



PHYSICAL DEVELOPMENT COMMITTEE
City Council Committee

Tuesday, April 8, 2025 | 3:00 PM
2nd Floor Training Room- City Hall
900 Church Street
Lynchburg, VA 24504

AGENDA

- I. Welcome** *Councilmember Jacqueline Timmer, Chair*
- II. Information Items**
 - II.1. A Minute for Planning - Community Development
 - II.2. Public Sidewalks Presentation
- III. General Business**
 - III.3. Rosedale Encroachment/"Plate Arch" Franchise
- IV. Roll Call**
- V. Next Regular Meeting**

PUBLIC SIDEWALKS PRESENTATION

April 8, 2025

PHYSICAL DEVELOPMENT COMMITTEE



PURPOSE & ACTION

Purpose:

To explain the various methods for installation of public sidewalks throughout the City.

Why:

Request from PDC Chair Timmer.

HOW ARE SIDEWALKS ADDED?

- **Specific sidewalk projects funded through City, VDOT/Federal grants**
 - City projects
 - Highway Safety Improvement Program (HSIP)
 - Transportation Alternatives Program (TAP)
 - Safe Routes To Schools (SRTS)
- **Ancillary to City construction projects**
 - Bridge projects
 - Road reconstruction
 - Signal projects

HOW ARE SIDEWALKS ADDED?

- **New street subdivisions**
 - City Code requires all new streets being constructed to have sidewalks
- **Technical Review Committee (TRC) projects**
 - City Code requires new private development to install along street frontage
- **Property owners requesting or petitioning for sidewalks**
 - City Code allows for a 50/50 cost share with City contingent upon available funding

SIDEWALK FACTS

- **City width requirements varies between 5' to 8'**
 - Depends on street classifications and conditions/restrictions
 - Must meet Public Right Of Way (PROWAG) guidelines – Subset of Americans with Disabilities Act (ADA)
- **Cost of sidewalk - \$110 - \$175 per linear foot (city contract)**
 - Cost includes concrete & installation only
 - Does not include design, walls, handrails, ADA ramps or traffic control

RECENT PROJECTS – STAND ALONE

- **Kemper Street – HSIP**
- **Jefferson Ridge Parkway – HSIP**
- **Old Forest Road (Linkhorne to Wal-Mart) - City – Gen. Streets**
- **Wards Road – City – CIP**
- **CVCC Campus Drive – City – CIP**
- **Linkhorne Elem, Bass Elem, Dearington Elem areas - SRTS**

RECENT PROJECTS – CITY PROJECTS

- **Lakeside Drive Bridge**
- **Link Road Bridge**
- **Indian Hill Road Bridge**
- **Kemper Street Bridge**
- **Fenwick Signal**
- **Liberty Mountain Drive**
- **John Capron Road**

RECENT PROJECTS – SUBDIVISIONS

- **Blackwater Run**
- **Locust Thicket**
- **Grove Hill**
- **Creekside**
- **Bennetts Grove**
- **Independence Court**
- **Craftsman Way**

RECENT PRIVATE DEVELOPMENTS

- **Rosedale**
- **Bausch & Lomb**
- **Eleven 25**
- **Frito-Lay**
- **Framatome**
- **West Edge**
- **Centra Health**
- **Liberty University**

UPCOMING PROJECTS

- **Nationwide Drive - HSIP**
- **Old Forest Road – Kings Drive to RR - HSIP**
- **Link Road @ Boonsboro – Revenue Sharing**
- **Wards Ferry @ Atlanta – Revenue Sharing**
- **CVCC Roundabout – SMART SCALE**
- **Candlers Mountain Interchange – SMART SCALE**
- **John Lynch Bridge – City Funds**
- **Millrace Drive Phases 1 & 2 – TAP**
- **Florida Avenue – Revenue Sharing**
- **Wadsworth Street – City Funds**
- **Bedford Avenue Bridge**
- **Hollins Mill Bridge**

RECENT REQUESTS FOR SIDEWALKS

- Leesville Road
- Timberlake Road
- Boonsboro Road
- Langhorne Road
- Link Road
- Wards Ferry Road



Questions?

Existing Sidewalks





AGENDA ITEM SUMMARY

MEETING DATE

April 8, 2025

PRESENTED BY

Lee Newland

AGENDA ITEM # III.3

Rosedale Encroachment/"Plate Arch" Franchise

RECOMMENDATION

SUMMARY

The City proposes granting Rosedale Investments, LLC and Rosedale Owner's Association, Inc., as part of the development and subdivision at 1600 Graves Mill Road (i.e. Rosedale), a non-exclusive franchise right to maintain an improperly installed culvert in a soon-to-be dedicated right of way of the City. The general purpose of the franchise is to ensure the culvert is properly inspected, maintained, and owned by Rosedale Investments, LLC and/or Rosedale Owner's Association, Inc. and not the City unless certain criteria in the franchise have been met.

PRIOR ACTION(S)

FISCAL IMPACT

CONTACT(S)

Lee Newland
Tom Martin

ATTACHMENT(S)

1. Franchise Agreement FINAL(12481430.1)

REVIEWED BY

Joseph Newland, City Engineer

Date: April 01, 2025

Gaynelle Hart

Gaynelle Hart, Director of Public Works

Date: April 02, 2025



Gregory Patrick, Deputy City Manager

Date: April 03, 2025



Alicia Finney, Clerk of Council

Date: April 03, 2025

AN ORDINANCE GRANTING A NON-EXCLUSIVE LIMITED FRANCHISE TO ROSEDALE INVESTMENTS, LLC AND ROSEDALE OWNERS ASSOCIATION, INC. TO PERMIT THE USE, MAINTENANCE, AND WORK OF AND UPON CERTAIN ENCROACHMENTS IN THE PUBLIC RIGHTS-OF-WAY OF THE CITY AT 1600 GRAVES MILL ROAD, LYNCHBURG, VIRGINIA 24502

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

ARTICLE I. GRANT AND PURPOSE

- A. Rosedale Investments, LLC, a Virginia limited liability company (“Rosedale”), is the owner of a certain parcel of real property located at 1600 Graves Mill Road, Lynchburg, Virginia, 24502, containing approximately 62.305 acres and designated as Parcel ID #23904004 (the “Property”).
- B. Rosedale is developing the Property as a mixed-use project (the “Project”).
- C. Rosedale desires to dedicate to the City of Lynchburg, Virginia, a municipal corporation (the “City”), certain portions of the Property (collectively, the “Dedicated Area”) as shown on that certain subdivision plat entitled “Plat Showing Rosedale City of Lynchburg, Virginia”, dated April 19, 2022, revised September 14, 2023 and March 18, 2025, made by Perkins & Orrison (the “Plat”), with City File No. D-2527, a copy of which Plat is expressly incorporated herein, is identified herein as **Exhibit A**, and will be recorded contemporaneously with this Franchise in the records of the Clerk’s Office of the Circuit Court for the City of Lynchburg, Virginia.
- D. As shown on the Plat, a culvert, referenced on the Plat as “Plate Arch,” runs under a portion of the Project, including a portion of the Dedicated Area. The portion of the culvert that runs under the portion of the Dedicated Area is referenced herein as the “Encroachment.”
- E. The United States Environmental Protection Agency (the “EPA”) and the Virginia Department of Environmental Quality (the “DEQ”) have initiated administrative actions with respect to the Property, including the Encroachment. The EPA has issued a Notice of Potential Violation dated September 18, 2023 (the “EPA NOV”). The DEQ has issued a Notice of Violation dated November 15, 2022 (the “DEQ NOV”).
- F. Rosedale has advised the City that Rosedale expects these administrative proceedings will be resolved through a consent decree entered by the United

States District Court for the Western District of Virginia (“Consent Decree”), which will incorporate a Restoration and/or Remediation Plan approved by the EPA/DEQ (the “Remediation Plan”).

- G. The EPA/DEQ and Rosedale are currently negotiating the terms of the Consent Decree and the Remediation Plan, and the schedule for implementing any remedial actions or corrective actions required by the Consent Decree and/or the Remediation Plan is unknown.
- H. Rosedale and the City wish to allow the subdivision of the Property and the development of the Property to proceed, subject to appropriate provisions to address the ongoing issues between the EPA/DEQ and Rosedale, including the Consent Decree and Remediation Plan.
- I. Rosedale has established Rosedale Owners Association, Inc., a Virginia corporation (“ROA”), pursuant to that certain Declaration of Easements, Covenants and Restrictions, a copy of which is contemporaneously recorded with this Franchise in the Clerk’s Office of the Circuit Court of the City (the “ROA Declaration”).
- J. Except as otherwise set forth herein, Rosedale and the ROA wish to retain any potential liability and responsibility related to the Encroachment, including all remedial action and corrective action required by the Consent Decree and/or the Remediation Plan.
- K. Rosedale, the ROA, Thomas P. Bell (“Bell”), and the City are entering into this Franchise for the purpose of providing for the rights and obligations of the parties, including the perpetual maintenance, repair and care of the Encroachment.
- L. Subject to the provisions, conditions, and restrictions hereafter set forth in this Franchise, the City herein and hereby grants a non-exclusive limited franchise, right, privilege, easement, and authority to Rosedale and the ROA, hereafter, collectively, the “Franchisees,” to use, work upon, maintain, and/or remove the Encroachment.
- M. This Franchise shall permit the Franchisees to use, work upon, maintain, and/or remove the Encroachment exclusively shown on the Plat. This Franchise shall in no way be construed to permit the Franchisees to expand or extend the Encroachment or to create additional encroachments upon the Dedicated Area in any way unless a written amendment to this Franchise is completed. The Franchisees shall not become vested with any further rights beyond what is previously described due to the existence of this Franchise or the Encroachment.

- N. The City has agreed that the obligations agreed-to by Rosedale, Bell, and the ROA under this Franchise collectively constitute good and sufficient security required by Virginia Code § 15.2-2104.

ARTICLE II. TERM

- A. Unless this Franchise is sooner terminated in accordance with the terms described herein, this Franchise will be in effect for a term of thirty-nine (39) years, beginning on June 1, 2025, and ending May 31, 2064, at 11:59 p.m. This Franchise is intended to be a long-term arrangement, and at the expiration of the stated term, the City and the Franchisees will negotiate in good faith for a renewal of this Franchise under mutually acceptable conditions.
- B. At the end of the aforesaid term, unless a renewal of this Franchise has been negotiated, this Franchise shall continue as a month-to-month tenancy, subject to all terms and conditions contained in this Franchise. Such month-to-month tenancy shall continue until such time as the City gives the Franchisees thirty (30) days written notice of the termination of the month-to-month tenancy. In the event the City elects to terminate the Franchise after the expiration of the initial term, the City shall become solely responsible for the Encroachment notwithstanding anything set forth herein to the contrary, provided that the ROA and Rosedale, if applicable, shall remain liable for all obligations arising under this Franchise prior to the termination by the City.

**ARTICLE III. CONSTRUCTION,
WORK, AND REPAIR**

- A. Franchisees, at their cost and expense, shall maintain the Encroachment in good operating condition and shall pay all costs associated with the operation and maintenance of the Encroachment. Any work, maintenance, repair, improvements, and/or changes to the Encroachment, including removal, shall be solely the responsibility of Rosedale and the ROA except as otherwise set forth herein. The City shall have no duty whatsoever to inform the Rosedale or the ROA of any needed maintenance, work, repair, improvements, and/or changes to the Encroachment. Rosedale and the ROA shall perform such maintenance, work, repair, improvements, and/or changes in accordance with all reasonable and applicable workman-like standards as well as in accordance with any applicable City, state, and federal laws and regulations.
- B. Rosedale and the ROA, at their sole expense and where required, shall obtain all necessary permits and/or approvals from all City, state, and federal agencies.
- C. In the event any maintenance, work, repair, improvements, and/or changes are required on the Encroachment, and such maintenance, work, repair, improvements, and/or changes materially interfere with the City's operations in any way, as determined in good faith by the City, then Rosedale and the ROA

shall be solely responsible for the actual costs of such additional work that results from the interference.

D. Without limitation to the foregoing, the Franchisees further agree to the following:

1. Take all actions necessary to comply with the Consent Decree, Remediation Plan, and/or any other order(s), requirement(s), and/or obligation(s) necessary to resolve the outstanding issues with the EPA and DEQ, including the EPA NOV and the DEQ NOV.
2. Conduct an annual inspection by a qualified inspector and provide an annual written report to the Erosion and Sediment Control Administrator, City of Lynchburg, 900 Church Street, Lynchburg, VA 24504, describing the condition of the Encroachment. The report shall be due on January 31 of each year, and the inspection shall have been performed within two (2) months prior to the report due date. The report shall state the site name and address, the owner's name, the inspection date, the inspector's name and qualifications, and shall describe any deficiencies with and/or required maintenance of the Encroachment.
3. Remediate any deficiencies identified by the annual inspection and written report and conduct a follow-up inspection and provide a follow-up report on such remediation within four (4) weeks of the date of the annual written report subject to the extension authorized in Paragraph B of Article IV.
4. Conduct periodic informal inspections of the Encroachment for excess sediment, debris, trash, or other impediments and pollutants.
5. Remove and properly dispose of sediment from the Encroachment when the flow or storage of the stormwater has been materially restricted or reduced by sediment.
6. Remove and properly dispose of trash, debris, loose brush and other growth from the Encroachment, as needed.
7. Remove and properly dispose of any oil or grease which has accumulated within the Encroachment.
8. If applicable, periodically cut any brush and other woody growth on and around the Encroachment as needed.
9. Make all other repairs and improvements that are reasonably necessary to keep the Encroachment operating in compliance with all applicable City Ordinances, and all state and federal laws, requirements, and regulations.

ARTICLE IV. MAINTENANCE, INSPECTION AND REPAIR

- A. The City shall have the right and option, upon five (5) days written notice to Rosedale and the ROA, to inspect the Encroachment. The City may provide a written report that describes any deficiencies and required maintenance of the Encroachment. Rosedale and the ROA shall promptly remediate any deficiencies identified by the City's written report.
- B. In the event the remediation of deficiencies set forth in any report(s) provided under Articles III or IV of this Franchise cannot be reasonably cured within the time limits, the Franchisees shall have such additional, reasonable time as may be required as long the Franchisees are taking diligent and reasonable steps to resolve the same and provide the City with written notice of those steps.
- C. In the event the Franchisees fail to inspect, report on, or properly maintain the Encroachment within the above specified time limits, the City may, following at least fifteen (15) days' prior written notice to the Franchisees (provided no notice shall be required in an event of an emergency), take whatever steps it deems necessary to maintain the Encroachment in compliance with City Ordinances and federal and state laws, requirements, and regulations and this Franchise.
- D. It is understood and agreed by the Franchisees that the City is under no obligation to inspect and/or maintain the Encroachment and this Franchise shall not be construed to impose such an obligation on the City. If such inspection and/or maintenance by the City is performed due to the failure of the Franchisees to do so, the Franchisees shall be jointly and severally obligated to reimburse the City for the reasonable costs of such inspection and/or maintenance within thirty (30) days of receipt of written notice from the City to the Franchisees, which notice shall include invoices and/or other written detailed evidence of the costs incurred by the City to cure the failure of the Franchisees to maintain the Encroachment. Bell shall personally guaranty the obligations of the Franchisees in this Paragraph until the release of Rosedale under Paragraph F of this Article IV and shall execute a Guaranty Agreement in connection with this Franchise to that effect. Any costs not reimbursed by the Franchisees, or Bell, as applicable, to the City following this time may be recorded as liens against the Property, provided any and all liens shall be subordinate to the rights of any lender granted a deed of trust on any portion of the Property regardless of the date such deed of trust is recorded and further provided that the City shall not take any action to disturb the rights of any bona fide, unrelated third party leasing any portion of the Property.
- E. In the event any of the Agencies, as defined below, require that any part of the Encroachment be removed (the "Removal"), the Franchisees, jointly and severally, shall be solely responsible for all costs incurred in connection with the Removal. If the City incurs costs related to the Removal due to the failure of the Franchisees to remove any part of the Encroachment as required by the Agencies, the Franchisees shall be jointly and severally obligated to reimburse the City for all reasonable costs incurred by the City within thirty (30) days of receipt of written

notice from the City, which notice shall include invoices and/or other written detailed evidence of the costs incurred by the City to cure the failure of the Franchisees to conduct the Removal. Bell shall personally guaranty the obligations of the Franchisees in this Paragraph until the release of Rosedale under Paragraph F of this Article IV and shall execute a Guaranty Agreement in connection with this Franchise to that effect. Any amounts unpaid to the City following this time may be recorded as liens against the Property, provided any and all liens shall be subordinate to the rights of any lender granted a deed of trust on any portion of the Property regardless of the date such deed of trust is recorded and further provided that the City shall not take any action to disturb the rights of any bona fide, unrelated third party leasing any portion of the Property.

F. Upon the occurrence of the contingencies in this Paragraph F of Article IV, the ROA, its successors and assigns, shall be solely responsible for the obligations under this Franchise, and Rosedale and Bell shall be released from all obligations under this Franchise (the "Release"):

1. A resolution acceptable to the EPA, DEQ, the Virginia Department of Historic Resources, the U.S. Corps of Engineers, and any other state or federal agency reviewing violations related to the Project (collectively, the "Agencies") is reached concerning the Project; and
2. The completion of any remedial work required by the Agencies. Notwithstanding the foregoing, if any Liabilities (as defined in Paragraphs A and B of Article VI) arise prior to the Release, Rosedale shall remain responsible, jointly and severally with the ROA, for the Removal, and to defend, indemnify, and hold the City, its employees, officials, and agents harmless from all Liabilities.

G. Notwithstanding anything set forth herein to the contrary, in the event the City or the Virginia Department of Transportation ("VDOT") elect to make changes or improvements to Graves Mill Road which require alterations or improvements to be made to the Encroachment, the City and/or VDOT, as applicable, shall be responsible for all costs and expenses associated with the necessary changes or improvements to be made to the Encroachment.

ARTICLE V. DAMAGE TO PROPERTY

Unless caused by the negligence or intentional misconduct of the City, its employees, or its officials, the City shall in no way be liable for any damage to the Encroachment. Rosedale and the ROA shall be responsible for repairing or replacing any damages to the City's property or the like that are caused by the acts or omissions of Rosedale, the ROA, their employees, or their agents related to the Encroachment.

ARTICLE VI. INDEMNIFICATION AND INSURANCE

- A. **INDEMNIFICATION – GENERAL.** Rosedale and the ROA, jointly and severally, shall indemnify, hold harmless, and defend the City, its employees, officials, and agents, from and against any and all lawsuits, claims, causes of action, liabilities, demands, damages, disability, losses and expenses, of any nature whatsoever, including reasonable attorneys' fees ("Liabilities"), resulting or in any manner arising out of: (i) the Encroachment; (ii) Rosedale's or the ROA's breach of obligations under this Franchise; or (iii) the negligent or intentional misconduct of Rosedale or the ROA, its members, employees or agents, unless such Liabilities are a direct result of the negligence or intentional misconduct of the City, its employees, or its officials. The City shall notify Rosedale and the ROA of any Liabilities subject to indemnification and defense hereunder and the parties shall cooperate with all reasonable requests for information, documents, testimony, or other assistance appropriate to a resolution of such Liabilities.
- B. **INDEMNIFICATION – CORRECTIVE ACTION/REMOVAL.** Rosedale and the ROA, jointly and severally, shall indemnify, hold harmless, and defend the City, its employees, officials and agents, from and against any and all lawsuits, claims, causes of action, liabilities, demands, damages, disability, losses, and expenses, of any nature whatsoever, including reasonable attorneys' fees ("Liabilities"), resulting or in any manner arising out of the Removal, and any remedial action or corrective action required to address the EPA and DEQ administrative actions. The City shall notify Rosedale and the ROA of any Liabilities subject to indemnification and defense hereunder and the parties shall cooperate with all reasonable requests for information, documents, testimony, or other assistance appropriate to a resolution of such Liabilities.
- C. The indemnification requirements described hereunder shall survive termination or expiration of this Franchise for a period of five (5) years beyond the same.
- D. **INSURANCE.** Rosedale and the ROA shall both obtain and maintain, at their sole cost and expense, with financially reputable insurers authorized to do business in the Commonwealth of Virginia, Commercial General Liability insurance for bodily injury, property damage, and all risk fire and casualty insurance coverage (multi-peril) in a limit of not less than USD\$3,000,000 (Three Million Dollars) per occurrence and USD\$5,000,000 (Five Million Dollars) in the annual aggregate;
1. Rosedale and the ROA shall further deliver to the City a Certificate of Insurance, satisfactory in form and content to the City, evidencing that the above insurance is in full force and effect. Rosedale and the ROA shall, at least thirty (30) days prior to the expiration of the policies, furnish the City with renewals or binders for the policies, or the City may order the required insurance and charge the cost to Rosedale or the ROA. Any and all such insurance policies shall name the City, its employees, officials, and agents as additional insured parties and shall include or be endorsed to include contractual liability.

2. 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 Rosedale and the ROA under this Franchise. Any deductibles or self-insured retentions applicable to the required coverage shall be paid by Rosedale and/or the ROA, as applicable, and the City shall not be required to participate therewith. All rights of subrogation against the City, its employees, officials, and agents are hereby waived, and such waiver of subrogation rights shall be shown on the aforesaid Certificate(s) of Insurance.
3. Nothing contained in this Franchise shall limit Rosedale's and/or the ROA's indemnification obligations to the City to the limits of the insurance certified or carried.
4. Notwithstanding any of the other provisions of this Franchise, in the event the Franchisees fail to (i) maintain the required insurance coverage throughout the term of this Franchise or (ii) deliver a new and valid binder or certificate verifying such coverage and such failure continues for five (5) days following the Franchisees' receipt of written notice from the City, the City may order the required insurance and charge the cost to Rosedale and/or the ROA. Bell shall personally guaranty the obligations of the Franchisees in this Paragraph until the release of Rosedale under Paragraph F of Article IV and shall execute a Guaranty Agreement in connection with this Franchise to that effect. Rosedale and/or the ROA, as applicable, shall reimburse the amounts paid by the City to obtain the insurance required by this Article VI upon demand and any amounts unpaid to the City within ten (10) days following written demand may be recorded as liens against the Property, provided any and all liens shall be subordinate to the rights of any lender granted a deed of trust on any portion of the Property regardless of the date such deed of trust is recorded and further provided that the City shall not take any action to disturb the rights of any bona fide, unrelated third party leasing any portion of the Property.

ARTICLE VII. COMPLIANCE WITH LAWS

The grant of this Franchise 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 Franchisees thirty (30) days advance written notice of all such rules and regulations adopted by the City before the Franchisees shall be required to comply therewith. In performing its responsibilities under this Franchise, the Franchisees 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 that may apply to their obligations under this Franchise.

ARTICLE VIII. AMENDMENTS TO FRANCHISE

The City and the Franchisees may modify this Franchise from time to time; however, such modifications will be in writing and approved by the Lynchburg City Council.

ARTICLE IX. TERMINATION OF FRANCHISE

- A. The City retains the right to withhold or withdraw any and all privileges granted under this Franchise and to terminate this Franchise at any time if the Franchisees or Bell fail to comply with any of the provisions of this Franchise. Exercise of this right by the City shall be in addition to and not in place of any other rights which the City has under the terms of this Franchise. Prior to exercising this right, the City Manager, or such other person or persons as the City Manager may from time to time designate, shall provide the Franchisees and/or Bell, as appropriate, with written notice of the failure to comply with the terms of this Franchise or default. The Franchisees and/or Bell shall have thirty (30) days from receipt of such notice to remedy any such default, provided that in the event the Franchisees and/or Bell cannot cure the default within the thirty (30) day period, the Franchisees and/or Bell shall have such additional, reasonable time as may be required as long they are taking diligent and reasonable steps to resolve the same and provide the City with written notice of those steps.
- B. If there are instituted by or against the Franchisees or Bell proceedings in bankruptcy or insolvency during the term of this Franchise, the City may terminate the same at any time thereafter. The exercise of this right by the City shall be in addition to and not in place of any other rights which the City has under the terms of this Franchise. Any successors, assignee or assignees, trustee, or receiver of the Franchisees or Bell resulting from proceedings in bankruptcy or under any insolvency law shall be subject to and bound by all of the provisions, terms, conditions, and limitations of this Franchise.
- C. The City retains the right to withhold or withdraw any and all privileges under this Franchise and to terminate this Franchise at any time if there is a taking of the Franchisees' property by way of a court of competent jurisdiction, which precludes the Franchisees and/or Bell from satisfying their obligations under this Franchise. Exercise of this right by the City shall be in addition to and not in place of any other rights which the City has under the terms of this Franchise. In the event the City elects to terminate the Franchise in connection with a taking, the City shall become solely responsible for the Encroachment notwithstanding anything set forth herein to the contrary, provided that the ROA, Rosedale, and/or Bell if applicable, shall remain liable for all obligations arising under this Franchise prior to the termination by the City.

ARTICLE X. NOTICES

- A. Rosedale has designated Bell to serve as the responsible individual for execution of the responsibilities of the Franchisees under this Franchise. The Franchisees shall inform the City regarding any change in the designee in writing according to this Article X.
- B. Notices, demands, requests, and other writings made by the parties pursuant to this Franchise shall be made to the following addresses via (i) hand delivery, (ii) certified mail, return receipt requested, or (iii) overnight carrier, and shall be deemed given upon receipt or refusal of acceptance, unless otherwise communicated in writing:

Rosedale:

Rosedale Investments, LLC
Attn: Member/Managing Member
103 West Edge Way, Ste H
Lynchburg, VA 24502

ROA:

Rosedale Owners Association, Inc.
Attn: President
103 West Edge Way, Ste H
Lynchburg, VA 24502

Bell:

103 West Edge Way, Ste H
Forest, Virginia 24551

A copy of any notice sent to Rosedale, the ROA, or Bell shall be contemporaneously sent to:

Whitlow & Youell, PLC
Attn: Cooper Youell
28A Kirk Avenue, SW
Roanoke, VA 24011

City:

City of Lynchburg, Virginia
Attn: City Manager
900 Church Street – 3rd Floor
Lynchburg, VA 24504

and

City of Lynchburg, Virginia
ATTN: City Engineer
900 Church Street – 2nd Floor
Lynchburg, VA 24504

A copy of any notice sent to the City shall be contemporaneously sent to:

City of Lynchburg, Virginia
Attn: City Attorney
900 Church Street – 3rd Floor
Lynchburg, VA 24504

ARTICLE XI. MISCELLANEOUS

- A. **TAXES.** Rosedale and the ROA shall pay all real estate taxes and any other charges or fees that may be assessed against the portion of the Property owned by Rosedale and/or the ROA, but no real estate taxes and any other charges or fees shall be assessed or charged in connection with the Encroachment.
- B. **SUCCESSORS.** This Franchise and the rights and responsibilities of the same shall run with the title to the land and shall be binding upon and inure to the benefit of the Franchisees, successor owners, and assigns of the Franchisees' property. Neither the City, the Franchisees, nor Bell may assign this Franchise or any of the rights and/or responsibilities described herein without the written consent of the others, which will not be unreasonably withheld. Notwithstanding any other part of this Franchise, the City Manager, in his discretion, shall have the authority to permit such assignments on behalf of the City without the same being approved by the Lynchburg City Council. Notwithstanding the foregoing, once the conditions set forth in Paragraph F of Article IV of this Franchise have been satisfied, Rosedale may transfer any portion of the Property to a bona fide, unrelated third-party purchaser without the consent of the City.
- C. **SEVERABILITY.** In the event that any provision of this Franchise, or portion of the same, shall be construed to be invalid or unenforceable by a court of competent jurisdiction, then such provision or portion shall be stricken, and the remaining portions of this Franchise shall remain in full force and effect.
- D. **GOVERNING LAW.** This Franchise shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, and any legal proceedings related to the same shall be filed in the courts of the City of Lynchburg, Virginia and in no other forum.

- E. ENTIRE FRANCHISE. All provisions with respect to this Franchise are expressly contained herein. No representative or agent of the City or the Franchisees has made any representation or promise with respect to this Franchise not contained herein.
- F. RESERVATION OF RIGHTS. It is distinctively understood that all privileges and uses of the City's property and right-of-way, except to the extent herein permitted to the Franchisees, are expressly reserved by the City to use at its discretion as the City deems advisable.
- G. REMEDIES NOT EXCLUSIVE. All rights and remedies described in this Franchise shall be cumulative and additional to all other rights and/or remedies available at law or in equity.
- H. BINDING EFFECT. This Franchise shall be binding and inure to the benefit of the City, the Franchisees, and Bell and their respective representatives, successors, and permissible assigns. Further, upon being admitted 'of record' in the Clerk's Office of the Circuit Court of the City of Lynchburg, Virginia, this Franchise shall constitute a covenant running with the land. Notwithstanding the foregoing, once the conditions set forth in Paragraph F of Article IV of this Franchise have been satisfied, only the property owned by the ROA shall be subject to any liens arising out of the failure of the ROA to perform its obligations under this Franchise.
- I. INDEPENDENT ENTITIES. Nothing contained in this Franchise shall be construed as or deemed to make either the City or the Franchisees the agent, partner, or joint venture of the other, except as may otherwise be provided in this Franchise. Nothing contained in this Franchise shall give the Franchisees 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 Franchise, neither the City nor the Franchisees shall be responsible or held liable for the acts or omissions of the other. Further, in performing any services or engaging in any actions pursuant to this Franchise, the Franchisees are and shall be acting as independent contractors, responsible to all parties for their acts and omissions, and the City shall not be liable for the same.
- J. THIRD-PARTY RIGHTS. Nothing in this Franchise shall be deemed to create any rights to those who are not expressly made a party to this Franchise. The parties to this Franchise are the City, the Franchisees, and Bell.
- K. COUNTERPARTS AND SIGNATURES. This Franchise 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 document. Further, this Franchise may be executed and/or sealed electronically. An electronic signature and/or seal shall be equally as enforceable as an original signature or seal.

- L. HEADINGS. Marginal headings contained in this Franchise are for convenience only and shall not be considered to amplify, relate, modify, or otherwise affect any of the terms, provisions, or conditions of this Franchise.
- M. FORCE MAJEURE. The Franchisees shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of this Franchise), where such noncompliance or alleged defaults occurred or were caused by events which constitute a Force Majeure. For purposes of this Franchise, "Force Majeure" means an event or events reasonably beyond the ability of the Franchisees to anticipate and control, and includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, or tornadoes.

ARTICLE XII. METHOD OF ACCEPTANCE

This Ordinance shall be and become effective as a Franchise and shall constitute a contract between the City, the Franchisees, and Bell once adopted by the Lynchburg City Council and executed by the Franchisees and Bell. The Franchisees and Bell shall execute this Ordinance prior to the said adoption by the Lynchburg City Council or within ten (10) days of the same.

ARTICLE XIII. ADOPTION OF ORDINANCE

This Ordinance was duly adopted by the Council of the City of Lynchburg, Virginia on the _____ day of _____, 2025, and shall be effective as of the 1st day of June, 2025.

Certified: _____
Clerk of Council

Approved as to Form:

City Attorney/Designee

ARTICLE XIV. ACCEPTANCE OF FRANCHISE

By joining in this Ordinance through signature of their duly authorized representatives, the Franchisees and Bell do hereby accept the entirety of the same as of its adoption date.

ROSEDALE INVESTMENTS, LLC

(SEAL)

By: _____

Printed Name: _____

Its: Manager

(SEAL)

ROSEDALE OWNERS ASSOCIATION, INC.

By: _____

Printed Name: Thomas P. Bell

Its: President

THOMAS P. BELL

_____(SEAL)