



**Town Council  
Regular Council Meeting Minutes  
April 25, 2023**

The Town Council of Bedford, Virginia, held a regularly scheduled meeting on Tuesday, April 25, 2023, at 7:00 p.m. in the Council Chambers of the Town Municipal Building at 215 East Main Street, Bedford, Virginia.

**Town Council members present:**

Mayor Tim Black, Vice Mayor C. G. Stanley, Councilman Bob Carson, Councilman Stacey Hailey, Councilman Bruce Hartwick, Councilman Bruce Johannessen, Councilman Darren Shoen

**Town Staff present:**

Town Manager Bart Warner, Finance Director Anne Cantrell, Town Attorney Michael Lockaby, Police Chief Ronnie Lewis, Director of Planning and Community Development Mary Zirkle, Clerk of Council Debra B. Anderson, and Recording Secretary Julia Peters

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Mayor Black called the meeting to order and led all those present in reciting the Pledge of Allegiance to the Flag.

**APPROVAL OF MINUTES**

Mayor Black declared that the minutes of the regular Council meeting on April 11, 2023 were approved as submitted.

**REPORT OF TOWN MANAGER**

Mr. Warner reported that the vote of the Phase II Boundary Adjustment would be delayed until May 23, 2023. This delay was due to survey and advertising requirements associated with the changes to the map that were made at the Called Meeting on Wednesday, April 19, 2023.

## **APPEARANCES BEFORE COUNCIL**

None.

## **COUNCIL COMMENTS**

Councilman Hartwick welcomed everyone to the meeting. He was looking for ways to soften the blow for the Phase II boundary adjustments and he would have liked to see some things done differently. He also would like to see businesses in Centertown opened a bit longer so they can get more customers in their shops.

## **REPORT OF COUNCIL COMMITTEES**

None.

## **REVISIONS TO AGENDA**

None.

## **PUBLIC HEARINGS**

Mr. Warner read the following public hearing notice.

### **NOTICE OF PUBLIC HEARING FOR PROPOSED REAL PROPERTY TAX INCREASE**

The Town of Bedford proposes to increase property tax levies.

1. **Assessment Increase:** Total assessed value of real property, excluding additional assessments due to new construction or improvements to property, exceeds last year's total assessed value of real property by 25.09 percent.
2. **Lowered Rate Necessary to Offset Increased Assessment:** The tax rate which would levy the same amount of real estate tax as last year, when multiplied by the new total assessed value of real estate with the exclusions mentioned above, would be \$0.25 per \$100 of assessed value. This rate will be known as the "lowered tax rate."
3. **Effective Rate Increase:** The Town of Bedford proposes to adopt a tax rate of \$0.29 per \$100 of assessed value. The difference between the lowered tax rate and the proposed rate would

be \$0.04 per \$100, or 17.02 percent. This difference will be known as the “effective tax rate increase.”

Individual property taxes may, however, increase at a percentage greater than or less than the above percentage.

4. Proposed Total Budget Increase: Based on the proposed real property tax rate and changes in other revenues, the total budget of the Town of Bedford will exceed last year’s by 0.14 percent.

A public hearing on the increase will be held on Tuesday, April 25, 2023, at 7:00 p.m. in the Council Chambers of the Town of Bedford Municipal Building, located at 215 E. Main Street, Bedford, Virginia.

By Order of the Clerk of the Town Council

Published: March 22, 2023

Mayor Black opened the public hearing at 7:08 p.m.

**David Thomas, 1615 Shady Knoll Avenue, Bedford, VA**

Mr. Thomas told the Council that between what the County has done and what the Town was proposing, his tax bill on his property would increase somewhere around \$400 per year. It seemed like a tremendous amount and he is sure many others would be even more. He wished it was possible for Council not to raise the tax quite as much, maybe \$0.27 rather than \$0.29.

There being no one else to come forward to speak, Mayor Black closed the public meeting at 7:10 p.m.

Mr. Warner read the following public hearing notice.

**NOTICE OF PUBLIC HEARING**

Please be advised that a public hearing on the tax rate will be held on Tuesday, April 25, 2023, at 7:00 p.m. in the Council Chambers of the Town of Bedford Municipal Building, located at 215 E. Main Street, Bedford, Virginia, to-wit: to set a personal property tax rate of not more than \$1.06 per \$100 assessed valuation in the Town of Bedford for calendar year 2023, and to set a machinery and tools tax rate of not more than \$0.000001 per \$100 assessed valuation in the Town of Bedford for calendar year 2023.

By Order of the Clerk of the Town Council

Published: April 5, 2023

Mayor Black opened the public hearing at 7:10 p.m.

There being no one to come forward to speak, Mayor Black closed the public meeting at 7:11 p.m.

Mr. Warner read the following public hearing notice.

### **PUBLIC HEARING NOTICE**

Notice is hereby given of a public hearing to be held by the Town Council at 7:00 p.m. on Tuesday, April 25, 2023, at the Town Municipal Building, Council Hall, 215 East Main Street for the purpose of hearing:

A request for a conditional use permit in zoning district B-2 for “Travel Park” for property located behind 1508 and 1510 Longwood Ave along Independence Blvd – Tax Parcels 156-5-C-19T, 156-5-C-1T, 177-2-C-33T. The owners are Amanda Marie Inc. and Christopher Blair, and James W. Andrews. The applicant is Christopher Blair of Bedford, VA. The plan requests 35 recreational vehicle lots with visitor amenities on 7.44 acres done in two phases with access from Independence Blvd.

Information is on file in the office of Planning and Community Development at 215 East Main Street, Bedford, VA. Anyone who is in favor of or opposed to the request will have an opportunity to express his/her views at this hearing.

By the Authority of the Planning Commission of the Town of Bedford

Published: April 12, 2023  
April 19, 2023

Mayor Black opened the public hearing at 7:11 p.m.

#### **Ed Adams, 1422 Belmont Drive, Bedford, VA**

Mr. Adams said he lives about ¼ mile away from the referenced property and he believed this proposal would be good for Bedford, for the economy, and tourism. The owners of the property have done a tremendous job cleaning it up. He thought that the Town needs to move on and accept change, and he was in favor of the travel park.

#### **Maurice Hansen, 140 Villa Oak Circle, Bedford, VA**

He thanked Council members for serving on the Council. He had lived in a few towns where there have been all kinds of recalls and he thanked them for their service to the community. He has a doctorate in business development and he approved of the trailer park. There are too many “For Rent” signs in the Town and too many empty buildings that could be used. He was not sure

if there was a research committee to find people to come to the Town to decrease the tax burden, but it was something the Town should think about.

**David Thomas, 1615 Shady Knoll Avenue, Bedford, VA**

Mr. Thomas and his wife own three lots that border Mr. Blair's property and he is in favor of the travel park. He has been to several Planning Commission meetings to speak in favor of this and he hopes Council will approve it. It will be a great thing for the Town and definitely a good thing for his property. What has been there before was a total nightmare and what will be coming will be great and the Town will benefit tremendously.

**Daniel Roberts, 414 Avenel Avenue, Bedford, VA**

He understands that the Conditional Use Permit (CUP) is somewhat conditional on the maintenance of a log for the travel park visitors, noting how long they stay and how often they return. He asked Council identify a resource to monitor the log and report back to the Council regarding the log. The idea is that people would stay a relatively short period and then leave and come back and he is asking that someone monitor that travel.

**Chris Blair, Owner of Subject Property**

Mr. Blair said he presented a packet of information to Council outlining what they plan to do with the property, which is a travel park which will benefit Bedford. People need to come to Bedford to visit and this will bring that "Wow" factor to Bedford. An RV park in general brings \$1.4 billion in economic impact to Virginia alone and Bedford needs to take advantage of some of that economic impact. There is nothing even closely related to this in Bedford. The biggest RV show in the country brings people to Bedford but they have no where to stay, and this location is ideal for it. There are local restaurants in the area, a grocery store, and the Dodge dealership. People can come right off Route 460, Route 122, and reset. They don't have to ride on winding backroads because the park will be right in Town where they can see the D-Day Memorial, visit the Peaks of Otter, and tour the businesses downtown. Hopefully, bringing people to Bedford will bring businesses to Bedford. They are predicting to build 600,000 new RV units in 2022. The Otter Bus ride is a great service and people will utilize it and get to tour parts of Bedford they didn't have access to do. The site plan was developed and they want visitors to feel a touch of nature so they plan to have gravel drives with 20-foot roads, pedestals with full amenities (water, electrical, and sewer hook-ups). Phase 2 will have a big "Wow" factor entrance. Bathrooms and pavilions will also be constructed. The Water Authority and Bedford Electric have been working with them. He has gone to the neighbors and talked about their vision and he has some letters of recommendation. The Office of Tourism has been great too, giving him facts about how this project can benefit Bedford. If this project passes, he asked for continued support from the citizens and Council. Staff have been amazing and he thanked them for their effort, and any resources that the Town and citizens can bring to him, he would be glad to work them in.

There being no one else to come forward to speak, Mayor Black closed the public hearing at 7:25 p.m.

## **CONSENT AGENDA**

None.

## **OLD BUSINESS**

None.

## **NEW BUSINESS**

### **Ordinance - Real Estate Tax for Fiscal Year 2023-2024**

The total real estate assessment, less new construction, for the Town of Bedford increased by approximately 25.09%.

Section 58.1-3321 of the 1950 Code of Virginia, as amended, required that certain notices be published and a public hearing be held when the annual real estate assessment less new construction results in an increase of 1% or more. Said Notice of Public Hearing was placed in the Bedford Bulletin on March 22, 2023 and the public hearing has just concluded. The Town has advertised a proposed real estate tax rate of \$0.29 per \$100 of assessed value.

Individual property taxes may have a greater or lesser percentage change based on the reassessment. A summary of the preliminary assessed values and corresponding tax levies are shown below:

Assessed Values	
Year 2023-2024	\$699,950,000
Year 2022-2023	<u>-555,959,900</u>
<b>Total Increase</b>	<b>\$143,990,100</b>
<b>Less New Cons.</b>	<b>-4,503,846</b>
<b>Net Increase</b>	<b>\$139,486,254</b>

**Assessment Increase Less New Construction – 0.2509 or 25.09%**

Tax Levy	
Year 2023-2024	\$2,029,855
Year 2022-2023	<u>\$1,707,100</u>
<b>Total Increase</b>	<b>\$322,755</b>

**Proposed tax rate is \$0.29 per \$100 of assessed value, which is a \$0.02 reduction from the current tax rate of \$0.31 per \$100 of assessed value.**

**ACTION REQUESTED:**

Town Council is requested to consider adoption of an ordinance levying tax upon real estate and certain tangible personal property of public service corporations and establishing the tax rate thereon for the fiscal year of 2023-2024.

Mr. Hailey moved, seconded by Mr. Johannessen to approve a tax rate of \$0.28 per \$100 of assessed value, which is a \$0.03 reduction from the current tax rate of \$0.31 per \$100 of assessed value for the year of 2023-2024.

Councilman Shoen noted that Council discussed the tax rate in the work session prior to the meeting, and consensus was agreeable to take the rate down from \$0.29 to \$0.28. It was a compromise because Council had to pass a budget. Councilman Johannessen noted that the budget was very tight and did not have any fat in it. Mayor Black said that at \$0.29, the budget increased overall by only 0.14 percent. Mr. Shoen said that this was in light of inflation being seven to nine percent and they are running very lean and something had to be done. The actual tax rate was being reduced and hopefully it will bring in more revenue. Mr. Hailey said that Council tries to do what it can to help its citizens while looking out for the Town. Mayor Black said they are able to lower the tax rate without affecting services while taking care of the employees. It would be nice to get the tax rate lower but they must meet expectations for the services provided to townspeople and he thinks they are doing that. A big portion of the revenues come from real estate taxes and they will be discussing how to diversify revenue sources but he thought they were moving in the right direction. He was glad they were able to drop one more cent off of the tax rate.

Voted upon and carried by the following roll call vote.

Councilman Carson	aye
Councilman Hailey	aye
Councilman Hartwick	aye
Councilman Johannessen	aye
Councilman Shoen	aye
Vice Mayor Stanley	aye
Mayor Black	aye

The motion carried with seven members voting aye.

The ordinance follows.

**ORDINANCE NO. 23-3**

**LEVYING TAX UPON REAL ESTATE AND  
CERTAIN TANGIBLE PERSONAL PROPERTY OF**

**PUBLIC SERVICE CORPORATIONS AND ESTABLISHING THE TAX RATE  
THEREON FOR THE FISCAL YEAR OF 2023-2024**

**BE IT ORDAINED** by the Town Council of the Town of Bedford, Virginia, that there be, and is hereby levied for the fiscal year of 2023-2024, a tax rate of \$0.28 per one hundred dollars of assessed valuation on all taxable real estate located in the Town, the respective levy hereby ordered being also applicable to the real estate and tangible personal property of public service corporations within the limitations specified by Section 58.1-2606 of the Code of Virginia of 1950, as amended, based upon the assessment thereof fixed by the State Corporation Commission and duly certified.

**Ordinance - Personal Property Tax for Calendar Year 2023**

The current personal property tax rate is \$1.06 per \$100 of assessed valuation on all taxable tangible personal property, including property separately classified in Section 58.1-3503 of the Code of Virginia, 1950, as amended, unless exempted from taxation or subject to a different rate. No change is being proposed for calendar year 2023.

The following items are taxes at a rate of \$0.000001 per \$100 of assessed valuation: machinery and tools, motor carriers, one vehicle owned by a disabled veteran, motor vehicles with a seating capacity of not less than 30 persons, including the driver, as separately classified in Section 58.1-3506(a)(39). No changes are being proposed for calendar year 2023.

A notice of public hearing was published in the Bedford Bulletin on April 5, 2023 and the public hearing had concluded.

**ACTION REQUESTED:**

Town Council is requested to consider adoption of the ordinance levying tax upon tangible personal property and establishing the tax rates thereon for the calendar year beginning January 1, 2023.

Mr. Stanley moved, seconded by Mr. Hartwick to adopt the ordinance levying tax upon tangible personal property and establishing the tax rates described above for the calendar year beginning January 1, 2023.

Mayor Black reminded attendees that the first \$20,000 of assessed value was exempt from tax and Council has provided that relief for many years. The Town's tax rate is extremely low compared to the County rate. This was a contentious item last year due to the assessed values of vehicles going through the roof, but some data anticipates about a 15 to 17 percent reduction in assessed values now. This reduction should lower the taxes this year over what citizens paid last year.

Voted upon and carried by the following roll call vote.



Councilman Hailey	aye
Councilman Hartwick	aye
Councilman Johannessen	aye
Councilman Shoen	aye
Vice Mayor Stanley	aye
Councilman Carson	aye
Mayor Black	aye

The motion carried with seven members voting aye.

The ordinance follows.

#### **ORDINANCE 23-4**

### **LEVYING TAX UPON TANGIBLE PERSONAL PROPERTY AND ESTABLISHING THE TAX RATES THEREON FOR THE CALENDAR YEAR BEGINNING JANUARY 1, 2023**

**BE IT ORDAINED** by the Town Council of the Town of Bedford, Virginia, that there be, and is hereby levied, for the calendar year 2023, a tax rate of \$1.06 per one hundred dollars of one hundred per centum (100%) of assessed value on all taxable tangible personal property, including property separately classified in Section 58.1-3503 of the Code of Virginia, 1950, as amended, unless exempted from taxation or subject to a different rate under this ordinance. All tangible personal property employed in a trade or business other than that described in subdivision 1 through 18 of Section 58.1-3503 is taxed at a levy of \$0.000001 per one hundred dollars of one hundred per centum (100%) of the assessed valuation. Household goods and personal effects as classified in Section 58.1-3504 and horses, mules and other kindred animals, hogs, poultry, grains and other feeds used for the nurture of farm animals, grain and tobacco; cattle, sheep and goats, farm machinery and farm implements as such items are classified in Section 58.1-3505 are exempted in whole from tangible personal property taxation. The following items are taxed at a rate of \$0.000001 per one hundred dollars of one hundred per centum (100%) of the assessed valuation: (a) machinery and tools separately classified in Section 58.1-3507; and (b) motor carriers as separately classified in Section 58.1-3506; (c) one vehicle owned by disabled veterans, of the Code of Virginia, 1950, as amended, as separately classified in Section 58.1-3506(a)(19); and (d) motor vehicles with a seating capacity of not less than 30 persons, including the driver, as separately classified in Section 58.1-3506 (a) (39).

#### **Resolution - Setting Percentage Tax Relief to Exhaust PPTRA Relief Funds**

The Virginia General Assembly in 1998 passed the Personal Property Tax Relief Act (PPTRA) with the philosophy that relief would be gradually implemented to eliminate personal property tax on personal use motor vehicles. By 2004, the Virginia General Assembly had revised its philosophy and capped the contribution from the Commonwealth to localities for reimbursement for personal property taxes.

As a result, the City Council, on November 22, 2005, in accordance with state statutes, adopted an ordinance which provided that the funds to be reimbursed to the City of Bedford by the Commonwealth would be allocated in such a manner as to eliminate personal property taxation on each qualifying vehicle with an assessed value of \$1,000 or less and that the Council would set, annually by resolution, a percentage of relief in respect to assessed values of more than \$1,000 as applied to the first \$20,000 in value of each such qualifying vehicle so as to exhaust fully the PPTRA funds provided to the City by the Commonwealth. The funding and methodology of the PPTRA remained the same upon the reversion of the City to a Town.

The amount received from the State, \$280,647, is allocated toward personal property tax relief in the Town of Bedford for fiscal year 2023-2024. In the prior fiscal year, a rate of 100% on the first \$20,000 of assessed value was adopted and the total relief applied to personal property bills was \$427,510. Council is asked to consider adopting a PPTRA rate of 100% for fiscal year 2023-2024.

**ACTION REQUESTED:**

Town Council is requested to adopt the resolution establishing a percentage tax relief rate pursuant to the Virginia Personal Property Tax Relief Act.

Mr. Hartwick moved, seconded by Mr. Carson to adopt the resolution as recommended by staff.

Voted upon and carried by the following roll call vote.

Councilman Hartwick	aye
Councilman Johannessen	aye
Councilman Shoen	aye
Vice Mayor Stanley	aye
Councilman Carson	aye
Councilman Hailey	aye
Mayor Black	aye

The motion carried with seven members voting aye.

The resolution follows.

**RESOLUTION**

**ESTABLISHING A PERCENTAGE TAX RELIEF RATE PURSUANT TO THE VIRGINIA PERSONAL PROPERTY TAX RELIEF ACT**

**WHEREAS**, the Virginia General Assembly in 1998 passed the Personal Property Relief Act based upon a philosophy that in passing the Act the personal property tax on personal motor vehicles would be eliminated; and

**WHEREAS**, in 2001, the Virginia General Assembly set the reimbursement rate to localities for personal property taxes for personal vehicles at seventy percent (70%) of the personal property tax amount; and

**WHEREAS**, in 2004, the Virginia General Assembly enacted statutes which drastically changed the philosophy of the Act and capped the contribution of the Commonwealth to localities for reimbursement for personal property taxes; and

**WHEREAS**, on November 22, 2005, the City Council of the City of Bedford passed an ordinance (Ordinance No. 05-24) which provided, among other things, that the allocation of personal property tax relief be allocated in such a manner as to eliminate personal property taxation on each qualifying vehicle with an assessed value of \$1,000 or less and that with respect to qualifying vehicles with assessed values of more than \$1,000 the City Council, by resolution, would set annually a percentage to be applied to the first \$20,000 in value of each such qualifying vehicle that based upon estimates of assessments would use up all remaining available state personal property tax relief; and

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE TOWN OF BEDFORD AS FOLLOWS:**

Section 1. In accordance with the requirements set forth in Section 58.1-3524(C) (2) and Section 58.1-3912(E) of the Code of Virginia, as amended by Chapter 1 of the Acts of Assembly (2004 Special Session 1) and as set forth in item 503.E (Personal Property Tax Relief Program) of Chapter 951 of the 2005 Acts of Assembly any qualifying vehicle having a situs within the Town commencing January 1, 2023, shall receive personal property tax relief in the following manner:

1. Tax relief shall be allocated so as to eliminate personal property taxation for qualifying personal use vehicles valued at \$1,000 or less.
2. Personal use vehicles valued at \$1,001 - \$20,000 will be eligible for 100% tax relief.
3. Qualifying personal use vehicles valued at \$20,001 or more shall only receive 100% tax relief on the first \$20,000 of value.
4. All other vehicles which do not meet the definition of “qualifying” (for example, including but not limited to, business use vehicles, farm use vehicles, motor home, etc.) will not be eligible for any form of tax relief under this program.

Section 2. If any amount of Personal Property Tax Relief Act funding is not used within the Town’s fiscal year, it shall be carried forward and used to increase the funds available for personal property tax relief in the following fiscal year.

Section 3. This Resolution shall take effect on July 1, 2023.

**Street Maintenance Funding Budget Appropriation**

In January 2023, the Town increased the budget funding to the Street and Highway Maintenance funding line item by \$150,503 based on the current funding from the State. On March 22, 2023, the Town received notice from the Department of Transportation that all cities and certain towns would be receiving an increase in their maintenance payments for FY23 which would be distributed equally in quarters 3 and 4. On March 28, 2023, the Town received the 3<sup>rd</sup> quarter funding from the State. Based on this payment, the Town will need to appropriate an additional \$128,253 for VDOT eligible expenditures. Staff would like to request the additional revenue to be formally appropriated to the expenditure line item for paving under the VDOT account.

**ACTION REQUESTED:**

Town Council is requested to approve the below budget amendment which will appropriate budget to the general ledger accounts listed.

<i>Budget Entry:</i>		
Revenue Increase		
100043-424301	Street & Highway Maintenance	\$128,253.00
Expenditure Increase		
10044121-560178	Blacktop	\$128,253.00

Mr. Carson moved, seconded by Mr. Hailey to approve the above budget amendment which will appropriate budget to the general ledger accounts listed.

Mayor Black noted that the \$128,253 will be an ongoing amount.

Voted upon and carried by the following roll call vote.

- Councilman Johannessen            aye
- Councilman Shoen                    aye
- Vice Mayor Stanley                  aye
- Councilman Carson                   aye
- Councilman Hailey                   aye
- Councilman Hartwick                aye
- Mayor Black                            aye

The motion carried with seven members voting aye.

**Ordinance - VML Joinder Agreement**

On February 28, 2023, representatives from the Virginia Municipal League (VML) provided a presentation on the Virginia Investment Pool (VIP) program available to local government entities. In order to participate in this program, Town Council is required to pass an ordinance which would give Town Staff the ability to earn interest income on deposit accounts in this program. Under this agreement, the Town would designate the position of the Finance Director to serve as the representative of the Town of Bedford to make deposits, withdrawals, and account changes.

**ACTION REQUESTED:**

Town Council is requested to adopt the ordinance authorizing participation by the Town in the VACO/VML Virginia Investment Pool for the purpose of investing in accordance with Section 2.2-4501 and 15.2-1300 of the Virginia Code.

Mr. Hailey moved, seconded by Mr. Hartwick to adopt the ordinance authorizing participation by the Town in the VACO/VML Virginia Investment Pool for the purpose of investing in accordance with Section 2.2-4501 and 15.2-1300 of the Virginia Code.

Mrs. Cantrell explained that the Town would have an investment account where funds could be deposited and the Town would receive interest off the deposit. The money is invested on the Town's behalf and Town would receive the returns. It is outside of what Davenport would be doing for the Town and has been recommended as a good program which has performed very well with limited risk.

Voted upon and carried by the following roll call vote.

Councilman Shoen	aye
Vice Mayor Stanley	aye
Councilman Carson	aye
Councilman Hailey	aye
Councilman Hartwick	aye
Councilman Johannessen	aye
Mayor Black	aye

The motion carried with seven members voting aye.

The ordinance follows.

**ORDINANCE 23-5**

**AUTHORIZE PARTICIPATION BY THE TOWN OF BEDFORD IN THE  
VACO/VML VIRGINIA INVESTMENT POOL  
FOR THE PURPOSE OF INVESTING IN ACCORDANCE WITH SECTION  
2.2-4501 *et seq.* AND 15.2-1300 OF THE VIRGINIA CODE.**

**WHEREAS**, Va. Code § 15.2-1500 provides, in part, that every locality shall provide for all the governmental functions of the locality, including without limitation, the organization of all departments, offices, boards, commissions and agencies of government, and the organizational structure thereof, which are necessary to carry out the functions of government; and

**WHEREAS**, the Investment of Public Funds Act (Va. Code §§ 2.2-4500 through 2.2-4519) lists the eligible categories of securities and investments in which municipal corporations, other political subdivisions and other public bodies are authorized to invest funds belonging to them or within their control; and

**WHEREAS**, Section 15.2-1300 of the Virginia Code provides that any power, privilege or authority exercised or capable of exercise by any political subdivision of the Commonwealth of Virginia may be exercised and enjoyed jointly with any other political subdivision having a similar power, privilege or authority pursuant to agreements with one another for joint action in accordance with the provisions of that Code section; and

**WHEREAS**, the City of Chesapeake, Virginia and the City of Roanoke, Virginia have jointly established and are participating in the Virginia Investment Pool Trust Fund (the “Trust Fund”), also known as the “VACo/VML Virginia Investment Pool,” and have provided in their trust agreement for participation by other eligible governmental entities that execute a trust joinder agreement; and

**WHEREAS**, it appearing to the Town Council of the Town of Bedford that it is in the best interests of the Town of Bedford to become a Participating Political Subdivision in the Trust Fund; and

**WHEREAS**, the Director of Finance of the Town of Bedford, has the authority and responsibility under Virginia law to determine the manner in which public funds other than sinking funds under his/her control will be invested;

**NOW, THEREFORE THE TOWN COUNCIL OF THE TOWN OF BEDFORD HEREBY ORDAINS:**

§ 1 That, pursuant to Sections 2.2-4501 *et seq.* and 15.2-1300 of the Virginia Code, the Town Council of the Town of Bedford hereby establishes a trust for the purpose of investing funds, other than sinking funds, determined to derive the most benefit from this investment strategy, in investments authorized under the Investment of Public Funds Act, jointly with other participating political subdivisions and public bodies in the Trust Fund. A copy of the Virginia Investment Pool Trust Fund Agreement (the “Trust Fund Agreement”) is attached and incorporated in this ordinance as Exhibit A.

§ 2 That the Town of Bedford agrees to become a “Participating Political Subdivision” in the Trust Fund, as further defined in the Agreement.

§ 3 That the Town Council of the Town of Bedford does hereby designate the Director of Finance of the Town of Bedford to serve as the trustee of the Town of Bedford with respect to the Trust Fund, and to determine what funds under his/her control shall be invested in the Trust Fund.

§ 4 That the Town Council of the Town of Bedford hereby authorizes the Director of Finance to execute and deliver the Trust Joinder Agreement for Participating Political Subdivisions under the Virginia Investment Pool Trust Fund (“Trust Joinder Agreement”), a copy of which is attached and incorporated in this ordinance as Exhibit B.

§ 5 This ordinance shall become effective upon its adoption.

Exhibits: Trust Fund Agreement (Attachment 1)  
Trust Joinder Agreement (Attachment 2)

### **Resolution – Conditional Use Permit (CUP) for a “Travel Park” at 1508 Longwood Avenue**

The subject property is located at 1508 Longwood Avenue and Independence Boulevard (identified as Tax Parcels 156-5-C-1-T, 156-5-C-19-T, 177-2-C-33-T) and is zoned General Business (B-2). The property currently has two vacant buildings being renovated and the remaining acreage is vacant and generally clear. The applicant is requesting a “Travel Park” use for recreational vehicles, which was added to the zoning ordinance in 2022 allowable with a conditional use permit. There are specific site and special requirements that must be met and conditions may be imposed by both the Planning Commission and Town Council for any aspects of the request.

The Planning Commission held a public hearing on April 6, 2023. The applicant spoke as did four members of the public. The applicant described two phases of development, tree placement for adjoining neighbors, no entrance from Longwood, dirt will be moved around within the site, targeting RVs priced over \$200,000, moving a dumpster farther from the neighbors closer to Independence, 24-hour staffing the first year, safety for pedestrians with lighting and a sidewalk to Food Lion. Two residents spoke in support of the project. Two speakers expressed concerns related to traffic, the potential need for a stoplight, RVs coming in and out, and that someone on Town staff should be looking at a guest log (this is a code requirement).

The Commission discussed details of the project including how water and sewer and electricity will be provided to each camp site, a possible increase in the length of stay beyond the 21-day consecutive limit, and the Town burn ordinance that could be in conflict with campfires. No conditions were discussed by the Commission. The Commission voted 6-0 to recommend approval of the CUP to Council with no additional conditions.

Zoning Ordinance Section 1002.03.e.: The council shall consider the proposed conditional use after notice and public hearing in accordance with Code of Virginia, § 15.2-2204, and shall take action on the proposed conditional use within 60 days from the date of the public hearing.

**ACTION REQUESTED:**

Town Council is requested to consider a resolution issuing a Conditional Use Permit as recommended for approval by the Planning Commission. The Council may deny the request or approve the request with or without conditions.

Mr. Hailey moved, seconded by Mr. Johannessen to approve a resolution issuing a Conditional Use Permit as recommended for approval by the Planning Commission.

Discussion followed. Topics briefly discussed were campfires, the burn ordinance and revisions, rules and regulations for use of the park, emergency and main entrances to the park, the sewer system, pavements, pop-up campers, a guest logbook, neighborhood noise and privacy buffering, project timelines, and marketing plans.

Voted upon and carried by the following roll call vote.

Vice Mayor Stanley	aye
Councilman Carson	aye
Councilman Hailey	aye
Councilman Hartwick	aye
Councilman Johannessen	aye
Councilman Shoen	aye
Mayor Black	aye

The motion carried with seven members voting aye.

The resolution follows.

**RESOLUTION**

**Permitting A “travel park” By  
CONDITIONAL USE PERMIT IN THE B-2 ZONING DISTRICT**

**WHEREAS**, the Planning Commission of the Town of Bedford held a public hearing on April 6, 2023; and

**WHEREAS**, the Town Council has held a public hearing after notice was given in the *Bedford Bulletin* once a week for two successive weeks as required by Virginia Code 15.2-2204; and

**WHEREAS**, Sections 609.03.i. and 609.03.j. of the Land Development Regulations allow a Travel Park use as defined in Section 302.176. to be permitted with a conditional use permit in the General Business (B-2) zoning district; and



**WHEREAS**, the Town Council finds as a fact that the proposed use is consistent with the intent of the land development ordinance and the land use plan, and is in the public interest; and

**NOW, THEREFORE, BE IT Resolved BY THE TOWN COUNCIL OF THE TOWN OF BEDFORD, VIRGINIA** that a conditional use permit is granted to Christopher Blair for the properties located at 1508 Longwood Avenue (identified as tax parcels 156-5-C-1-T, 156-5-C-19-T, and 177-2-C-33-T) to allow a Travel Park regulated by the Code of Virginia without additional conditions.

### **Ordinance – Fiber to the Premises Right of Way Franchise**

As laid out in the ordinance and franchise agreement enclosed, ZiTEL, LLC, approached the Town earlier this year about extending its fiber optic fiber to the premises (FTTP) Internet system into Town limits. It currently operates a system throughout several parts of Bedford County. However, because the Town owns and manages its own streets pursuant to the Virginia Constitution and the Code of Virginia, it must obtain a franchise from the Town prior to beginning to use Town rights of way to lay its fiber.

As required by State Code, the Council directed the Town Clerk to advertise a draft franchise. The text was prepared by the Town Attorney and agreeable to ZiTEL in its terms and conditions. Because it is a non-exclusive franchise, the Town may make an award to multiple bidders if more than one applies. Because of the provisions of the federal Communications Act of 1934, the Town Attorney recommends award of a competitive franchise to any provider with a credible proposal that meets the requirements of the request for proposals.

Community Development has advised that it hopes that the entry of ZiTEL and/or others into the market will spur competition in prices, customer service, and scope of service territory to the benefit of the customer. This is a goal of the deregulation of communications services under the Telecommunications Act of 1996 and Federal Communications Commission (FCC) regulations.

At the meeting, the Mayor will formally close bidding. Thereafter, a summary of the bids received will be read.

### **ACTION REQUESTED:**

Town Council may make an award at the meeting of a franchise to ZiTEL, LLC.

Mayor Black asked for any further bids to enter into a franchise for the use of the public rights-of-way of the Town for fiber to the premises internet access service.

Being no further bids, Mayor Black closed the bidding process and asked Mr. Lockaby to give a summary of bids. Mr. Lockaby announced only one bid was received and it was from ZiTEL, LLC. The company proposes to build a fiber-to-home internet system in the Town of Bedford. It also operates a television streaming service over the internet through the fiber optic cables. The company will comply with all requirements for access to the public rights-of-way and they will

have a separate pole attachment agreement with the electric department. This franchise will extend into any area that is added to Town limits through a boundary adjustment. ZiTEL will pay the Communications Sales and Use Tax collected by the Commonwealth of Virginia, where some of the tax filters down to the Town. The franchise will be for a ten-year period with extensions possible.

Mr. Hailey moved, seconded by Mr. Hartwick, to award a franchise to ZiTEL, LLC., and adopt the ordinance allowing franchises to use the public rights-of-way of the Town for fiber to the premises internet access services.

Voted upon and carried by the following roll call vote.

Councilman Carson	aye
Councilman Hailey	aye
Councilman Hartwick	aye
Councilman Johannessen	aye
Councilman Shoen	aye
Vice Mayor Stanley	aye
Mayor Black	aye

The motion carried with seven members voting aye.

The ordinance and franchise agreement follow.

#### **ORDINANCE NO. 23-6**

### **AN UNCODIFIED ORDINANCE OF THE COUNCIL OF THE TOWN OF BEDFORD, VIRGINIA, APPROVING AND ENTERING ONE OR MORE FRANCHISES FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY OF THE TOWN FOR FIBER TO THE PREMISES INTERNET ACCESS SERVICE**

**WHEREAS**, the Town of Bedford, Virginia (the “Town”) is vested by the Virginia Constitution, art. VII, §§ 8, 9, and the Code of Virginia, 1950, as amended, §§ 15.2-2000 et seq. and 15.2-2100 et seq., with the responsibilities of ownership, maintenance, and management of the public rights-of-way within the corporate limits of the Town; and

**WHEREAS**, ZiTEL, LLC, a provider of broadband Internet service to the premises using fiber-optic infrastructure, but not a provider of cable television service within the meaning of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 521 et seq., has requested a franchise to construct, reconstruct, maintain, and otherwise lay its fiber within the public rights-of-way of the Town, in order to provide such service to the public, and has proposed terms and conditions on which it intends to do so (the “Franchise”); and

**WHEREAS**, the Town has prepared and advertised a draft franchise ordinance and agreement and advertised it in accordance with the requirements of the Virginia Constitution and

the Code of Virginia, and has received [number] of bids, and such bidding has been closed and bids evaluated in accordance with law; and

**WHEREAS**, it appearing that the public health, safety, general welfare, and the public necessity and convenience require issuance and entry of franchise ordinances and agreements as advertised.

**NOW THEREFORE**, the Council of the Town of Bedford hereby ordains and directs as follows:

1. The Council hereby awards the Franchise to [name of firm or firms]; and
2. The Council hereby authorizes and directs the Mayor of the Town to execute the Franchise Agreement attached hereto and incorporated herein as **Exhibit A** upon its execution and delivery to him, without substantial variation, and authorizes the directs the Town Clerk and the Town Attorney to ensure proper execution and delivery of the Franchise Agreement and provide their respective endorsements thereon; and
3. This Ordinance shall be effective upon adoption; provided, however, that (a) the Franchise Agreement shall be effective in accordance with its own terms, and (b) if not executed and delivered by the grantee of the Franchise within three (3) months of the approval of this Ordinance, the grant of the Franchise shall be null and void.

### **BROADBAND FRANCHISE AGREEMENT**

THIS BROADBAND FRANCHISE AGREEMENT (“Agreement”) is entered as of the \_\_\_ day of \_\_\_\_\_, 2023, by and between the Town of Bedford, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia (the “Town”), and [name of company], a [jurisdiction] [type of entity] (the “Grantee”).

#### **Recitals**

WHEREAS, the Town is responsible for management of the public rights-of-way and performs a wide range of vital tasks necessary to preserve the physical integrity of public rights-of-way, to control the orderly flow of vehicles, to promote the safe movement of vehicles and pedestrians, and to manage the extensive water, sewer, electric, cable television, telephone, telecommunications, and other facilities located in the public rights-of-way; and

WHEREAS, the Town has authority to grant franchises authorizing the occupancy of the public rights-of-way, to obtain fair and reasonable compensation for the use of public property, and to regulate the activities of occupants of the public rights-of-way, subject to applicable laws; and

WHEREAS, the Grantee desires to install, maintain, operate, and control a fiber to the premises (“FTTP”) network in the public rights-of-pay of the Town for the purpose of offering broadband Internet access service to its customers; and

WHEREAS, the Town is willing to permit the Grantee to enter and occupy the public rights-of-way on the terms and conditions herein set forth.

### **Agreement**

NOW THEREFORE, in consideration of the premises hereof, which are expressly incorporated herein, the mutual promises hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Grantee agree as follows:

#### **Article I**

#### **Grant of Authority; Franchise Fee**

1.1 Subject to the terms of this Agreement, the Town hereby grants to the Grantee the non-exclusive right to construct, install, maintain, locate, move, operate, place, protect, reconstruct, reinstall, relocate, remove and replace fiber optic or other cable and related facilities for the provision of broadband Internet services in the public streets and public rights-of-way in the Town of Bedford. The Grantee shall be solely responsible for obtaining any required consents from State agencies or private parties to the extent that its operations affect State or private property.

1.2 It is expressly agreed that this Agreement does not give the Grantee the right to occupy any public rights-of-way with permanent above-ground cabinets, pads and other similar structures except pursuant to the express approval of a plan therefor by the Town Manager.

1.3 This Agreement does not authorize the Grantee to provide any other service, including cable service, video programming service as defined in 47 U.S.C. § 522(20), or telecommunications service as defined in 47 U.S.C. § 153(53), within the Town, but shall not be construed to prohibit offering of over-the-top streaming services without an additional franchise. The Grantee shall have the right to provide additional services, other than those listed in the preceding sentence, provided that the Town reserves the right, in its sole discretion, to provide for separate franchise fees for such other services, to the extent consistent with applicable laws.

1.4 The Grantee acknowledges that this grant of authority is for the benefit of the Grantee only, and that the Grantee is not authorized to lease, sublease, assign or otherwise allow other persons or providers to use or occupy the public rights-of-way except in accordance with provisions of this Agreement.

1.5 The Grantee acknowledges that, to the extent allowed by State and Federal law, the Town has the authority to adopt ordinances regulating the use of the public rights-of-way, so long as such ordinances apply equally to similarly-situated persons and are related to using the public streets and public rights-of-way in the Town for the same purposes. The Grantee agrees to be bound by all such future ordinances so long as it provides Internet services or has property or equipment within the public streets or rights-of-way located in the Town.

1.6 This Agreement is not a grant by the Town of any fee simple or other property interest except as expressly contemplated by this Agreement and is made subject and subordinate to the

prior and continuing right of the Town to use the public streets and public rights-of-way occupied by the Grantee for the purpose of laying, installing, maintaining, repairing, protecting, replacing, and removing sanitary sewers, water mains, storm drains, gas mains, poles and other equipment for municipal uses and with the right of the general public to ingress and egress along, above, over, across and in said public streets and public rights-of-way.

1.7 This Agreement shall be in full force and effect from and after the date of its approval by the Town Council; provided, however, that notwithstanding such approval, this Agreement shall not become effective until all required bonds, letters of credit, certificates of insurance and other instruments required by this Agreement have been filed with, and accepted and approved by the Town, which acceptance and approval shall not be unreasonably delayed, conditioned or withheld.

1.8 For the avoidance of ambiguity, the Grantee is expressly made subject to the rights of way use fee as it may be adopted by the Town Council from time to time, and to all taxes, fees and charges of general application.

## **Article II Definitions & Rules of Construction**

2.1 For the purposes of this Agreement, and the interpretation and enforcement hereof, the following words and phrases have the following meanings:

*“Affiliate”* means a person or entity that directly, or indirectly, through one or more intermediaries, owns, controls, is owned or controlled by, or is under common ownership or control with another person or entity.

*“Broadband services”* means the offering of broadband Internet access services to customers.

*“Cable service”* has the same meaning as in 47 U.S.C. § 522, and is synonymous with the term “cable television service.” For the purposes of avoidance of ambiguity, over-the-top streaming television service shall not be construed to be cable service.

*“Communications facilities”* means the plant, equipment and property, including, but not limited to, the poles, pipes, mains, conduits, ducts, fiber optic and other cables, circuits and wires, and any other equipment and related facilities used by the Grantee to provide broadband services.

*“Conduit”* means any materials, such as metal or plastic pipe, that protects wire, cable, lines, fiber optic cable or other technology for the provision of broadband, telecommunications or electrical service.

*“Duct”* means a pipe, tube, channel or similar item for carrying wires, lines, cables, fiber optic cable, or other technology for the provision of broadband, telecommunications or electrical service.

*“Fiber optic or other cable and related facilities”* means fiber optic cables or other cable, facilities, conduits, converters, splice boxes, handholds, manholes, vaults, equipment, drains, surface location markers, appurtenances and related facilities located or to be located by the Grantee in the public streets or rights-of-way of the Town used or useful for the provision of broadband services.

*“Grantee”* means [name of Grantee].

*“Grantor”* means the Town of Bedford, Virginia.

*“Public streets,”* and *“public rights-of-way”* or *“public ways”* include the surface of, and the space above and below, any public street, road, highway, avenue, sidewalk, way, bridge, viaduct, alley or other public right-of-way, including unimproved surfaces, now or hereafter held by the Town for the purpose of public travel, communications, alarm, street lighting, power distribution, water or sewer service or other public use, whether present or future, to the extent of the Town's right, title, interest or authority to grant a franchise to occupy and use such streets and easements for the purpose of locating communications facilities or providing broadband services.

*“Public works project”* or *“public improvements”* include, without limitation, the construction, realignment, paving or repaving, or other work on any public street or public right-of-way, change of grade or alignment of any public street or public right-of-way, the construction or reconstruction of any water, sanitary sewer, storm sewer, force main, drainage or communications facility of the Town.

*“Town”* means the Town of Bedford, Virginia, and where appropriate to the context, its officers, agents, employees and volunteers. When making reference to water and sanitary sewer facilities, the term includes any public service authority of which the Town is a member and which provides water and sanitary sewer service within Town limits.

*“Town Attorney”* means the Town Attorney or his designee.

*“Town Council”* means the Town Council of the Town of Bedford.

*“Town Electric Director”* means the Director of the Town's Electric Department or designee.

*“Town Manager”* means the Town Manager or designee.

*“Town property”* means and includes all real property owned by the Town, including all property held in a proprietary capacity by the Town.

*“Unused facilities”* means where, pursuant to this Agreement, the Grantee has commenced the

installation of communications facilities in the Town's public streets or public rights-of-way, and (i) such installation work has ceased and remains unfinished for a period of twelve (12) consecutive months; or (ii) after installation, such fiber optic or other cable and related facilities are unused, for whatever reason, for a period of twelve (12) consecutive months; then, in the event of (i) or (ii) such fiber optic or other cable and related facilities or any parts thereof shall be deemed to be unused. For the purposes of this definition, communication facilities shall not be considered unused merely because the fiber is dark, and shall be considered in use if the facilities are connected to other fiber optic or other cable and related facilities owned by the Grantee that are used. Should all of the fiber optic or other cable and related facilities be determined to be unused, then the Town Manager shall, within thirty (30) days thereof, by certified mail, return receipt requested, notify the Grantee of the Town's intent to determine if such fiber optic or other cable and related facilities are unused. The Grantee shall then have thirty (30) days to respond to the Town by demonstrating that such facilities are used. If the Grantee is unable to demonstrate that the facilities are used, the facilities shall be deemed Unused Facilities and shall be subject to the provisions of Section 3.2 of this Agreement.

2.2 The following rules of interpretation are applicable to the construction of this Agreement.

(a) All Article, Section, Subsection, Exhibit and Schedule references used in this Agreement are to Articles, Sections, Subsections, Exhibits, Schedules and Attachments to this Agreement unless otherwise specified. The Exhibits, Schedules and Attachments to this Agreement constitute a part of this Agreement and are incorporated herein for all purposes.

(b) If a term is defined as one part of speech (e.g., as a noun), it also has a corresponding meaning when used as a different part of speech (e.g., a verb). Unless the context of this Agreement clearly requires otherwise, words using the masculine gender also include the feminine and neuter genders, and vice versa. The words "includes" or "including" mean "includes without limitation" or "including without limitation," the words "hereof," "hereby," "herein," "hereunder," and the like, when used in this Agreement, refer to this Agreement as a whole and not to any particular Section or Article in which the words appear, and any reference to a Law includes any rules and regulations promulgated thereunder and refers to such Law, rules, and regulations as in effect on the date hereof unless otherwise indicated. Currency amounts are stated in U.S. Dollars.

(c) Whenever this Agreement refers to a number of days, such number refers to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may validly be taken or done on the next day that is a Business Day.

(d) Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party or any similar rule operating

against the drafter of an agreement is not applicable to the construction or interpretation of this Agreement.

### **Article III**

#### **Term of Agreement**

3.1 The term of this Agreement is an initial term of ten (10) years, commencing on the date of approval of this Agreement by the Town Council. Unless either party gives at least ninety (90) days written notice of its intention to terminate the Agreement prior to the end of the initial term, the Agreement shall thereafter automatically renew and continue on an annual basis from year-to-year; provided, however, that either party may, upon giving at least ninety (90) days written notice prior to the end of each annual renewal period, terminate the Agreement. In addition to the foregoing, Grantee shall have the right to terminate this Agreement at any time upon giving the Town at least ninety (90) days' prior written notice of termination. Upon termination of this Agreement as herein provided, and unless the parties are in active good faith negotiation of a replacement agreement or otherwise and agree in writing to an extension, the Grantee shall be prohibited from further access to the public rights-of-way in the Town of Bedford except as necessary to perform its obligations in Section 3.2.

3.2 Upon the termination or expiration of this Agreement, including any renewal period, or if any portion of the Grantee's facilities are deemed Unused Facilities, the Grantee shall remove its communications facilities, or, if applicable, the Unused Facilities, from the Town's public streets and public rights-of-way at its own expense; provided, however, that if directed or authorized by the Town in writing, the Grantee may abandon some or all of the facilities in place, and such facilities shall become the property of the Town upon their abandonment. In the event the Grantee fails to remove its facilities within ninety (90) days after termination or after such facilities are deemed to be Unused Facilities, except facilities abandoned in place at the direction of, or with the consent of the Town, the Town may cause such facilities to be removed, without further notice, and charge the cost for removal to Grantee, which shall pay such costs within thirty (30) days of the demand to do so. The Town may collect such costs, expenses and attorney's fees as debts owed to the Town by bringing legal action to enforce this section 3.2. The obligations of this Section 3.2 shall survive the termination of this Agreement.

3.3 In the event that the Town determines that the Grantee is in breach of its material obligations or duties under this Agreement, the Town may give written notice to the Grantee setting forth in reasonable detail the nature of such breach. If the Grantee fails to cure such breach within forty-five (45) days from the date of Grantee's receipt of such notice, or, if the breach is not susceptible of cure within forty-five (45) days, has not expeditiously begun and diligently pursues to completion, or within such other reasonable time as may be agreed to in writing by the parties, then the Town, at its option, may terminate this Agreement upon



giving the Grantee written notice of termination.

#### **Article IV Compliance with Laws**

4.1 The Grantee shall at all times during the term of this Agreement, including any renewal period, comply with all applicable federal, state, and local laws, ordinances and regulations in the exercise of its rights and performance of its obligations under this Agreement. Expressly reserved to the Town is the right to adopt, in addition to the provisions of this Agreement and existing laws, such additional ordinances and regulations as are necessary for the lawful exercise of its police power for the benefit and safety of the public and applicable equally to all similarly-situated providers of broadband services.

#### **Article V Construction; Location or Relocation of Facilities**

All communications facilities of the Grantee to be constructed, installed and located on or in the Town's public streets and public rights of way shall be in accordance with the following terms and conditions, unless otherwise specified by the Town:

5.1 Whenever all existing electric utilities, cable facilities or communications facilities are located underground within a particular segment of a street or public right-of-way of the Town, the Grantee shall also install its communications facilities underground. Notwithstanding the foregoing, in the case where the Town determines that there is not adequate space underground, or the Town desires to reserve underground space for its future use, the Town may require Grantee to install its facilities along an alternate route as determined by the Town and Grantee, or may permit the Grantee to install aerial facilities.

5.2 Whenever existing overhead electric utilities, cable facilities or communications facilities are relocated underground within a particular segment of a street or public right-of-way of the Town, the Grantee shall relocate its facilities underground within a reasonable period of time after notification by the Town that such facilities must be relocated. Absent extraordinary circumstances or undue hardship as reasonably determined by the Town, such relocation shall be made concurrently with relocation of other facilities so as to minimize the disruption of the public streets or public rights-of-way.

5.3 The Grantee shall obtain all required permits for the construction or installation of its facilities as required in this Agreement, provided, however, that nothing in this Agreement shall prohibit the Town and Grantee from agreeing to an alternative plan to review permit and construction procedures, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices. A right-of-way permit is required for all work in the right-of-way, including but not limited to installation, repair and emergencies. By

obtaining a right-of-way permit, the Grantee agrees to restore the right-of-way in accordance with Town standards. The Town shall ensure that all permit applications and other requests submitted by Grantee pursuant to this Agreement are reviewed and acted upon in a reasonable, non-discriminatory manner consistent with applicable laws and regulations.

5.4 In the performance and exercise of its rights and obligations under this Agreement, the Grantee shall not interfere in any manner with the existence and operation of any public street and public or private right-of-way, sanitary sewer, water line, storm drain, gas main, pole, overhead or underground electric and telephone wires, television cables, public works, facilities of other providers of broadband services, telecommunications services, or cable services, or Town property without the prior approval of the Town, including in any permit or other authorization issued by the Town.

5.5 Except as may be expressly provided herein, nothing in this Agreement shall be construed to abrogate or limit the right of the Town of Bedford to perform any public works or public improvements. If any facilities of the Grantee interfere with the construction, operation, maintenance, repair or removal of such public works or public improvements, including any new improvement projects, within ninety (90) days after written notice by the Town of Bedford (or such other period of time set forth in Section 5.6 or as may be agreed upon in writing by the Town of Bedford and Grantee), the Grantee shall, at its own expense, protect, alter, remove or relocate facilities, as directed by the Town Manager. If the Grantee fails to protect, alter, remove or relocate equipment within such period, the Town may break through, remove, alter or relocate the facilities of Grantee without any liability to Town, and the Grantee shall pay to the Town the actual costs incurred in connection with such breaking through, removal, alteration or relocation. The Grantee shall also reimburse the Town for or bear any additional cost actually incurred by the Town as a result of the Grantee's failure to comply with the Town's request to protect, alter or remove equipment under this Agreement. Such costs shall be paid by Grantee within 30 days after receiving written notice. The Town may collect such costs, and any reasonable expenses and attorney fees incurred in collecting such costs, as debts owed to the Town, by bringing legal action or exercising the Town's rights to draw on bonds or letters of credit, or in any other lawful manner, individually or in combination.

5.6 The Town retains the right and privilege to cut or move any communications facilities located within the public ways or other areas of the Town as the Town may determine to be necessary, appropriate or useful in response to any life-threatening emergency. The Town will endeavor to notify the Grantee as soon as practicable of such emergencies which may impact its communications facilities. Nothing herein shall create any duties or obligations on the Town so to notify the Grantee nor shall the Town, its officers, agents, employees or volunteers in any way be liable for any failure to notify the Grantee.

5.7 The facilities of the Grantee shall be located so as not to interfere with the public safety or, to the extent possible, with the convenience of persons using the public streets or rights-of-way for ingress, egress or passage. The Grantee shall construct, maintain and locate its communications facilities so as not to interfere with the construction, location and maintenance of sewer, water, drainage, electrical, signal and fiber optic facilities of the Town.

5.8 The Town shall have the right to specifically designate the location of the facilities of the Grantee with reference to sewer and water mains, drainage facilities, fiber optic cable, signal poles and lines and similar services, other facilities, such as public telephone utilities, public electric utilities, cable television facilities, and railway, communication and power lines, in such a manner as to protect the public safety and public and private property. Failure by the Town to designate the location of the Grantee's facilities shall not relieve the Grantee of its responsibilities in matters of public safety as provided in this Agreement.

5.9 Except in emergencies, the Grantee shall not move, alter, change or extend any of its communications facilities in any public street or public right-of-way unless prior written notice of its intention to do so is given to the Town Manager and permission in writing to do so is granted, or such requirement is waived, by the Town Manager. The Town Manager shall use his or her best efforts to either approve or deny the Grantee's request to relocate its facilities within fifteen (15) days of receipt of Grantee's request. Such permission shall be conditioned upon compliance with the terms and conditions of this Agreement, and with such other terms and conditions as will preserve, protect and promote the safety of the public using the public ways, and as will prevent undue interference with or obstruction of the use of the public ways by the public, the Town or by any other public utility, public service corporation or cable operator for their respective purposes and functions. Such work by the Grantee shall also be coordinated with the Town's annual paving program through the Town Department of Public Works.

5.10 The Grantee shall not open, disturb or obstruct, at any time, any more of the public streets or public rights-of-way than is reasonably necessary to enable it to proceed in laying or repairing its communications facilities. The Grantee shall not permit any public street or public right-of-way so opened, disturbed or obstructed by it to remain open, disturbed or obstructed for a longer period of time than is reasonably necessary. In all cases where any public street or public right-of-way is excavated, disturbed or obstructed by the Grantee, the Grantee shall take all precautions necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals and other devices necessary or proper to adequately give notice, protection and warning to the public of the existence of all actual conditions present.

5.11 After the installation, removal, relocation or construction or maintenance of the fiber optic or other cable and related facilities is completed, the Grantee shall, at its own cost, repair and return the public streets or public rights-of-way to a minimum of the same or similar condition existing before such installation, removal, relocation construction or maintenance, in a manner as may be reasonably specified by the Town and to the reasonable satisfaction of the Town. The Grantee shall be responsible for damage to Town street pavements, existing utilities, curbs, gutters and sidewalks due to the Grantee's installation, construction, maintenance, repair or removal of its communications facilities in the public streets, public rights-of-way, and shall repair, replace and restore in kind, the said damaged property at its sole expense. Upon failure of the Grantee to repair, replace and restore said damaged property, in a manner as may be reasonably specified by the Town and to the reasonable satisfaction of the Town, after thirty (30) days' notice in writing shall have been given by the Town, the Town may cause such necessary repairs to be made and may collect the costs incurred from the Grantee, including but not limited to, exercising the Town's rights to draw on bonds or letters of credit. The Town may collect such costs, and any expenses and attorney fees incurred in collecting such costs, as debts owed to the Town, by bringing action in any court of competent jurisdiction or in any manner allowed by law.

5.12 Except for actions taken in accordance with this Agreement or otherwise authorized by the Town, neither the Grantee, nor any person acting on the Grantee's behalf, shall take any action or permit any action to be done which may impair or damage any Town property, including, but not limited to, any public street, public right-of-way or other property located in, on or adjacent thereto.

5.13 In the event of an unexpected repair or emergency, the Grantee may commence such repair and emergency response work as required under the circumstances, provided the Grantee shall notify the Town as promptly as possible before such repair or emergency work is started or as soon thereafter as possible if advance notice is not practicable.

5.14 The Grantee shall at all times employ a high standard of care consistent with industry practice in the performance of its obligations hereunder and shall install and maintain and use approved methods and devices for preventing failure or accidents that are likely to cause damages, injuries or nuisances to the public.

5.15 The Grantee shall obtain all required permits from the Town and any other governmental entity having jurisdiction prior to commencing work of any nature and shall comply with all terms and conditions of any such permit. The Grantee shall furnish detailed plans of the work and other required information, and shall pay all required fees prior to issuance of a permit in accordance with the rates in effect at the time of payment. The Grantee shall comply with all applicable ordinances and permitting requirements.

A single permit may be issued for multiple excavations to be made in public streets and rights-of-way; provided, however, any applicable fees established by the Town shall apply to each such excavation unless otherwise provided by ordinance or agreed as part of an alternative rights of way permitting procedure. Exceptions to the requirement for a written permit may also be allowed in cases of emergencies involving public safety or restoration of service. In the case of emergency excavations made in a public street or public right-of-way without a permit, the Grantee shall make a report of each such excavation to the Town pay the applicable fee within seven days after such emergency work. Any permit application and inspection related to repair of excavations shall be promptly acted upon by the Town so as not to unreasonably delay the Grantee in efficiently discharging its public service obligation and in any event shall be granted or denied within thirty (30) days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

5.16 (a) Promptly after installation, repair or extension of the communications facilities or any portion thereof or any pavement cut by the Grantee in any public way of the Town, the incidental trenches or excavations shall be refilled by the Grantee in a manner reasonably acceptable to the Town Manager. Pavement, sidewalks, curbs, gutters or any other portions of public ways damaged, disturbed or destroyed by such work shall be promptly restored and replaced with like materials to their former condition by the Grantee at its own expense; however, where it is necessary, and if authorized by the Town, in order to achieve the former conditions, the Grantee shall use materials whose type, specification and quantities exceed or are different from those used in the installation, then the Grantee, at its own expense, shall provide such different materials. Where a cut or disturbance is made in a section of sidewalk or paving, rather than replacing only the area actually cut, the Grantee shall replace the full width of the existing sidewalk or appropriate sections of paving as determined by the Town Engineer and the full length of the section or sections cut, a section being defined as that area marked by expansion joints or scoring or as determined by the Town Engineer. The Grantee shall maintain, repair and keep in good condition for a period of one (1) year following such disturbance all portions of public ways disturbed by the Grantee, provided such maintenance and repair is required as a result of defective workmanship or materials supplied by the Grantee.

(b) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of communications facilities shall be replaced or restored, as nearly as may be practicable, to the condition existing prior to performance of work. All restoration work within the public ways or other areas shall be done in accordance with landscape plans approved by the Town, provided that such landscape plans do not require the Grantee to incur a greater expense than it would have incurred by merely restoring the landscaping and grounds to the condition existing prior to its performance of the work.

5.17 (a) The Grantee shall promptly remove or correct any obstruction, damage or defect in any public street or public right-of-way caused by the Grantee in the installation, operation, maintenance or extension of the Grantee's communications facilities. Any such obstruction, damage or defect which is not promptly removed, repaired or corrected by the Grantee after proper notice to do so, given by the Town to the Grantee, may be removed or corrected by the Town, and the cost thereof shall be charged against the Grantee and payable on demand. Any expense, cost, or damages incurred for repair, relocation, or replacement to Town water, sanitary sewer, storm sewer, storm drainage, telecommunication facilities or other property resulting from construction or maintenance of the Grantee's communications facilities shall be borne by the Grantee and any and all actual expense and cost incurred in connection therewith by the Town shall be fully reimbursed by the Grantee to the Town.

(b) If weather or other conditions do not permit the complete restoration required by this Section, the Grantee shall temporarily restore the affected property. Such temporary restoration shall be at the Grantee's sole expense and the Grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(c) The Grantee or any other person or agent acting on its behalf shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property, and shall comply with all federal, state, and local laws and regulations, including, but not limited to, the flagging requirements of the Virginia Department of Transportation.

5.18 Except in the case of the Town's gross negligence or intentional or willful misconduct, the Town, its officers, agents, or employees, shall not be liable for any damage to or loss of any of the Grantee's communications services or communications facilities within the public ways or any other areas of the Town as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work or activity or lack of any activity of any kind by or on behalf of the Town.

5.19 The Grantee shall cooperate with the Town in coordinating its construction activities as follows:

(a) The Grantee shall provide the Town with a schedule of its proposed construction activities prior to commencing any expansion of its communications facilities in the public streets or public rights-of-way;

(b) Upon request, the Grantee shall meet with the Town and other users of the public ways to coordinate construction in the public ways; and

(c) All construction locations, activities and schedules shall be coordinated, as directed by the Town Manager, to minimize public inconvenience, disruption or damages. The Grantee shall submit a written construction schedule to the Town Manager at least ten (10) days before commencing any work in or about the public streets or public rights-of-way. The Grantee shall comply with the provisions of the Virginia Underground Utility Damage Prevention Act, Virginia Code Section 56-265.14, *et seq.*

5.20 The provisions of this Agreement are expressly made subject to the provisions of any pole attachment agreement made between the Grantee and the Town, which shall be a separate agreement and shall not be merged herein. The Grantee shall not attach any of its Facilities to any of the Town's electric poles except in strict conformity therewith. The Grantee shall notify the Town Electric Director of any construction that may affect the Town's electric system, and otherwise comply with all provisions of such pole attachment agreement. Failure to comply with such pole attachment agreement on a pole situated within the Town's corporate limits shall be a violation of this Agreement, without limitation as to any other remedy possessed by the Town, including remedies under such pole attachment agreement.

## **Article VI Mapping**

6.1 The Grantee shall maintain an accurate map of its communications facilities located in the public streets or public rights-of-way. The Grantee shall provide the Town with "as built" drawings and an accurate map or maps showing the location of such facilities, including pole lines and conduit lines and any other facilities requested by the Town, to include a digitized map(s) in both printed and electronic form readable by the current version of AutoCAD and tied to both the Virginia State Plane Coordinate System and the Town's Survey Control monuments and geographic information system certifying the location of all such communications facilities within the Town. The Grantee shall, upon request, provide updated maps annually.

6.2 If any of the requested information of the Grantee in this Agreement is considered proprietary, confidential or a trade secret, the Grantee must notify the Town of this opinion and the Town will keep such information confidential to the extent permitted by the Virginia Freedom of Information Act (Virginia Code Sections 2.2-3700, *et seq.*) or other any successor statute or law. As for new installations, after the effective date of this franchise, the Grantee shall submit the proposed Mapping of its plans for new construction in the public streets or public rights-of-ways to the Town prior to any construction. As-built drawings of any new construction of facilities shall be furnished to the Town within ninety (90) days of completion of such construction. All as-built maps and drawings shall be drawn to scale and reference to a physical Town benchmark to the extent the physical benchmark is in reasonable proximity to the Grantee's new installation. All mapping shall be provided in a

format compatible to the Town's then current mapping systems. Alternatively, the Grantee must pay for the cost of making the mapping compatible.

6.3 Prior to its installation of any facilities in the public streets or public rights-of-way and after the Grantee provides the Town with its proposed plans for the facilities, the Town may in its reasonable discretion designate certain locations to be excluded from use by the Grantee for its communications facilities, including, but not limited to, ornamental or similar specially designed streets lights or other facilities or locations which, in the reasonable judgment of the Town Manager, do not have electrical service adequate for or appropriate for the Grantee's facilities or cannot safely bear the weight or wind loading thereof, or any other facility or location that in the reasonable judgment of the Town Manager is incompatible with the proposed facilities or would be rendered unsafe or unstable by the installation. The Town Manager may further exclude certain other Town locations that have been designated or planned for other use or are subject to proprietary, legal or other limitations or restrictions as may be reasonably determined by the Town. In the event such exclusions conflict with reasonable requirements of the Grantee, the Town will cooperate in good faith with the Grantee to attempt to find suitable alternatives, if available, provided that the Town shall not be required to incur financial costs nor require the Town to acquire new locations for the Grantee. The Grantee shall, prior to any excavation or installation within the public streets or public rights-of-way, provide sufficient notification and joint installation opportunity on a shared cost basis to potential users of the public streets or public rights-of-way as may be provided for by a separate Town policy. Such notification and adopted policies shall be designed to maximize co-location of providers to minimize the disturbance to the public streets or public rights-of-way and maximize its useable capacity.

## **Article VII Community Benefits**

The Grantee shall provide FTTP broadband services using its communications facilities to the community facilities identified in **Exhibit A** not later than the dates specified therein.

## **Article VIII Insurance Requirements**

At all times during the term of this Agreement and any renewal period, the Grantee shall, at its expense, maintain the following insurance policies. Any required insurance shall be in a form and with an insurance company authorized to do business in the Commonwealth of Virginia and have a rating of no less than A- VII by A.M. Best Co.

8.1 Commercial General Liability. Commercial General Liability insurance coverage on an occurrence basis insuring against all claims, loss, cost, damage, expense or liability from loss of life or damage or injury to persons or property arising out of any of the work or activity



under or by virtue of this Agreement. The minimum limits of liability for such coverage shall be Two Million Dollars (\$2,000,000) combined single limit for any one occurrence. However, the parties acknowledge that Grantee may meet the policy limit in this section by combination of the Grantee's General Commercial Liability Policy and the Grantee's Umbrella or Excess Liability Policy.

8.2 Contractual Liability. Broad form contractual liability insurance.

8.3 Workers Compensation. Workers' Compensation insurance covering the Grantee's statutory obligation under the laws of the Commonwealth of Virginia and Employer's Liability insurance for all its employees engaged in work under this Agreement.

8.4 Automobile Liability. Automobile Liability insurance having minimum limits of liability of Two Million Dollars (\$2,000,000) combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this Agreement.

8.5 Pollution Liability. The Grantee shall maintain during the life of this Agreement Pollution Liability Insurance in the amount of One Million Dollars (\$1,000,000) for each occurrence. Coverage shall be provided for bodily injury and property damage resulting from pollutants which are discharged suddenly and accidentally. Such insurance shall also provide coverage for cleanup costs.

8.6 Umbrella Coverage. The insurance coverages and amounts set forth in this Section may be met by an umbrella liability policy following the form of the underlying primary coverage in a minimum amount of Five Million Dollars (\$5,000,000).

8.7 The Grantee shall, prior to commencing construction pursuant to this Agreement or within ninety (90) days after the granting of the franchise contemplated by this Agreement, whichever is sooner, furnish the Town certificates of insurance, showing the type, amount, effective dates and date of expiration of the policies, and thereafter prior to the expiration of any such policy or change in the amount or conditions, of coverage. Such certificate or certificates and evidence of insurance shall include the Town, its officers, agents, and employees as additional insureds. The Grantee shall obtain a written obligation on the part of each insurance company to notify the Grantee at least thirty (30) days before cancellation or a material change of any such insurance. Upon receipt of such notice from the Grantee's insurance company, the Grantee will immediately notify the Town of Bedford on any of the required coverages that are not replaced.

## **Article IX**

### **Surety**

9.1 Grantee shall provide, or cause to be provided, a bond, in a form and by a surety

authorized to do business in the Commonwealth of Virginia, in the amount of Fifty Thousand Dollars (\$50,000) securing its faithful performance of the terms and conditions of this Agreement (“Performance Bond”). The Grantee shall maintain such Performance Bond for the duration of this Franchise Agreement, unless otherwise agreed to in writing by the Town.

9.2 Whenever the Town determines that Grantee has violated one (1) or more terms, conditions or provisions of this Agreement for which relief is available against the Performance Bond, a written notice shall be given to the Grantee. The written notice shall describe in reasonable detail the violation so as to afford the Grantee an opportunity to remedy the violation. The Grantee shall have twenty-one (21) days subsequent to receipt of the notice in which to correct the violation before the Town may make demand upon the Performance Bond.

9.3 Such Performance Bond shall be in addition to any performance or defect bond or other surety required by the Town in connection with the issuance of any construction permit.

## **Article X Transfer of Ownership**

Notwithstanding any provision of this Agreement, the Grantee may not assign, transfer, lease or sell any of the rights and privileges granted hereunder without the approval of the Town Manager, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that no consent need be obtained to assign, transfer, lease or sell any rights and privileges granted hereunder to any of Grantee’s affiliates or any party providing financing to Grantee, provided that no assignment, transfer, lease or sale shall be effective until the assignee, transferee, lessee, or the purchaser, including an affiliate, has filed with the Town of Bedford a duly executed instrument reciting the fact of such assignment, transfer, lease or sale and accepting the terms of the Agreement and agreeing to perform all of the conditions thereof.

## **Article XI Indemnification**

The Grantee agrees to indemnify and hold harmless the Town, its officers, employees and agents from and against all claims, demands, losses, damages, liabilities, fines, and penalties, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney’s fees and costs of defense (collectively, the losses), incurred as a result of any claim, allegation or demand by any third party based on or arising out of any breach by the Grantee of the terms and conditions of this Agreement, except to the extent any such losses are proximately caused by the negligence or willful misconduct of the Town of Bedford, its officers, employees and agents. In addition, the Grantee shall protect, indemnify, and hold harmless the Town, its officers, agents, and employees, from any and all demands by any third party for fees, claims, suits, actions, causes of action, or judgments based on the allegation that (i) any communications facilities which the Grantee constructs, installs or operates on or in

any of the Town’s public rights-of-way or public streets, or (ii) any communications services provided by the Grantee through the use of any such communications facilities, infringe or violate of any patent, trade secret, copyright or other intellectual property right of such third party, except to the extent proximately caused by the negligence or willful misconduct of the Town of Bedford, its officers, employees or agents.

**Article XII**  
**Hazardous Substances**

In its performance of this Agreement, the Grantee shall not transport, dispose of or release any hazardous substance, material, or waste, except as necessary in performance of its work under this Agreement, and in any event the Grantee shall comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, solid wastes, and other pollution, and relating to the storage, transport, release, or disposal of hazardous material, substances or waste. Regardless of the Town's acquiescence, the Grantee shall indemnify and hold the Town, its officers, agents, employees and volunteers harmless from all costs, claims, damages, causes of action, liabilities, fines or penalties, including reasonable attorney's fees, resulting from Grantee’s violation of this section and agrees to reimburse Town for all costs and expenses incurred by the Town in eliminating or remedying such violations. The Grantee also agrees to reimburse the Town and hold the Town, its officers, agents, employees and volunteers harmless from any and all costs, expenses, attorney’s fees and all penalties or civil judgments obtained against any of them as a result of Grantee’s use or release of any hazardous substance or waste onto the ground, or into the water or air from, near or upon the Town’s premises. For purposes of this Section, the following definitions shall apply:

“*Hazardous Substances*” means asbestos and any and all pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials and hazardous substances as referenced or defined in, or pursuant to, any federal, state, local or other applicable environmental law, statute, ordinance, rule, order, regulation or standard in effect on the date hereof including, without limitation, the Resource Conservation and Recovery Act (42 U.S.C 6901, *et seq.*), as amended, the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135, *et seq.*), as amended, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, *et seq.*), as amended, and the Toxic Substance Control Act (15 U.S.C. 2601, *et seq.*), as amended.

As used in this Section, “release” includes the placing, releasing, depositing, spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any substance.

**Article XIII**  
**General Provisions**

13.1 Authority. The Grantee warrants and represents that it has obtained, or, prior to

construction, will obtain, all necessary and appropriate authority and approval from all applicable federal and state agencies or authorities for constructing and operating communications facilities within the Town's public streets and public rights-of-way , and upon request by the Town will provide evidence of such authority.

13.2 Other Remedies. Nothing in this Agreement shall be construed as waiving or limiting any rights or remedies that the Town or Grantee may have, at law or in equity, for enforcement of this Agreement.

13.3 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement, or its application to any person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

13.4 Nonenforcement. Neither party shall be excused from complying with any of the provisions of this Agreement by any failure of the other party, upon any one or more occasions, or delay in asserting its rights, to insist upon strict performance of this Agreement or to seek the other party's compliance with any one or more of such terms or conditions of this Agreement.

13.5 Conflicts of Law. If there is a conflict between the provisions of this Agreement and any law, whether federal, state, or Town, including all future laws and ordinances, the law and conflicting provision hereof will, to the extent reasonably possible, be construed so as to be consistent with each other and if such construction is not reasonably possible, the conflicting provision of this Agreement shall be deemed superseded by such law and have no effect, provided such law or ordinance is consistent with Section 4 of this Agreement.

13.6 Controlling Law and Venue. By virtue of entering into this Agreement, the Grantee agrees and submits itself to a court of competent jurisdiction in Bedford County, Virginia or in the United States District Court for the Western District of Virginia, Roanoke Division, and both parties agree that this Agreement is controlled by and shall be construed in accordance with the laws of the Commonwealth of Virginia or any applicable federal laws and that all claims, disputes and other matters shall be decided only by such court according to the laws of the Commonwealth of Virginia or any applicable federal laws or by any regulatory body with jurisdiction, including the Federal Communications Commission.

13.7 Captions. The section captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

13.8 Nondiscrimination. During the performance of this Agreement, the Grantee agrees that it will not discriminate against any employee or applicant for employment on the basis of race, religion, color, sex, handicap or national origin. Grantee agrees to post in conspicuous places,

available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Grantee, in all solicitations or advertisements for employees placed by or on behalf of Grantee, will state that Grantee is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements herein. Grantee agrees to comply with the good faith minority business efforts required by the Bedford Town Code.

13.9 Notices. Notices given pursuant to this Agreement shall be in writing and addressed as follows:

To the Town: Attn: Town Manager  
215 East Main Street  
Bedford, Virginia 24523  
540-587-6020  
[bwerner@bedfordva.gov](mailto:bwerner@bedfordva.gov)

With a copy: Attn: Town Attorney  
215 East Main Street  
Bedford, Virginia 24523  
[mlockaby@bedfordva.gov](mailto:mlockaby@bedfordva.gov)

To the Grantee:

Either party may change the address at which it will receive notices by providing written notice of the change to the other party.

12.10 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between parties hereto with respect to the subject matter hereof and supersedes, any and all prior agreements, understandings and negotiations, whether written or oral, regarding the subject matter hereof. This Agreement cannot be amended unless in writing and signed by duly authorized representatives of each party.

**Town of Bedford, Virginia:**

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**Mayor, Town of Bedford**

**COMMONWEALTH OF VIRGINIA  
COUNTY of BEDFORD, to wit:**

The foregoing Broadband Franchise Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_.

NOTARY PUBLIC \_\_\_\_\_

My Commission No.: \_\_\_\_\_

My Commission expires \_\_\_\_\_

Witnessed:

\_\_\_\_\_  
Debra Anderson, Town Clerk

Approved as to legal form:

\_\_\_\_\_  
Michael Lockaby, Town Attorney

**[name of firm]:**

\_\_\_\_\_  
\_\_\_\_\_

**COMMONWEALTH OF VIRGINIA**  
**CITY/COUNTY of \_\_\_\_\_, to wit:**

The foregoing Broadband Franchise Agreement was acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023, by \_\_\_\_\_.

NOTARY PUBLIC \_\_\_\_\_

My Commission No.: \_\_\_\_\_

My Commission expires \_\_\_\_\_

## EXHIBIT A

### Public Facility Connections

The Grantee shall provide one or more fiber-to-the-premises Internet connections, using its system, within eighteen (18) months of the effective date of this Agreement:

- Town of Bedford Municipal Building, 215 East Main Street
- Public Works Building, 702 Orange Street
- Public Works/Engineering, 700 Orange Street
- Electric Department/IT Department, 877 Monroe Street
- Bedford Fire Department, 315 Bedford Avenue
- Future Bedford Police Department, Plunkett Street (notwithstanding any other provision herein, to be provided upon final completion and occupancy of the building).

### **Ordinance – Amendment of Chapter 50 of the Town Code to add Article VII – Rights-of-Way Use Fee for Communications Providers**

The Virginia Department of Transportation (VDOT) and most municipalities that control their own rights-of-way, charge a public rights-of-way use fee in order to recover the marginal cost of having communications providers occupying the rights-of-way and tearing them up, thus increasing the public works costs and lessening the number of years between repaving cycles. Historically, the Town has not imposed such a fee, or only imposed it on a piecemeal basis through individual franchises.

Beginning in 1998, the Virginia General Assembly began making franchise fee calculation methodologies for communications providers more uniform throughout the Commonwealth. Today, we are authorized to charge this fee by ordinance. VDOT calculates the use fee annually based upon its actual maintenance costs. For 2023, the monthly rights-of-way use fee is \$1.26 per connection per month.

Because of its almost universal use, communications providers are used to administering this fee. The Town Manager is directed in the ordinance to provide copies of the ordinance to communications providers in the Town. Town staff will also notify VDOT, which publicizes a list of localities that charge the use fee and/or franchise fees for communications franchisees.



**ACTION REQUESTED:**

Town Council is requested to consider adoption of the ordinance amending Chapter 50 of the Town Code.

Mr. Johannessen moved, seconded by Mr. Stanley, to adopt the ordinance amending Chapter 50 of the Town Code.

Mayor Black said that Verizon DSL and Shentel would be affected by the amendment as well as ZiTEL, LLC. It is a different source of revenue which Council talked about earlier. Mr. Lockaby said it only covers services that are wired from the street into houses and does not pertain to cellphone internet.

Voted upon and carried by the following roll call vote.

Councilman Hailey	aye
Councilman Hartwick	aye
Councilman Johannessen	aye
Councilman Shoen	aye
Vice Mayor Stanley	aye
Councilman Carson	aye
Mayor Black	aye

The motion carried with seven members voting aye.

The ordinance follows.

**ORDINANCE NO. 23-7**

**AN ORDINANCE AMENDING CHAPTER 50 OF THE TOWN CODE**

**Chapter 50 – Streets, Sidewalks and Public Places.**

...

**Article VII. – Rights of way use fee for communications providers.**

**Sec. 50-170. – Definitions.**

The following words, terms and phrases, when used in this article, have the meanings given to them in this section, except where the context clearly indicates a different meaning:

*Access lines* means residence and business telephone lines and other switched (packet or circuit) lines connecting a customer's premises located in the Town to the public switched telephone network for the transmission of outgoing voice-grade telecommunications services. Centrex, PBX, or other multistation telecommunications services will incur a public rights-of-way use fee on every line or trunk (network access registrar or PBX trunk) that allows

simultaneous unrestricted outward dialing to the public switched network. ISDN primary rate interface services will be charged five public rights-of-way use fees for every ISDN primary rate interface network facility established by the customer. Other channelized services in which each voice-grade channel is controlled by the telecommunications service provider shall be charged on fee for each line that allows simultaneous unrestricted outward dialing to the public switched telephone network. Access lines do not include local, state, and federal government lines; interstate and intrastate dedicated WATS lines; special access lines; off-premises extensions; official lines provided and used by providers of telecommunications service for administrative, testing, intercept, and verification purposes; and commercial mobile radio service.

*Cable operator* means any person or group of persons that:

- (1) Provides cable service over a cable system and directly or through one or more affiliated owns a significant interest in such cable system; or
- (2) Otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system, whether or not the operator has entered into a franchise agreement with the town.

The term cable operator does not include a provider of wireless or direct-to-home satellite transmission service.

*Cable system* means any facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community, except that such definition shall not include:

- (1) A system that serves fewer than 20 subscribers;
- (2) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (3) A facility that serves only subscribers without using any public right-of-way;
- (4) A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201, et seq., as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (5) Any facilities of any electric utility used solely for operating its electric systems;
- (6) Any portion of a system that serves fewer than 50 subscribers in the Town, where such portion is a part of a larger system franchised in an adjacent locality; or
- (7) An open video system that complies with § 653 of Title VI of the Communications Act of 1934, 47 U.S.C. § 573, as amended.

*Provider of local telecommunications service* means a public service corporation or locality holding a certificate issued by the state corporation commission to provide local exchange telephone service and any other person who provides local telephone services to the public for a fee, other than a provider of commercial mobile radio service (CMRS), as defined in 4 U.S.C. § 124, as amended.

*Provider of telecommunications service* means a public service corporation or locality holding a certificate issued by the state corporation commission to provide interexchange telephone service and any other person who provides local telephone services to the public for a fee, other than a provider of commercial mobile radio service (CMRS), as defined in 4 U.S.C. § 124.

*Public highway* means, for the purposes of computing the public rights-of-way use fee, the centerline mileage of highways and streets of the town.

*Subscriber* means a person who receives video programming as defined in 47 U.S.C. § 522(20), distributed by a cable operator, and does not further distribute it.

**Sec. 50-171. – Public rights-of-way use fee.**

- (a) Pursuant to Code of Virginia, § 58.1-468.1, as amended, the town elects to adopt the public rights-of-way fee provided for by such code section. Accordingly, there is hereby imposed upon each access line of every provider of telecommunications service a public rights-of-way use fee in the amount to be established under Code of Virginia, § 56-468.1, as amended.
- (b) The public rights-of-way use fee provided for by this article is hereby imposed on all cable operators that use the public rights-of-way.
- (c) The town will apply the public rights-of-way use fee as calculated by the Virginia Department of Transportation as provided by law.
- (d) A provider of local telecommunications service shall collect the public rights-of-way use fee on a per access line basis and a cable operator shall collect the public rights-of-way use fee on a per subscriber basis by adding the fee to each ultimate end user's monthly bill for local telecommunications service or cable service. A company providing both local telecommunications service and cable service to the same ultimate end user may collect only one public rights-of-way use fee from that ultimate end user based on either local telecommunications service or cable service.

The public rights-of-way use fee shall, when billed, be stated as a distinct item separate and apart from the monthly charge for local telecommunications service and cable service. If any ultimate end user or subscriber refuses to pay the public rights-of-way use fee, the local telecommunications service provider or cable operator shall notify the Town.

- (e) Until the end user pays the public rights-of-way use fee to the telecommunications service provider or cable operator, the fee shall constitute a debt of the user that is owed

to the town. Whenever an end user fails or refuses to pay the fee to a telecommunications service provider, the telecommunications service provider shall notify the town department of finance of the user's identity and the total amount of fees that the user has refused or failed to pay. Such notification of unpaid use fees shall be provided to the town department of finance within two months after the end of each calendar quarter.

- (f) After an end user pays the public rights-of-way use fee to a local telecommunications service provider or cable operator, the collected fee shall be deemed to be held in trust by the provider until remitted to the department of finance. Within two months after the end of each calendar quarter, a telecommunications service provider shall remit directly to the town department of finance all public use fees that it has collected from end users during the prior quarter. The public rights-of-way use fee billed by a cable operator shall be remitted to the department of taxation for deposit into the communication sales and use tax trust fund by the twentieth day of the month following the billing of the fee.
- (g) Every local telecommunications provider and cable operator shall keep complete records showing all public rights-of-way use fees collected in each calendar quarter. Such records shall be kept open for inspection by the town department of finance.
- (h) Nothing in this section shall:
  - (1) Relieve any person from complying with the requirements and restrictions imposed by this article, or by other law or regulations, regarding its use of and activities within public rights-of-way in the town including, but not limited to, the placement, construction, repair, maintenance, and removal of its facilities, and street or roadway repairs in the manner required by this article and other applicable statutes, ordinances or regulations; provided, however, that such requirements are no greater than those imposed on all providers of telecommunication services and nonpublic providers of cable television, electric, natural gas, water, and sanitary sewer services;
  - (2) Affect the amount payable by any person for the right to place facilities or otherwise use property of the town, including structures owned by the town that are within the public rights-of-way, other than public rights-of-way themselves, or fees for permits and approvals required by zoning, site plan, subdivision, or comprehensive planning fees provided by general law;
  - (3) Affect the authority of the town to enter a franchise, including providing for franchise fees, with persons who locate facilities or otherwise use public rights-of-way as provided by law.

**Sec. 50-172. – Effective date.**

This article shall become effective July 1, 2023, and shall remain in effect until repealed, provided that the rate of the public rights-of-way fee hereby imposed shall be altered annually pursuant to Code of Virginia, § 56-468.1, as amended. As soon as practicable following its adoption, the town manager shall send a copy of this article to the registered agent for each telecommunications services provider and cable provider which offers services within the town.

**ADJOURNMENT**

8:25 p.m.

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Tim Black, Mayor

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Debra Anderson, Clerk of the Council