

SCHENKS BRANCH SEWER LINE PROJECT EASEMENT PROVISIONS
AGREEMENT

THIS EASEMENT PROVISIONS AGREEMENT (“Agreement”) is entered into this ____ day of ____, 202__, by and between the **CITY OF CHARLOTTESVILLE, VIRGINIA** (“City”), the **COUNTY OF ALBEMARLE, VIRGINIA** (“County”), and the **RIVANA WATER AND SEWER AUTHORITY** (“RWSA”), (collectively, “Parties;” individually, “Party”).

These provisions set forth terms for the temporary construction easement and permanent easements on City Parcel ID # 350134000, owned by the County (“County Property”), in connection with the Schenks Branch Sewer Line Project (“Project”).

WITNESSETH

NOW, THEREFORE, for and in consideration of the premises, covenants, and agreements set forth herein, the Parties hereto set forth their agreement as follows:

1. Definitions

“*Easement Areas*” means the areas conveyed under the temporary construction easement and the permanent easements for utilities and the shared-use path on County Property.

“*Off-season*” means November through February, unless otherwise agreed in writing by County.

“*Disturbed Area*” means all areas impacted by construction, including areas beyond the limits of the ditch line.

“*Approved Plant List*” means City’s and RWSA’s list of approved plants for sewer-line easements.

“*Effective Date*” means the date on which the last of City, County, and RWSA executes the Agreement.

“*Commercial Zoning Designation*” means the CX-3 Corridor Mixed Use Zoning District under City’s Development Code, or another then-existing City Zoning District that (i) is classified as a corridor, node, or downtown mixed-use district and (ii) permits commercial development at an intensity equal to or greater than CX-3.

“*Tenth Anniversary*” means the tenth (10th) anniversary of the Effective Date.

2. Compensation

City and RWSA shall jointly pay County **ONE MILLION, ONE HUNDRED AND THIRTY-FOUR THOUSAND, SEVEN HUNDRED AND FORTY-FOUR DOLLARS AND 48/100 CENTS (\$1,134,744.48)** for the temporary construction easement and the permanent easements for utilities and a shared-use path across County Property.

3. Utility Relocation

City and County will collaborate to identify and implement a viable future solution for relocation of utilities on County Property. City and RWSA must design and install the proposed sewer line so that it does not preclude future co-location of utilities within the easement area.

4. Tree Impact Mitigation

City and RWSA must mitigate all construction-related impacts on vegetation located on County Property, including the protection and replacement of trees and the use of trenchless (boring) methods beneath trees, where appropriate.

5. Protection of Pin Oak Tree

City, RWSA, and their contractors must install the sewer line by boring beneath the visitor-parking lot entrance and in the vicinity of the large pin oak tree located on the front lawn of County Property. All protective measures recommended by an ISA-Certified Arborist hired by County, including temporary fencing, must be implemented. County will perform arborist-recommended work to preserve the tree during construction and for five (5) years thereafter, at City's expense.

6. Protection of County Biofilter

City, RWSA, and their contractors must implement all measures recommended by a certified professional (retained by County) to avoid any impact to County's stormwater biofilter. The biofilter must be restored to its pre-construction condition following completion of Project. All associated costs must be paid by City.

7. Access to County Property

At least two (2) of the three (3) existing vehicular entrances from McIntire Road to County Property must always remain open during construction. City and RWSA must provide temporary access plans and wayfinding signage acceptable to County.

8. 1978 Deed Requirement

City must vacate, waive, and/or release the 1978 deed requirement obligating County to dedicate a fifty (50)-foot-wide strip of land along McIntire Road to the Virginia Department of Transportation for road widening.

9. Zoning Status and Contingent Easement Consideration

9.1 No Zoning Commitment

Nothing in these provisions obligates City, City Council, City Planning Commission, or any City officer or employee to initiate, recommend, support, approve, or refrain from taking any action on a Zoning Map Amendment (“ZMA”) or other land-use matter affecting County Property. Nothing in these provisions limits the discretion of any public body or official, prescribes the result of any legislative or administrative process, or excuses compliance with any application, notice, public hearing, or other legal requirement. County may seek a ZMA in the same manner as any other property owner.

9.2 Contingent Easement Consideration

If County Property is not subject to a Commercial Zoning Designation on the Tenth Anniversary, City must pay County the Zoning Value Differential determined under this Section. The payment is additional consideration for the easements and allocates the risk that the zoning designation in effect on the Tenth Anniversary may affect the value of County Property. It is not a penalty or damages for a failure to rezone, and it does not depend on the action, inaction, recommendation, or vote of any individual City official.

9.3 Zoning Value Differential

The “Zoning Value Differential” is the amount, if any, by which the Commercial-Zoning Value exceeds the Actual-Zoning Value. The “Commercial-Zoning Value” is the fair market value of County Property as of the Tenth Anniversary, assuming that County Property were then subject to the CX-3 Corridor Mixed Use Zoning District or, if that District no longer exists, its most nearly equivalent successor District. The “Actual-Zoning Value” is the fair market value of County Property as of the same date under the zoning designation in effect. Both values must reflect the same physical condition, title, easements, and other encumbrances affecting County Property on the valuation date. The zoning assumption must be the only material difference between the two (2) valuations, and neither valuation may assume approval of a Special Use Permit, variance, or other discretionary land-use approval.

9.4 Appraisal Procedure

Within thirty (30) days after the Tenth Anniversary, City and County must jointly retain an independent Virginia Certified General Real Estate Appraiser to determine both values and the Zoning Value Differential. If the Parties do not agree on an appraiser within that period, each Party must retain an independent Virginia Certified General Real Estate Appraiser within the next twenty (20) days. If either Party fails to do so, the determination made by the appraiser timely retained by the other Party is final. Each appraiser must provide a written appraisal within sixty (60) days after being retained.

If two (2) appraisers are retained and their determinations of the Zoning Value Differential differ by no more than 10 percent (10%) of the lower determination, the final Zoning Value Differential is the average of the two (2). If the determinations differ by more than 10 percent (10%), the two (2) appraisers must select a third (3rd) independent Virginia Certified General Real Estate Appraiser within fifteen (15) days. If they do not, either Party may ask the Virginia Commonwealth Chapter of the Appraisal Institute to select the third (3rd) appraiser. The third (3rd)

appraiser must provide a written appraisal within forty-five (45) days after being retained. The final Zoning Value Differential is the average of the two (2) closest determinations, or the average of all three (3), if the differences are equal. Each Party must pay its own appraiser, and the Parties must share equally the cost of a jointly retained or third (3rd) appraiser.

9.5 Payment

City must pay the final Zoning Value Differential within ninety (90) days after it is determined. Payment fully satisfies City's obligations under this Section.

10. Right of First Refusal

10.1 Grant and Term

Beginning on the Effective Date, County grants City a perpetual right of first refusal to purchase all or any portion of County Property on the terms set forth in this Section. The right does not expire on the Tenth Anniversary, upon any payment under Section 9, or solely by the passage of time. The right terminates as to any property purchased by City or sold to a third (3rd) party after City declines or fails to exercise the right in accordance with this Section.

10.2 Notice of Proposed Sale

Before accepting a *bona fide* written offer from an unrelated third (3rd) party to purchase all or any portion of County Property, County must give City written notice of the proposed sale. The notice must include a complete copy of the offer and all amendments and must identify all material economic and non-economic terms of the proposed transaction.

10.3 City Election and Closing

City may exercise the right of first refusal by action of City Council and written notice to County within sixty (60) days after receiving County's notice. If City exercises the right, City and County are bound to purchase and sell the offered property on the same material terms as the third (3rd)-party offer, except that City will have at least ninety (90) days after its election to close and may substitute cash for any non-cash consideration at its objectively reasonable fair market value. City may conduct customary title, survey, environmental, and physical due diligence during the closing period.

10.4 Sale After Non-Exercise

If City declines or fails to timely exercise the right, County may sell the offered County Property to the identified third (3rd) party within one-hundred and eighty (180) days after expiration of City's election period, but not for a lower price or on other terms materially more favorable to the third (3rd) party than those provided to City. Any material change in the terms or failure to close within that one-hundred and eight (180)-day period requires County to offer the County Property to City again under this Section.

10.5 Excluded Transactions

This right of first refusal does not apply to easements, licenses, leases, mortgages, deeds of trust, public dedications, boundary-line adjustments, or conveyances resulting from the exercise or threat of eminent domain. It also does not apply to a conveyance to an entity wholly owned or controlled by County, provided that the transferee assumes County's obligations under this Section in a writing enforceable by City.

10.6 Successors; Memorandum; Remedies

This Section perpetually binds County, and its successors and assigns, except a purchaser that acquires County Property after City has declined or failed to exercise the right in compliance with this Section. As to any County Property then remaining subject to the right, this Section may be terminated only by a written release executed by City and recorded among the land records of City. At City's request and expense, County must execute a short-form Memorandum of this right of first refusal in recordable form. The Parties intend the right to be perpetual. If a court of competent jurisdiction determines that any rule against perpetuities, restraint on alienation, or similar rule prevents the right from continuing perpetually, the right must be reformed and enforced for the longest period permitted by law and must not be declared void solely because of its stated duration. Because a breach may cause harm not adequately remedied by money damages, City may seek specific performance or injunctive relief in addition to any other available remedy.

11. Baseball Field - Work Window and Restoration

RWSA must limit construction on and around the baseball field to the off-season (generally November through February) and restore the baseball field to its existing condition. All fencing, batting cages, concrete pads, and turf removed or disturbed must be replaced to the same standards no later than the end of February.

11.1 Construction Specifications and Testing

An independent geotechnical engineering firm must perform compaction testing and provide results to City, RWSA, and County. Ditch compaction must conform to industry standards and reach a level eight (8) inches below existing grade. Manholes must be installed per design and may be buried up to one (1) foot within the baseball field.

11.2 Restoration of Disturbed Areas

All disturbed areas must be laser-leveled; sub-grade set eight (8) inches below existing grade; eight (8) inches of screened topsoil with pH 7.0 applied; and slow-release starter fertilizer (18-4-6) tilled into the top eight (8) inches of added soil. Sod must consist of eighty percent (80%) turf-type tall fescue and twenty percent (20%) Kentucky bluegrass grown from "blue tag" certified seed, with no plastic netting, installed no more than one (1) inch above adjacent turf. Sod must not be installed when the ground is frozen and may be placed after February, if needed. Sod must receive at least one-half inch (0.5) inch of water per week for four (4) weeks.

A one (1)-year sod-replacement guarantee and a one (1)-year subsurface-settling repair guarantee apply.

12. Landscape Restoration

City and RWSA must implement a County-approved landscaping plan for the easement areas. Approved plantings may be installed in outer easement areas, and low groundcover is required within ten (10) feet of the sewer line centerline.

13. Shared-Use Path

Upon County's conveyance of the required easements, City must construct a shared-use path along the western side of McIntire Road on County Property. A temporary path will be installed first, followed by a permanent path constructed as part of Project.

WITNESS, the following signatures and seals:

CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____
Samuel Sanders, Jr.
City Manager

Date: _____

Approved as to Form:

By: _____
John Maddux, Esq.
City Attorney

COUNTY OF ALBEMARLE, VIRGINIA

By: _____

Jeffery B. Richardson

County Executive

Date: _____

Approved as to Form:

By: _____

Andrew Herrick, Esq.

County Attorney

RIVANNA WATER AND SEWER AUTHORITY

By: _____

Date: _____

Approved as to Form:

By: _____

_____, Esq.

RWSA Counsel