



PHYSICAL DEVELOPMENT COMMITTEE City Council Committee

Tuesday, June 11, 2024 | 3:00 PM
2nd Floor Training Room- City Hall
900 Church Street
Lynchburg, VA 24504

AGENDA

- I. **Welcome** *Councilmember Larry Taylor, Chair*
- II. **Information Items**
- III. **General Business**
 - III.1. SMART SCALE Application FY2025
 - III.2. Interim License Agreement - ZAYO GROUP, LLC
- IV. **Roll Call**
- V. **Next Regular Meeting**



AGENDA ITEM SUMMARY

MEETING DATE

June 11, 2024

PRESENTED BY

Lee Newland

AGENDA ITEM # III.1

SMART SCALE Application FY2025

RECOMMENDATION

Review the proposed SMART SCALE project and forward it to City Council on June 25, 2024, to adopt a resolution of support for the SMART SCALE project application to the Virginia Department of Transportation (VDOT) for funding. If approved, funding would be available in FY2031.

SUMMARY

A Candler's Mountain Road Study from University Blvd to Sunnymede Road in Campbell County identified the offset intersection of Liberty Mountain Drive as a concern that needed to be addressed by aligning the two roads or another TBD solution. The application process is required to be submitted by August 1, 2024, and a resolution of support from the governing body of the entity making the application is required. Attached is a resolution of support.

PRIOR ACTION(S)

May 24, 2022: Council Approved the Application which was not funded in FY2023

FISCAL IMPACT

None other than staff involvement time as SMART SCALE is a 100% federally funded

CONTACT(S)

Lee Newland
Gaynelle Hart, Director of Public Works

ATTACHMENT(S)

1. SMART SCALE Resolution
2. Candler's Corridor and Liberty Mtn Concept

REVIEWED BY

Date: June 04, 2024

Gaynelle Hart, Director of Public Works



Date: June 05, 2024

Gregory Patrick, Deputy City Manager



Date: June 05, 2024

Alicia Finney, Clerk of Council

A RESOLUTION BY THE COUNCIL OF THE CITY OF LYNCHBURG, VIRGINIA,
ENDORISING THE VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT) SMART SCALE PROGRAM
APPLICATIONS

WHEREAS, in accordance with the Commonwealth Transportation Board construction allocation procedures, it is necessary that a resolution of support be received from the local jurisdiction requesting the Virginia Department of Transportation (VDOT) establish and fund projects in the City of Lynchburg.

NOW, THEREFORE, BE IT RESOLVED, that the City of Lynchburg does support and requests the Commonwealth Transportation Board to establish and fund, for the Smart Scale program the Candler Mountain Rd/460 & Liberty Mountain Dr Roundabout.

BE IT FURTHER RESOLVED THAT: The City of Lynchburg hereby agrees to provide its share of the total cost for preliminary engineering, right-of-way and construction of these projects in accordance with the project financial documents.

BE IT FURTHER RESOLVED THAT: The City of Lynchburg hereby agrees to enter into project administration agreements with VDOT and provide the necessary oversight to ensure the projects are developed in accordance with all applicable federal, state and local requirements for design, right-of-way acquisition, and construction of the projects.

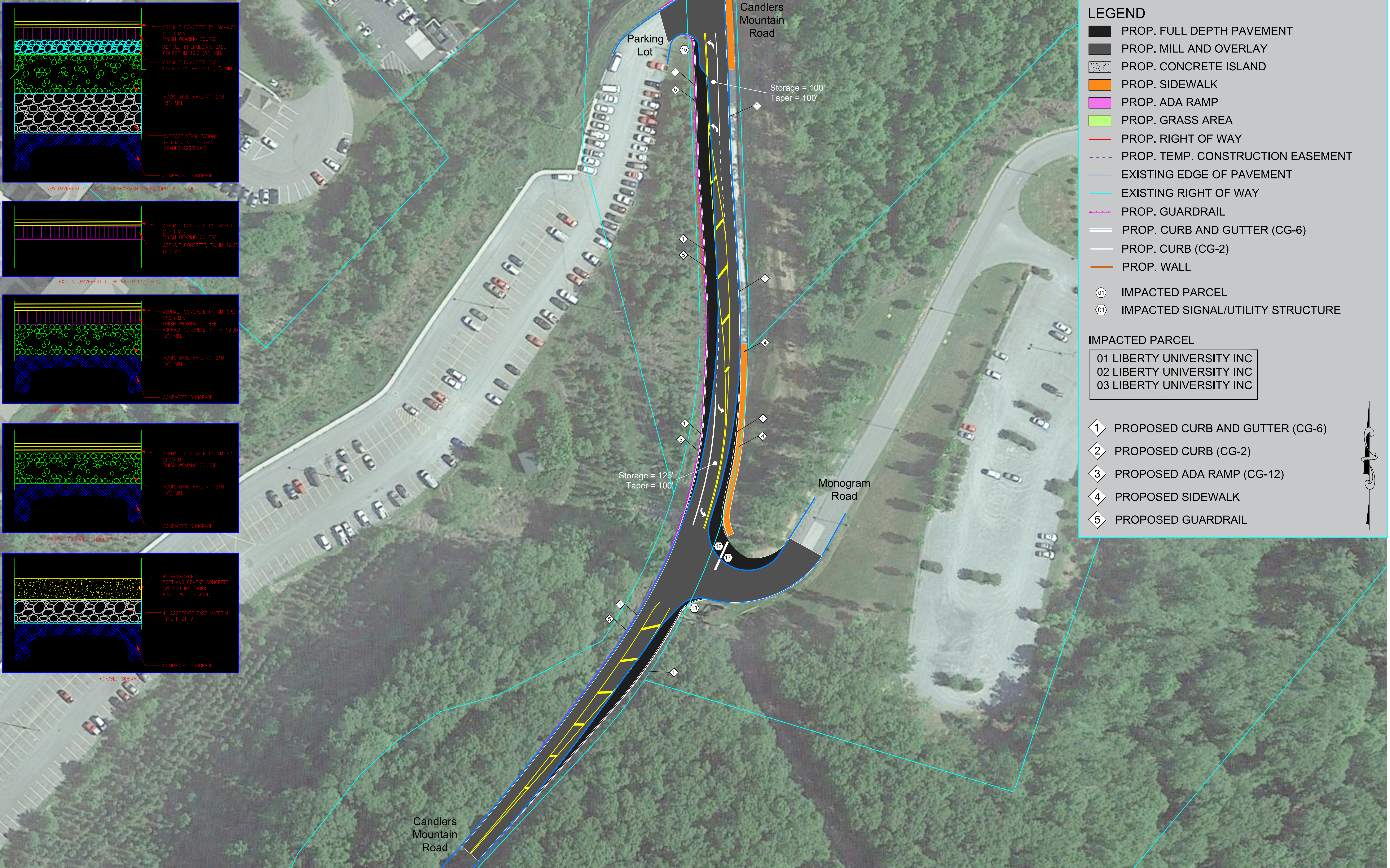
BE IT FURTHER RESOLVED THAT: The City of Lynchburg will be responsible for maintenance and operating costs of the facilities as constructed unless other arrangements have been made with VDOT.

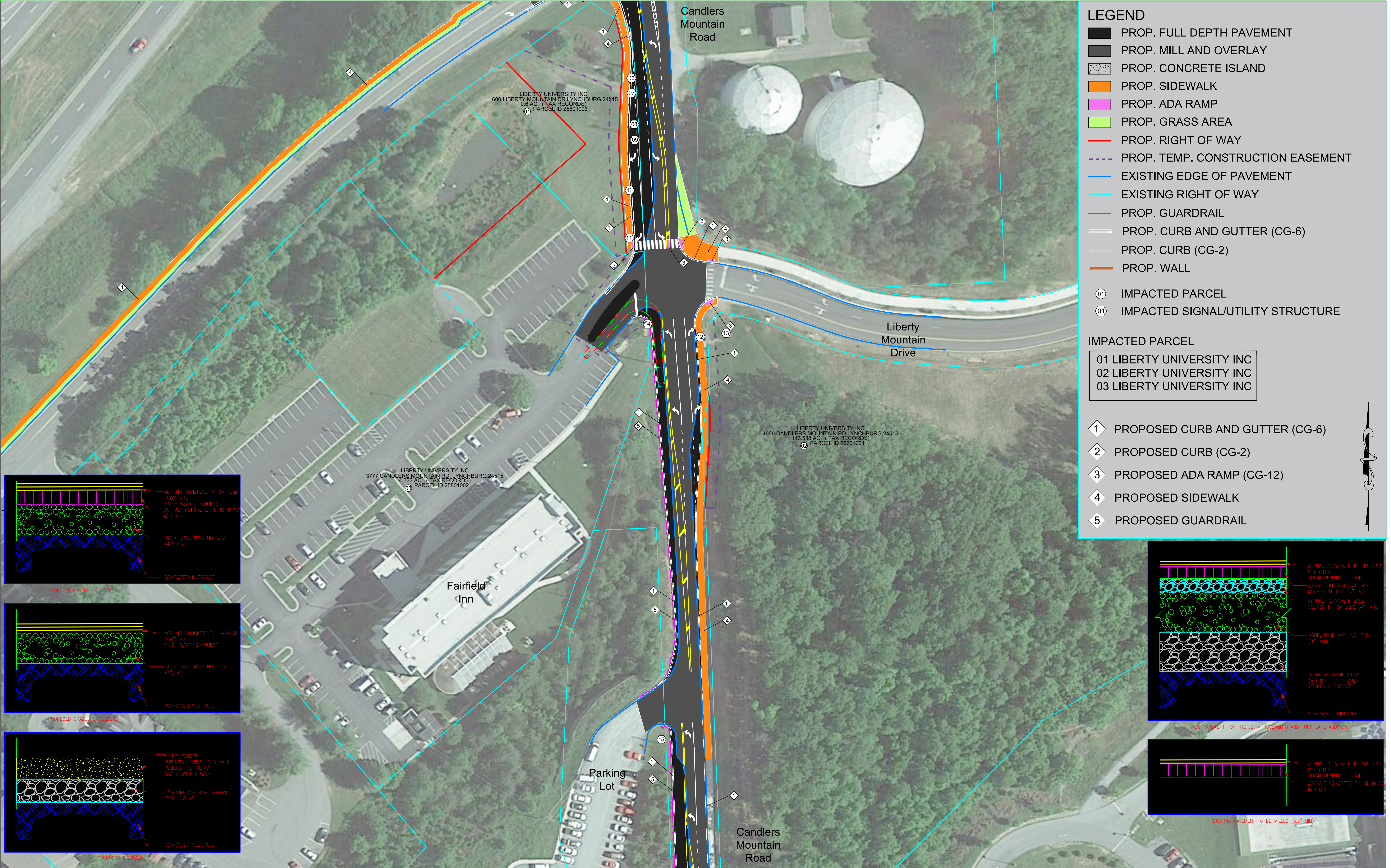
BE IT FURTHER RESOLVED THAT: If the City of Lynchburg subsequently elects to cancel any of the projects, the City of Lynchburg hereby agrees to reimburse VDOT for the total amount of costs expended by VDOT through the date VDOT is notified of such cancellation. The City of Lynchburg also agrees to repay any funds previously reimbursed that are later deemed ineligible by the Federal Highway Administration or VDOT.

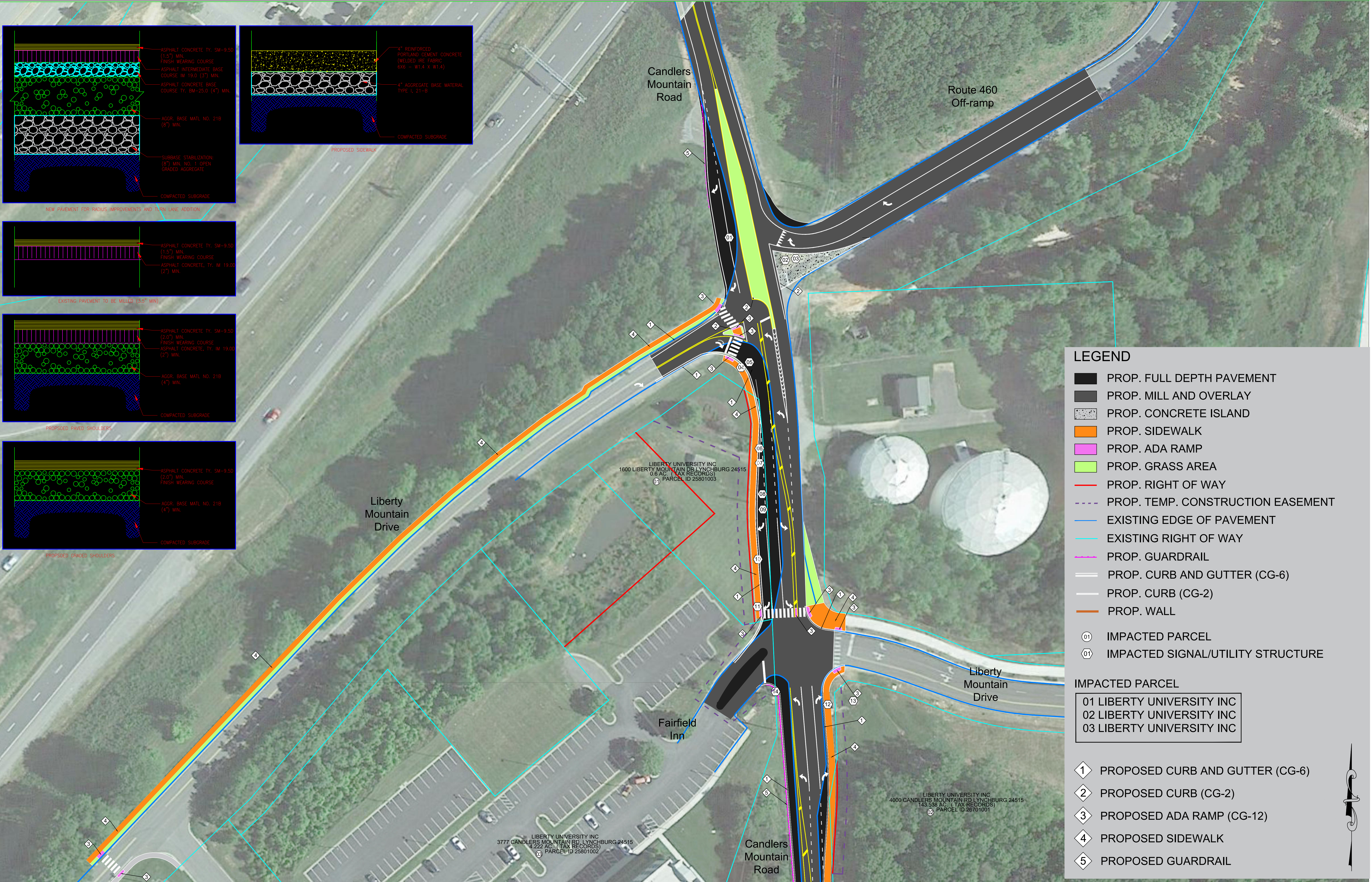
BE IT FURTHER RESOLVED THAT: The Council of the City of Lynchburg hereby grants authority for the City Manager to apply for funds and execute project administration agreements, as well as other documents necessary for approved projects.

Adopted:

Certified: _____
Clerk of Council







- LEGEND**
- PROP. FULL DEPTH PAVEMENT
 - PROP. MILL AND OVERLAY
 - PROP. CONCRETE ISLAND
 - PROP. SIDEWALK
 - PROP. ADA RAMP
 - PROP. GRASS AREA
 - PROP. RIGHT OF WAY
 - PROP. TEMP. CONSTRUCTION EASEMENT
 - EXISTING EDGE OF PAVEMENT
 - EXISTING RIGHT OF WAY
 - PROP. GUARDRAIL
 - PROP. CURB AND GUTTER (CG-6)
 - PROP. CURB (CG-2)
 - PROP. WALL
 - IMPACTED PARCEL
 - IMPACTED SIGNAL/UTILITY STRUCTURE

IMPACTED PARCEL

01 LIBERTY UNIVERSITY INC
02 LIBERTY UNIVERSITY INC
03 LIBERTY UNIVERSITY INC

- 1 PROPOSED CURB AND GUTTER (CG-6)
- 2 PROPOSED CURB (CG-2)
- 3 PROPOSED ADA RAMP (CG-12)
- 4 PROPOSED SIDEWALK
- 5 PROPOSED GUARDRAIL

JUNE 2022



AGENDA ITEM SUMMARY**MEETING DATE**

June 11, 2024

PRESENTED BY

Lee Newland - City Engineer

AGENDA ITEM # III.2

Interim License Agreement - ZAYO GROUP, LLC

RECOMMENDATION

Consider approving the attached license agreement by adopting the attached proposed Resolution, that ZAYO GROUP, LLC. (ZAYO) is granted a non-exclusive interim license to maintain and operate telecommunications facilities. This will go to a Public Hearing on June 25, 2024.

SUMMARY

This new Agreement replaces previous agreements dated October 19th, 2012 which replaced the agreement dated June 16th, 2005 with CityNet Fiber Network, LLC. ZAYO has asked to continue to use and be granted a non-exclusive interim license to maintain and operate its facilities for telecommunications purposes more specifically described in that certain Interim License Agreement, dated May 21, 2024, between the City and ZAYO.

Staff recommends authorization of the attached license agreement by adopting the attached proposed Resolution to permit the telecommunications facilities, given that the encroachments cause no undue hardship to the City.

PRIOR ACTION(S)

Approved Interim License on June 16, 2005.
Approved Interim License on October 19, 2012.

FISCAL IMPACT

None

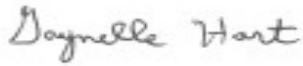
CONTACT(S)

Lee Newland - City Engineer
Gaynelle Hart, Director of Public Works
Tom Williamson, Chief Information Officer

ATTACHMENT(S)

1. Zayo Group LLC Interim License (05-21-2024)
2. Proposed Resolution - Zayo and City Interim License Agreement (2024)

REVIEWED BY



Gaynelle Hart, Director of Public Works

Date: June 04, 2024



Gregory Patrick, Deputy City Manager

Date: June 05, 2024



Alicia Finney, Clerk of Council

Date: June 05, 2024

INTERIM LICENSE AGREEMENT

THIS INTERIM LICENSE AGREEMENT (this “Interim License”), made and entered into this 21st day of May, 2024, by and between **ZAYO GROUP, LLC**, a Colorado limited liability company authorized to do business in Virginia (hereinafter referred to as the “Provider”), and the **CITY OF LYNCHBURG, VIRGINIA**, a municipal corporation (hereinafter referred to as the “City”), the Provider and the City each being a “Party” and collectively referred to herein as the “Parties”.

WHEREAS, the Provider has requested that the City allow the Provider to maintain and operate telecommunications facilities in the public rights-of-way and on other City-owned property in the City, hereafter the “Facilities”; and

WHEREAS, the City is currently developing a Rights-of-way Construction and Administration Ordinance (“Rights-of-way Ordinance”) to govern the use of its public rights-of-way by telecommunications providers and other entities, and until such time as the Rights-of-way Ordinance has been adopted, the City and the Provider are entering into this Interim License to allow the Provider to use the public rights-of-way and City-owned property to install, maintain, and operate its Facilities; and

WHEREAS, the Provider has agreed to use the public rights-of-way and City-owned property in accordance with the terms and conditions of this Interim License; and

WHEREAS, the issuance of this Interim License was authorized by Resolution or Ordinance of the Lynchburg City Council after a duly held and advertised public hearing.

NOW, THEREFORE, WITNESSETH: that for and in consideration of the mutual promises and covenants herein contained, the Parties mutually agree as follows:

ARTICLE 1. AUTHORITY FOR USE OF PUBLIC RIGHTS-OF-WAY AND CITY-OWNED PROPERTY; SCOPE OF LICENSE

1.1 The Provider is permitted to maintain and operate its Facilities within the City. The Provider requests an Interim License from the City to use the public rights-of-way and City-owned property to maintain and operate such Facilities.

1.2 The City hereby agrees to provide non-exclusive access and use of its public rights-of-way and City-owned property to the Provider to maintain and operate its Facilities within the City. Under this Interim License, the Provider may install, operate, maintain, repair, replace, reconstruct, modify, upgrade, remove, and retain in, on, under, upon, across, above, and along (“maintain and operate”) the public rights-of-way and City-owned property within the City, the Facilities, provided that all applicable and required Federal, State, and City permits, including the permits required under Chapter 35 of the City Code, are applied for and granted, all fees are paid, and all other City codes and ordinances in effect now or hereinafter adopted are otherwise complied with.

1.3 If required by the City Engineer, the Provider shall apply to the City’s Engineering Division for a permit to maintain and operate its Facilities in the public rights-of-way and on City-owned property. The application will be processed in accordance with the provisions of Chapter 35 of the City Code. The Provider shall not attach its Facilities to another company’s facilities without the written approval of the City Engineer, which shall not be unreasonably withheld, and the other company.

1.4 The Provider shall not unreasonably interfere with other uses of the public rights-of-way and City-owned property.

1.5 Where required by the City Engineer, the Provider shall obtain permits including Maintenance of Traffic and/or excavation permits, and shall perform the work authorized in such permit(s) in accordance with all applicable requirements of the City Code, and any subsequent ordinances or regulations currently in force or that may be adopted by the City regarding the work. If a permit is needed, the permit fee paid pursuant to the requirements of the City Code shall be in addition to any other fees required hereunder.

1.5.1 Prior to the commencement of any construction or alteration of the Facilities in the public rights-of-way and on City-owned property, the Provider shall apply to the City's Department of Public Works for written approval by the City Engineer, which shall not be unreasonably withheld. The Provider's projects for the same will be reviewed by the City's Technical Review Committee (TRC) prior to their approval. If the City's Department of Public Works deems it necessary, the Provider shall supply the same with an engineering study which shall consist, at a minimum, of the completion of the following tasks:

- (a) Secure all available "as built" plans, plats, and other location data indicating the existence and approximate location of the Facilities along the proposed construction route.
- (b) Physically survey and record the location and dimensions of the Facilities along the proposed construction route, which may include, but not be limited to, manholes, valve boxes, utility boxes, posts, and visible street-cut repairs.
- (c) Plot and incorporate the data obtained from the completion of the tasks described in subsections (a) and (b) above on the Provider's proposed system route maps, plan sheets, and computer aided drafting and design files.
- (d) Provide to the City Engineer acceptable plans showing the locations of lines for review by the TRC and documentation in the City's map room.
- (e) Provide to the City Engineer acceptable "as built" plans after completion of the project for documentation in the City's map room and an updated City-wide map showing the location of the existing lines.
- (f) Where requested, provide to the City Engineer acceptable surety, performance, removal and/or other bonds to ensure faithful performance under this Interim License. Alternatively, and at the discretion of the City Engineer, monetary deposits and/or irrevocable letters of credit may be used to satisfy this subsection.

1.6 The Provider shall maintain and operate its Facilities in accordance with industry standards.

1.7 The Provider shall be responsible for any and all costs to maintain and operate its Facilities including, but not limited to: the actually incurred costs borne by the City in relation to this Interim License, the costs of repair and replacement to the public rights-of-way and City-owned property for the Provider to

maintain and operate the Facilities, and costs incurred by the Provider in removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the public rights-of-way and City-owned property for City purposes. The Provider agrees that it will be responsible for any damages it causes to the public rights-of-way and City-owned property to maintain and operate its Facilities.

Whenever the City shall determine that it is necessary in connection with the repair, relocation, or improvement of the public rights-of-way and City-owned property, the City may require by written notification that any Facilities of the Provider be removed or relocated. Within sixty (60) days after receipt of such notification, unless the City extends such period for good cause shown, the Provider shall remove or relocate its Facilities to such place and under such terms and conditions as specified by the City. The Provider shall bear all expenses associated with the removal or relocation except that the City will issue, without charge to the Provider, whatever local permits are required for the removal or relocation of the Provider's Facilities. If the Provider does not complete its removal or relocation within sixty (60) days or such other period as authorized by the City, the City may take such actions as is necessary to effect such removal or relocation at the Provider's expense. Further, the Provider will be responsible for any additional costs and expenses incurred by the City as a result of the Provider's failure to remove or relocate its Facilities in a timely manner. All such amounts will be paid to the City within thirty (30) days of a written demand being sent to the Provider.

1.8 Abandoned and Unusable Facilities. Upon expiration of this Interim License, or earlier if the Provider decides to discontinue its operations in the City, the Provider must either:

- (a) Provide information satisfactory to the City that the Provider's obligations for its Facilities in the public rights-of-way and City-owned property under this Interim License have been transferred to another company acceptable to the City or assigned in accordance with Article 3 below; or
- (b) Remove its Facilities from the public rights-of-way and City-owned property at the Provider's expense.

ARTICLE 2. TERM; TERMINATION

The term of this Interim License shall commence at the time it is fully executed and shall continue month-to-month thereafter. Upon the adoption of a Rights-of-way Ordinance by the City, all rights of the Provider under this Interim License shall terminate, however, the Provider may continue to maintain and operate its Facilities in the public rights-of-way and City-owned property consistent with the terms of said ordinance. At that time, it is the intent of the City and the Provider to enter into a Franchise Agreement based upon the Telecommunications Ordinance adopted by the City and the Rights-of-way Ordinance adopted by the City. Except as previously described, ninety (90) days written notice to the non-terminating party shall be required to terminate this Interim License.

ARTICLE 3. TRANSFER OF OWNERSHIP

The Provider shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation, or otherwise, this Interim License or any of the rights or privileges granted by this Interim License, without the prior consent of the City, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Provider may, without prior notice or consent, assign this Interim License to (i) a Provider affiliate, or (ii) to any successor entity upon the merger, reorganization, consolidation or sale of all or substantially all of the Provider's assets associated with the services provided pursuant to this Interim License. For purposes of this section, "affiliate" shall

mean a person or entity that directly or indirectly controls, is controlled by, or is under common control with the Provider. Any attempt to assign this Interim License in contravention of this section shall be void and of no force and effect and shall be grounds for termination of this Interim License. The Provider shall promptly notify the City anytime this Interim License is assigned to an affiliate and shall provide the City with the name and contact information of the affiliate and appropriate documentation demonstrating the relationship between the Provider and the affiliate.

ARTICLE 4. COMPENSATION

4.1 During the term of this Interim License, the Provider may be subject to the right-of-way use fees as adopted by the General Assembly and set forth in Section 56-468.1 and Section 56-484.32 of the Code of Virginia, 1950, as amended (“Code of Virginia”). If during the term of this Interim License the Provider is subject to right-of-way use fees in Section 56-468.1 and Section 56-484.32 of the Code of Virginia, the Provider shall pay such fees as provided in Section 56-468.1 and Section 56-484.32 of the Code of Virginia. If Section 56-484.29(B) of the Code of Virginia applies to the Provider’s Facilities in the public rights-of-way and/or City-owned property under this Interim License – a right-of-way use fee shall not be applicable. However, if in the future this should change for any reason, then within thirty (30) days of written notice being provided to the Provider by the City, the City and the Provider agree to modify this Interim License to include such right-of-way use fees. Further, in the event any fees are required and applicable to the Provider under the City’s Telecommunications Ordinance, the Provider will pay the same as provided in such Ordinance.

4.2 Any fees paid by the Provider under this Interim License shall be sent to:

City of Lynchburg, Virginia
Billings and Collections Division of the Finance Department
900 Church Street
Lynchburg, Virginia 24504

ARTICLE 5. ACCEPTANCE

This Interim License shall be accepted and executed by the Provider before or within thirty (30) days after approval by the City as evidenced by the City’s execution hereof and the performance of other requirements relating to the Provider’s Facilities as set forth in this Interim License.

ARTICLE 6. CONFIDENTIAL INFORMATION

To the extent allowed by the Virginia Freedom of Information Act and subject to the requirements of any court order, subpoena, other applicable law, or other legal process, each Party shall preserve the other Party’s confidential or proprietary information obtained in the course of the Provider’s use of the public rights-of-way and City-owned property hereunder with the same degree of care in protecting its own confidential or proprietary information, however in no event less than reasonable care. The obligations under this Article 6 shall survive termination or expiration of this Interim License. All confidential or proprietary information must be properly marked and a basis given as to why it is deemed confidential or proprietary. Failing to do so will render the same NOT confidential or proprietary information.

ARTICLE 7. INDEMNIFICATION

7.1 The Provider shall indemnify, hold harmless, and defend the City, its officers, boards, commissions, agents, and employees (the “Indemnified Persons”) from and against any and all lawsuits, claims, causes of action, liabilities, demands, damages, disabilities, losses, and expenses, of any nature whatsoever, including reasonable attorneys’ fees (“Damages”), to the extent resulting or in any manner

arising from the action(s) or inaction(s) of the Provider in carrying on its business or operations in the City pursuant to this Interim License, in exercising any right or failing to exercise any obligation contained in this Interim License, and in maintaining and operating its Facilities in the public rights-of-way and/or on City-owned property, except to the extent that such Damages are caused by the negligence or intentional misconduct of the Indemnified Persons. The foregoing requirement to indemnify shall also apply to, but not be limited to, any third-party claim or cause of action for invasion of privacy, defamation, antitrust, negligence, theft, fire, violation, or infringement of any copyright, trademark, trade name, service mark, patent, or intellectual property right of any person, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Interim License. This indemnification obligation shall survive the expiration or termination of this Interim License for a period of five (5) years.

7.2 The City shall promptly notify the Provider of any Damages subject to indemnification and shall cooperate with all reasonable requests by the Provider for information, documents, testimony, or other assistance appropriate to a resolution of the same. The Provider shall have full responsibility and control of any action directed at the resolution of such Damages.

ARTICLE 8. INSURANCE

8.1 During the term of this Interim License, the Provider shall carry and maintain, at the Provider's sole expense, with insurers rated at least A- VII by A.M. Best, which are eligible to do business in all jurisdictions where any work is performed, the following insurance:

- (a) Workers' compensation insurance as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employer's liability limit of \$500,000 per accident/disease per employee/disease policy limit.
- (b) Commercial general liability insurance based on ISO form CG 00 01 or its equivalent, including coverage for contractual liability and products completed operations liability, with a limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate combined single limit for bodily injury, personal injury, and property damage liability, including the City, its officials, and its employees as additional insureds by endorsement with respect to this Interim License.
- (c) "All risk" property self-insurance covering not less than the full replacement costs of the City's property in the care, custody or control of the Provider while on a Provider job site and/or doing Provider work/services.

8.2 Certificates of Insurance. The Provider shall, as a material condition of this Interim License, deliver to the City a certificate of insurance evidencing that the above insurance, excluding Worker's Compensation, is in full force and effect prior to this Interim License's effective date. The Provider must give the City ten (10) calendar days advance written notice of any cancellation or nonrenewal of coverage of the insurance required herein that is not replaced. In the event of such cancellation or nonrenewal notice, the Provider shall obtain, pay all premiums for the renewal or replacement of the insurance required hereunder. Any such renewal or replacement insurance policy shall provide coverage equivalent to the coverages required herein, and adhere to the previously mentioned provisions regarding additional insureds. The insurance required hereunder shall be primary, and any insurance or self-insurance maintained by the City shall be in excess of and shall not contribute with any insurance required of the Provider under this Interim License. Any deductibles or self-insured retention's applicable to the required coverage hereunder shall be paid by the Provider, and the City shall not be required to participate therewith.

Further, all rights of subrogation against the City shall be waived and evidenced in the said certificate of insurance.

8.3 Nothing contained in this Interim License shall limit the Provider's liability to the City to the limits of insurance certified or carried.

8.4 Notwithstanding any of the other provisions of this Interim License, the Provider's failure to maintain the required insurance coverage throughout the term of this Interim License or the failure of the Provider to deliver a new and valid binder or certificate verifying coverage are material breaches of this Interim License and required to be remedied and resolved within thirty (30) days' written notice of such breach or the City will be authorized to terminate this Interim License without liability to the Provider.

ARTICLE 9. TAXES

The Provider shall be fully responsible for the payment and/or collection of all ad valorem, property, use, utility, and other taxes that apply to its activities within the public rights-of-way and City-owned property pursuant to this Interim License.

ARTICLE 10. MISCELLANEOUS

10.1 This Interim License, together with any, if any, exhibits shall constitute the entire Interim License and no negotiations or discussions prior to execution shall be of any effect. Any modifications hereto shall be in writing signed by the Parties. The City Manager, in his discretion, may approve such modifications without City Council approval.

10.2 The invalidity in whole or in part of any provision of this Interim License shall not affect the validity of any other provision and shall be severable where applicable.

10.3 The rights and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any provision herein this Interim License shall not constitute a waiver of any other breach. The laws of the Commonwealth of Virginia and applicable Federal laws shall govern this Interim License and any legal action filed by either Party to this Interim License arising out of the performance or non-performance of the terms of this Interim License shall be filed in the Commonwealth's or Federal courts serving the City of Lynchburg, Virginia.

10.4 In the event a governmental entity requires modifications or changes to this Interim License as a condition precedent to the granting of funds or otherwise, the Parties agree to work together in good faith to ensure such modification or change is accomplished within thirty (30) days written notice of the same.

10.5 Nothing herein shall be deemed to create any rights to those who are not expressly made a party to this Interim License.

10.6 This Interim License may be executed in counterparts. Each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one enforceable document. Further, this Interim License may be executed and/or sealed electronically. An electronic signature and/or seal shall be equally as enforceable as an original signature or seal.

10.7 Nothing contained in this Interim License shall be construed as or deemed to make either the City or the Provider the agent, partner, or joint venture of the other, except as may otherwise be provided herein. Nothing contained in this Interim License shall give the Provider any authority to represent the City before any court or governmental or regulatory agency without the express prior written authorization of

the City. Unless otherwise provided in this Interim License, neither the City nor the Provider shall be responsible or held liable for the acts or omissions of the other. Further, in taking any action pursuant to this Interim License, the Provider is and shall be acting as an independent contractor, responsible to all third parties for its acts/omissions, and the City shall not be liable for the same.

10.8 All privileges and uses of the City's property and its public rights-of-way, except to the extent herein permitted to the Provider, are expressly reserved by the City to use at its discretion as the City deems advisable. In the event there is a conflict between the City's use of its property and/or public rights-of-way and the Provider's use of the same, then the City's use shall prevail. In the event of such a conflict, the Parties shall work together in good faith to resolve the conflict.

10.9 The Provider covenants that no person on the grounds of race, sex, color, national origin, or any other basis prohibited by Federal or Virginia law shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in its operations which may be connected to this Interim License. The Provider further covenants it will not discriminate against and will make all reasonable efforts to accommodate persons with disabilities as required by the Americans with Disabilities Act (ADA) or similar laws.

10.10 This Interim License is subject to all ordinances, resolutions, and procedures of the City as the same now exist or may be hereafter adopted, amended, revised, or codified, in lawful exercise of any power granted to the City by the Virginia General Assembly or any other lawful body. The City agrees that, except in cases of emergency, it will give the Provider thirty (30) calendar days' notice of all such rules and regulations adopted by the City before the Provider shall be required to comply therewith. In performing its responsibilities under this Interim License, the Provider will comply with all applicable State and Federal laws and regulations and all Federal, State, and local laws, ordinances, rules, and regulations currently in force or subsequently adopted. Further, if any permissions are required by any utility, public service corporation, or private citizen or party concerning the Provider's facilities in any way, then the Provider, at its sole expense and effort, shall be responsible for obtaining such permissions.

10.11 The City shall not be liable for damages or losses of the Provider's Facilities unless the City directly causes the same through their action or inaction. However, the City will use reasonable efforts to notify the Provider of any maintenance issues regarding its Facilities, where the City, via its Information Technology Director or City Engineer, has actual personal knowledge of needed maintenance/maintenance issues specific to the Facilities. The Provider shall be solely reliable for any and all Damages which may arise as a result of their Facilities' existence on the City's property or public rights-of-way. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, ARISING OUT OF OR IN CONNECTION WITH THIS INTERIM LICENSE.

10.12 This Interim License shall replace as a novation the following agreements existing between the Parties: The Interim License Agreement dated October 19th 2012 between the City and the Provider (which replaced the Interim License Agreement dated June 16th, 2005 between the City and CityNet Fiber Network, LLC).

10.13 Notices shall be in writing, mailed certified with return receipt requested, effective upon receipt and sent to:

The Provider: Zayo Group, LLC
Attn: Director, Underlying Rights – East Region
1821 30th Street, Unit A
Boulder, CO 80301
legal@zayo.com

With a copy to: Zayo Group, LLC
Attn: General Counsel, Legal
1821 30th Street, Unit A
Boulder, CO 80301

Billing: Zayo Group, LLC
Attn: Accounts Payable
1821 30th Street, Unit A
Boulder, CO 80301
ap@zayo.com

Emergencies: Network Operations Center & Repair
Phone (888) 404 9296
zayoncc@zayo.com

The City: City of Lynchburg, Virginia
City Manager's Office
900 Church Street
Lynchburg, Virginia 24504

With a copy to:

City of Lynchburg, Virginia
City Engineer
900 Church Street
Lynchburg, Virginia 24504

City of Lynchburg, Virginia
IT Department Director
900 Church Street
Lynchburg, Virginia 24504

Or to replacement persons or addresses that may be later designated in writing by the Parties. Notices shall be deemed received within five (5) days of their mailing.

10.14 The Provider, within ten (10) days of this Interim License being fully executed by the parties, shall provide the City Engineer with a detailed map (in electronic and paper form) of all of the Facilities the Provider maintains and operates within the City's corporate limits. Such map will be updated by the Provider as needed and/or within ten (10) days of a written request being made by the City Engineer. Such maps shall be subject to the protections described in Article 6 of this Interim License.

IN WITNESS WHEREOF, the Parties hereto have executed this Interim License as of the day, month, and year first above written.

City of Lynchburg, Virginia

(seal)

By: _____ (SEAL)
Wynter C. Benda, City Manager

Attest: _____
Alicia L. Finney, Clerk of Council

Approved as to Form:

City Attorney/Designee

COMMONWEALTH OF VIRGINIA,

CITY OF LYNCHBURG, to-wit:

Acknowledged before me on behalf of the City of Lynchburg, Virginia, by Wynter C. Benda, its City Manager, on this ____ day of _____, 2024.

Notary Public

My Commission Expires: _____

Registration No. _____

Affix Seal:

Zayo Group, LLC

By: _____

Printed Name: _____

Its _____

(seal)

Attest: _____

Printed Name: _____

Its _____

Acknowledged before me on behalf of the Zayo Group, LLC, by _____,
its _____ on this ____ day of _____, 2024.

State/Commonwealth of _____

County/City of, _____ to-wit:

Notary Public

My Commission Expires: _____

Registration No. _____

Affix Seal:

RESOLUTION:

#R-24-_____

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That ZAYO GROUP, LLC ("Zayo") is granted a non-exclusive interim license to maintain and operate telecommunications facilities within the corporate limits of the City of Lynchburg, Virginia ("City"), as more specifically described in that certain Interim License Agreement, dated May 21, 2024, between the City of Lynchburg and Zayo. Such agreement is expressly incorporated herein by reference.
2. That the City Manager is authorized to execute the said Interim License Agreement on behalf of the City.
3. That this Resolution shall become effective upon its adoption.

Adopted:

Certified: _____
Clerk of Council