CRHA Affordable Housing Preservation at Dogwood	$154,806.00
218	1900554	CRHA Housing Stability Program (TBRA)	$18,941.54
218	1900555	LEAP Solar Readiness Program	$18,576.72

Public Services Activities

Fund	*Account/Internal Order #*	*Funding Recommendation*	*Revised Award*
218	1900556	IRC Financial Capabilities Program	$16,512.64
218	1900557	PACEM Shelter Transportation	$7,998.31
218	1900558	LVCA Beginning Level Workforce Development Program	$15,480.60
218	1900559	PHAR Resident-Involved Redevelopment	$25,801.00

Programmatic Funds

Fund	*SAP Cost Center #*	*Funding Recommendation*	*Revised Award*
218	3914001000	CDBG Planning & Admin	$87,723.40

In the event that funding received from the U.S. Department of Housing and Urban Development differs from the amounts referenced above, all appropriated amounts may be administratively increased/reduced at the same prorated percentage of change to actual funding received. No subrecipient's grant may be increased above their initial funding request without further consideration by Council.

BE IT FURTHER RESOLVED that this appropriation is conditioned upon the receipt of not less than $438,617 in CDBG funds from the U.S. Department of Housing and Urban Development for program year 2024-25, and all subrecipient awards are also conditioned upon receipt of such funds.

BE IT FURTHER RESOLVED that the amounts appropriated above within this resolution will be provided as grants to public agencies or private non-profit, charitable organizations (individually and collectively, "subrecipients") and shall be utilized by the subrecipients solely for the purpose stated within their grant applications. The City Manager is hereby authorized to enter into agreements with each subrecipient as deemed advisable so as to ensure that the grants are expended for their intended purposes and in accordance with applicable federal and state laws and regulations. To this end, the City Manager, the Director of Finance, and public officers to whom any responsibility is delegated by the City Manager pursuant to City Code Section 2-147, are authorized to establish administrative procedures and provide for guidance and assistance in the subrecipients' execution of the funded programs.

	Aye	**No**
Oschrin	_x__	____
Payne	_x__	____
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council

#O-24-085

AN ORDINANCE
AMENDING AND REORDAINING CHAPTER 31 (UTILITIES) OF THE CODE OF THE CITY OF CHARLOTTESVILLE, 1990, AS AMENDED, TO ESTABLISH A CONNECTION FEE FOR NEW GAS SERVICE

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia, that:

1. Sections 31-31 of Chapter 31, of the Code of the City of Charlottesville, 1990, as amended, are hereby amended and reordained as follows:

CHAPTER 31. UTILITIES

ARTICLE II. GAS

DIVISION 1.-GENERALLY

Sec. 31-31. - Installation of service connections and lines; relocation of lines, meters, etc.

(a) The gas division may install new service connections up to one hundred fifty (150) feet from the main at ~~no cost~~ a cost of $340.00 to the customer for residential service, provided that the ~~gas superintendent~~ Director of Utilities, or their designee determines that the prospective revenue from such installation will justify the city's investment therein. The additional cost to the city in extending any such service connection beyond one hundred fifty (150) feet from the main shall be charged to the customer. The cost to the customer for installation of a gas service for commercial applications will be determined based on connected load using the economic model in the gas main extension policy.

(b) *All gas connections . . . .*

(c) *Relocation of service lines . . . .*

2. The foregoing amendments shall become effective January 1, 2025.

	Aye	No
Oschrin	_x__	____
Payne	____	_x__
Pinkston	_x__	____
Snook	_x__	____
Wade	_absent___	

Approved by Council
June 17, 2024

Kyna Thomas

Kyna Thomas, MMC
Clerk of Council