TOWN COUNCIL REGULAR WORK SESSION
TUESDAY, SEPTEMBER 3, 2024 @ 7:00 PM
Town Hall Conference Room

View meeting online LIVE at https://www.frontroyalva.com/673/Town-Hall-Live

7:00pm 1. Roll Call

2. **New Business**
   - A. Bid Award for De-Icing Road Salt – *Michelle Campbell*
   - B. Fiscal Year 2025-2026 Budget Calendar – *BJ Wilson*
   - C. Request to Renew Lease Agreement for Parking Spaces – RPS Composites at 211 E. 4th St.– *Joe Waltz*
   - D. Waiver of Special Use Permit Application Fee for Salvation Army's Requested Mural located at 296 South Street – *Joe Waltz*
   - E. Ordinances to Adopt and Re-enact a Republished Town Code and to Amend and Re-enact Chapter 1 and Repeal Chapters 43 and 180– *Tina Presley*
   - F. Resolution to Cancel October 15th and November 4th Work Sessions – *Mayor Cockrell*

7:45pm 3. **Old Business**
   - A. Property Maintenance Update – *Lauren Kopishke*
   - B. Suggestions for Recognizing John Marlow in the Gazebo Area located on Main Street – *Mayor Cockrell*
   - C. Reaching Out Now (RON) Funding Discussion – NO COVERSHEET

8:15pm 4. Closed Meeting

5. Adjourn

COUNCIL REGULAR WORK SESSION
AGENDA STATEMENT

Meeting Date: September 3, 2024 Item# 02A

Agenda Item: Bid Award for De-Icing Road Salt

Summary: Purchasing issued a solicitation for bulk purchasing of de-icing road salt. The method of procurement was competitive sealed bidding.

On Friday, August 9th, Purchasing held a public bid opening and received seven (7) bids. Council is requested to approve the bid for de-icing road salt to the lowest responsive and responsible bidder, Morton Salt, Inc., at firm fixed pricing for $88.20 per ton.

Budget/Funding: Funding is available in the FY25 budget line item:

4500-45478 Streets Department, Snow Removal

Staff Recommendation: Staff recommends approving the award as presented under the consent agenda on September 23rd.

Town of Front Royal
Public Works

MEMORANDUM

TO: Michelle Campbell, Purchasing Manager

CC: B.J. Wilson, Finance Director

FROM: Robert B Boyer, Public Works Director

DATE: August 12, 2024

SUBJECT: Recommendation to Award De-Icing Road Salt Bid

The town received 6 bids for De-icing Road salt, the lowest bidder was Morton Salt Inc. The town has used Morton Salt for the last couple of years and they're service, and delivery has been good. We recommend moving forward with awarding this bid to Morton Salt at a price of $88.20 per ton delivered to the public works complex. This product allows the department to treat the town roads during winter weather events to keep the roads safe for motorist, there is funding currently available in budget code 4500-5478.

If you have any questions or need any further information, please contact me at 540-692-4789.

Thank You.

VENDOR SPREAD SHEET

Town of Front Royal, VA

IFB #15-2024 DE-ICING ROAD SALT

BID OPENING DATE: July 23, 2024

BID OPENING TIME: 2:00 PM

		MORTON SALT, INC. CHICAGO, IL	EASTERN SALT CO. INC. LOWELL, MA	CARGILL INCORPORATED NORTH OLMSTED, OH	GOVERNMENT MLO SUPPLIES USA INC BETHESDA, MD	MID-ATLANTIC SALT LLC GLADWYNE, PA	DEICING DEPOT LLC DEERFIELD BEACH, FL	COMPASS MINERALS OVERLAND, KS
QTY	ITEM DESCRIPTION	UNIT PRICE	UNIT PRICE	UNIT PRICE	UNIT PRICE	UNIT PRICE	UNIT PRICE	UNIT PRICE
1	DE-ICING ROAD SALT DELIVERED	$88.20	$105.00	$98.74	$92.89	$92.00	$98.00	NO BID
	Total Bid	$88.20	$105.00	$98.74	$92.89	$92.00	$98.00	NO BID

***DENOTES NON-RESPONSIVE BID**

The VENDOR SPREAD SHEET is generated from the initial, raw information collected. No award decision has been made.

Prepared by: Michelle Campbell, VCA

Department of Purchasing
102 E Main Street
Front Royal, VA 22630
Website: www.frontroyalva.com
Phone 540-636-6889

COUNCIL REGULAR WORK SESSION
AGENDA STATEMENT

Meeting Date: September 3, 2024 Item# 02B

Agenda Item: Fiscal Year 2025-2026 Budget Calendar

Summary: Staff is proposing the attached calendar to prepare the FY25-26 Proposed Budget for Town Council's review. During the first work session in January 2025, staff will provide Town Council with a list of major items that could possibly impact the budget, then providing the proposed FY25-26 budget to Council in February 2025. This will allow four work sessions to discuss the proposed budget before council is requested to vote on the 2025 tax rates and approximately 3 months before the public hearing of the appropriation ordinance.

Budget/Funding: N/A

Staff Recommendation: Staff recommends for council to review the FY25-26 Budget Calendar and discuss any questions or concerns.

Fiscal Year 2025-2026 Budget Calendar

Sept 16, 2024	Finance Department distributes FY26 Budget forms to Departments (FY24 Figures provided will not be final/audited figures)
Oct 18, 2024	FY26 Departmental spending requests & Budgetary Planning documents due back to Finance
Nov 18-22, 2024	Town Manager preliminary review spending with Departments
Dec 16, 2024	Mid-year FY25 Budget transfers due from departments
Jan 6, 2025	Review of major items that may be included in FY26 Proposed Budget
Feb 3, 2025	Town Manager's Recommended Budget provided to Town Council, Work Session review of FY26 Proposed Budget
Feb 10, 2025	Additional Budget Work Session (As needed)
March 3, 2025	Work Session to discuss advertisement to be submitted for annual tax rate for Real and Personal Property
March 10, 2025	Additional Budget Work Session (As needed)
March 24, 2025	Public Hearing & Request of Council approval for Town Tax rates for both Real Estate and Personal Property
April 7, 2025	Advertisement submitted for Annual Appropriation Ordinance
April 14, 2025	Additional Budget Work Session (if requested)
April 28, 2025	Public Hearing & Request of Council approval for FY 25-26 Appropriations Ordinance & Rate Ordinances

COUNCIL REGULAR WORK SESSION
AGENDA STATEMENT

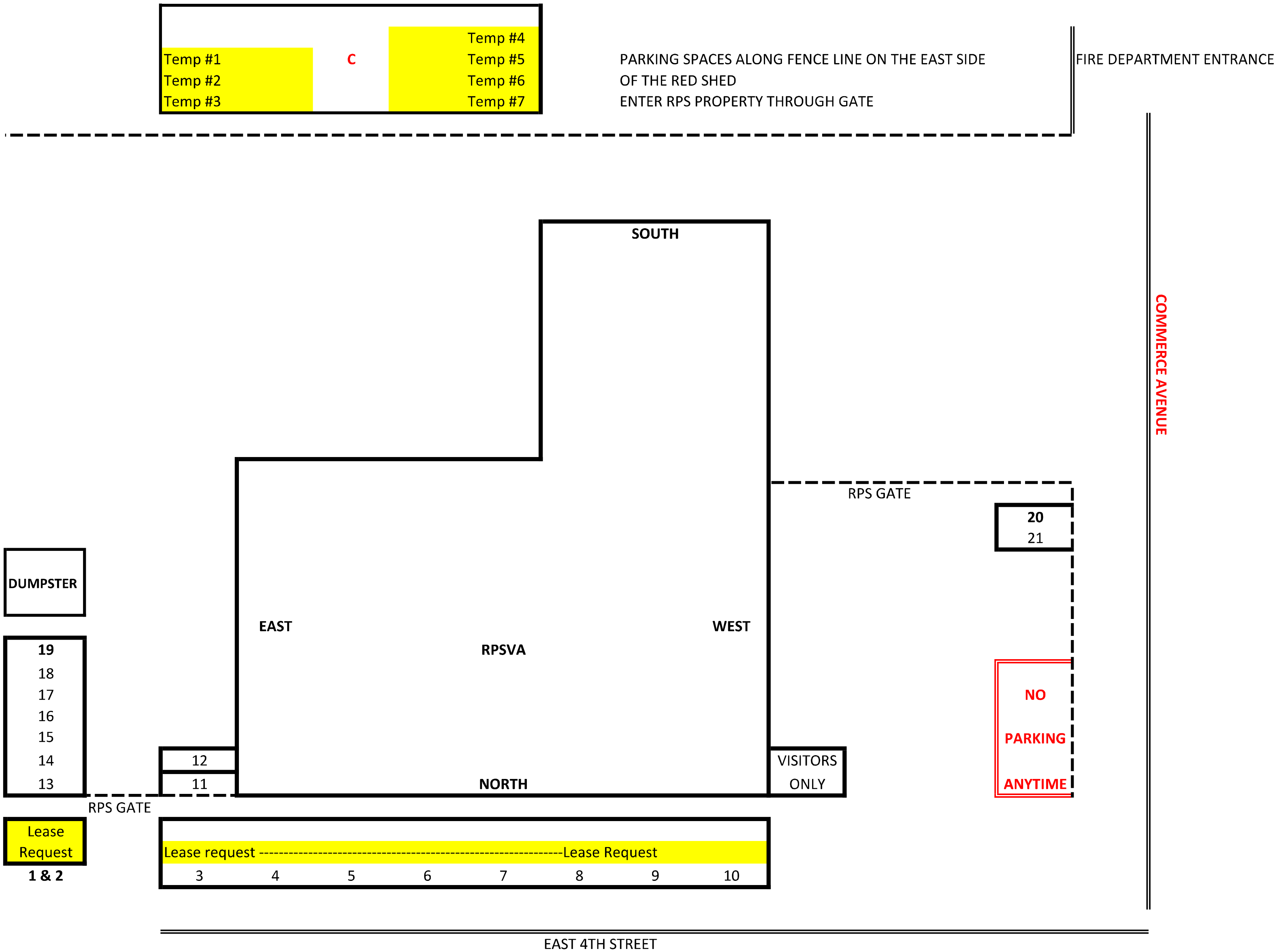
Meeting Date: September 3, 2024 Item# 02C

Agenda Item: Request to renew lease agreement for Parking spaces – RPS Composites at 211 E. 4th Street.

Summary: The Town has received a request from RPS Composites Virginia, Inc., 211 E. 4th street, to renew the lease of ten (10) business parking space as indicated on the attached diagram. This area is a portion of 4th Street. The original lease was approved on October 1, 2019, for a five-year term.

Budget/Funding: None.

Staff Recommendation: Council takes desired action.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PARKING SPACES ALONG FENCE LINE ON THE EAST SIDE
OF THE RED SHED
ENTER RPS PROPERTY THROUGH GATE
FIRE DEPARTMENT ENTRANCE
COMMERCE AVENUE
SOUTH
RPS GATE
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21
DUMPSTER
EAST
RPSVA
WEST
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14
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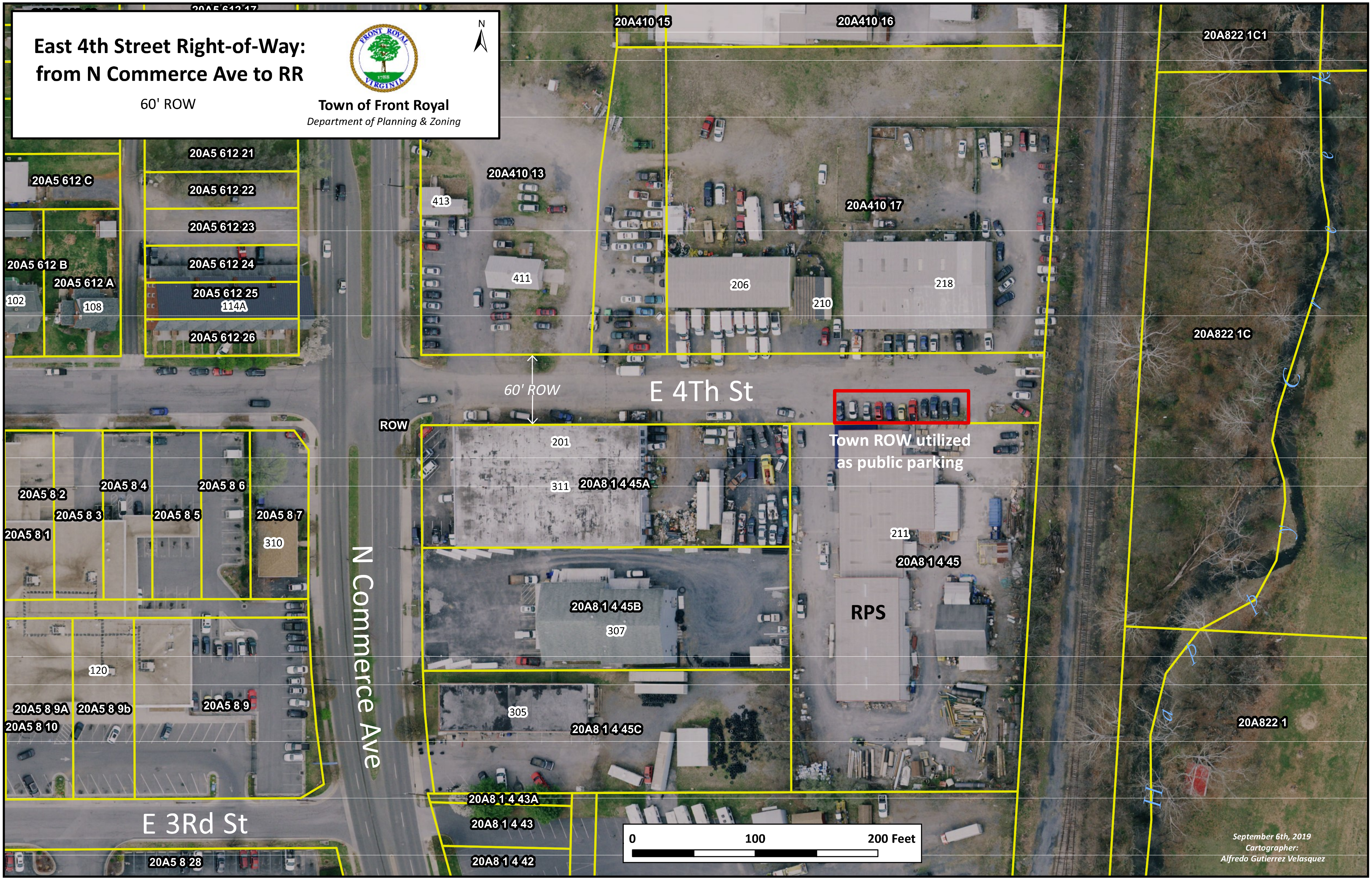
11
NORTH
VISITORS
ONLY
NO
PARKING
ANYTIME
RPS GATE
Lease
Request
1 & 2
Lease request ---Lease Request
3 4 5 6 7 8 9 10
EAST 4TH STREET



East 4th Street Right-of-Way:
from N Commerce Ave to RR
60' ROW
Town of Front Royal
Department of Planning & Zoning
N
E 4Th St
60' ROW
ROW
N Commerce Ave
E 3Rd St
Town ROW utilized as public parking
RPS
20A410 15
20A410 16
20A822 1C1
20A410 13
20A410 17
20A822 1C
20A822 1
20A5 612 21
20A5 612 22
20A5 612 23
20A5 612 24
20A5 612 25
20A5 612 26
20A5 612 C
20A5 612 B
20A5 612 A
20A5 8 1
20A5 8 2
20A5 8 3
20A5 8 4
20A5 8 5
20A5 8 6
20A5 8 7
20A5 8 9
20A5 8 9A
20A5 8 9b
20A5 8 10
20A5 8 28
20A8 1 4 45A
20A8 1 4 45B
20A8 1 4 45C
20A8 1 4 45
20A8 1 4 43A
20A8 1 4 43
20A8 1 4 42
413
411
206
210
218
201
311
211
307
305
310
120
114A
102
108
0
100
200 Feet
September 6th, 2019
Cartographer:
Alfredo Gutierrez Velasquez

<u>Request to Lease Town Property for Business Parking</u> – *Town Manager*

SUMMARY: Council has received a request from RPS Composites Virginia, Inc., 211 E 4th Street, to lease business parking space as indicated on the attached diagram "lease request". This area is a portion of 4th Street.

Below is a letter of request from RPS Composites with sketch and map of area.

RPS COMPOSITES letter:

September 4, 2019

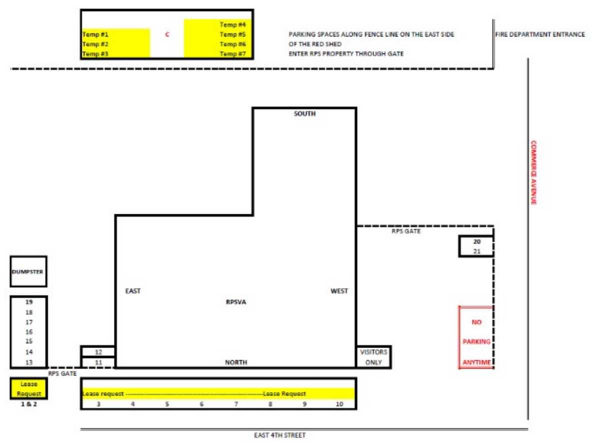
RE: Right of Way Lease Request

To Whom It May Concern

RPS Composites Virginia, Inc. has resided at 211 East 4th Street for over 28 years (under various names). Recently, a used car dealership moved into the space at the corner of Commerce Ave and East 4th street and they lease the property (garage) at the far end of 4th street as well. Since this dealership moved in, our employees have had to fight for parking space and our customers have no place at all to park. It has become increasingly difficult for our vendors to navigate the area due to the overcrowding of used vehicles along our building and in the street.

We have made numerous requests to the owner to come to any compromise with the dealership over parking. Every request is either ignored or met with vulgar responses. In an effort to avoid future conflict and allow our employees and customers adequate parking, we are requesting to lease the right of way along our property from the Town of Front Royal. I have attached a sketch of our property with the requested lease area indicated.

We greatly appreciate you taking the time to consider our request and look forward to hearing back from you in the near future.



Council Discussion: Mr. Waltz noted that they are requesting lease of parking for down past the gate and he suggested parking in front of their site, perhaps 5-6 spaces. Council voiced support for the lease of five years for $1 and Staff noted that they would work on the paperwork and bring the matter forward at an upcoming meeting for an official vote.

LEASE AND L ICENSE AG R EE M E N T

THIS LEASE AND LICENSE AGREEMENT, is made and entered into this 1st day of October, 2019, by and between the **TOWN OF FRONT ROYAL, VIRGINIA,** a municipal corporation, hereinafter referred to as the "Town", and **RPS COMPOSITES VIRGINIA, INC.** a Virginia corporation, hereinafter referred to as "RPS".

WHEREAS, RPS has done business at 211 East 4th Street for over 28 years (under various names). Recently, another business moved nearby RPS and it has become increasingly difficult for vendors, customers and employees of RPS to find spaces to park, and RPS has not been able to reach an accommodation with its neighbors as to parking.

WHEREAS, in an effort to avoid future conflict and allow vendors, employees and customers adequate parking, RPS requests from the Town a lease and license of the Town's right of way along the property of RPS in the area of the attached sketch of the property of RPS.

WHEREAS, the Town is willing to authorize this lease and license of the use of its rights of way by RPS **SUBJECT** to the following terms and conditions.

That for and in consideration of the sum of **ONE DOLLAR ($1.00) per annum,** paid by the RPS to the Town , the parties do hereby agree as follows:

1. **PREMISES** - The Town agrees to lease and license to RPS so much of the Town's Property located on the Town's public right-of-way of East 4th Street as shown on

the attached sketch (the "Property"), which is made an integral part hereof as Exhibit "1", marked on said Exhibit "1" as "Lease Request" "1" through "10", signifying ten (10 parking spaces to be reserved for the employees, customers, and vendors of RPS, said parking spaces to be located on the north side of and parallel to the publicly travelled portion of East 4th Street, for the term of this Lease and License Agreement.

2. **<u>TERM OF LICENSE</u>** - The term of the Lease and License is for a period of **Five (5)** years, commencing on the **1st day of** OCTOBER**, 2019**, and ending DWN on the 30th ____ **day of** SEPTEMBER**, 2024.**

3. **<u>PAYMENT OF LICENSE FEE</u>** - RPS shall pay to the Town an annual Lease and license fee payment of **One Dollar ($1.00)**. The license fee payment shall be paid in advance beginning on the 1st day of ________________, 2019 and on an annual basis thereafter for the term of this Lease and License and any extensions hereunder.

4. **<u>RELEASE AND HOLD HARMLESS</u>** – RPS hereby agrees to hold the Town, its officers, employees, agents, and invitees harmless from any liability pertaining to RPS, RPS's employees, customers, vendors guests, invitees, agents, officers, and contractors use and/or occupancy of the Property.

5. **<u>USE OF PREMISES</u>** – RPS shall not assign this Lease and License Agreement or sublicense the Property. RPS shall not permit or allow any dangerous practice or hazardous condition to occur on the Property, shall not violate any State, Federal, or local law concerning the use of the Property, or permit any illegal activity to occur

thereon. RPS shall not create or allow any nuisance to be or remain upon the Property, except as set forth herein.

7. **ALTERATIONS OR IMPROVEMENTS** - Any alterations, additions, or improvements to the Property shall not be permitted without the written consent of the Town, except as set forth herein. Any permitted alterations, additions, or improvements to the Property shall be performed at the sole expense of the RPS by reputable workmen and contractors approved by the Town. All alterations, additions, or improvements to the Property shall be and remain the sole property of the Town, except as permitted in writing by the Town.

8. **MAINTENANCE** – RPS shall maintain the Property in a safe condition of good repair. RPS shall surrender the Property to the Town at the conclusion of the Lease and License Agreement in the same condition as when RPS accepted the Property from the Town. RPS accepts the Property **"as is", "where is"**. It is specifically understood that the Town has no obligation to RPS to make any repairs, improvements, or replacements whatsoever to the Property during the period of the Lease and License Agreement. The Town does not warrant or guarantee as to the suitability of the Property for any particular purposes.

9. **TERMINATION** - This Lease and License Agreement may be terminated by either party for any reason six (6) months from the date of mailing or hand delivery a written notice of termination to the other party, without liability therefor. For the purposes of this Lease and License Agreement, all notices shall be made in writing and shall be delivered by first class mail or hand delivered to the parties at the addresses stated herein, to-wit:

TOWN OF FRONT ROYAL
C/O Front Royal Town Manager
102 East Main Street
Front Royal, Virginia 22630

RPS COMPOSITES VIRGINIA, INC.
C/O Office Manager
211 East 4th Street
Front Royal, Virginia 22630

Except as provided herein, any fixtures or personal property which remains upon the Property upon termination or expiration of the Lease and License Agreement shall become the sole property of the Town at the sole option of the Town.

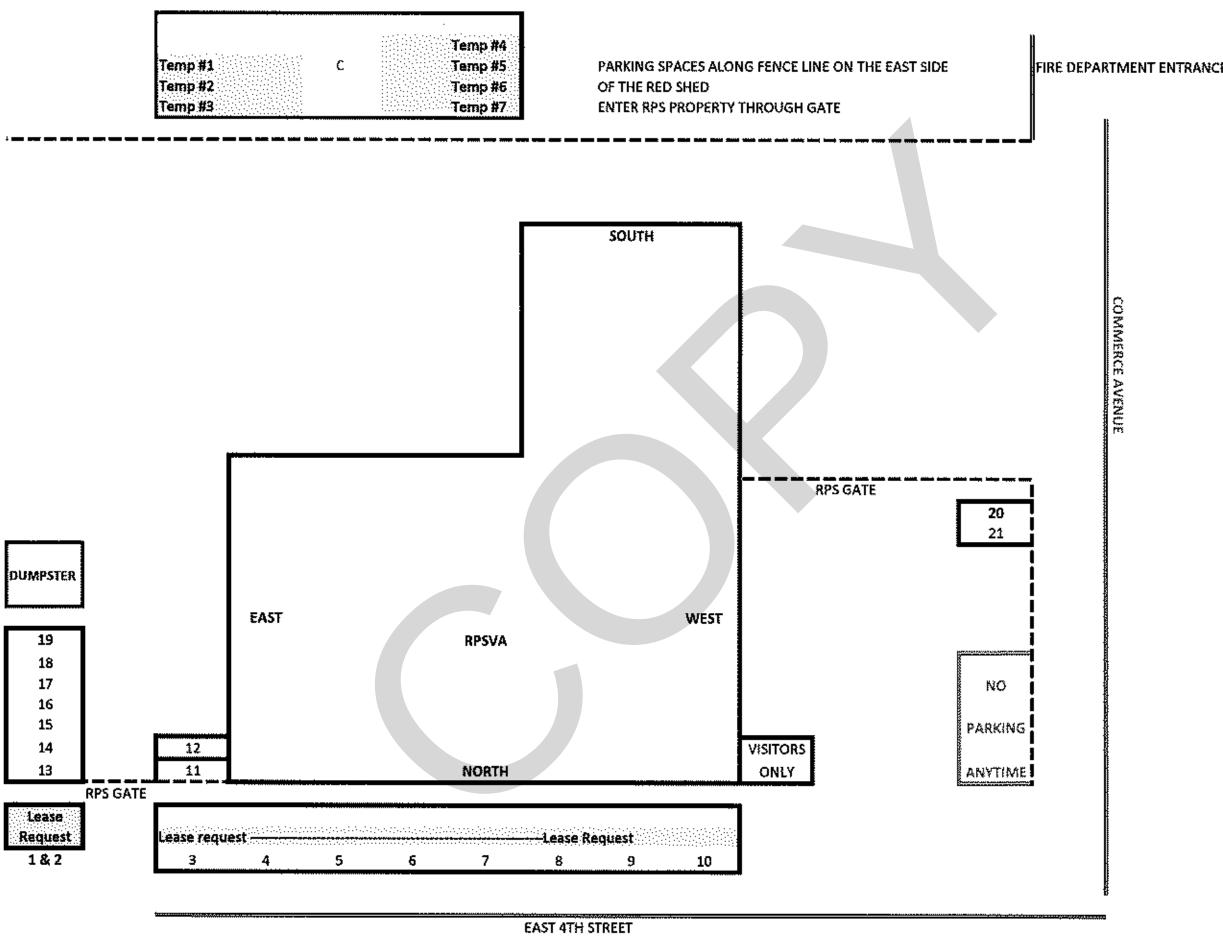
10. AUTHORITY- All parties and signatories hereto affirmatively represent that by signing this Lease and License Agreement and all Exhibits hereto, that they have all necessary and appropriate authority of their representative organizations to do so and legally bind their organizations hereto.

11. INTERPRETATION - The interpretation of the provisions of this Lease and License Agreement shall be in accordance with the laws of the Commonwealth of Virginia.

12. MODIFICATION AND EXTENSIONS - Modification of the terms and conditions of this Lease and License Agreement and extensions or renewals of this License Agreement shall not be permitted, unless agreed to in writing and executed with the same formality as this Agreement.

GIVEN under our hands this 14th day of October, 2019.

[SIGNATURES NEXT PAGE FOLLOWING]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EAST
RPSVA
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11
NORTH
VISITORS ONLY
NO PARKING ANYTIME
RPS GATE
Lease Request
1 & 2
Lease request
Lease Request
3
4
5
6
7
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9
10
EAST 4TH STREET
COPY

E 4th St – Parking Spaces

TOWN OF FRONT ROYAL, VIRGINIA (SEAL)

BY: ______________________________
JOSEPH E. WALTZ, TOWN MANAGER

RPS COMPOSITES VIRGINIA, INC, (SEAL)

BY: ______________________________
NAME/TITLE

APPROVED AS TO FORM:

____
Douglas W. Napier, Town Attorney

RPS COMPOSITES
ENGINEERED COMPOSITE SOLUTIONS

September 4, 2019

RE: Right of Way Lease Request

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We have made numerous requests to the owner to come to any compromise with the dealership over parking. Every requests is either ignored or met with vulgar responses.

In an effort to avoid future conflict and allow our employees and customers adequate parking, we are requesting to lease the right of way along our property from the Town of Front Royal. I have attached a sketch of our property with the requested lease area indicated.

We greatly appreciate you taking the time to consider our request and look forward to hearing back from you in the near future.

Thank you,

K. Renz

K. Renz
Office Manager

RPS Composites Virginia, Inc.
211 East 4th St | Front Royal, VA 22630
(540) 635-2131 p | (540) 518-9077

COUNCIL REGULAR WORK SESSION
AGENDA STATEMENT

Meeting Date: September 3, 2024 Item# 02D

Agenda Item: Waiver of Special Use Permit Application Fee for the Salvation Army's requested Mural located at 296 South Street.

Summary: Council has received a request from the Salvation Army to waive the $400 Special Use Permit application fee to allow the painting of a mural on the west side of their building at 296 South Street.

The Salvation Army has submitted an application to paint a mural on the west side of their building located at 296 South Street. The mural will be approximately 14.5 feet by 18.5 feet in size and will feature a design in gray, black, and white, with the Salvation Army shield and bluebells in color. Per the Town Code any mural is a sign used or intended to attract the attention of the public therefore a wall sign permit is required and the maximum size is determined by the length of the building wall (1 square foot of sign per 1 linear foot of the building) with a maximum of sixty (60) square feet. If over the maximum a special use permit is required. The Salvation Army is requesting that the $400 application fee for this permit be waived.

Budget/Funding: N/A

Staff Recommendation: Council takes desired action.

DOING THE MOST GOOD

RECEIVED
AUG 22 2024
Town of Front Royal
Town Manager's Office

William Booth, *Founder*
Lyndon Buckingham, *General*
Commissioner Kelly Igleheart, *Territorial Commander*
Lt. Colonel Allan Hofer, *Divisional Commander*
Captain Ann Hawk, *Corps Officer*

July 26, 2024

Attention: Joe Waltz
Town Manager
Town of Front Royal

Dear Mr. Waltz,

May this letter act as a formal request to exempt the fees corresponding to creation of a new mural at The Salvation Army Family Store.

Over the past two years, numerous civic groups and local community members have come together to support the renovation of our Front Royal Salvation Army. More than $40,000 was raised to rebuild the entire facade of the store and repaint the building as well. Simultaneously, Front Royal's Advisory Committee for Environmental Sustainability (ACES) helped remove dead trees and replace them with above ground planters filled with multi-stem crape myrtles. Those planters were then painted with native flowers by students from Randolph-Macon Academy's ARTATAK team. The results of these projects have significantly improved the look and feel of the entire property, which now visually portrays the importance and value that the Salvation Army brings to our community.

One final piece of this multi-phase project remains that we are all very excited about, and that is the addition of a mural to the west-facing outer wall of the store. Whitney Waller is taking the lead on that mural. Previously a DC based artist, Waller moved to Browntown in 2016, then into the town of Front Royal in 2019. She is involved in multiple downtown art initiatives, such as the burgeoning Stone Branch Center for the Arts and the current group show at Melissa Ichiuji's Gallery, and can frequently be found drawing musicians on weekends at many downtown businesses.

The proposed mural will consist of an adult black bear and its cub embracing the Salvation Army shield. The shield will be in color and will adhere to Salvation Army's branding standards. The scene will be bordered by a row of native Virginia Bluebells. See mock-up below. With the prospective mural wall facing traffic on South Street, one of Front Royal's main corridors for accessing Shenandoah National Park, we feel that highlighting our native wildlife and flora aligns well with our Town's connectivity to the great outdoors, the Appalachian Trail, and our "Settle In, Venture Out" motto.

The mural will be approximately 14.5' x 18.5' in size, in gray, black, and white, with the shield and bluebells in color.

The mural will be entirely funded by community donors and will require 5 days to complete. Painting the mural will not impede traffic flow or parking. Safety of the artist will be prioritized at all times.

Recognizing that this mural, as well as the aforementioned beautification projects on the same property, have been a community-led effort, and recognizing that these improvements along a high-visibility corridor in Front Royal will add considerable value to our Town's image to both the local community and visitors, we would like to request an exemption of any Town fees associated with the mural approval process.

Thank you for your time and consideration of this project.
Captain Ann Hawk, Corps Officer, The Salvation Army, 540-323-4095, Ann.Hawk@uss.salvationarmy.org
Justin Proctor, ACES Member, 607-229-6255, c.justin.proctor@gmail.com
Whitney Waller, Artist

RECEIVED
AUG 15 2024
TOWN OF FRONT ROYAL
PLANNING & ZONING DEPARTMENT

TOWN OF FRONT ROYAL

DEPARTMENT OF PLANNING & ZONING
102 EAST MAIN STREET
P.O. BOX 1560
FRONT ROYAL, VA 22630
Main: 540.635.4236
Fax: 540.631.1007
Internet: www.frontroyalva.com

SUP #2400483

SPECIAL USE PERMIT REQUEST

APPLICANT

NAME The Salvation Army PHONE 540-635-4020

ADDRESS 357 Cloud St. Front Royal

E-MAIL frontroyalva@uss.salvationarmy.org

PROPERTY DESCRIPTION

PROPERTY ADDRESS 296 ~~SHORT~~ South STREET

TAX MAP - SECTION 20A816B BLOCK - LOT -

SUBDIVISION NAME ______ ACREAGE .1286

REQUEST

ZONING DISTRICT C-1 SOUTH RIVER

PROPOSED USE OF PROPERTY NEW MURAL

SPECIFIC SPECIAL USE PERMIT REQUEST MURAL ON WEST SIDE OF BUILDING. PLEASE SEE ATTACHED SHEET FOR MORE DETAILS.

ATTACHMENTS --The following *must* be submitted with the application. Additional information may be required depending on the nature of the request.

1. Survey/Plat of property showing all **existing** improvements. (10 copies if larger than 11" X 17")
2. Site Plan Application → REQUESTING EXEMPTION
3. Application Fee of $400.00 (Checks payable to the Town of Front Royal)
4. Additional information as required by the Department of Planning & Zoning.

CERTIFICATION

I certify that the information provided with this application is correct to the best of my knowledge and should the special use permit be granted, the project will comply with the conditions imposed upon it and will be implemented only as approved by Town Council.

Signature [signature] Date 7/6/24

By submitting this application, the applicant grants permission to Town officials and employees to enter upon the property, which is the subject of this application, during reasonable hours and for purposes related to the application process.

Receipt # Pd $400.00 CK#1004 Date Paid 8-15-24

Revised 2-15-13

4 July, 2024

To the Town of Front Royal,

Over the past two years, numerous civic groups and local community members have come together to support the renovation of our Front Royal Salvation Army. More than $40,000 was raised to rebuild the entire facade of the store and repaint the building as well. Simultaneously, Front Royal's Advisory Committee for Environmental Sustainability (ACES) helped remove dead trees and replace them with above ground planters filled with multi-stem crape myrtles. The results of these projects have significantly improved the look and feel of the entire property, which now visually portrays the importance and value that the Salvation Army brings to our community.

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The proposed mural will consist of an adult black bear and its cub embracing the Salvation Army shield. The shield will be in color and will adhere to Salvation Army's branding standards. The scene will be bordered by a row of native Virginia Bluebells. See mock-up below. With the prospective mural wall facing traffic on South Street, one of Front Royal's main corridors for accessing Shenandoah National Park, we feel that highlighting our native wildlife and flora aligns well with our Town's connectivity to the great outdoors, the Appalachian Trail, and our "Settle In, Venture Out" motto.

The mural will be approximately 14.5' x 18.5' in size, in gray, black, and white, with the shield and bluebells in color.

The mural will be entirely funded by community donors and will require 5 days to complete. Painting the mural will not impede traffic flow or parking. Safety of the artist will be prioritized at all times. The mural has been approved by the Salvation Army Board of Directors.

Thank you for your time and consideration of this project.
Captain Ann Hawk, Corps Officer, Potomac Division, 540-323-4095, Ann.Hawk@uss.salvationarmy.org
Justin Proctor, ACES Member, 607-229-6255, c.justin.proctor@gmail.com
Whitney Waller, Artist

(Mural mockup on next page)


THE SALVATION ARMY

additional unlimited wall signs may be permitted, within the maximum area permitted by Section 175-106B.2.b[3], as part of a coordinated design package, reviewed in conjunction with the Special Permit. Such structures previously granted a Special Permit may apply for additional signage by amendment to the Special Permit.

(Amended [1] 6-26-95 and 7-28-03-Effective Upon Passage)

[2] Types of Signs Permitted: Wall, ground mounted, monument style, projecting, window, awning, canopy, marquee, permitted temporary, sandwich board, and traditional flag.

(Amended by adding *"sandwich board style signs"* 11-22-10-Effective Upon Passage)
(Amended by adding *"traditional flag"* 1-9-12-Effective Upon Passage)

[3] Maximum Size of Signs:

[a] Wall or Marquee Sign: One (1) square foot per linear foot of building width on which the sign is to be attached, up to a maximum of sixty (60) square feet of signage on any building elevation which fronts on a public street or parking area; provided, however, that the maximum size of any wall sign for a business located within 1,000 feet of the right-of-way of Interstate 66 shall be 120 square feet. In addition to the basic 60 square feet sign area, structures permitted by Special Permit with a gross floor area of 50,000 square feet or more, may be permitted to increase the total wall sign area, calculated as described herein, not to exceed 120 square feet of additional area, for a maximum total of 180 square feet. Such additional sign area shall be permitted only as part of a coordinated design package reviewed in conjunction with the Special Permit application. Such structures previously granted a Special Permit for increased building area may apply for additional sign area by amendment to the Special Permit. Artistic murals containing business or product advertising may be approved for a size exceeding sixty (60) square feet by special permit, pursuant to Section 175-136, when located outside the Historic Overlay District or by the Board of Architectural Review, pursuant to Section 175-88, when located within the Historic Overlay District.

(Amended [a] 11-8-93, 6-26-95, 5-28-02 and 7-28-03-Effective Upon Passage)

[b] Ground Mounted or Monument Signs: On lots with 100 feet or more of lot width, one (1) square foot per three (3) linear feet of lot width on the side where the sign is to be located, up to a maximum size of sixty (60) square feet and a maximum height of twenty (20) feet. Lots with less than 100 feet of lot width shall conform to the maximum size in Section 175-106A.9.a.[1]. On shared signs permitted pursuant to Section 175-106B.2.h. a maximum size of sixty (60)

COUNCIL REGULAR WORK SESSION
AGENDA STATEMENT

Meeting Date: September 3, 2024 Item# 02E

Agenda Item: Ordinances to Adopt and Re-enact a Republished Town Code and to Amend and Re-enact Chapter 1 and Repeal Chapters 43 and 180

Summary: Staff has been working with Municode/CivicPlus to republish the Town Code to enhance its appearance and make it more easily accessible and searchable. Pursuant to VA State Code §15.2-1433, municipal codes are required to be approved by Council through an ordinance when a republish occurs.

During the review process it was determined the following chapters needed attention and therefore it is suggested they be approved as such in a separate ordinance approved by Council.

- Chapter 1, General Provisions - amend and re-enact to coincide with the republish.
- Chapter 43, Air Pollution - repealed in 1985 but was never removed from the Code
- Chapter 180, Franchise Agreements – remove as they are not required to be codified. Most of the agreements are either not updated with the current agreement or no longer exist. Most localities do not codify their franchise agreements.

This item is budgeted.

CLICK HERE FOR THE NEW REPUBLISHED CODE:
http://www.municode.com/resources/gateway.aspx?productId=17260

Budget/Funding: 1204-43053 – IT Department - Computer Licensing

Staff Recommendation: Council approves the advertisements for public hearings on the two separate ordinance for September 23rd.

AN ORDINANCE ADOPTING AND ENACTING A REPUBLISHED CODE FOR THE TOWN OF FRONT ROYAL, VIRGINIA; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

BE IT ORDAINED BY THE TOWN COUNCIL:

Section 1. The Code entitled "Code of Front Royal, Virginia," referred as "Front Royal Town Code" published by MUNICODE powered by CivicPlus, consisting of Chapters 1 through 200, each inclusive, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before April 22, 2024, and not included in the Code or recognized and continued in force by reference therein, are repealed.

Section 3. The repeal provided for in Section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

Section 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished in accordance with Code Chapter 1, General Penalties, as adopted. Each act of violation and each day upon which any such violation shall continue or occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section, whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the Town may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.

Section 5. Additions or amendments to the Code when passed in such form as to indicate the intention of the Town Council to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 6. Ordinances adopted after April 22, 2024, that amend or refer to ordinances that have been codified in the Code, shall be construed as if they amend or refer to like provisions of the Code.

Section 7. This ordinance shall become effective ______________________________.

APPROVED:

____
Lori A. Cockrell, Mayor

ATTEST:

____
Tina L. Presley, Clerk of Council

Vote/Certification on next page

This Ordinance was approved at the Regular Meeting of the Town of Front Royal, Virginia Town Council conducted on __________________________, 2024 upon the following recorded vote:

R. Wayne Sealock	__Yes __No	H. Bruce Rappaport	__Yes __No
Joshua L. Ingram	__Yes __No	Melissa DeDomenico-Payne	__Yes __No
Amber F. Morris	__Yes __No	Glenn E. Wood	__Yes __No

A public hearing on the above was held on ______________________having been advertised in the Northern Virginia Daily on____.

****

Approved as to Form and Legality:

____
George M. Sonnett, Jr., Town Attorney Dated: __________________________

****

Certificate of Adoption

I hereby certify that the foregoing is a true copy of the ordinance passed at the regular meeting of the county council, held on the ______day of ______________ , 2024.

____
Clerk of the Council

AN ORDINANCE TO AMEND FRONT ROYAL TOWN CODE CHAPTER 1, GENERAL PROVISIONS AND REPEAL CHAPTER 43, AIR POLLUTION AND CHPATER 180, FRANCHISE AGREEMENTS

WHEREAS, an Ordinance adopting and enacting a republished Code for the Town of Front Royal, Virginia, referred as *"Front Royal Town Code",* was adopted by Town Council ________________________________; and,

WHEREAS, upon adoption of the republished Code, it is suggested that Chapter 1, General Provisions be amended and revised; and that Chapters 43, Air Pollution and 180, Franchise Agreements be repealed, as shown herein; and,

NOW THEREFORE, BE IT ENACTED, by the Town Council of the Town of Front Royal, Virginia, that Chapter 1, General Provisions; Chapter 43, Air Pollution; and Chapter 180, Franchise Agreements, hereby be amended and repealed as follows:

Chapter 1

GENERAL PROVISIONS

Sections:

1-1 CODE ADOPTED AND DESIGNATED

There is hereby adopted by the Council of the Town of Front Royal, Virginia, that certain Code entitled the "Code of Front Royal, Virginia," referred to hereinafter as the "Front Royal Municipal Code" containing certain ordinances of a general and permanent nature consisting of Chapters 1 through 200 inclusive. Such Code as being recodified or republished in 1951, 1965, 1985 and 1997.

1-2 WHEN EFFECTIVE

The provisions of the Front Royal Municipal Code, as republished, shall be in force and effective upon adoption ______________________________.

1-3 REPEALER

All ordinances of a general and permanent nature enacted on or before April 22, 2024, and not included in the Front Royal Municipal Code or recognized and continued in force by reference therein are repealed. The repeal shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

1-4 PROVISIONS AND ORDINANCES SAVED FROM REPEAL

The repeal provided for in the preceding section shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established accruing before the adoption of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the adoption of this ordinance; nor shall such repeal affect any ordinance or resolution promising or guaranteeing payment of money by or for the Town or authorizing the issue of any bonds of the Town or any evidence of indebtedness or any contract or obligation assumed by the Town; nor shall it affect any right or franchise conferred by ordinance or resolution of the Town on any person or corporation; nor shall it affect any ordinance adopted for purposes which have been consummated or any ordinance which is temporary, although general in effect, or special, although permanent in effect; nor shall it affect any of the following ordinances or any amendment thereto:

A. Any appropriation ordinance.

B. Any ordinance levying or imposing taxes.

C. Any ordinance providing for any public improvement.

D. Any ordinance making any assessment.

E. Any ordinance opening, relocating, closing, vacating, altering, or naming any Town rights-of-way, including but not limited to streets and alleys.

F. Any ordinance relative to salaries, wages or compensation or bonds of Town employees, officials or members of boards and commissions.

G. Any ordinance establishing, extending or contracting the corporate limits of the Town.

H. Any ordinance relative to changes in the Zoning Map.

I. Any ordinance relative to utility connections and rate charges supplied by and connected to the Town's utility systems including electricity, water and sewer.

1-5 SEVERABILITY

If any part, section, subsection, sentence, clause, word or phrase of this ordinance or of the Front Royal Municipal Code, is for any reason declared by a court of competent jurisdiction to be unconstitutional or invalid, it shall be severed from the body of this ordinance or Code, and such decision shall not affect the validity of the remainder of this ordinance or of such Code.

1-6 AVAILABILITY OF COPIES

Pursuant to §15-2-1433 VA Code, a copy of the Front Royal Municipal Code shall be made available for public inspection during normal business hours in the Office of the Clerk of Council.

1-7 GENERAL PENALTY

A. Whenever a provision in this Code or other ordinance of the Town prescribes punishment by stating that the act or offense or the failure to do any act is a misdemeanor or unlawful, and no specific penalty is provided therefore, the act or offense or failure to do any act shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500.00) or by imprisonment in jail for a period of not exceeding twelve (12) months, either or both, except that acts or offenses or the failure to do any act considered Class II Misdemeanors in any similar statute of the Commonwealth of Virginia shall be punished by a fine of not more than one thousand dollars ($1,000.00), or confinement in jail for not more than six (6) months, either or both, and that acts or offenses or the failure to do any act considered Class III Misdemeanors in any similar statute of the Commonwealth of Virginia shall be punished by a fine of not more than five hundred dollars ($500.00), and that acts or offenses or the failure to do any act considered Class IV Misdemeanors in any similar statute of the Commonwealth of Virginia shall be punished by a fine of not more than two hundred fifty dollars ($250.00).

B. In no case shall the penalty of any Town ordinance exceed the penalty imposed in a similar statute of the Commonwealth of Virginia. In the event that any Town ordinance should provide a penalty exceeding that imposed in a similar statute of the Commonwealth of Virginia, the Town penalty shall be considered null and void, and said penalty provision shall be severed from the ordinance, and the lesser penalty of the similar statute of the Commonwealth of Virginia shall be thereupon incorporated by reference, to be employed in lieu of the severed penalty provision of the Town ordinance.

C. Except where otherwise provided, each day any violation of this Code or of any such ordinance, rule or regulation shall continue shall constitute a separate offense.

1-8 DEFINITIONS

A. In the interpretation and construction of this Code and of all ordinances of the Town, the following definitions and rules of construction shall be observed, unless they are inconsistent with the manifest intent of the Council or the context clearly requires otherwise:
BOND - When a bond is required, an undertaking in writing shall be sufficient.

CHIEF OF THE FIRE DEPARTMENT; FIRE CHIEF - The Chief of the Warren County Department of Fire and Rescue Services.

CODE - The Code of the Town of Front Royal, Virginia or Front Royal Municipal Code.

COMPUTATION OF TIME - When a notice is required to be given or any other act to be done a certain time before any proceeding, there must be that time, exclusive of the day for such proceeding, but the day on which such notice is given, or such act is done, may be counted as part of the time; but when a notice is required to be given or any other act to be done within a certain time after any event, that time shall be allowed in addition to the day on which the event occurred.

COUNCIL - The Town Council of the Town of Front Royal, Virginia.

COUNTY - The County of Warren, Virginia.

FOLLOWING - When used by way of reference to any section or sections in the Code, next following that in which such reference is made.

HEALTH OFFICER - The State Health Officer of Warren County or his authorized agent or representative.

MONTH - A calendar month.

NUMBER - A word importing the singular number only may extend and be applied to several persons and things, as well as to one (1) person or thing; and a word importing the plural number only may extend and be applied to one (1) person or thing, as well as to several persons or things.

OATH - Includes an affirmation in all cases in which by law an affirmation may be substituted for an oath.

OFFICIAL TIME STANDARD - Whenever particular hours are specified in this Code relating to the time within which any act shall be performed by any person, the time applicable shall be the official standard time or daylight savings time, whichever may be in current use in the Town.

OWNER - As applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or part of such building or land.

PERSON - Includes a firm, partnership, association of persons, corporation, organization or any other group acting as a unit.

PRECEDING - When used by way of reference to any section or sections in this Code, shall be construed to mean next preceding that in which such reference is made.
PROPERTY - Real, personal or mixed property.

PUBLIC GROUNDS - The parks and all public lands owned or leased by the Town, and those parts of public places which do not form traveled parts of streets as defined in this section.

SHALL - Shall be mandatory.

SIDEWALK - Any portion of a street between the curbline, or the lateral lines of a roadway where there is no curb, and the adjacent property line intended for the use of pedestrians.

SIGNATURE; SUBSCRIPTION - Includes a mark when the person cannot write, his name being written near it, and being witnessed by a person who writes his own name as a witness.

STATE - The Commonwealth of Virginia.

STREET - Includes avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the Town and shall mean the entire width thereof between abutting property lines; it shall be construed to include a sidewalk or footpath, unless the contrary is expressed or unless such construction would be inconsistent with the manifest intent of the Town Council.

SWEAR; SWORN - Equivalent to the word "affirm" or "affirmed" in all cases in which by law an affirmation may be substituted for an oath.

TOWN - The Town of Front Royal, in the County of Warren and Commonwealth of Virginia.

WRITTEN; IN WRITING - Includes typewriting, printing on paper and any other mode of representing words and letters.

YEAR - A calendar year, unless a fiscal year is indicated.

1-9 CORPORATE SEAL

A. The Corporate Seal of the Town shall be a design within a circle one and one-half (1 1/2) inches in diameter, with *"Corporate Seal"* therein. Around the edge shall be this inscription: *"Front Royal, Warren County, Virginia"*.

B. No other seal shall be used for the Town, and no paper issued by municipal authority, which requires the Seal of the Town, shall be valid unless the Seal prescribed above shall be duly affixed thereto.

1-10 SALE OF TOWN PROPERTY

A. No real estate owned by the Town shall be sold unless the following requirements have been complied with:

1. Pursuant to §15.2-2204 VA Code, the Town Council shall hold a public hearing upon the question of the sale after been published once a week for two successive weeks in some

newspaper published or having general circulation in the locality, with the first notice appearing no more than 14 days before the intended adoption and not less than six (6) days elapsing between the first and second publication.

2. The Town Council shall authorize by resolution the terms of the sale.

3. Bids shall be accepted by the Manager of Purchasing on the date such property is advertised for sale.

4. The Town Council shall authorize the acceptance or rejection of the best bid at the first available regular Town Council meeting.

B. No personal property owned by the Town shall be sold unless the following requirements have been complied with:

1. The Town Manager, or his designated agent, shall cause to be published in a newspaper having general circulation in the Town, an advertisement arranging the sale including the date, time and place of the sale.

2. The sale shall be held by public auction and/or online public auction to the highest bidder, and such shall be conducted at the place, date and time such property is advertised for sale.

C. Any deviation from the foregoing procedures shall be authorized by resolution adopted by the Town Council, with the reasons therefore stated therein.

~~**Chapter 1**~~

~~**GENERAL PROVISIONS**~~

~~**Sections:**~~

~~**1-11 CODE ADOPTED**~~
~~**1-12 WHEN EFFECTIVE**~~
~~**1-13 REPEALER**~~
~~**1-14 PROVISIONS SAVED FROM REPEAL**~~
~~**1-15 SEVERABILITY**~~
~~**1-16 DELECTIONS FROM PRINTED VOLUMES**~~
~~**1-17 EFFECT ON ORDINANCES ADOPTED BY SUBSEQUENT TO CERTAIN DATE**~~
~~**1-18 FILING OF COPIES**~~
~~**1-19 THROUGH 14 (RESERVED)**~~
~~**1-15 GENERAL PENALTY**~~
~~**1-16 DESIGNATION OF CODE**~~
~~**1-17 DEFINITIONS**~~
~~**1-18 CONTINUATION OF EXISTING PROVISIONS**~~
~~**1-19 SEVERABILITY OF CODE PROVISIONS**~~
~~**1-20 CATCHLINES OF SECTIONS**~~

~~**1-21 CORPORATE SEAL**~~
~~**1-22 SALE OF TOWN PROPERTY**~~

~~Adopted by the Town Council of the Town of Front Royal 3-11-85. *(formerly Chapter 1 of the 1965 Code including adoptions/amendments 1-25-71; 5-26-80)*~~

~~1-1 CODE ADOPTED~~

~~Be it ordained and enacted by the Council of the Town of Front Royal, Virginia as follows:~~

~~There is hereby adopted by the Council of the Town of Front Royal, Virginia, that certain Code entitled the "Code of the Town of Front Royal, Virginia," containing certain ordinances of a general and permanent nature as revised, compiled, consolidated and codified in the chapters therein, as follows: Chapters 1 through 180, inclusive.~~

~~1-2 WHEN EFFECTIVE~~

~~The provisions of the Code of the Town of Front Royal, Virginia, as revised and recodified, shall be in force and effect immediately upon the adoption of this ordinance.~~

~~1-3 REPEALER~~

~~All ordinances of the Town of Front Royal, Virginia, which were enacted on or before October 8, 1984, which are not contained in the revised and recodified Code of the Town of Front Royal, Virginia, hereby adopted, and which are not excepted herein, are hereby expressly repealed effective immediately upon the adoption of this ordinance.~~

~~1-4 PROVISIONS SAVED FROM REPEAL~~

~~The repeal provided for in the preceding section of this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the adoption of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the adoption of this ordinance; nor shall such repeal affect any ordinance or resolution promising or guaranteeing payment of money by or for the Town or authorizing the issue of any bonds of the Town or any evidence of indebtedness or any contract or obligation assumed by the Town; nor shall it affect any right or franchise conferred by ordinance or resolution of the Town on any person or corporation; nor shall it affect any ordinance adopted for purposes which have been consummated or any ordinance which is temporary, although general in effect, or special, although permanent in effect; nor shall it affect any of the following ordinances or any amendment thereto;~~

~~A. Any appropriation ordinance.~~

~~B. Any ordinance levying or imposing taxes.~~
~~C. Any ordinance providing for any public improvement.~~
~~D. Any ordinance making any assessment.~~

~~E. Any ordinance opening, relocating, closing, altering, or naming any streets or alleys.~~

~~F. Any ordinance relative to salaries, wages or compensation or bonds of Town employees and officials or members of Town boards or commissions.~~

~~G. Any ordinance establishing, extending or contracting the corporate limits of the Town.~~

~~H. Any ordinance relative to changes in the Zoning Map.~~

~~I. Any ordinance relative to electrical connection charges for connection with the electrical lines or system.~~

~~J. Any ordinance relative to rates charged by the Town for electricity supplied by the Town.~~

~~K. Any ordinance designating parking meter zones.~~

~~L. Chapter 23, Sections 23-1, 23-2, 23-3 and 23-4 of the 1965 Code of the Town of Front Royal, pertaining to voting precincts. (These sections will be renumbered and included in Chapter 34 of the Code adopted herein.)~~

~~M. Chapter 1, Sections 1-1, 1-2, 1-3, 1-4, 1-5, 1-6 and 1-7 of the 1965 Code of the Town of Front Royal, pertaining to General Provisions. (These sections will be renumbered and included in a chapter of the Code adopted herein.)~~

~~N. Chapter 2, Article III, Section 2-43, of the 1965 Code of the Town of Front Royal, pertaining to the Industrial Development Authority. (This section will be renumbered and included in a chapter of the Code adopted herein.)~~

~~1-5 SEVERABILITY~~

~~If any part, section, subsection, sentence, clause, word or phrase of this ordinance or of the Code of the Town of Front Royal, Virginia, is for any reason declared by a court of competent jurisdiction to be unconstitutional or invalid, it shall be severed from the body of this ordinance or Code, and such decision shall not affect the validity of the remainder of this ordinance or of such Code.~~

~~1-6 DELETIONS FROM PRINTED VOLUMES~~

~~A. The following ordinances as printed in the revised edition of the Code of the Town of Front Royal, Virginia, are surplusage and are not to be included as part of the newly adopted Code:~~

1. ~~Section 110-27, Slander and liable.~~
2. ~~Section 134-14, Petition by property owners for extension of sewer service.~~

3. ~~Section 134-15, Report to petitioners.~~

~~4. Chapter 31, pertaining to the Police Department.~~

~~5. Chapter 16, Sections 16-1, 16-2, 16-3, 16-4, 16-5, 16-6, 16-7, 16-8, 16-9 and 16-10, pertaining to the Industrial Development Authority.~~

~~6. Chapter 43, Sections 43-1, 43-2, 43-3, 43-4, 43-5, 43-6, 43-7, 43-8, pertaining to air pollution.~~

~~7. Chapter 51, pertaining to abandoned bicycles.~~

~~B. The aforementioned sections and chapters are hereby declared to be reserved for future use.~~

~~1-7 EFFECT ON ORDINANCES ADOPTED SUBSEQUENT TO CERTAIN DATE~~

~~Neither the repeal provided for in Section 1-3 of this ordinance, nor the provisions of the Code of the Town of Front Royal, Virginia, shall be construed to affect any ordinance passed after October 8, 1984.~~

~~1-8 FILING OF COPIES~~

~~A copy of the Code of the Town of Front Royal, Virginia shall be filed in the office of the Town Clerk, and shall be made available to persons desiring to examine the same.~~

~~1-9 THROUGH 14 (RESERVED)~~

~~1-15 GENERAL PENALTY~~

~~A. Whenever a provision in this Code or other ordinance of the Town prescribes punishment by stating that the act or offense or the failure to do any act is a misdemeanor or unlawful, and no specific penalty is provided therefore, the act or offense or failure to do any act shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500.00) or by imprisonment in jail for a period of not exceeding twelve (12) months, either or both, except that acts or offenses or the failure to do any act considered Class II Misdemeanors in any similar statute of the Commonwealth of Virginia shall be punished by a fine of not more than one thousand dollars ($1,000.00), or confinement in jail for not more than six (6) months, either or both, and that acts or offenses or the failure to do any act considered Class III Misdemeanors in any similar statute of the Commonwealth of Virginia shall be punished by a fine of not more than five hundred dollars ($500.00), and that acts or offenses or the failure to do any act considered Class IV Misdemeanors in any similar statute of the Commonwealth of Virginia shall be punished by a fine of not more than two hundred fifty dollars ($250.00).~~

~~B. In no case shall the penalty of any Town ordinance exceed the penalty imposed in a similar statute of the Commonwealth of Virginia. In the event that any Town ordinance should provide a penalty exceeding that imposed in a similar statute of the Commonwealth of Virginia, the Town penalty shall be considered null and void, and said penalty provision shall be severed from the ordinance, and the lesser penalty of the similar statute of the Commonwealth of Virginia shall~~

~~be thereupon incorporated by reference, to be employed in lieu of the severed penalty provision of the Town ordinance.~~

~~C. All acts, offenses or the failure to do any acts punishable under Section 17-28 of the Town Code (since repealed) shall be punishable under the provisions of this section. All references to "Section 17-28 of the Town Code" shall be taken as references to this section.~~

~~D. Except where otherwise provided, each day any violation of this Code or of any such ordinance, rule or regulation shall continue shall constitute a separate offense.~~

~~**(Ord. of 8-12-02)**~~

~~1-16 DESIGNATION OF CODE~~

~~The ordinances embraced in this and the following chapters and sections shall constitute and be designated the "Code of the Town of Front Royal, Virginia", and may be so cited. Such ordinances may also be cited as the "Front Royal Town Code".~~

~~1-17 DEFINITIONS~~

~~A. In the interpretation and construction of this Code and of all ordinances of the Town, the following definitions and rules of construction shall be observed, unless they are inconsistent with the manifest intent of the Council or the context clearly requires otherwise:~~

~~**BOND** - When a bond is required, an undertaking in writing shall be sufficient.~~

~~**CHIEF OF THE FIRE DEPARTMENT; FIRE CHIEF** - The Chief of the Volunteer Fire Department.~~

~~**CODE; THIS CODE** - The Code of the Town of Front Royal, Virginia.~~

~~**COMPUTATION OF TIME** - When a notice is required to be given or any other act to be done a certain time before any proceeding, there must be that time, exclusive of the day for such proceeding, but the day on which such notice is given, or such act is done, may be counted as part of the time; but when a notice is required to be given or any other act to be done within a certain time after any event, that time shall be allowed in addition to the day on which the event occurred.~~

~~**COUNCIL** - The Council of the Town of Front Royal, Virginia.~~

~~**COUNTY** - The County of Warren in the State of Virginia.~~

~~**FOLLOWING** - When used by way of reference to any section or sections in the Code, next following that in which such reference is made.~~

~~**HEALTH OFFICER** - The State Health Officer of Warren County or his authorized agent or representative.~~

~~**MONTH** - A calendar month.~~

~~**OATH** - Includes an affirmation in all cases in which by law an affirmation may be substituted for an oath.~~

~~**OFFICIAL TIME STANDARD** - Whenever particular hours are specified in this Code relating to the time within which any act shall be performed by any person, the time applicable shall be the official standard time or daylight savings time, whichever may be in current use in the Town.~~

~~**OWNER** - As applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or part of such building or land.~~

~~**PERSON** - Includes a firm, partnership, association of persons, corporation, organization or any other group acting as a unit.~~

~~**PRECEDING** - When used by way of reference to any section or sections in this Code, shall be construed to mean next preceding that in which such reference is made.~~

~~**PROPERTY** - Real, personal or mixed property.~~

~~**PUBLIC GROUNDS** - The parks and all public lands owned or leased by the Town, and those parts of public places which do not form traveled parts of streets as defined in this section.~~

~~**SHALL** - Shall be mandatory.~~

~~**SIDEWALK** - Any portion of a street between the curbline, or the lateral lines of a roadway where there is no curb, and the adjacent property line intended for the use of pedestrians.~~

~~**SIGNATURE; SUBSCRIPTION** - Includes a mark when the person cannot write, his name being written near it, and being witnessed by a person who writes his own name as a witness.~~

~~**STATE** - The Commonwealth of Virginia.~~

~~**STREET** - Includes avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the Town, and shall mean the entire width thereof between abutting property lines; it shall be construed to include a sidewalk or footpath, unless the contrary is expressed or unless such construction would be inconsistent with the manifest intent of the Town Council.~~

~~**SWEAR; SWORN** - Equivalent to the word "affirm" or "affirmed" in all cases in which by law an affirmation may be substituted for an oath.~~

~~**TOWN** - The Town of Front Royal, in the County of Warren and Commonwealth of Virginia.~~
~~**WRITTEN; IN WRITING** - Includes typewriting, printing on paper and any other mode of representing words and letters.~~

~~**YEAR** - A calendar year, unless a fiscal year is indicated.~~

~~B. Gender. Words importing the masculine gender only may extend and be applied to females and to corporations as well as males.~~

~~C. Number. A word importing the singular number only may extend and be applied to several persons and things, as well as to one (1) person or thing; and a word importing the plural number only may extend and be applied to one (1) person or thing, as well as to several persons or things.~~

~~1-18 CONTINUATION OF EXISTING PROVISIONS~~

~~The provisions appearing in this Code, so far as they are the same as those in the Code of the Town of Front Royal, Virginia, 1965, and all ordinances adopted subsequent to such Code and included herein, shall be considered as a continuation thereof and not as new enactments.~~

~~1-19 SEVERABILITY OF CODE PROVISIONS~~

~~If any part, section, subsection, sentence, clause or phrase of this Code is for any reason declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remainder of this Code.~~

~~1-20 CATCHLINES OF SECTIONS~~

~~The catchlines of the sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of any section, nor, unless expressly so provided, shall they be so deemed when any section, including its catchline, is amended or reenacted.~~

~~1-21 CORPORATE SEAL~~

~~A. The Corporate Seal of the Town shall be a design within a circle one and one-half (1 1/2) inches in diameter, with "Corporate Seal" therein. Around the edge shall be this inscription: "Front Royal, Warren County, Virginia".~~

~~B. No other seal shall be used for the Town, and no paper issued by municipal authority, which requires the Seal of the town, shall be valid unless the Seal prescribed above shall be duly affixed thereto.~~

~~1-22 SALE OF TOWN PROPERTY~~

~~A. No real estate owned by the Town shall be sold unless the following requirements have been complied with:~~

1. ~~The Town Council shall hold a public hearing upon the question of the sale after two (2) publications in a newspaper published or having general circulation in the Town.~~

~~2. The Town Council shall authorize by resolution the terms of the sale.~~

~~3. Bids shall be accepted by the Purchasing Agent on the date such property is advertised for sale.~~

~~4. The Town Council shall authorize the acceptance, or rejection, of the best bid at the first available regular Town Council meeting.~~

~~B. No personal property owned by the Town shall be sold unless the following requirements have been complied with:~~

~~1. The Town Manager, or his designated agent, shall cause to be published in a newspaper having general circulation in the Town, an advertisement arranging the sale including the date, time and place of the sale.~~

~~2. The sale shall be held by public auction and/or online public auction to the highest bidder, and such shall be conducted at the place, date and time such property is advertised for sale.~~

~~C. Any deviation from the foregoing procedures shall be authorized by resolution adopted by the Town Council, with the reasons therefore stated therein.~~

~~Chapter 43~~
~~AIR POLLUTION~~

~~Sections:~~

~~Adopted by the Town Council of the Town of Front Royal 3-11-85. *(formerly Chapter 2A of the 1965 Code including adoptions/amendments 11-9-64; 12-14-64; 8-23-65).*~~

~~43-1 PROHIBITIONS~~

~~It shall be unlawful for any person who is the owner, operator or in control of any stationary steam boiler to permit or cause to escape into the open air within the Town any dense smoke, soot, cinders or fly ash, as hereinafter defined in Sections 43-2 to 43-4.~~

~~43-2 GRADING OF SMOKE DENSITY~~

~~For the purpose of grading the density of smoke under this chapter, the Ringelmann Chart, as now published and used by the United States Bureau of Mines, which is hereby made a part hereof by reference, shall be the standard. Two (2) copies of such chart shall be deposited with the Town Manager. Smoke shall be considered dense when it is equal to or of greater density than No. 2 on such chart.~~

~~43-3 EXCEPTIONS TO SMOKE DENSITY RESTRICTIONS~~

~~The following shall be exceptions to the provisions of Section 43-2:~~

~~A. When cleaning the boiler or stack.~~

~~B. When a fire box is cleaned out or a new fire is being built therein, smoke shall be permitted of a density equal to but not in excess of No. 2 on such Ringelmann Chart for a period or periods aggregating not more than nine (9) minutes in any one (1) hour or of a density in excess of No. 2 on such chart for a period or periods aggregating not more than six (6) minutes in any one (1) hour.~~

~~C. Blowing of boiler tubes.~~
~~D. In the event of a breakdown of the fuel burning equipment or other failure, which is not reasonably preventable and which causes the emission of smoke of a density greater than No. 2 on the Ringelmann Chart, the emission of such smoke shall be permitted for a reasonable time during the period of such breakdown or failure. The person responsible for such equipment or failure shall forthwith notify the Air Pollution Commission or its representatives of such breakdown or failure, shall give the reasons therefor, shall exercise every reasonable effort to prevent without undue delay the emission of smoke of a density greater than No. 2 on the Ringelmann Chart, shall state when such breakdown or failure will be corrected and shall further notify the Air Pollution Commission or its representatives when such breakdown or failure will be corrected.~~

~~43-4 SOOT, CINDERS AND FLY ASH~~

~~A. Emission prohibited. No person shall cause or allow the escape or emission from any stack into the open air of such quantities of soot, cinders or fly ash in such place or manner as to cause injury, detriment or nuisance to any person or to the public or in such manner as to cause or have a tendency to cause injury or damage to business or property.~~

~~B. Permissible amounts of fly ash.~~

~~1. No person shall operate or cause to be operated or maintained or cause to be maintained any furnace or combustion device for the burning of solid fuel unless the quantity of fly ash emitted into the open air shall not exceed seventy-five hundredths (0.75) grain per cubic foot of flue gas at a stack temperature of five hundred degree's Fahrenheit (500 degrees F), applying to a stack temperature of eight hundred fifty degrees Fahrenheit (850 degrees F) or less, of which amount not to exceed two-tenths (0.2) of a grain per cubic foot shall be of such size as to be retained on a three-hundred twenty-five mesh United States standard~~

~~sieve. These conditions are to be conformed to when the percentage of excess air in the stack does not exceed fifty percent (50%) at full load.~~

~~2. Any person violating the provisions of this subsection shall have ninety (90) days after notification by the Air Pollution Commission or its representative within which to cause such furnace or combustion device to comply with the provisions of this subsection. The Town Council, upon the recommendation of the Air Pollution Commission, may extend this time during a period of construction which is being done to comply with this chapter.~~

~~C. Emission a public nuisance. The escape or emission of soot, cinders and fly ash, as prohibited herein, is hereby declared to be a public nuisance.~~

~~D. Exempted emissions. In the event of a breakdown of any furnace or combustion device mentioned in Subsection B or other failure which is not reasonably preventable and which causes the quantity of fly ash emitted into the open air to exceed the quantity mentioned in such subsection, the emission of such fly ash shall be permitted for a reasonable time during the period of such breakdown or failure. The person responsible for such equipment or failure shall notify forthwith the Air Pollution Commission or its representative of such breakdown or failure, shall give the reasons therefor, shall exercise every reasonable effort to prevent without undue delay the emission of smoke of a greater quantity than permitted by Subsection B, shall state when such breakdown or failure will be corrected and shall notify the Air Pollution Commission or its representative when such breakdown or failure has been corrected.~~

~~E. Defined. As used in this chapter, the following terms shall have the meanings indicated:~~

~~**SOOT, CINDERS AND FLYASH** - Considered to be all matter other than dense smoke, and shall include coke, cinders, dust and soot formed as a result of the combustion of fuel which is carried in the gas stream so as to reach the external air and which have not been completely consumed by the combustion process.~~

~~43-5 AIR POLLUTION COMMISSION~~

~~A. The Town Council, shall, biennially, at the regular Council meeting in September, beginning in 1966, appoint an Air Pollution Commission. Such Commission shall consist of at least three (3) members, who shall hold office until their successors are named as hereinabove provided.~~
~~B. The Air Pollution Commission or its representatives shall have authority to enter at all reasonable times in or upon any private or public property, except private residences, for the purpose of inspecting and investigating any condition which the Commission shall have reasonable cause to believe is a violation of any part of this chapter. Such officials shall at all times comply with all reasonable safety rules then in effect at such properties. Any information relating to secret processes or methods of manufacture or production obtained in the course of such inspections or investigations shall be kept confidential by such officials.~~

~~43-6 VIOLATIONS AND PENALTIES~~

~~A. Any person violating any of the provisions of this chapter shall be subject to the fines and penalties hereinafter provided. All persons participating in any such violation, either as owners, proprietors, lessees, agents, tenants, managers, superintendents, engineers, firemen or janitors, or otherwise, shall severally be liable therefore and subject to the fines and penalties prescribed by Section B of this section.~~

~~B. Upon conviction of the violation of any of the provisions of this chapter, each such person shall for the first offense be punished by a fine of not less than twenty-five dollars ($25.) nor more than one hundred dollars ($100.) and, upon conviction of a subsequent offense or offenses hereunder, shall be fined not less than one hundred dollars ($100.), nor more than five hundred dollars ($500.) or be confined in jail for not more than ten (10) days, either or both.~~

~~C. In the event that any person shall have been convicted of three (3) violations of this chapter within any calendar year period, the Town Council may authorize the Air Pollution Commission to direct counsel for the Town to institute forthwith a proceeding in any court of competent jurisdiction to enjoin further operation of such equipment as shall have caused the condition resulting in such violations.~~

~~43-7 EXEMPTIONS FROM PROVISIONS OF THIS CHAPTER~~

~~Private residences, except when such residences contain four (4) or more family units, shall be exempted from the provisions of this chapter.~~

~~43-8 AUTHORIZATION TO ENGAGE INSPECTOR~~

~~The Town Manager is hereby authorized to employ, engage or obtain from time to time, if needed, a competent person for the purpose of carrying out the inspections and investigations hereinabove provided. Such person shall be deemed to be a representative of the Air Pollution Commission for all purposes pursuant to this Chapter.~~

~~Chapter 180~~

~~FRANCHISES~~

~~Chapter 180~~

~~CABLE TELEVISION~~

~~(Adopted by the Town Council of the Town of Front Royal 4-8-63. Renewed 11-10-75; 9-30-85; 5-12-03; 10-28-19; 5-13-18)~~

~~180-181 COMCAST CABLE TELEVISION FRANCHISE AGREEMENT~~

~~(Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia LLC)~~

~~This nonexclusive Cable Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the Town of Front Royal, VA, a political subdivision of the Commonwealth of Virginia (hereinafter, "Town") and Comcast of California/Maryland/Pennsylvania/ Virginia/West Virginia, LLC (hereinafter, "Franchisee").~~

~~The Town, having determined that the financial, legal and technical ability of the Franchisee is reasonably sufficient to provide the services, facilities and equipment necessary to meet the future cable-related needs of the community, desires to enter into this negotiated Franchise Agreement with the Franchisee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein. In furtherance thereof, at its Regular Meeting of October 28, 2019, the Town, after proper notice and public hearing, enacted an ordinance authorizing this Franchise Agreement.~~

~~SECTION 1 - DEFINITION OF TERMS~~

~~For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the following meanings:~~

~~**"ACT"** means the Communications Act of 1934.~~

~~**"AFFILIATE",** in relation to any Person, means another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person, but, in relation to Franchisee, does not include affiliated entities that are not involved with the use, management, operation, construction, repair and/or maintenance of Cable Systems.~~

~~**"BASIC SERVICE TIER"** means the service tier that includes (i) the retransmission of local television broadcast channels and (ii) public, educational, and governmental channels as required by applicable law to be carried in the basic tier.~~

~~**"CABLE ACT"** shall mean the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 *et seq*,~~

~~**"CABLE OPERATOR"** means any Person or group of Persons that (A) provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or (B) otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System. Cable Operator does not include a provider of wireless or direct to home satellite transmission service, unless that provider otherwise qualifies as a Cable Operator.~~

~~**"CABLE SERVICE"** means the one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C.§ 332(d).~~

~~**"CABLE SYSTEM" or "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 (i) a system that serves fewer than 20 Subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only~~

~~Subscribers without using any public right-of-way; (iv) 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 USC§ 201 et seq., 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; (v) any facilities of any electric utility used solely for operating its electric systems; (vi) or any portion of a System that serves fewer than 50 Subscribers in any locality, where such portion is part of a larger System franchised in an adjacent locality; or (vii) an open video system that complies with§ 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.~~

~~**"CUSTOMER" or "SUBSCRIBER"** means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Franchisee's express permission.~~

~~**"EFFECTIVE DATE"** means May 13th, 2018.~~

~~**"FCC"** means the Federal Communications Commission or successor governmental entity thereto.~~

~~**"FORCE MAJEURE"** means an event or events reasonably beyond the ability of Franchisee to anticipate and control. "Force majeure" 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, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Franchisee's facilities are attached or to be attached or conduits in which Franchisee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.~~

~~**"FRANCHISE"** means the initial, nonexclusive, authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System in the public rights-of-way and compatible easements, pursuant to 47 U.S.C. § 541.~~

~~**"FRANCHISE AGREEMENT" or "AGREEMENT"** shall mean this nonexclusive Cable Franchise Agreement and any amendments or modifications hereto.~~

~~**"FRANCHISE AREA"** means the present legal boundaries of the Town as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means, as per the requirements set forth herein.~~

~~**"FRANCHISEE"** shall mean Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC.~~

~~**"FRANCHISING AUTHORITY"** means the Town or the lawful successor, transferee, designee, or assignee thereof.~~

~~**"GROSS REVENUE"** means all revenue, as determined in accordance with generally accepted accounting principles (GAAP), that is actually received by the cable operator and derived from the operation of the Cable System to provide Cable Services in the Franchise Area; however, "gross revenue" shall not include: (i) refunds or rebates made to Subscribers or other third parties; (ii) any revenue which is received from the sale of merchandise over home shopping channels carried on the Cable System, but not including revenue received from home shopping channels for the use of the Cable Service to sell merchandise; (iii) any tax, fee, or charge collected by the Cable Operator and remitted to a governmental entity or its agent or designee, including without limitation a local public access or education group; (iv) program launch fees; (v) directory or advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing; (vi) refundable deposits; (vii) late fees; (viii) investment income; (ix) a sale of Cable Service for resale or for use as a component part of or for the integration into Cable Services to be resold in the ordinary course of business, when the reseller is required to pay or collect franchise fees or similar fees on the resale of the Cable Service; (x) revenues received by any Affiliate or any other person in exchange for supplying goods or services used by the Cable Operator to provide Cable Service; and (xi) revenue, or the pro-rata portion of multi-service fees, derived from services classified as non-Cable Services under federal law, including, without limitation, revenue derived from telecommunications services and information services, and any other revenues attributed by the Cable Operator to non-Cable services in accordance with GAAP rules, regulations, standards, or orders of the Federal Communications Commission. Gross Revenues shall not include actual bad debt that is written off, consistent with generally accepted accounting principles, provided however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in the Gross Revenues in the period so collected.~~

~~**"INTERACTIVE ON-DEMAND SERVICE"** means a service providing video programming to Subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming the programming provider preschedules.~~

~~**"ORDINANCE"** includes a resolution.~~

~~**“PEG”** means public, educational and/or governmental access to the Cable System to provide video programming.~~

~~**"PERSON"** means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.~~

~~**"PUBLIC RIGHT-OF-WAY" (PROW or Public Way)** means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which the Town now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System. No reference herein, or in any franchise, to a "public right-of-way" shall be deemed to be a representation or guarantee by the Town that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and Franchisee~~

~~shall be deemed to gain only those rights to use as are properly in the Town and as the Town may have the undisputed right and power to give. For purposes of this Franchise, the term "public right-of-way" shall also include any other parcels of property that the Town owns.~~

~~**"SERVICE INTERRUPTION"** means a Service Outage affecting less than five subscribers, or a loss of either video or audio for one or more channels for one or more subscribers.~~

~~**"SERVICE OUTAGE"** means the complete loss of Cable Service to five or more subscribers served by the same trunk, node, or feeder line for a period of fifteen (15) minutes or more.~~

~~**"TRANSFER"** means any transaction in which (i) an ownership or other interest in the Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that majority control of the Franchisee is transferred; or (ii) the rights and obligations the Franchisee holds under the Franchise granted under this Franchise Agreement are transferred or assigned to another Person or group of Persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the Franchise shall not include (a) transfer of an ownership or other interest in the Franchisee to the parent of the Franchisee or to another Affiliate of the Franchisee; (b) transfer of an interest in the Franchise granted under this Franchise Agreement or the rights held by the Franchisee under the Franchise granted under this Franchise Agreement to the parent of the Franchisee or to another Affiliate of the Franchisee; (c) any action that is the result of a merger of the Franchisee's parent; (d) any action that is the result of a merger of another Affiliate of the Franchisee; (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or the System used to provide Cable Service in order to secure indebtedness; or (f) the sale, conveyance, transfer, exchange, or release of fifty percent (50%) or less of its equitable ownership.~~

~~**"VIDEO PROGRAMMING"** means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.~~

~~All terms used herein, unless otherwise defined, shall have the same meaning as set forth in Sections 15.2-2108.19 *et seq.* of the Code of Virginia; and if not defined therein, then as set forth in Title VI of the Communications Act of 1934, 47 U.S.C. § 521 *et seq.*; and if not defined therein, their common and ordinary meaning. In addition, references in this Ordinance to any federal or state law shall include amendments thereto as are enacted from time-to-time.~~

~~**SECTION 2 - GRANT OF AUTHORITY**~~

~~2.1 The Franchising Authority hereby grants to the Franchisee under the Code of Virginia and the Cable Act a nonexclusive Franchise authorizing the Franchisee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System and to provide such Cable Services over the Cable System as may be lawfully allowed. This agreement neither authorizes the Franchisee to use the PROW for purposes of~~

~~providing any service other than Cable Service, nor prohibits the Franchisee from doing so. The Franchisee's authority to provide non-Cable Services shall be subject to applicable law.~~

~~2.2 Term of Franchise. The term of the Franchise granted hereunder shall be fifteen (15) years, beginning on the Effective Date, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Code of Virginia, and the Cable Act.~~

~~2.3 Renewal. Any Franchise renewal shall be governed by and comply with the provisions of Article 1.2 of Chapter 21 of Title 15.2 of the Code of Virginia and the Cable Act, as amended.~~

~~2.4 Reservation of Authority. Nothing in this Franchise Agreement shall be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority.~~

~~SECTION 3 - CONSTRUCTION AND MAINTENANCE OF THE CABLE SYSTEM~~

~~3.1 Permits and General Obligations. The Franchisee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. The issuance of such permits shall not be unreasonably withheld, conditioned, or delayed. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. Notwithstanding the requirements herein, Franchisee shall not be required to obtain a permit for individual drop connections to Subscribers, servicing or installing pedestals or other similar facilities, or other instances of routine maintenance or repair to its Cable System. All transmission and distribution structures, poles, other lines, and equipment the Franchisee installs for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.~~

~~3.2 Conditions of Street Occupancy.~~

~~(A) Relocation at request of Third Party. The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Franchisee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Franchisee is given not less than thirty (30) business days advance written notice to arrange for such temporary relocation. Any service disruption provisions of this Franchise shall not apply in the event that the removal of Franchisee's wires, cables, poles or other facilities pursuant to the above results in temporary service disruptions.~~

~~(B) Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Way, the Franchisee agrees that it shall at its own cost and expense replace and restore~~

~~any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance. The Town may make the final determination as to the reasonable acceptability of repair and/or replacement of damaged facilities.~~

~~(C) Safety Requirements. The Franchisee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations and with applicable provisions of the National Electrical Safety Code and the National Electrical Code. The Cable System shall not endanger or interfere with the safety of Persons or property in the Franchise Area.~~

~~(D) Trimming of Trees and Shrubbery. The Franchisee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Franchisee's sole cost and expense. For all planned trimming, the Franchisee shall provide the Town at least five (5) business days' notice of the work to be performed and a description of such work. For trimming of an emergency nature, including responding to storm damage, advance notice is not required. The Franchisee shall be responsible for any damage and all clean up of debris the trimming causes. The foregoing notwithstanding, any tree trimming by Franchisee must comply with any separately negotiated pole attachment agreement in effect between the Town and the Franchisee.~~

~~(E) Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or Town utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable System's transmission and distribution facilities underground; provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or Town utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment. To avoid overburdening the Public Way, and in furtherance of the health, safety and welfare of the public, Franchisee will use commercially reasonable efforts to utilize existing utility poles and conduits when and where available for the construction, repairs and maintenance of the Cable System pursuant to separately negotiated pole attachment and conduit utilization agreements. Franchisee shall not erect, for any reason, any pole on or along any Public Right-of-Way or on public property without the advance written approval of the Town. The foregoing notwithstanding, the terms of any separately negotiated pole attachment agreement in effect between the Town and the Franchisee shall govern.~~

~~(F) All excavation and reconstruction work by Franchisee in the Public Rights-of-Way must be in compliance with the generally applicable requirements of Town Code, including all of the standards referenced therein, and all applicable VDOT standards. It shall be the Franchisee's responsibility to obtain any required permits, to review all applicable excavation, reconstruction, restoration, repair and permitting requirements, and to become familiar with such requirements before beginning any excavation, reconstruction, restoration or repair work in the Public Rights-of-Way or private property.~~

~~(G) Any equipment or facilities the Franchisee installs in the Public Rights-of-Way shall be installed, located, erected, constructed, reconstructed, replaced, restored, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not (1) to endanger or interfere in any manner with improvements the Town or VDOT may deem appropriate to make; or (2) to interfere with the rights of any private property owner; or (3) to hinder or obstruct pedestrian or vehicular traffic.~~

~~(H) Whenever the Town shall determine that it is necessary in connection with the repair, relocation, or improvement of the Public Rights-of-Way, the Town may require by written notification that any properties or facilities of the Franchisee be removed or relocated. Within sixty (60) days after receipt of notification, unless the Town extends such period for good cause shown, the Franchisee shall remove or relocate its facilities to such place and under such terms and conditions as the Town specifies. The Franchisee shall bear all expenses associated with the removal and relocation except that the Town will issue, without charge to the Franchisee, whatever local permits are required for the relocation of Franchisee's facilities. If the Franchisee does not complete its removal or relocation within sixty (60) days or such other period as authorized by the Town, the Town may take such actions as necessary to effectuate such removal or relocation at the Franchisee's expense. The Town shall use reasonable efforts to minimize the impact on Franchisee's facilities related to any removal or relocation. Franchisee shall follow all applicable VDOT standards and regulations in connection with the repair, relocation, or improvement of the Public Rights-of-Way. Franchisee shall be entitled to reimbursement of its relocation costs from public or private funds, if any, raised for the project and made available to other users of the Public Way.~~

~~(i) Nothing in this Franchise Agreement shall be construed to prevent the Town from constructing, maintaining, repairing, improving, grading, paving, relocating and/or altering any Public Right-of-Way; constructing, installing, repairing, maintaining, or relocating any water or sewer mains; or constructing, maintaining, relocating or repairing any sidewalk or other public work. All such work shall be done, to the extent possible, in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of the Franchisee.~~

~~(ii) Nothing contained in this Franchise Agreement shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Franchisee's facilities while performing any work in any Public Right-of-Way or on public property.~~

~~(I) Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Franchisee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Franchisee's relocation costs shall be included in any computation of necessary project funding by the Town or private parties. Franchisee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way. It is understood that the Franchising Authority does not guarantee that any public or private funds will be available to help defray the cost of such undergrounding or beautification projects. In the event that public and/or private funds are not available or do not cover the entire cost of the relocation, Franchisee reserves the right to pass its costs, or in the case of partial reimbursement from public and/or private funds its incremental cost, through to its Subscribers in accordance with applicable law.~~

~~SECTION 4 -SERVICE OBLIGATIONS~~

~~4.1 General Service Obligations.~~

~~(A) The Franchisee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least (30) thirty dwelling units per mile when measured in strand footage from the nearest point of the existing Cable System from which a usable signal can be obtained. For purposes of this section, a home shall only be counted as a “dwelling unit” if such home is within two hundred seventy-five (275) feet of the public right-of-way. Subject to the density requirement, Franchisee shall offer Cable Service to all new homes or previously unserved homes located within two hundred fifty (250) feet of the Franchisee's distribution cable. Should an area within the Franchise Area meet the density requirements, Franchisee shall provide Cable Service to such area within six (6) months after it confirms that the density requirements have been met through actual knowledge or following notice from the Franchising Authority that one or more residents has requested service.~~

~~(B) The Franchisee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Franchisee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of the above standards. Any such additional charge related to an extended drop shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above. Such additional charge shall be paid in advance by the developer, landowner, or customer requesting Cable Service in an area that does not meet the density and distance standards.~~

~~4.2 New Developments. Franchisee agrees to use commercially reasonable efforts to inform itself of all newly planned developments within the Town and to work with developers to cooperate in pre-installation of facilities to support Cable Service.~~

~~4.3 Programming. The Franchisee shall offer to all Customers a diversity of video programming services.~~

~~4.4 No Discrimination. The Franchisee shall not discriminate or permit discrimination between or among any Persons in the availability of Cable Services or other services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Franchisee are satisfied; unless such Person has engaged in inappropriate activity including, but not limited to, theft of Franchisee's cable services, vandalism of its property, or abuse or harassment of its representatives. Nothing contained herein shall prohibit the Franchisee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.~~

~~(A) Franchisee shall assure that access to Cable Services is not denied to any group of potential residential cable subscribers because of the residents' income.~~

~~4.5 Availability of Maps to the Town. Upon the Town giving two (2) weeks written request, but no more often than annually, the Franchisee shall make available for the Town's viewing, at the Franchisee's nearest business office, updated maps of the Franchise Area which shall clearly delineate all areas within the Franchise Area where Cable Service is available to Subscribers.~~

~~4.6 Changes in Service. Franchisee agrees to give the Town Manager thirty (30) days prior written notice of changes in rates, programming services or channel positions, provided that such changes are within the control of Franchisee.~~

~~SECTION 5 PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS CHANNELS~~

~~5.1 Franchisee shall make available one (1) Standard Definition (SD) channel for Public, Educational and/or Governmental ("PEG") Access video programming provided by the Franchising Authority or its designee, such as a public access organization or educational institution. All PEG Access Programming shall be modulated, then transmitted from the origination site location at 220 North Commerce Avenue, Front Royal, VA 22630 to Franchisee's headend or hub site on a Franchisee owned upstream ("return line"). Any construction or upgrades of return lines or origination sites shall be paid for by the Franchising Authority. Said payment shall be made in advance to the Franchisee subject to the Franchisee providing the Franchising Authority with a detailed estimate of said construction cost. Use of a channel position for PEG access shall be provided on the most basic tier of service offered by the Franchisee and in accordance with the Cable Act and the Code of Virginia, and as further set forth below. "Channel position" means a number designation on the Franchisee's channel lineup regardless of the transmission format (analog or digital). Franchisee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. In the event any access channel is reassigned, the Franchisee shall provide the Town with at least thirty (30) days' notice before reassigning the channel. A PEG access user- whether an individual, educational or governmental user- acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use. Franchisee shall not~~

~~exercise editorial control over any public, educational, or governmental use of a channel position, except Franchisee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity. The Franchising Authority shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Access Channel use.~~

~~(A) Franchisee shall continue to make available to Subscribers the Warren County Public Schools PEG Channel within the Town subject to the authorization of Warren County and so long as Warren County, VA continues to produce said PEG programming and Franchisee continues to carry said programming in Warren County, VA.~~

~~5.2 Public Access. A "Public Access Channel" is a channel position designated for noncommercial use by the public on a first-come, first-served, nondiscriminatory basis. A Public Access Channel may not be used to cablecast programs for profit, or for political or commercial fundraising in any fashion.~~

~~5.3 Educational Access. An "Educational Access Channel" is a channel position designated for noncommercial use by educational institutions such as public or private schools (but not "home schools"), community colleges, and universities.~~

~~5.4 Government Access. A "Governmental Access Channel" is a channel position designated for noncommercial use by the Franchising Authority for the purpose of showing the public local government at work.~~

~~5.5 Franchisee shall ensure that all PEG access channel signals carried on its system, regardless of the method used to acquire the PEG channels, comply with all applicable FCC signal quality and technical standards except that Franchisee shall not be responsible for the technical signal quality of programming produced by any PEG Channel programmer. The technical and signal quality of all PEG access channel signals shall be preserved and shall be of comparable quality as other channels.~~

~~5.6 High Definition (HD) PEG Access Channel. Within one hundred and eighty (180) days of receipt of the Town's written request, which is deemed received by Franchisee upon execution hereof, Franchisee shall make the PEG Access Channel discussed in Section 5.1 available in HD format. Franchisee shall continue to carry the SD PEG Access Channel simultaneously until SD channels are no longer provided over the Cable System. The Franchisee shall be responsible for providing the PEG Access signal to Subscribers over its Cable System in a SD format until no longer required. The Franchising Authority shall be responsible for providing the PEG Access signal in a HD format acceptable to Franchisee to the PEG Access origination location demarcation point, at 220 North Commerce Avenue, Front Royal, VA 22630. The Franchising Authority acknowledges that the HD PEG Access Channel may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service upon which HD channels are made available. Franchisee is not required to provide free HD equipment to Subscribers or the Town.~~

~~5.7 Capital Support for PEG Access.~~

~~(A) Franchisee shall pay to Town an initial lump sum capital grant of thirty-one thousand dollars ($31,000) as capital support for PEG access equipment, payable within ninety (90) days from the execution of this Franchise Agreement. If the capital support grant payment is not made within one hundred twenty (120) days from the date of execution of this Franchise Agreement, this Franchise Agreement shall become null and void, ab initio, without notice. The Franchising Authority will distribute these funds for capital purposes and/or procure equipment in support of the PEG access programming needs of the community.~~

~~(B) At the Town's option, Franchisee shall collect a monthly fee from each Subscriber to provide additional capital support for PEG access. The maximum fee that shall be imposed is 0.5% of Franchisee's gross revenues, and the fee collected shall be remitted to the Town no later than thirty (30) days following the end of each calendar quarter. Comcast shall not impose a fee to provide capital support for PEG access unless and until the Town directs Franchisee to impose a fee. The Town shall give Franchisee at least ninety (90) days' written notice before Franchisee shall begin collecting the fee. The Town shall allocate such amount to PEG capital uses exclusively. If such fee is imposed and used exclusively for PEG capital purposes, it shall not be deemed to be "franchise fees" within the meaning of 47 U.S.C. Section 542 and such payments shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the compensation the Franchisee is to pay the Town pursuant to Section 6 hereof, or (ii) part of the compensation the Franchisee is to pay to the Town pursuant to Section 6 hereof.~~

~~5.8 Indemnification. The Franchising Authority shall indemnify Franchisee, to the extent authorized by the Virginia Constitution and general laws, for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties or arising out of the content of programming shown on any PEG channel and from claims arising out of the Franchising Authority's rules for or administration of PEG Access.~~

~~SECTION 6 COMMUNICATION TAX AND FRANCHISE FEES~~

~~6.1 Communications Tax. Franchisee shall comply with the provisions of Sections 58.1-645 et seq. of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax, as amended (the "Communications Tax"), and Sections 6.2 through 6.6 of the Agreement shall not have any effect, for so long as the Communications Tax or a successor state or local tax that would constitute a franchise fee for purposes of 47 U.S.C. § 542 is imposed on the sale of Cable Services by the Franchisee to the Town's Subscribers.~~

~~6.2 Payment of Franchise Fee to Town. In the event that the Communications Tax is repealed, and no successor state or local tax is enacted that would constitute a franchise fee for purposes of 47 U.S.C. § 542, Franchisee shall pay to the Town a Franchise fee of five percent (5%) of annual Gross Revenue, beginning thirty (30) days from the effective date of the repeal of such tax (the "Repeal Date"). Beginning on the Repeal Date, the terms of Section 6.2 through 6.6 of this Agreement shall take effect. In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than thirty (30) days following the end of each calendar~~

~~quarter. Should Franchisee submit an incorrect amount, Franchisee shall be allowed to add or subtract that amount in a subsequent quarter, but no later than ninety (90) days following the close of the calendar year for which such amounts were applicable; such correction shall be documented in the supporting information required under Section 6.3 below.~~

~~6.3 Supporting Information. Each Franchise fee payment shall be accompanied by a brief report prepared by a representative of Franchisee showing the basis for the computation and a breakdown by major revenue categories (such as Basic Service, premium service, etc.). The Town shall have the right to reasonably request further supporting information for each Franchise fee payment, subject to the proprietary information provisions of Section 8.7.~~

~~6.4 Bundled Services. If Cable Services subject to a franchise fee, or any other fee determined by a percentage of the Cable Operator's gross revenues in a locality, are provided to Subscribers in conjunction with other services: the fee shall be applied only to the value of the Cable Services, as reflected on the books and records of the Cable Operator in accordance with rules, regulations, standards, or orders of the Federal Communications Commission, the State Corporation Commission, or generally accepted accounting principles. Any discounts resulting from purchasing the services as a bundle shall be reasonably allocated between the respective services that constitute the bundled transaction.~~

~~6.5 Books and Records Regarding Franchise Fees. In the event that the Communications Tax is repealed, and subject to the confidentiality requirements of Section 8.7 of this Agreement, the Town, or such Person or Persons the Town designates, shall have the right to inspect and copy records and the right to audit and to re-compute any amounts determined to be payable under this Franchise, regardless of who holds the records. If an audit discloses an overpayment or underpayment of franchise fees, the Town shall notify the Franchisee in writing of such overpayment or underpayment within ninety (90) days of the date the audit was completed. The Franchisee shall have thirty (30) days from receipt of such notice to provide the Town with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these notices, the parties shall agree upon a final settled amount. The Town, in its sole discretion, shall determine the completion date for any audit conducted hereunder. Audit completion is not to be unreasonably delayed by either party. Subject to the confidentiality requirements of Section 8.7 of this Franchise, the Franchisee shall be responsible for providing to the Town, within forty-five (45) days of a written request, all records necessary to confirm the accurate payment of franchise fees. The Franchisee shall maintain such records for the current year plus three (3) years. The Town shall bear its audit expenses. If re-computation results in additional revenue to be paid by Franchisee to the Town, such amount shall be subject to an interest charge in accordance with the prime rate of interest charged by the Town's primary depository bank.~~

~~(A) Any final settled amounts due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority within forty five (45) days from the date the parties agree upon the final settled amount. Once the parties agree upon a final settled amount and such amount is paid by the Franchisee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period.~~

~~(B) The period of limitation for recovery of any Franchise fee payable hereunder shall be three (3) years from the date on which payment by Franchisee is due.~~

~~SECTION 7 CUSTOMER SERVICE STANDARDS; CUSTOMER BILLS AND PRIVACY PROTECTION~~

~~7.1 Customer Service Standards. The Franchisee shall comply in all respects with the customer service requirements established by the FCC (47 CFR §76.309). Franchisee shall be subject to the following customer service standards consistent with federal law:~~

~~(A) Franchisee will maintain a local or toll-free telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week. Additionally, for at least the first twenty-four (24) months from the Effective Date, Franchisee will maintain at least one customer service center within the Town for Subscribers to make payments and exchange equipment. In addition, Franchisee may, when a Subscriber consents, provide for an employee to pick up or drop off equipment in either of the following ways: (i) by having a Franchise representative to go to the Subscriber's residence, or (ii) by using a prepaid mailer. Franchisee also has the option to provide alternative payment drop off locations within the Franchise Area.~~

~~(B) Under Normal Operating Conditions, telephone answer time by a customer representative or automated answering device, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions as measured on a quarterly basis.~~

~~(C) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.~~

~~(D) Franchisee shall accurately collect and maintain data to measure its compliance with the telephone answering standards in paragraphs 7.1(B) and 7.1(C).~~

~~(E) Local customer service centers and bill payment locations will be open for sales, service complaints and scheduling, equipment exchange, and bill payment with customer account history access at no cost to customers, including assisting walk-in customers, at least during normal business hours, which are understood as approximately 8:00am to 5:00pm Monday through Friday.~~

~~(F) Installations, Outages, and Service Calls. Under normal operating conditions, each of the following standards will be met no less than ninety five percent (95%) of the time as measured on a quarterly basis.~~

~~(i) Standard installations will be performed within seven (7) business days after an order has been placed, unless the customer requests a longer period. "Standard" installations are those that are within one hundred seventy-five (175) feet of the existing distribution system.~~

~~(ii) Excluding conditions beyond the control of the Franchisee, the Franchisee will begin repairs on Service Outages and Service Interruptions promptly and in no event later than twelve (12) hours after the outage or interruption becomes known.~~

~~(iii) The Franchisee must begin working to correct Service Interruptions within 8 hours, including weekends, of receiving a subscriber call for a Service Interruption. "Service Interruption" shall mean the loss of any service provided to customer by Franchisee.~~

~~(G) Franchisee shall accurately collect and maintain data to measure its compliance with subparagraph 7.1.(F).~~

~~(H) The "appointment window" alternatives for installations, service calls and other installation activities will either be at a specific time or, at maximum, a four-hour time block during Normal Business Hours. Franchisee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of the customer.~~

~~(I) Franchisee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If Franchisee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled as necessary, at a time which is convenient for the customer.~~

~~(J) Franchisee shall provide information, in accordance with applicable law, on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:~~

~~(i) Products and services offered;~~

~~(ii) Prices and options for programming services and conditions of subscription to programming and other services;~~

~~(iii) Installation and service maintenance policies;~~

~~(iv) Instructions on how to use the Cable Service;~~
~~(v) Channel positions of programming carried on the System; and~~

~~(vi) Billing and complaint procedures, including where to locate the Franchisee's office hours, telephone number, and address of the local cable office.~~

~~7.2 Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (i) is not misleading and (ii) does not omit material information. The Franchisee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by the Cable Act.~~

~~7.3 Notification. Franchisee shall notify Subscribers of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to Subscribers~~

~~a minimum of thirty (30) days in advance of such changes if the change is within the control of the Franchisee. In addition, Franchisee shall notify subscribers thirty (30) days in advance of any significant changes in the other information that paragraph 7.1(J) requires.~~

~~7.4 Billing Disputes. In case of a billing dispute, Franchisee must respond to a Subscriber's written complaint within thirty (30) days.~~

~~7.5 Refunds. Refund checks will be issued promptly, and no later than thirty (30) days from the date of the good faith determination that a refund is warranted.~~

~~7.6 Credits. Credits for service will be issued promptly, and no later than the Subscribers next available billing statement after a good faith determination that a credit is warranted.~~

~~7.7 Parental Control. Franchisee shall make available parental control devices to all Subscribers who wish to be able to block out any objectionable channel(s) of programming from the Cable Service.~~

~~7.8 Privacy Protection. The Franchisee shall comply with all applicable federal and state privacy laws.~~

~~SECTION 8 OVERSIGHT AND REGULATION BY FRANCHISING AUTHORITY~~

~~8.1 Oversight of Franchise. In accordance with applicable law, the Franchising Authority at its sole cost and expense, shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Franchisee's employee, periodically inspect the construction, operation and maintenance of the Cable System in the Franchise Area, and all parts thereof, as necessary to monitor Franchisee's compliance with the provisions of this Franchise Agreement.~~

~~(A) The Franchisee shall perform all required tests necessary to demonstrate compliance with applicable FCC standards.~~

~~(B) Upon a showing of a pattern of unresolved Subscriber complaints regarding signal quality, upon written request, the Franchisee shall conduct applicable tests to determine compliance with applicable FCC standards., Franchisee shall make the results of such test available to the Town to verify compliance. If any such test indicates that any part or component of the System fails to meet applicable requirements, the Franchisee shall take corrective action, retest locations, and advise the Town of the action taken and results achieved.~~

~~8.2 Technical Standards. The Franchisee shall comply with all applicable technical standards of the FCC. The Franchising Authority shall have, upon written request, the right to obtain a copy records required to be maintained pursuant to the FCC's rules.~~

~~8.3 Operational Records. Upon no less than thirty (30) business days' written notice to the Franchisee, the Town shall have the right to inspect Franchisee's books and records, including electronic books and records, pertaining to Franchisee's provision of Cable Service in the~~

~~franchise area at any time during normal business hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise Agreement. Such notice shall specifically reference the Franchisee's section or subsection which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the Town. Franchisee shall not be required to maintain any books and records for franchise compliance purposes longer than the current year plus three (3) years. The Franchisee shall maintain the records required to compute all operational and customer service compliance measures outlined in this Franchise to demonstrate that the measures are being met for at least four (4) consecutive quarters.~~

~~8.4 Records Required. Franchisee shall at all times maintain:~~

~~(A) Records of all written complaints for a period of one (1) year after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call.~~

~~(B) Records of Service Outages and Service Interruptions for a period of one (1) year after occurrence, or until the applicable compliance measures described in this Franchise are met for four (4) consecutive quarters, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause.~~

~~(C) Records of service calls for repair and maintenance for a period of one (1) year after resolution by Franchisee, indicating the date and time service was required, the date and time service was provided, and (if different) the date and time the problem was resolved.~~

~~(D) Records of installation/reconnection for a period of one (1) year after the request was fulfilled by Franchisee, or until the applicable compliance measures described in this Franchise are met for four (4) consecutive quarters, indicating the date of request and the date and time service was extended.~~

~~8.5 Federal Communications Commission (FCC) Testing. Within fourteen (14) days of the Town's written request, a written report of test results of required FCC performance testing will be provided to the Town Manager or his designee.~~

~~8.6 File for Public Inspection. Throughout the term of this Franchise Agreement, the Franchisee shall maintain for public, those documents required pursuant to the FCC's Public Inspection File rules and regulations.~~

~~8.7 Proprietary Information.~~

~~(A) Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to submit information to the Town that it reasonably deems to be proprietary or confidential in nature, nor submit to the Town any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Franchise Area, except as provided~~

~~herein. Such confidential information shall be made available to the Town subject to terms of a nondisclosure agreement that is reasonably acceptable to the parties and to the following, to be applied as is most practicable for the purposes of this Agreement:~~

~~i. To the extent an exemption under the Virginia Freedom of Information Act permits the Town to maintain the confidentiality of submitted information and the Franchisee submits such information to the Town, the Town shall maintain the confidentiality of such information and not disclose it to any public request;~~

~~ii. To the extent the information provided to an accountant, attorney, consultant, or any other agent of the Town ("Town Consultant") would not be subject to public disclosure under the Virginia Freedom of Information Act, and the Town instructs the Franchisee to provide such information to the Town Consultant as may be required by this Agreement, the Franchisee shall provide such information to the Town Consultant and the Town shall not take possession of the information nor engage in any act that would jeopardize the information's confidentiality.~~

~~(B) At all times, the Town shall take reasonable steps to protect the proprietary and confidential nature of any books, records, maps, plans, or other Town requested documents that are provided pursuant to the Agreement to the extent they are designated as such by the Franchisee. Nothing in this Section shall be read to require the Franchisee to violate federal or state law protecting Subscriber privacy.~~

~~8.8 Reports.~~

~~(A) No later than ninety (90) days from the end of the calendar year, within ninety (90) days after receipt of the Town's written request, Franchisee shall submit a written year-end report to the Town. Such report may address, if the Town so desires: major cable-related projects undertaken in the past year and planned for the current year, including construction and upgrade schedules for any new, relocated, or upgraded aerial or underground facilities.~~

~~(B) Upon written request of the Town, no later than thirty (30) days after the end of each calendar quarter, the Franchisee shall submit a written report to the Town regarding complaints the Franchisee received from Customers in the Franchise Area concerning Franchisee's customer service performance.~~

~~SECTION 9 TRANSFER OR CHANGE OF CONTROL OF CABLE TELEVISION OR FRANCHISE~~

~~9.1 No Transfer of this Franchise shall occur without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld, delayed or conditioned. No Transfer shall be made to a Person, group of Persons or Affiliate that is not legally, technically and financially qualified to operate the Cable System and satisfy the obligations hereunder.~~

~~SECTION 10 INSURANCE AND INDEMNITY~~

~~10.1 The Franchisee shall indemnify hold harmless and defend the Town, its officers, employees, and agents (hereinafter referred to as "indemnitees"), from and against:~~

~~(A) Any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the indemnitees by reason of any act or omission of the Franchisee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Franchisee's Cable System caused by Franchisee, its contractors, subcontractors or agents or the Franchisee's failure to comply with any federal, state or local statute, ordinance or regulation.~~

~~(B) Any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which are imposed upon, incurred by or asserted against the indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the Franchisee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the Franchisee's Cable System in the Town.~~

~~10.2 Damages shall include, but not be limited to, penalties arising out of copyright infringements and damages arising out of any failure by the Franchisee to secure consents from the owners, authorized distributors or licensees, or programs to be delivered by the Franchisee's Cable System.~~

~~10.3 The Franchisee undertakes and assumes for its officers, agents, contractors, subcontractors, and employees all risk of dangerous conditions, if any, on or about any Town owned or controlled property, including streets and public rights-of-ways, except for any claim asserted or liability imposed that arises or is related to gross negligence or intentional misconduct by such indemnitees or any loss or claims related to PEG access Channels in which the Franchising Authority or its designee participates.~~

~~10.4 In the event any action or proceeding shall be brought against the indemnitees by reason of any matter for which the indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the indemnitees, and at the Franchisee's sole cost and expense, resist and defend the same; provided further, however, that the Franchisee shall not admit liability in any such matter on behalf of the indemnitees without the written consent of the Town Attorney or his designee. If the Town determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Town.~~

~~10.5 The Town shall give the Franchisee timely written notice within twenty (20) business days of the Town receiving notice of a written claim, or the commencement of any action, suit or other proceeding covered by the provisions of this section. The Town will cooperate with the Franchisee while the Franchisee defends any claim or action under this section.~~

~~10.6 Nothing in this Franchise Agreement is intended to, or shall be construed or applied to, express or imply the Town's waiver of statutory provisions, privileges or immunities of any kind or nature as set forth in the Code of Virginia, including the Town's limits of liability as exists presently or as the legislature may increase from time to time. Nothing in a franchise or this ordinance shall constitute a waiver of the Town's statutory provisions, privileges or immunities, including the Town's sovereign immunity, of any kind or nature.~~

~~10.7 The Franchisee shall maintain, and by its acceptance of a franchise hereunder specifically agrees that it will maintain throughout the term of the Franchise Agreement, general commercial liability insurance insuring the Franchisee. All liability insurance shall include an endorsement in a specific form which names as joint and several insured's the Town and the Town's officials, and employees, under such commercial liability policy, with respect to all claims arising out of the operation and maintenance of the Franchisee's Cable System in the Town. Such policy shall be in the minimum amounts of Five Million Dollars ($5,000,000) combined single limit per occurrence for bodily injury, property damage, or personal & advertising injury, which limit may be met through any combination of primary and excess liability policies.~~

~~(A) The Franchisee shall provide Workers Compensation Insurance as required by the Commonwealth of Virginia;~~

~~(B) Franchisee shall carry and maintain in its own name automobile liability insurance with a limit of $1,000,000 for each person and $1,000,000 combined single limit per occurrence for each accident for property damage with respect to owned and non-owned automobiles for the operation of which the Franchisee is responsible; and~~

~~10.8 The inclusion of more than one (1) insured shall not operate to increase the limit of the Franchisee's liability, and the insurer waives any right on contribution with insurance which the Town may have.~~
~~10.9 All policies of insurance this section requires shall be placed with companies which are qualified to write insurance in the Commonwealth of Virginia and which maintain throughout the policy term a General Rating of "A- " as determined by Best Insurance Rating Services.~~

~~10.10 Upon the Town's written request, the Franchisee shall provide the Town with Certificates of Insurance for the coverages this section mandates.~~

~~10.11 Should the Town find an insurance document to be non-compliant, then it shall notify the Franchisee; and the Franchisee shall promptly cure the defect in accordance with this Agreement.~~

~~10.12 Neither this section's provisions, nor any damages recovered by the Town thereunder, shall be construed to nor limit the Franchisee's liability under this Franchise Agreement or for~~

~~damages, except that nothing herein shall be interpreted to permit the Town to exercise rights and remedies in a manner that permits duplicative recovery from or payments by the Franchisee or its surety.~~

~~10.13 The commercial general liability insurance policy provided for herein shall name the Town, its officers, and employees as additional insureds, and shall be primary to any insurance or self-insurance the Town carries, but only with respect to the losses for which the Franchisee is responsible hereunder. The insurance policies this section requires shall be carried and maintained by the Franchisee throughout the term of the Franchise Agreement and such other period of time during which the Franchisee operates or is engaged in the removal of its Cable System. Each policy shall provide for notice of cancellation in accordance with policy provisions~~

~~10.14 Nothing in this section shall require Franchisee to indemnify, hold harmless or defend the Town, its officials, employees or agents, from any claims or lawsuits arising out of the Town's award of a franchise to another person.~~

~~SECTION 11 SYSTEM DESCRIPTION AND SERVICE~~

~~11.1 System Characteristics. Franchisee's Cable System shall meet or exceed the following requirements:~~

~~(A) The System shall be capable of providing Video Programming to its Customers in the Franchise Area in accordance with the Cable Act.~~

~~(B) The System shall be designed to be an active two-way plant for Subscriber interaction, if any, required for selection or use of Cable Service.~~

~~(C) The Cable Service shall be operated in a manner such that it is in compliance with FCC standards and requirements with respect to interference. The Cable System shall be operated in such a manner as to minimize interference with a Subscriber's reception of off-the-air signals. The Franchisee shall insure that signals carried by the Cable System, or originating outside the Cable System wires, cable, fibers, electronics and facilities, do not ingress or egress into or out of the Cable System in excess of FCC standards. In particular, the Franchise shall not operate the Cable System in such a manner as to pose unwarranted interference with emergency radio services, aeronautical navigational frequencies or an airborne navigational reception in normal flight patterns, or any other type of wireless communications, pursuant to FCC regulations.~~

~~11.2 Interconnection. The Franchise shall design its Cable System so that it may be interconnected with other cable systems and open video systems in the Franchise Area.~~

~~11.3 Standby Power. The Franchisee shall provide standby power generating capacity at the headend and at all hubs. The Franchisee shall maintain standby power capable of at least twenty-four (24) hours duration at the headend and all hubs, with automatic response systems to alert the local management center when commercial power is interrupted.~~

~~11.4 Technical Standards. The Cable System shall meet or exceed the applicable FCC technical performance standards.~~

~~11.5 Leased Access Channels. The Franchisee shall provide Leased Access Channels in accordance with federal law.~~

~~11.6 Emergency Powers. In the event of an emergency, or where Franchisee's Cable System creates or is contributing to an imminent danger to health, safety, or property, or an unauthorized use of property, the Franchisee shall remove or relocate any or all parts of Franchisee's Cable System at the Town's request. If the Franchisee fails to comply with the Town's request, the Town may remove or relocate any or all parts of the Franchisee's Cable System upon reasonable notice to the Franchisee. The Town shall use reasonable efforts to minimize the impact on Franchisee's facilities related to any emergency removal or relocation. Franchisee shall be entitled to compensation for expenses incurred for removal or relocation in the event of an emergency to the extent other users of the Public Way are compensated. It is understood that the Franchising Authority does not guarantee that funds will be available to compensate users of the Public Ways for emergency removal or relocation.~~

~~11.7 Emergency Alert System. Franchisee shall install and thereafter maintain an Emergency Alert System (EAS) that shall at all times be operated in accordance with FCC rules and the Virginia EAS Plan.~~

~~SECTION 12 ENFORCEMENT OF FRANCHISE~~

~~12.1 Performance Bond. Within thirty (30) days after the award of a Franchise Agreement, the Franchisee shall deposit with the Town a performance bond from a financial institution running to the Town in the amount of one hundred thousand dollars ($100,000.00). The bond shall be used to insure the Franchisee's faithful performance of all its franchise provisions or defaults under this Franchise Agreement or the payment by Franchisee of any penalties, liquidated damages, claims, liens, and taxes due the Town which arise by reason of the construction, operation, or maintenance of Franchisee's Cable System in the Town, including restoration of the public rights-of-way and the cost of removal or abandonment of any property of Franchisee. Following notice and opportunity to cure in accordance with Section 12.2, the Franchising Authority shall give Franchisee twenty (20) business days' notice of its intent to draw from the performance bond. The Franchising Authority may not draw from the performance bond while any action, appeal or other process has been instituted by Franchisee to challenge the amount owed.~~

~~(A) Any bond obtained by Franchisee must be placed with a company which is qualified to write bonds in the Commonwealth of Virginia. The bond may not be cancelled, and not renewed or replaced, without the Town's consent until thirty (30) days after the Town's receipt by registered mail, return receipt requested, of Franchisee's written notice of intent to cancel.~~

~~(B) Any bond shall be recoverable by the Town for all damages and costs, whether direct or indirect, resulting from the Franchisee's failure to well and faithfully observe and perform any provision of this Agreement.~~

~~(C) The bond shall be maintained at the amount established herein for the entire term of the Franchise Agreement, even if amounts have to be withdrawn pursuant to this Agreement. The Franchisee shall promptly replace any amounts withdrawn from the bond unless an action, appeal or other process has been instituted by Franchisee to challenge the amount withdrawn, and no replacement of funds shall be required until any such action, appeal or other process has been resolved.~~

~~12.2 Non-compliance procedures.~~

~~(A) Should the Franchising Authority believe that the Franchisee has not complied with any of the provisions of this Franchise Agreement, it shall: (i) informally discuss the matter with the Franchisee and (ii) notify the Franchisee in writing of the exact nature of the alleged noncompliance if the discussions described in the foregoing clause (i) do not lead to resolution of the alleged noncompliance. The Franchisee shall have thirty (30) days from receipt of this written notice to: (a) respond to the Franchising Authority, if the Franchisee contests, in whole or in part, the assertion of noncompliance; (b) cure such default; or (c) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed. The Franchising Authority shall schedule a public hearing in the event that the Franchisee fails to respond to the written notice pursuant to these procedures or in the event that the alleged default is not remedied within thirty (30) days of the date projected above if the Franchising Authority intends to continue its investigation into the default. The Franchising Authority shall provide the Franchisee at least thirty (30) business days prior written notice of such hearing, which will specify the time, place, and purpose. The Franchising Authority shall provide the Franchisee with a reasonable opportunity to be heard at any such hearing.~~

~~(B) The Town shall, within a reasonable time after the closure of the public hearing, issue findings and conclusions in writing, setting forth the basis for the findings; the proposed cure plan; and the time line for curing the violation if the violation can be cured; and the penalties, damages and applicable interest owed, if any.~~

~~(C) Subject to applicable federal and Virginia law and the provisions of this Agreement, if the Town determines pursuant to a public hearing that Franchisee is in violation of any provision of this Agreement the Town may apply one or a combination of the following remedies: (i) seek specific performance or other equitable relief; (ii) commence an action at law; (iii) apply liquidated damages in accordance with Section 12.3, if applicable; or (iv) in the case of substantial default of material provisions of the Agreement, initiate revocation proceedings in accordance with Section 12.4.~~

~~(D) The Town may designate its cable administrator or other person to conduct the hearings and issue findings and conclusions under this subsection, in which case Franchisee may appeal the determination of the cable administrator or other Town designee to the Town Council. Such an appeal shall be heard at a lawfully noticed public hearing. The Franchising Authority shall provide the Franchisee with a reasonable opportunity to be heard at any such hearing.~~

~~12.3 Penalties and Liquidated Damages. Because it may be difficult to calculate the harm to the Franchising Authority in the event of Franchisee's breach of this Franchise Agreement, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the Franchising Authority elects to assess liquidated damages as provided in this Agreement and such liquidated damages have been paid, such damages shall be the Franchising Authority's sole and exclusive remedy. Nothing in this Section shall preclude the Franchising Authority from exercising any other right or remedy with respect to a breach that continues past the time the Franchising Authority stops assessing liquidated damages for such breach. Liquidated damages shall not be assessed until the Franchising Authority has completed the procedures set forth in Section 12.2 hereof, including holding a public hearing, and notifying the Franchisee by certified or registered mail of the proposed liquidated damages, specifying the violation. The Franchisee shall have thirty (30) days from the date of receipt of the written notice to submit payment. If the Franchisee does not make payment within that period, the Franchising Authority may obtain the amount assessed from the Franchisee's performance bond.~~

~~(A) The first day for which liquidated damages may be assessed, if there has been no cure, shall be the day after the end of the applicable cure period, including any extension of the cure period the Franchising Authority has granted.~~

~~(B) Franchisee may appeal (by pursuing judicial relief) any assessment of liquidated damages within thirty (30) days of receiving written notice of the assessment. Franchisee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of the appeal.~~

~~(C) The Franchising Authority may assess liquidated damages for the following violations of this Franchise Agreement, in the following amounts:~~

~~(i) Failure to comply with PEG access requirements: \$100 per violation for each day the violation continues.~~

~~(ii) Failure to render payments due to the Franchising Authority: \$100 per violation for each day the violation continues, in addition to any monetary payment due.~~

~~(iii) Failure to supply information, reports, or filings lawfully required: \$100 per violation for each day the violation continues.~~

~~(iv) Failure to comply with customer service standards: \$100 per each violation for each day the violation continues, except where compliance is measured quarterly, in which case damages shall be as specified in Section 12.4(C)(v) below.~~

~~(v) Failure to comply with customer service standards with which compliance is measured on a quarterly basis: $300 for the first violation in which such standards were not met; $500 for any violation within 18 months after the first; and $750 for any violation within 18 months after the second or any subsequent violation.~~

~~(D) The Franchisee shall not be charged with multiple violations for a single act or event affecting a single subscriber or for a single act or event affecting multiple subscribers on the same day.~~

~~(E) The parties agree that such liquidated damages are reasonable.~~

~~(F) The Town may reduce or waive any of the above liquidated damages if it determines, in its sole discretion that such waiver is in the public interest.~~

~~(G) The amount of all liquidated damages assessed per annum shall not exceed twenty thousand dollars ($20,000) in the aggregate.~~

~~(H) If after 120 days the Franchisee has not cured or commenced to cure the alleged breach to the satisfaction of the Franchising Authority, the Franchising Authority may pursue all other remedies aside from liquidated damages.~~

~~12.4 Revocation.~~

~~(A) Subject to applicable federal and state law, in the event the Franchising Authority, after a public hearing pursuant to Section 12.3 of this Agreement, determines that the Franchisee is in default of material provisions of the Franchise Agreement, the Franchising Authority may initiate revocation proceedings in accordance with the following:~~

~~(i) The Franchising Authority shall give written notice to the Franchisee of its intent to revoke the Franchise Agreement on the basis of a pattern of non-compliance by the Franchisee, including two or more instances of substantial non-compliance with a material provision of the Agreement. The notice shall set forth with specificity the exact nature of the non-compliance. The Franchisee shall have ninety (90) business days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response from the Franchisee or upon receipt of the response does not agree that the allegations of non-compliance have been or will be resolved, it may then seek revocation of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request revocation of the Franchise Agreement.~~

~~(ii) At the designated public hearing, the Franchising Authority shall give the Franchisee an opportunity to state its position on the matter, present evidence and question witnesses, in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Virginia, after which it shall~~

~~determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Franchisee within ten (10) business days. The decision of the Franchising Authority shall be in writing and shall be delivered to the Franchisee by certified mail. The Franchisee may appeal such determination to an appropriate court.~~

~~12.5 Technical Violation. The Franchising Authority agrees that it is not its intention to subject the Franchisee to penalties, fines, forfeitures or revocation of the Franchise Agreement for so-called "technical" breach(es) or violation(s) of the Franchise Agreement, which shall include, but not be limited to, the following:~~

~~(A) In instances or for matters in which the Franchisee's violation or breach of the Franchise Agreement was a good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or~~

~~(B) Where there existed circumstances reasonably beyond the Franchisee's control and which precipitated the Franchisee's violation of the Franchise Agreement, or which prevented the Franchisee from complying with a term or condition of the Franchise Agreement.~~

~~12.6 Removal of System. Franchisee shall remove its Cable System within six (6) months as a result of termination, revocation, denial of renewal, or any other lawful action to forbid or disallow Franchisee from providing Cable Service unless Franchisee has obtained other authority to occupy the rights-of-way in the Franchise Area.~~

~~SECTION 13 – INSPECTION OF FACILITIES~~

~~13.1 Franchisee shall comply with all applicable federal, state, and generally applicable local construction and engineering codes and regulations, currently in force or hereafter applicable, to the construction, operation or maintenance of its Cable System within the Town. After construction has been completed, the Town shall have the right to inspect all construction or installation work performed pursuant to the Franchise Agreement and all applicable federal, state and generally applicable local building and engineering codes. However, the Town shall not be required to review or approve construction plans and specifications or to make any inspections. The Franchisee shall be solely responsible for taking all steps necessary to assure compliance with applicable standards and to ensure that its Cable System is installed in a safe manner and pursuant to the terms of the Franchise Agreement and applicable law.~~

~~SECTION 14 – MISCELLANEOUS PROVISIONS~~

~~14.1 Force Majeure. The Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by events which constitute a Force Majeure, as defined in this Agreement.~~

~~14.2 Notice. All notices shall be in writing and shall be served upon the other party by hand delivery; first class mail; registered or certified mail, return receipt requested, postage prepaid; or by reputable overnight courier service and addressed as follows:~~

~~To the Franchising Authority:~~
~~Town Manager~~
~~Town of Front Royal~~
~~P.O. Box 1560~~
~~102 E. Main Street~~
~~Front Royal, Virginia 22630~~

~~To the Franchisee:~~
~~Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC~~
~~600 Hays Street~~
~~Staunton, VA 24401~~
~~Attn: Government Affairs Department/Paul Comes~~

~~With copies to:~~
~~Comcast Cable~~
~~7850 Walker Drive, 2nd Floor~~
~~Greenbelt, MD 20770~~
~~Attn.: Government Affairs Department~~

~~And to:~~
~~Comcast Cable Northeast Division~~
~~676 Island Pond Rd.~~
~~Manchester, NH 03109~~
~~Attention: Government Affairs Department~~

~~14.3 Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the Franchising Authority and the Franchisee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by the Franchise Agreement.~~

~~14.4 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid in whole or in part by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portion, which shall continue in full force and effect.~~

~~14.5 Governing Law. This Franchise Agreement shall be deemed to be executed in the Commonwealth of Virginia and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the Commonwealth of Virginia.~~

~~14.6 Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument in writing duly executed by the Franchising Authority and the Franchisee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law.~~

~~14.7 No Third-Party Beneficiaries. Nothing in this Franchise Agreement shall confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.~~

~~14.8 No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Franchisee may have under federal or state law unless such waiver is expressly stated herein.~~

~~14.9 Incorporation by Reference. Should the State, the federal government or the FCC require Franchisee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the Franchising Authority and Franchisee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.~~

~~14.10 Annexation. Upon ninety (90) days written notice, any additions of territory to the Franchise Area, by annexation or other legal means, contiguous to the Franchise Area, shall thereafter be subject to all the terms of this Agreement as though it were an extension made hereunder related to the Cable System located or operated within said territory.~~

~~CABLE TELEVISION~~

~~(Added 10-28-19)~~

~~This nonexclusive Cable Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the Town of Front Royal, VA, a political subdivision of the Commonwealth of Virginia (hereinafter, "Town") and Shenandoah Cable Television, LLC (hereinafter, "Franchisee").~~

~~The Town, having determined that the financial, legal and technical ability of the Franchisee is reasonably sufficient to provide the services, facilities and equipment necessary to meet the future cable-related needs of the community, desires to enter into this negotiated Franchise Agreement with the Franchisee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein. In furtherance thereof, at its Regular Meeting of October 28, 2019, the Town, after proper notice and public hearing, enacted an ordinance authorizing this Franchise Agreement.~~

~~180-182 SHENANDOAH CABLE TELEVISION LLC FRANCHISE AGREEMENT~~

~~SECTION 1 - DEFINITION OF TERMS~~

~~For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the following meanings:~~

~~**"ACT"** means the Communications Act of 1934 as amended.~~

~~**"AFFILIATE",** in relation to any Person, means another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.~~

~~**"BASIC SERVICE TIER"** means the service tier that includes (i) the retransmission of local television broadcast channels and (ii) public, educational, and governmental channels required to be carried in the basic tier.~~

~~**"CABLE ACT"** shall mean the Cable Communications Policy Act of 1934, as amended from time to time, 47 U.S.C. §§ 521 *et seq*,~~

~~**"CABLE OPERATOR"** means any Person or group of Persons that (A) provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or (B) otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System. Cable Operator does not include a provider of wireless or direct-to-home satellite transmission service.~~

~~**"CABLE SERVICE"** means the one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C.§ 332(d).~~

~~**"CABLE SYSTEM" or "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 (i) a system that serves fewer than 20 Subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only Subscribers without using any public right-of-way; (iv) 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 USC§ 201 et seq., 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; (v) any facilities of any electric utility used solely for operating its electric systems; (vi) or any portion of a System that serves fewer than 50 Subscribers in any locality, where such portion is part of a larger System franchised in an adjacent locality; or (vii) an open video system that complies with§ 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. *§* 573, as amended.~~

~~**"CUSTOMER" or "SUBSCRIBER"** means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Franchisee's express permission.~~

~~**"EFFECTIVE DATE"** means the specific date on which this negotiated Franchise Agreement was approved by a duly enacted ordinance.~~

~~**"FCC"** means the Federal Communications Commission or successor governmental entity thereto.~~

~~**"FORCE MAJEURE"** means an event or events reasonably beyond the ability of Franchisee to anticipate and control. "Force majeure" 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, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Franchisee's facilities are attached or to be attached or conduits in which Franchisee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.~~

~~**"FRANCHISE"** means the initial, nonexclusive, authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System in the public rights-of- way.~~

~~**"FRANCHISE AGREEMENT" or "AGREEMENT"** shall mean this nonexclusive Cable Franchise Agreement and any amendments or modifications hereto.~~

~~**"FRANCHISE AREA"** means the present legal boundaries of the Town as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.~~

~~**"FRANCHISEE"** shall mean Shenandoah Cable Television, LLC.~~

~~**"FRANCHISING AUTHORITY"** means the Town or the lawful successor, transferee, designee, or assignee thereof.~~

~~**"GROSS REVENUE"** means all revenue, as determined in accordance with generally accepted accounting principles, that is actually received by the cable operator and derived from the operation of the cable system to provide cable services in the franchise area; however, "gross revenue" shall not include: (i) refunds or rebates made to subscribers or other third parties; (ii) any revenue which is received from the sale of merchandise over home shopping channels carried on the cable system, but not including revenue received from home shopping channels for the use of the cable service to sell merchandise; (iii) any tax, fee, or charge collected by the cable operator and remitted to a governmental entity or its agent or designee, including without limitation a local public access or education group; (iv) program launch fees; (v) directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing; (vi) a sale of cable service for resale or for use as a component part of or for the integration into cable services to be resold in the ordinary course of business, when the reseller is required to pay or collect franchise fees or similar fees on the resale of the cable service; (vii) revenues received by any affiliate or any other person in exchange for supplying goods or services used by the cable operator to provide cable service; and (viii) revenue derived from services classified as noncable services under federal law, including, without limitation, revenue derived from telecommunications services and information services,~~

~~and any other revenues attributed by the cable operator to noncable services in accordance with rules, regulations, standards, or orders of the Federal Communications Commission.~~

~~**"INSTITUTION NETWORK"** means the Town's communication network.~~

~~**"INTERACTIVE ON-DEMAND SERVICE"** means a service providing video programming to Subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming the programming provider preschedules.~~

~~**"ORDINANCE"** includes a resolution.~~

~~**"PEG"** means public, educational and/or governmental access to the Cable System to provide video programming.~~

~~**"PERSON"** means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.~~

~~**"PUBLIC RIGHT-OF-WAY" (PROW or Public Way)** means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which the Town now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a cable system. No reference herein, or in any franchise, to a "public right-of-way" shall be deemed to be a representation or guarantee by the Town that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and Franchisee shall be deemed to gain only those rights to use as are properly in the Town and as the Town may have the undisputed right and power to give. For purposes of this Franchise, the term "public right-of-way" shall also include any other parcels of property that the Town owns.~~

~~**"SERVICE INTERRUPTION"** means a service outage affecting less than five subscribers, or a loss or degradation of either video or audio for one or more channels for one or more subscribers.~~

~~**"SERVICE OUTAGE"** means the complete loss of cable service to five or more subscribers served by the same trunk, node, or feeder line for a period of 24 hours or more.~~

~~**"TRANSFER"** means any transaction in which (i) an ownership or other interest in the Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that majority control of the Franchisee is transferred; or (ii) the rights and obligations the Franchisee holds under the Franchise granted under this Franchise Agreement are transferred or assigned to another Person or group of Persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the Franchise shall not include (a) transfer of an ownership or other interest in the Franchisee to the parent of the Franchisee or to another Affiliate of the Franchisee; (b) transfer of an interest in the Franchise granted under this Franchise Agreement or the rights held by the Franchisee under the Franchise~~

~~granted under this Franchise Agreement to the parent of the Franchisee or to another Affiliate of the Franchisee; (c) any action that is the result of a merger of the Franchisee's parent; (d) any action that is the result of a merger of another Affiliate of the Franchisee; (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or the System used to provide Cable Service in order to secure indebtedness.~~

~~**"VIDEO PROGRAMMING"** means programming provided by, or generally considered comparable to, programming a television broadcast station provides.~~

~~All terms used herein, unless otherwise defined, shall have the same meaning as set forth in Sections 15.2-2108.19 *et seq.* of the Code of Virginia; and if not defined therein, then as set forth in Title VI of the Communications Act of 1934, 47 U.S.C. § 521 *et seq.*; and if not defined therein, their common and ordinary meaning. In addition, references in this Ordinance to any federal or state law shall include amendments thereto as are enacted from time to time.~~

~~SECTION 2 - GRANT OF AUTHORITY~~

~~2.1 The Franchising Authority hereby grants to the Franchisee under the Code of Virginia and the Cable Act a nonexclusive Franchise authorizing the Franchisee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System and to provide such Cable Services over the Cable System as may be lawfully allowed. This agreement neither authorizes the Franchisee to use the PROW for purposes of providing any service other than Cable Service, nor prohibits the Franchisee from doing so. The Franchisee's authority to provide non Cable Services shall be subject to applicable law.~~

~~2.2 Term of Franchise. The term of the Franchise granted hereunder shall be fifteen (15) years, beginning on the Effective Date, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Code of Virginia, and the Cable Act.~~

~~2.3 Renewal. Any Franchise renewal shall be governed by and comply with the provisions of Article 1.2 of Chapter 21 of Title 15.2 of the Code of Virginia and the Cable Act, as amended.~~

~~2.4 Reservation of Authority. Nothing in this Franchise Agreement shall be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority.~~

~~SECTION 3 - CONSTRUCTION AND MAINTENANCE OF THE CABLE SYSTEM~~

~~3.1 Permits and General Obligations. The Franchisee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and~~

~~maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. Notwithstanding the requirements herein, Franchisee shall not be required to obtain a permit for individual drop connections to Subscribers, servicing or installing pedestals or other similar facilities, or other instances of routine maintenance or repair to its Cable System. All transmission and distribution structures, poles, other lines, and equipment the Franchisee installs for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.~~

~~3.2 Conditions of Street Occupancy.~~

~~(A) New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Franchisee shall, upon reasonable advance written notice from the Franchising Authority (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall notify the Franchisee of the availability of such funding and make such funds available to the Franchisee. It is understood that the Franchising Authority does not guarantee that any public funds will be available to help defray the cost of altering or relocating the Cable System to conform to new grades or lines.~~

~~(B) Relocation at request of Third Party. The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Franchisee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Franchisee is given not less than thirty (30) business days advance written notice to arrange for such temporary relocation.~~

~~(C) Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Way, the Franchisee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance. The Town may make the final determination as to acceptability of repair and/or replacement of damaged facilities. In performing any excavation work in the public rights-of-way, the Franchisee will comply with all of the requirements of Town Code applicable to all users of the Public Rights of Way.~~

~~(D) Safety Requirements. The Franchisee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with~~

~~applicable FCC or other federal and state regulations and with the National Electrical Safety Code (National Bureau of Standards) and the National Electrical Code (National Bureau of Fire Underwriters). The Cable System shall not endanger or interfere with the safety of Persons or property in the Franchise Area.~~

~~(E) Trimming of Trees and Shrubbery. The Franchisee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Franchisee's sole cost and expense. For all planned trimming, the Franchisee shall provide the Town at least five (5) business days' notice of the work to be performed and a description of such work. For trimming of an emergency nature, including responding to storm damage, advance notice is not required. The Franchisee shall be responsible for any damage and all clean up of debris the trimming causes. The foregoing notwithstanding, any tree trimming by Franchisee must at all times comply with any tree trimming provision contained in any separately negotiated pole attachment agreement in effect between the Town and the Franchisee.~~

~~(F) Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective Town utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable System's transmission and distribution facilities underground; provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective Town utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Franchisee to construct, operate, or maintain underground any ground- mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment. To avoid overburdening the Public Way, and in furtherance of the health, safety and welfare of the public, Franchisee will at all times utilize Town owned utility poles and conduit when and where available for the construction, repairs and maintenance of the Cable System pursuant to separately negotiated pole attachment and conduit utilization agreements in effect with the Town. The Cable System will be constructed and maintained in such a way as to maximize the use of Town poles and conduit.~~

~~(G) All excavation and reconstruction work by Franchisee in the Public Rights-of-Way must be in compliance with the requirements of Town Code applicable to users of the Public Rights-of-Way, including all of the standards referenced therein, and all applicable VDOT standards. It shall be the Franchisee's responsibility to obtain any required permits, to review all applicable excavation, reconstruction, restoration, repair and permitting requirements, and to become familiar with such requirements before beginning any excavation, reconstruction, restoration or repair work in the Public Rights-of-Way or private property.~~

~~(H) Any equipment or facilities the Franchisee installs in the Public Rights-of-Way shall be installed, located, erected, constructed, reconstructed, replaced, restored, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not (1) to endanger or interfere in any manner with improvements the Town or VDOT may deem appropriate to make; or (2) to interfere with the rights of any private property owner; or (3) to hinder or obstruct pedestrian or vehicular traffic. Franchisee shall not erect, for any reason, any pole on or along any Public Right-of-Way or on public property without the advance written approval of the Town.~~

~~(I) Whenever the Town shall determine that it is necessary in connection with the repair, relocation, or improvement of the Public Rights-of-Way, the Town may require by written notification that any properties or facilities of the Franchisee be removed or relocated. Within sixty (60) days after receipt of notification, unless the Town extends such period for good cause shown, the Franchisee shall remove or relocate its facilities to such place and under such terms and conditions as the Town specifies. The Franchisee shall bear all expenses associated with the removal and relocation except that the Town will issue, without charge to the Franchisee, whatever local permits are required for the relocation of Franchisee's facilities. If the Franchisee does not complete its removal or relocation within 60 days or such other period as authorized by the Town, the Town may take such actions as necessary to effectuate such removal or relocation at the Franchisee's expense. The Town shall use reasonable efforts to minimize the impact on Franchisee's facilities related to any removal or relocation. Franchisee shall follow all applicable VDOT standards and regulations in connection with the repair, relocation, or improvement of the Public Rights-of-Way. Franchisee shall be entitled to reimbursement of its relocation costs from public or private funds, if any, raised for the project and made available to other users of the Public Way.~~

~~Nothing in this Franchise Agreement shall be construed to prevent the Town from constructing, maintaining, repairing, improving, grading, paving, relocating and/or altering any Public Right-of-Way; constructing, installing, repairing, maintaining, or relocating any water or sewer mains; or constructing, maintaining, relocating or repairing any sidewalk or other public work. All such work shall be done, to the extent possible, in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of the Franchisee.~~

~~Nothing contained in this Franchise Agreement shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Franchisee's facilities while performing any work in any Public Right-of-Way or on public property.~~

~~(J) Movement of Facilities. In the event it is necessary to move or remove any of Franchisee's wires, cables, poles or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the Public Right-of-Ways or public property of the Town, upon 30-day notice by the Town to Franchisee, Franchisee shall move at the expense, which may be required to paid in~~

~~advance, of the Person requesting the temporary removal such of its facilities as may be required to facilitate such movements.~~

~~Any service disruption provisions of this Franchise shall not apply in the event that the removal of Franchisee's wires, cables, poles or other facilities pursuant to the preceding paragraph results in temporary service disruptions.~~

~~(K) Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Franchisee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Franchisee's relocation costs shall be included in any computation of necessary project funding by the Town or private parties. Franchisee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way. It is understood that the Franchising Authority does not guarantee that any public or private funds will be available to help defray the cost of such undergrounding or beautification projects. In the event that public and/or private funds are not available or do not cover the entire cost of the relocation, Franchisee reserves the right to pass its costs, or in the case of partial reimbursement from public and/or private funds its incremental cost, through to its Subscribers in accordance with applicable law.~~

~~(L) Inspection. The Town shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise to ensure compliance with the terms of the Franchise and applicable laws.~~
~~(M) Quality Control. Upon request, the Franchisee will provide information to the Town regarding items of quality control for installation and maintenance activities performed by the Franchisee or its authorized subcontractors.~~

~~SECTION 4 -SERVICE OBLIGATIONS~~

~~4.1 General Service Obligations. The Franchisee shall make Cable Service generally available to businesses and residential dwelling units within the Franchise Area. The Franchisee initially shall build out its Cable System to make Cable Service generally available to those business and residential units located within the red ovals shown on the map attached to this Franchise Agreement as Exhibit A. The Franchisee shall use commercially reasonable efforts (considering build out costs, geographical and geological conditions, and business conditions) to complete such initial build out by January 1, 2022. Franchisee shall complete its Cable System within the remainder of the Franchise area within a commercially reasonable time (considering build out costs, geographical and geological conditions, and business conditions). In addition to the obligations and considerations set forth above, Franchisee shall offer Cable Service to all new or previously unserved business and residential units within 150 feet of the Franchisee's~~ distribution cable.

(A) The ~~Franchisee may elect to provide Cable Service to areas not meeting the above distance standards. The Franchisee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess~~

~~of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above. Such additional charge shall be paid in advance by the developer, landowner, or customer requesting Cable Service in an area that does not meet the density and distance standards.~~

~~4.2 New Developments. Franchisee agrees to use commercially reasonable efforts to inform itself of all newly planned developments within the Town and to work with developers to cooperate in pre-installation of facilities to support Cable Service.~~

~~4.3 Programming. The Franchisee shall offer to all Customers a diversity of video programming services.~~

~~4.4 No Discrimination. The Franchisee shall not discriminate or permit discrimination between or among any Persons in the availability of Cable Services or other services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Franchisee are satisfied; unless such Person has engaged in inappropriate activity including, but not limited to, theft of Franchisee's cable services, vandalism of its property, or harassment of its representatives. Nothing contained herein shall prohibit the Franchisee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.~~

~~Franchisee shall assure that access to Cable Services is not denied to any group of potential residential cable subscribers because of the residents' income.~~

~~4.5 Availability of Maps to the Town: Upon the Town giving two (2) weeks written request, but no more often than annually, the Franchisee shall make available for the Town's viewing, at the Franchisee's nearest business office, or at Town Hall updated maps of the Franchise Area which shall clearly delineate all areas within the Franchise Area where Cable Service is available to Subscribers.~~

~~4.6 Changes in Service: Franchisee agrees to give the Town Manager thirty (30) days prior written notice of changes in the mix or nature of the Cable Services.~~

~~SECTION 5 PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS CHANNELS~~

~~5.1 Franchisee shall designate capacity on up to five (5) channels for public, educational and/or governmental ("PEG") access video programming provided by the Franchising Authority or its designee, such as a public access organization or educational institution. Within one hundred and twenty (120) days of receipt of a written request from the Town to activate an access channel, Franchisee will make such channel(s) available for the Town's use or its designee's use; and such channel(s) shall be carried in HD digital format. Use of a channel position for PEG access shall be provided on the most basic tier of service offered by the Franchisee and in accordance with the Cable Act and the Code of Virginia, and as further set forth below. "Channel position" means a number designation on the Franchisee's channel lineup regardless of the transmission~~

~~format (analog or digital). Franchisee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. In the event any access channel is reassigned, the Franchisee shall provide the Town with at least thirty (30) days' notice before reassigning the channel and shall pay the verified reasonable costs of any advertising and promotional materials required due to the channel reassignment, not to exceed $5,000. A PEG access user- whether an individual, educational or governmental user- acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use. Franchisee shall not exercise editorial control over any public, educational, or governmental use of a channel position, except Franchisee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity. The Franchising Authority shall be responsible for developing, implementing, interpreting and enforcing rules for Educational and Governmental Access Channel use.~~

~~5.2 Public Access. A "Public Access Channel" is a channel position designated for noncommercial use by the public on a first-come, first-served, nondiscriminatory basis. A Public Access Channel may not be used to cablecast programs for profit, or for political or commercial fundraising in any fashion.~~

~~5.3 Educational Access. An "Educational Access Channel" is a channel position designated for noncommercial use by educational institutions such as public or private schools (but not "home schools"), community colleges, and universities.~~
~~5.4 Government Access. A "Governmental Access Channel" is a channel position designated for noncommercial use by the Franchising Authority for the purpose of showing the public local government at work.~~

~~5.5 Franchisee shall ensure that all PEG access channel signals carried on its system, regardless of the method used to acquire the PEG channels, comply with all applicable FCC signal quality and technical standards. The technical and signal quality of all PEG access channel signals shall be preserved and shall be of comparable quality as other channels.~~

~~Within one hundred and twenty (120) days of receipt of the Town's written request to activate an access channel discussed in Section 5.1, Franchisee will provide a connection between a location the Town designates and Franchisee's headend for each new channel to be activated for PEG use, at no charge to the Town if the connection between the new location and the nearest usable signal insertion point in Franchisee's cable system is five hundred (500) feet or less.~~

~~5.6 Capital support for PEG access. At the Town's option, Franchisee shall collect a monthly fee from each subscriber to provide additional capital support for PEG access. The maximum fee that shall be imposed is 0.5% of Franchisee's revenues from basic and expanded cable service, and the fee collected shall be remitted to the Town no later than thirty (30) days following the end of each calendar quarter. Franchisee shall not impose a fee to provide capital support for PEG access unless and until the Town directs Franchisee to impose a fee. The Town shall give Franchisee at least ninety (90) days' notice before Franchisee shall begin collecting the fee. The~~

~~Town shall allocate such amount to PEG capital uses exclusively. If such fee is imposed, it shall not be deemed to be "franchise fees" within the meaning of 47 U.S.C. Section 542 and such payments shall not be deemed to be (i) "payments-in-kind" or any involuntary payments chargeable against the compensation the Franchisee is to pay the Town pursuant to Section 6 hereof, or (ii) part of the compensation the Franchisee is to pay to the Town pursuant to Section 6 hereof.~~

~~SECTION 6 COMMUNICATION TAX AND FRANCHISE FEES~~

~~6.1 Communications Tax: Franchisee shall comply with the provisions of Sections 58.1-645 et seq. of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax, as amended (the "Communications Tax"), and Sections 6.2 through 6.6 of the Agreement shall not have any effect, for so long as the Communications Tax or a successor state or local tax that would constitute a franchise fee for purposes of 47 U.S.C. § 542 is imposed on the sale of cable services by the Franchisee to the Town's subscribers.~~

~~6.2 Payment of Franchise Fee to Town: In the event that the Communications Tax is repealed and no successor state or local tax is enacted that would constitute a franchise fee for purposes of 47 U.S.C. § 542 Franchisee shall pay to the Town a Franchise fee of five percent (5%) of annual Gross Revenue, beginning 30 days from the effective date of the repeal of such tax (the "Repeal Date"). Beginning on the Repeal Date, the terms of Section 6.2 through 6.6 of this Agreement shall take effect. In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than thirty (30) days following the end of each calendar quarter. Should Franchisee submit an incorrect amount, Franchisee shall be allowed to add or subtract that amount in a subsequent quarter, but no later than ninety (90) days following the close of the calendar year for which such amounts were applicable; such correction shall be documented in the supporting information required under Section 6.3 below.~~

~~6.3 Supporting Information: Each Franchise fee payment shall be accompanied by a brief report prepared by a representative of Franchisee showing the basis for the computation and a breakdown by major revenue categories (such as Basic Service, premium service, etc.). The Town shall have the right to reasonably request further supporting information for each Franchise fee payment, subject to the proprietary information provisions of Section 8.7.~~

~~6.4 Limitation on Franchise Fee Actions: The period of limitation for recovery of any Franchise fee payable hereunder shall be three (3) years from the date on which payment by Franchisee is due.~~

~~6.5 Bundled Services: If cable services subject to a franchise fee, or any other fee determined by a percentage of the cable operator's gross revenues in a locality, are provided to subscribers in conjunction with other services: the fee shall be applied only to the value of these cable services, as reflected on the books and records of the cable operator in accordance with rules, regulations, standards, or orders of the Federal Communications Commission, the State Corporation~~

~~Commission, or generally accepted accounting principles. Any discounts resulting from purchasing the services as a bundle shall be reasonably allocated between the respective services that constitute the bundled transaction.~~

~~6.6 Books and Records Regarding Franchise Fees. Subject to the confidentiality requirements of Section 8.7 of this Agreement, the Town, or such Person or Persons the Town designates, shall have the right to inspect and copy records and the right to audit and to re-compute any amounts determined to be payable under this Franchise, regardless of who holds the records. If an audit discloses an overpayment or underpayment of franchise fees, the Town shall notify the Franchisee in writing of such overpayment or underpayment within ninety (90) days of the date the audit was completed. The Franchisee shall have thirty (30) days from receipt of such notice to provide the Town with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these notices, the parties shall agree upon a final settled amount. The Town, in its sole discretion, shall determine the completion date for any audit conducted hereunder. Audit completion is not to be unreasonably delayed by either party. Subject to the confidentiality requirements of Section 8.7 of this Franchise, the Franchisee shall be responsible for providing to the Town all records necessary to confirm the accurate payment of franchise fees. The Franchisee shall maintain such records for the current year plus three (3) years. The Town shall bear its audit expenses unless the audit determines the payment to the Town should be increased by more than five percent (5%) in the audited period, in which case the Franchisee shall pay reasonable and verifiable costs of the audit, but in no event more than $20,000, to the Town within thirty (30) days following the Town's written notice to the Franchisee of the underpayment, which notice shall include a copy of the audit report. If re-computation results in additional revenue to be paid by Franchisee to the Town, such amount shall be subject to an interest charge in accordance with the prime rate of interest charged by the Town's primary depository bank.~~

~~SECTION 7 CUSTOMER SERVICE STANDARDS; CUSTOMER BILLS AND PRIVACY PROTECTION~~

~~7.1 Customer Service Standards. The Franchisee shall comply in all respects with the customer service requirements established by the FCC (47 CFR §76.309) unless modified herein. Franchisee shall be subject to the following customer service standards consistent with federal law:~~

~~(A) Franchisee will maintain a local or toll-free telephone access line which will be available to its subscribers 24 hours a day, seven days a week. Additionally, Franchisee and the Town agree that it is appropriate that Franchisee will also maintain at least one bill payment location and equipment return location within the Town. In addition, Franchisee will provide for an employee to pick up or drop off equipment free of charge in either of the following ways: (i) by having a Franchise representative to go to the subscriber's residence, or (ii) by using a prepaid mailer. Franchisee also has the option to provide alternative payment drop off locations within the Franchise Area.~~

~~(B) Under normal operating conditions, telephone answer time by a customer representative or automated answering device, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety-five (95) percent of the time under normal operating conditions as measured on a quarterly basis.~~

~~(C) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.~~

~~(D) Franchisee shall accurately collect and maintain data to measure its compliance with the telephone answering standards in paragraphs 7.1(B) and 7.1(C).~~

~~(E) Local bill payment location will be open to customers, including assisting walk in customers, at least during the hours of 8:30 a.m. – 5:30 p.m. Monday through Friday.~~

~~(F) Installations, Outages, and Service Calls. Under normal operating conditions, each of the following standards will be met no less than ninety five percent (95%) of the time as measured on a quarterly basis.~~

~~i. Standard installations will be performed within seven business days after an order has been placed, unless the customer requests a longer period. "Standard" installations are those that are within 150 feet of the existing distribution system.~~
~~ii Excluding conditions beyond the control of the Franchisee, the Franchisee will begin repairs on Service Outages promptly and in no event later than eight (8) hours after the outage becomes known.~~

~~iii The Franchisee must begin working to correct Service Interruptions within 8 hours, including weekends, of receiving a subscriber call for a Service Interruption. “Service Interruption” shall mean the loss of any service provided to customer by Franchisee.~~

~~(G) Franchisee shall accurately collect and maintain data to measure its compliance with subparagraph 7.1.(F).~~

~~(H) The "appointment window" alternatives for installations, service calls and other installation activities will either be at a specific time or, at maximum, a two-hour time block during normal business hours. Franchisee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.~~

~~(I) Franchisee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If Franchisee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled as necessary, at a time which is convenient for the customer.~~

~~(J) Franchisee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:~~

~~i. Products and services offered;~~

~~ii. Prices and options for programming services and conditions of subscription to programming and other services;~~

~~iii. Installation and service maintenance policies;~~

~~iv. Instructions on how to use the cable service;~~

~~v. Channel positions of programming carried on the system;~~

~~vi. Refund policy; and~~

~~vii. Billing and complaint procedures, including the Franchisee's office hours, telephone number, and address of the local cable office.~~

~~7.2 Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (i) is not misleading and (ii) does not omit material information. Notwithstanding anything to the contrary in Section 7.1 above, the Franchisee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by the Cable Act.~~

~~7.3 Franchisee shall notify subscribers of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Franchisee. In addition, Franchisee shall notify subscribers thirty (30) days in advance of any significant changes in the other information that paragraph 7.1.(J) requires.~~

~~7.4 In case of a billing dispute, Franchisee must respond to a subscriber's written complaint within fifteen (15) days.~~

~~7.5 Refund checks will be issued promptly by the customer's next billing cycle following resolution of the request, or thirty (30) days, whichever is earlier.~~

~~7.6 Credits for service will be issued promptly by the customer's next billing cycle following the determination that a credit is warranted.)~~

~~7.7 Franchisee shall make available parental control devices to all subscribers who wish to be able to block out any objectionable channel(s) of programming from the cable service entering the subscriber's home.~~

~~7.8 Privacy Protection. The Franchisee shall comply with all applicable federal and state privacy laws.~~

~~**SECTION 8 OVERSIGHT AND REGULATION BY FRANCHISING AUTHORITY**~~

~~8.1 Oversight of Franchise. In accordance with applicable law, the Franchising Authority at its sole cost and expense, shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Franchisee's employee, periodically inspect the construction, operation and maintenance of the Cable System in the Franchise Area, and all parts thereof, as necessary to monitor Franchisee's compliance with the provisions of this Franchise Agreement.~~

(A) ~~The Franchisee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise and other performance standards established by law or regulation, and to ensure that the Cable System components are operating as expected.~~

(B) ~~Upon pertinent and valid evidence demonstrating a probability of non-compliance, the Franchisee shall conduct additional FCC tests upon the Town's requests to ensure that its Cable System is functioning in compliance with applicable laws and regulations and make the results of such test available to the Town to verify compliance. If any such test indicates that any part or component of the System fails to meet applicable requirements, the Franchisee shall take corrective action, retest locations, and advise the Town of the action taken and results achieved.~~

~~8.2 Technical Standards. The Franchisee shall comply with all applicable technical standards of the FCC as published in Subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Franchisee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Franchising Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.~~

~~8.3 Operational Records. The Franchisee shall maintain the records required to compute all operational and customer service compliance measures outlined in this Franchise to demonstrate that the measures are being met for at least four consecutive quarters. Failure to maintain the records as required herein shall subject the Franchisee to the liquidated damages established in this Franchise Agreement~~

~~8.4 Records Required: Franchisee shall at all times maintain:~~

~~(A) Records of all written complaints for a period of one year after receipt by Franchisee or until the applicable compliance measures described in this Franchise are met for four consecutive quarters. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call.~~

~~(B) Records of Outages and Service Interruptions for a period of one year after occurrence, or until the applicable compliance measures described in this Franchise are met for four consecutive quarters, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause.~~

~~(C) Records of service calls for repair and maintenance for a period of one year after resolution by Franchisee, or until the applicable compliance measures described in this Franchise are met for four consecutive quarters, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved.~~

~~(D) Records of installation/reconnection and requests for service extension for a period of one year after the request was fulfilled by Franchisee, or until the applicable compliance measures described in this Franchise are met for four consecutive quarters, indicating the date of request, date of acknowledgment, and the date and time service was extended.~~

~~8.5 Federal Communications (FCC) Testing: Within fourteen (14) days of the Town's written request, a written report of test results of FCC performance testing will be provided to the Town Manager or his designee.~~

~~8.6 File for Public Inspection. Throughout the term of this Franchise Agreement, the Franchisee shall maintain, at a nearby business office or on-line, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations. Upon no less than thirty (30) business days' written notice to the Franchisee, the Town shall have the right to inspect Franchisee's books and records, including electronic books and records, pertaining to Franchisee's provision of Cable Service in the franchise area at any time during normal business hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this franchise. Such notice shall specifically reference the Franchisee's section or subsection which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the Town. Franchisee shall not be required to maintain any books and records for franchise compliance purposes longer than the current year plus three (3) years.~~

~~8.7 Proprietary Information:~~

~~(A) Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to submit information to the Town that it reasonably deems to be proprietary or confidential in nature, nor submit to the Town any of its or an affiliate's books and records not relating to the provision of Cable Service in the franchise area, except as provided herein. Such confidential information shall be subject to terms of a nondisclosure agreement that is acceptable to the parties and to the following, to be applied as is most practicable for the purposes of this Agreement:~~

~~i. To the extent an exemption under the Virginia Freedom of Information Act permits the Town to maintain the confidentiality of submitted information and the Franchisee submits such information to the Town, the Town shall maintain the confidentiality of such information and not disclose it to any public request;~~

~~ii. To the extent the information provided to an accountant, attorney, consultant, or any other agent of the Town ("Town Consultant") would not be subject to public disclosure under the Virginia Freedom of Information Act, and the Town instructs the Franchisee to provide such information to the Town Consultant as may be required by this Agreement, the Franchisee shall provide such information to the Town Consultant and the Town shall not take possession of the information nor engage in any act that would jeopardize the information's confidentiality; or,~~

~~iii. Franchisee must provide the following documentation to the Town:~~

~~(a) specific identification of the information;~~
~~(b) statement attesting to the reason(s) the Franchisee believes the information is confidential; and~~
~~(c) statement that the documents are available at the Franchisee's designated offices for the Town's inspection.~~

~~(B) At all times, the Town shall take reasonable steps to protect the proprietary and confidential nature of any books, records, maps, plans, or other Town requested documents that are provided pursuant to the Agreement to the extent they are designated as such by the Franchisee. Nothing in this Section shall be read to require the Franchisee to violate federal or state law protecting Subscriber privacy.~~

~~8.8 Reports. Within ninety (90) days after receipt of the Town's written request, Franchisee shall submit a written year-end report to the Town. Such report may address, if the Town so desires: (I) major cable-related projects undertaken in the past year and planned for the current year, including construction and upgrade schedules for any new, relocated, or upgraded aerial or underground facilities. Upon written request of the Town, no later than thirty (30) days after the end of each quarter, the Franchisee shall submit a written report to the Town regarding complaints and service requests the Franchisee received from customers in the Franchise Area concerning Franchisee's customer service performance.~~

~~SECTION 9 TRANSFER OR CHANGE OF CONTROL OF CABLE TELEVISION OR FRANCHISE~~

~~9.1 No transfer of this Franchise shall occur without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld, delayed or conditioned. No transfer shall be made to a Person, group of Persons or Affiliate that is not legally, technically and financially qualified to operate the Cable System and satisfy the obligations hereunder.~~

~~SECTION 10 INSURANCE AND INDEMNITY~~

~~10.1 The Franchisee shall indemnify hold harmless and defend the Town, its officers, employees, and agents (hereinafter referred to as "indemnitees"), from and against:~~

~~(A) Any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the indemnitees by reason of any act or omission of the Franchisee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or~~
~~any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Franchisee's cable system caused by Franchisee, its contractors, subcontractors or agents or the Franchisee's failure to comply with any federal, state or local statute, ordinance or regulation.~~

~~(B) Any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which are imposed upon, incurred by or asserted against the indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the Franchisee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the Franchisee's cable system in the Town.~~

~~10.2 Damages shall include, but not be limited to, penalties arising out of copyright infringements and damages arising out of any failure by the Franchisee to secure consents from the owners, authorized distributors or licensees, or programs to be delivered by the Franchisee's cable system.~~

~~10.3 The Franchisee undertakes and assumes for its officers, agents, contractors, subcontractors, and employees all risk of dangerous conditions, if any, on or about any Town owned or controlled property, including streets and public rights-of-ways, except for any claim asserted or liability imposed that arises or is related to gross negligence or intentional misconduct by the indemnities; and the Franchisee hereby agrees to indemnify and hold harmless the indemnitees against and from any claim asserted or liability imposed upon the indemnitees for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the Franchisee's cable system or the Franchisee's failure to comply with any federal, state or local statute, ordinance or regulation, except for any claim asserted or liability imposed upon the indemnitees that arises or is related to gross negligence or intentional misconduct by the indemnitees.~~

~~10.4 In the event any action or proceeding shall be brought against the indemnitees by reason of any matter for which the indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the indemnitees, and at the Franchisee's sole cost and expense, resist and defend the same; provided further, however, that the Franchisee shall not admit liability in any~~

~~such matter on behalf of the indemnitees without the written consent of the Town Attorney or his designee. If the Town determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Town.~~

~~10.5 The Town shall give the Franchisee notice within 10 business days of the Town receiving notice of a written claim, or the commencement of any action, suit or other proceeding covered by the provisions of this section. The Town will cooperate with the Franchisee while the Franchisee defends any claim or action under this section.~~

~~10.6 Nothing in this Franchise Agreement is intended to, or shall be construed or applied to, express or imply the Town's waiver of statutory provisions, privileges or immunities of any kind or nature as set forth in the Code of Virginia, including the Town's limits of liability as exists presently or as the legislature may increase from time to time. Nothing in a franchise or this ordinance shall constitute a waiver of the Town's statutory provisions, privileges or immunities, including the Town's sovereign immunity, of any kind or nature.~~

~~10.7 The Franchisee shall maintain, and by its acceptance of a franchise hereunder specifically agrees that it will maintain throughout the term of the franchise, general commercial liability insurance insuring the Franchisee. All liability insurance shall include an endorsement in a specific form which names as joint and several insured's the Town and the Town's officials, employees and agents, under such commercial liability policy, with respect to all claims arising out of the operation and maintenance of the Franchisee's cable system in the Town. Such policy shall be in the minimum amounts of Ten Million Dollars ($10,000,000) combined single limit per occurrence for bodily injury, property damage, or personal & advertising injury, which limit may be met through any combination of primary and excess liability policies.~~

~~(A) The Franchisee shall provide Workers Compensation Insurance as required by the Commonwealth of Virginia;~~

~~(B) Franchisee shall carry and maintain in its own name automobile liability insurance with a limit of $1,000,000 for each person and $1,000,000 for each accident for property damage with respect to owned and non-owned automobiles for the operation of which the Franchisee is responsible; and~~

~~10.8 The inclusion of more than one (1) insured shall not operate to increase the limit of the Franchisee's liability, and the insurer waives any right on contribution with insurance which the Town may have.~~

~~10.9 All policies of insurance this section requires shall be placed with companies which are qualified to write insurance in the Commonwealth of Virginia and which maintain throughout the policy term a General Rating of "A- " and a Financial Size Category of "VII " as determined by Best Insurance Rating Services.~~

~~10.10 Upon the Town's written request, the Franchisee shall provide the Town with Certificates of Insurance for the coverages this section mandates. The Franchisee shall immediately advise the Town Attorney of any litigation that may develop that would affect the Town.~~

~~10.11 Should the Town find an insurance document to be non-compliant, then it shall notify the Franchisee; and the Franchisee shall promptly cure the defect in accordance with the requirements of this section 10.~~

~~10.12 Neither this section's provisions, nor any damages recovered by the Town thereunder, shall be construed to nor limit the Franchisee's liability under any franchise issued hereunder or for damages, except that nothing herein shall be interpreted to permit the Town to exercise rights and remedies in a manner that permits duplicative recovery from or payments by the Franchisee.~~

~~10.13 The commercial general liability insurance policy provided for herein shall name the Town, its officers, employees and agents as additional insureds, and shall be primary to any insurance or self insurance the Town carries, but only with respect to the losses for which the Franchisee is responsible hereunder. The insurance policies this section requires shall be carried and maintained by the Franchisee throughout the term of the franchise and such other period of time during which the Franchisee operates or is engaged in the removal of its cable system. Each policy shall provide for notice of cancellation in accordance with policy provisions~~

~~10.14 Nothing in this section shall require Franchisee to indemnify, hold harmless or defend the Town, its officials, employees or agents, from any claims or lawsuits arising out of the Town's award of a franchise to another person.~~

~~SECTION 11 SYSTEM DESCRIPTION AND SERVICE~~

~~11.1 System Characteristics: Franchisee's Cable System shall meet or exceed the following requirements:~~

> ~~(A) The System shall be capable of providing Video Programming reception available to its customers in the Franchise Area in accordance with the Cable Act.~~
>
> ~~(B) The System shall be designed to be an active two-way plant for subscriber interaction, if any, required for selection or use of Cable Service.~~
>
> ~~(C) The Cable Service shall be operated in a manner such that it is in compliance with FCC standards and requirements with respect to interference. The Cable System shall be operated in such a manner as to minimize interference with a Subscriber's reception of off-the-air signals. The Franchisee shall insure that signals carried by the Cable System, or originating outside the Cable System wires, cable, fibers, electronics and facilities, do not ingress or egress into or out of the Cable System in excess of FCC standards. In particular, the Franchise shall not operate the Cable System in such a manner as to pose unwarranted interference with emergency radio services, aeronautical navigational frequencies or an airborne navigational reception in normal flight patterns, or any other type of wireless communications, pursuant to FCC regulations.~~

~~11.2 Interconnection: The Franchise shall design its Cable System so that it may be interconnected with other cable systems and open video systems in the Franchise Area.~~

~~11.3 Standby Power: The Franchisee shall provide standby power generating capacity at the headend and at all hubs. The Franchisee shall maintain standby power capable of at least twenty-four (24) hours duration at the headend and all hubs, with automatic response systems to alert the local management center when commercial power is interrupted.~~

~~11.4 Technical Standards: The Cable System shall meet or exceed the applicable technical standards set forth in 47 C.F.R. § 76.601.~~

~~11.5 Leased Access Channels: The Franchisee shall provide Leased Access Channels that federal law requires.~~

~~11.6 Cable Service to School and Government Facilities.~~

~~Franchisee shall provide, without charge, at least one cable service outlet activated for basic cable service to each facility owned by Town government, and by the Warren County Public Schools located within the Town, as well as other such municipal buildings where service is requested in the future that are located within the Franchise Area within 150 feet of the Franchisee's distribution cable. The excess cost for extending service to buildings not within 150 feet of the Franchisee's distribution cable shall be paid by the entity requesting service.~~

~~11.7 Emergency Powers. In the event of an emergency, or where Franchisee's Cable System creates or is contributing to an imminent danger to health, safety, or property, or an unauthorized use of property, the Franchisee shall remove or relocate any or all parts of Franchisee's Cable System at the Town's request. If the Franchisee fails to comply with the Town's request, the Town may remove or relocate any or all parts of the Franchisee's cable system upon reasonable notice to the Franchisee. The Town shall use reasonable efforts to minimize the impact on Franchisee's facilities related to any emergency removal or relocation. Franchisee shall be entitled to compensation for expenses incurred for removal or relocation in the event of an emergency to the extent other users of the Public Way are compensated. It is understood that the Franchising Authority does not guarantee that funds will be available to compensate users of the Public Ways for emergency removal or relocation.~~

~~11.8 Emergency Alert System. Franchisee shall install and thereafter maintain an Emergency Alert System (EAS) that shall at all times be operated in accordance with FCC rules and the Virginia EAS Plan.~~

~~SECTION 12 ENFORCEMENT OF FRANCHISE~~

~~12.1 If, pursuant to any required public hearing, the Town determines that the Franchisee has failed to materially comply with this franchise the Town may impose any penalty hereunder, including, without limitation, revocation of the franchise.~~

~~12.2 Within thirty (30) days after the award of a franchise, the Franchisee shall deposit with the Town a performance bond from a financial institution running to the Town in the amount of one hundred thousand dollars ($100,000.00.). The bond shall be used to insure the Franchisee's faithful performance of all its franchise provisions or defaults under a franchise or the payment by Franchisee of any penalties, liquidated damages, claims, liens, and taxes due the Town which~~

~~arise by reason of the construction, operation, or maintenance of Franchisee's Cable System in the Town, including restoration of the public rights-of-way and the cost of removal or abandonment of any property of a cable operator.~~

~~12.3 Any bond obtained by Franchisee must be placed with a company which is qualified to write bonds in the Commonwealth of Virginia, and shall contain the following endorsement (or the substantive equivalent of such language as agreed upon by the Town):~~

~~"It is hereby understood and agreed that this bond may not be cancelled without the Town's consent until sixty (60) days after the Town's receipt by registered mail, return receipt requested, of a written notice of intent to cancel or not renew."~~

~~12.4 Any bond shall be recoverable by the Town for all damages and costs, whether direct or indirect, resulting from the Franchisee's failure to well and faithfully observe and perform any provision of this Agreement.~~

~~12.5 The bond shall be maintained at the amount established herein for the entire term of the franchise, even if amounts have to be withdrawn pursuant to this ordinance. The Franchisee shall promptly replace any amounts withdrawn from the bond.~~

~~12.6 Non-compliance procedures.~~

~~(A) Should the Franchising Authority believe that the Franchisee has not complied with any of the provisions of this Franchise Agreement, it shall: (i) informally discuss the matter with the Franchisee and (ii) notify the Franchisee in writing of the exact nature of the alleged noncompliance if the discussions described in the foregoing clause (i) do not lead to resolution of the alleged noncompliance. The Franchisee shall have thirty (30) days from receipt of this written notice to: (a) respond to the Franchising Authority, if the Franchisee contests, in whole or in part, the assertion of noncompliance; (b) cure such default; or (c) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed. The Franchising Authority shall schedule a public hearing in the event that the Franchisee fails to respond to the written notice pursuant to these procedures or in the event that the alleged default is not remedied within thirty (30) days of the date projected above if the Franchising Authority intends to continue its investigation into the default. The Franchising Authority shall provide the Franchisee at least thirty (30) business days prior written notice of such hearing, which will specify the time, place, and purpose. The Franchising Authority shall provide the Franchisee with a reasonable opportunity to be heard at any such hearing.~~

~~(B) The Town shall, within a reasonable time after the closure of the public hearing, issue findings and conclusions in writing, setting forth the basis for the findings; the proposed~~

~~cure plan; and the time line for curing the violation if the violation can be cured; and the penalties, damages and applicable interest owed, if any.~~

~~(C) Subject to applicable federal and Virginia law and the provisions of this Agreement, if the Town determines pursuant to a public hearing that Franchisee is in violation of any provision of this Agreement the Town may apply one or a combination of the following remedies: (i) seek specific performance or other equitable relief; (ii) commence an action at law; (iii) apply penalties in accordance with Section 12.8, if applicable; or (iv) apply liquidated damages in accordance with Section 12.8, if applicable.~~

~~(D) The Town may designate its cable administrator or other person to conduct the hearings and issue findings and conclusions under this subsection in which case the Franchisee may appeal the determination of the cable administrator or other Town designee to the Town Council. Such an appeal shall be heard at a lawfully noticed public hearing. The Franchising Authority shall provide the Franchisee with a reasonable opportunity to be heard at any such hearing.~~

~~12.7 Penalties and Liquidated Damages. Because it may be difficult to calculate the harm to the Franchising Authority in the event of Franchisee's breach of this Franchise Agreement, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the Franchising Authority elects to assess liquidated damages as provided in this Agreement and such liquidated damages have been paid, such damages shall be the Franchising Authority's sole and exclusive remedy. Nothing in this Section shall preclude the Franchising Authority from exercising any other right or remedy with respect to a breach that continues past the time the Franchising Authority stops assessing liquidated damages for such breach. Liquidated damages shall not be assessed until the Franchising Authority has completed the procedures set forth in Section 12.7 hereof, including holding a public hearing, and notifying the Franchisee by certified or registered mail of the proposed liquidated damages, specifying the violation. The Franchisee shall have thirty (30) days from the date of receipt of the written notice to submit payment. If the Franchisee does not make payment within that period, the Franchising Authority may obtain the amount assessed from the Franchisee's performance bond.~~

~~(A) The first day for which liquidated damages may be assessed, if there has been no cure, shall be the day after the end of the applicable cure period, including any extension of the cure period the Franchising Authority has granted.~~

~~(B) Franchisee may appeal (by pursuing judicial relief) any assessment of liquidated damages within thirty (30) days of receiving written notice of the assessment. Franchisee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of the appeal.~~

~~(C) The Franchising Authority may assess liquidated damages for the following violations of this Franchise Agreement, in the following amounts:~~

~~i. Failure to comply with PEG access requirements: $200 per violation for each day the violation continues.~~

~~ii. Failure to render payments due to the Franchising Authority: Three-tenths of one percent (0.3%) of the unpaid amount for each day the violation continues, in addition to any monetary payment due and interest, computed at the Town's prime rate of interest charged by the Town's primary depository bank.~~

~~iii. Failure to supply information, reports, or filings lawfully required: $100 per violation for each day the violation continues.~~

~~iv. Failure to comply with customer service standards: $100 per each violation for each day the violation continues, except where compliance is measured quarterly, in which case damages shall be as specified in Section 12.8(C)v below.~~

~~v. Failure to comply with customer service standards with which compliance is measured on a quarterly basis: $300 for the first violation in which such standards were not met; $750 for any violation within 18 months after the first; and $1,500 for any violation within 18 months after the second or any subsequent violation.~~

~~vi. The Franchisee shall not be charged with multiple violations for a single act or event affecting a single subscriber or for a single act or event affecting multiple subscribers on the same day.~~

~~vii. The parties agree that such liquidated damages are reasonable.~~

~~viii. The Town may reduce or waive any of the above liquidated damages if it determines, in its sole discretion that such waiver is in the public interest.~~

~~ix. If a court of competent and binding jurisdiction determines that liquidated damages cannot be imposed by this Agreement, the foregoing liquidated damages shall be construed to be penalties to the full extent allowed and contemplated by paragraph 6 of Section 15.2-2108.22 of the Code of Virginia and shall apply via the liquidated damages procedures and limitations under this section.~~

~~(D) The amount of all liquidated damages assessed per annum shall not exceed twenty thousand dollars ($20,000) in the aggregate.~~

~~(E) If after 120 days the Franchisee has not cured or commenced to cure the alleged breach to the satisfaction of the Franchising Authority, the Franchising Authority may pursue all other remedies aside from liquidated damages.~~

~~12.8 Technical Violation. The Franchising Authority agrees that it is not its intention to subject the Franchisee to penalties, fines, forfeitures or revocation of the Franchise for so-called~~

~~"technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited to, the following:~~

> ~~(A) In instances or for matters in which the Franchisee's violation or breach of the Franchise was a good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or~~
>
> ~~(B) Where there existed circumstances reasonably beyond the Franchisee's control and which precipitated the Franchisee's violation of the Franchise, or which prevented the Franchisee from complying with a term or condition of the Franchise.~~

~~SECTION 13 INSPECTION OF FACILITIES~~

~~13.1 Franchisee shall comply with all applicable federal, state, and local construction and engineering codes and regulations, currently in force or hereafter applicable, to the construction, operation or maintenance of its Cable System within the Town. The Town shall have the right to review Franchisee's construction plans and specifications to assure compliance with the required standards. After construction has been completed, the Town shall have the right to inspect all construction or installation work performed pursuant to the franchise and all applicable federal, state and local building and engineering codes. However, the Town shall not be required to review or approve construction plans and specifications or to make any inspections. The Franchisee shall be solely responsible for taking all steps necessary to assure compliance with applicable standards and to ensure that its Cable System is installed in a safe manner and pursuant to the terms of the franchise and applicable law.~~

~~SECTION 14 MISCELLANEOUS PROVISIONS~~

~~14.1 Force Majeure. The Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by events which constitute a Force Majeure, as defined in this Agreement.~~

~~14.2 Notice. All notices shall be in writing and shall be served upon the other party by hand delivery; first class mail; registered or certified mail, return receipt requested; or by reputable overnight courier service and addressed as follows:~~

> ~~To the Franchising Authority:~~
>
> ~~Town Manager~~
> ~~Town of Front Royal~~
> ~~P.O. Box 1560~~
> ~~102 E. Main Street~~
> ~~Front Royal, Virginia 22630~~
>
> ~~And to:~~

~~Town Attorney~~
~~Town of Front Royal~~
~~P.O. Box 1560~~
~~102 E. Main Street~~
~~Front Royal, Virginia 23834~~

~~To the Franchisee:~~
~~Chris Kyle~~
~~500 Shentel Way~~
~~Edinburg, VA 22824~~

~~14.3 Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the Franchising Authority and the Franchisee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by the Franchise Agreement.~~

~~14.4 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid in whole or in part by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portion, which shall continue in full force and effect.~~

~~14.5 Governing Law. This Franchise Agreement shall be deemed to be executed in the Commonwealth of Virginia and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the Commonwealth of Virginia.~~

~~14.6 Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument in writing duly executed by the Franchising Authority and the Franchisee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law.~~

~~14.7 No Third Party Beneficiaries. Nothing in this Franchise Agreement shall confer third party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.~~

~~14.8 No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Franchisee may have under federal or state law unless such waiver is expressly stated herein.~~

~~ELECTRIC COMPANY~~

~~(Adopted 5-2-86; Renewed 1-2-09; Amended 8-28-14)~~

~~180-183 ELECTRIC COMPANY FRANCHISE~~

~~On or about January 12, 2009, the Town of Front Royal, Virginia (the "Town") did enact that certain ordinance granting The Potomac Edison Company d/b/a Allegheny Power ("Allegheny") and its successors or assigns certain rights and privileges relating to the transmission and distribution of electricity within or outside the corporate limits of the Town, all as more particularly provided in said ordinance, a copy of which is attached hereto and marked as Exhibit A ("Ordinance"); and~~

~~Rappahannock Electric Cooperative ("REC") did acquire (as successor and assignee) a portion of Allegheny's service territory and associated distribution assets, which territory includes the Town, all as provided more particularly in that certain State Corporation Commission Order in Case No. PUE-2009-00101("Acquisition"); and~~

~~REC and the Town desire to amend the Ordinance for the purposes expressed more particularly below; and~~

~~Now Therefore, in consideration of the mutual promises and conditions expressed hereunder, the Ordinance and other valuable consideration, the receipt of which is hereby acknowledged, the Ordinance shall be amended as follows:~~

~~**Section 1.** The above recitals are incorporated in this amendment to the Ordinance ("Amendment") as material terms and conditions hereunder.~~

~~**Section 2.** The Town hereby reaffirms all rights and privileges granted under the Ordinance for the benefit of REC as successor to Allegheny's service territory under the Acquisition.~~

~~**Section 3.** This Amendment specifically addresses the installation and replacement of~~

~~utility poles, conductors and facilities within the Town along the locations designated on 1~~

~~Exhibits 1-4 (collectively the "Facilities" or individually "Facility"), which exhibits are incorporated herein by this reference as material conditions and obligations under this Amendment (all of the foregoing under this Section 3 the "Project")~~

~~**Section 4.** REC will transfer all Town facilities from existing poles to new poles as shown on Exhibits 1-4. In this regard, REC will install and construct the Facilities in the locations described on the Exhibits 1-4. The installation will include approximately fifty-three (53) wooden utility poles, three (3) steel utility poles, approximately 8,100 feet of 3-phase 336 ACSR and various crossarms and support facilities. All new steel poles shall have a galvanized finish and be directly imbedded in the ground according to applicable ASCE, ASTM, NESC and ANSI standards. REC will also install all related hardware and materials as may be reasonably required for the Facilities, except for the triplex conductor required on Exhibit 2, from P/S 110 to P/S 230. REC will undertake all efforts pertaining to the Project in a reasonable and diligent manner endeavoring to minimize any disruption to electric services. Prior to any disruption in electric services, except in emergency or unanticipated situations, REC will undertake reasonable efforts~~

~~to notify Town customers before any outage is required for the construction of a Facility. Before the project described herein commences, REC will mail notice letters (example Exhibit 5) to landowners and/or residents of affected properties indicating the work being performed, and REC contact information for any questions. Prior to undertaking any actions that may likely disrupt services, REC will contact customers in person and/or by hanging outage notification "door knockers" at the residence at a minimum of 24 hours before outage occurs.~~

~~**Section 5.** After successfully energizing the new 34.5kV line, REC will, in regard to the existing dual circuit 34.5kV and 12.5kV overhead utility line section shown on Exhibit 4 and Exhibit 6, de-energize, and remove or abandon all such facilities no longer required for REC 12.5kV distribution services, relocate those portions of the 34.5kV line section that are not currently occupying streets, avenues, alleys, parks, or other public places to a mutually agreed upon route, and thereafter vacate any applicable right of ways, all within a reasonable time period thereafter not to exceed eighteen (18) months.~~

~~**Section 6.** Upon completion of the Project, REC will relinquish ownership of the Facilities and convey and assign said ownership to the Town, except REC will maintain ownership of the conductor, supports and insulators used for 34.5kV REC circuit. Also, where Century Link is present owner of poles (P/S 110-220 Exhibit 2, Sheet 2, 3 & 4), Century Link will retain ownership after completion of project.~~

~~**Section 7.** The Ordinance shall remain in full force and effect except as amended through this Amendment.~~

~~**Section 8.** REC, subject to a separate agreement and in accordance with any applicable state corporation commission and/or local approvals, agrees, in good faith, to evaluate (in cooperation with the Town) the potential of consolidating facilities on 6th Street (within the Town) to the extent that such consolidating does not: (i) impact REC service reliability levels, (ii) place undue financial burden on the Cooperative, and (iii) follows sound engineering and safety standards.~~

~~This Ordinance was adopted by the Town Council August 28, 2014. An Interconnection Agreement with Rappahannock Electric Cooperative adopted July 1, 2014 is on file in the Town's Energy Services Department.~~

~~TELEPHONE COMPANY~~

~~Adopted 1-28-92; Renewed 6-27-05~~

~~180-184 TELEPHONE COMPANY FRANCHISE~~

~~Be it enacted by the Town Council of the Town of Front Royal, Virginia that an Ordinance to grant a telephone company franchise in accordance with the provisions of Virginia Code Section 56-460 and Virginia Code Section 15.2-2100, as amended, is hereby adopted and enacted [June 27, 2005] as follows:~~

~~Section 1 FRANCHISE GRANTED~~

~~The Central Telephone Company of Virginia, hereinafter known as "Centel", its lessees, successors and assigns, for the term and subject to the conditions and limitations hereinafter stated, is hereby granted a franchise to occupy and to use the streets, roads, avenues, alleys, turnpikes, waterways, parks and other public places of the Town of Front Royal, Virginia, and to acquire, erect, reconstruct, maintain and use thereon telephone lines and equipment, including poles, towers, wires, cable, conduit and any accessories used in connection with telephone lines and service, under, over and along the streets, avenues, roads, alleys, turnpikes, waterways, parks and other public places and upon and through the poles, towers, conduits and other facilities and structures used by the Town of Front Royal in its transmission and distribution of electrical service.~~

~~Section 2 PURPOSE OF THE FRANCHISE~~

~~The purpose of the franchise is to permit Centel the right and privilege of erecting, maintaining and operating a telephone system to provide telecommunications services, including all necessary appurtenances, within the limits of the Town of Front Royal and to use the streets and public places of the Town of Front Royal and the property of the Town of Front Royal in its operations subject to the conditions and agreements as hereafter set forth.~~

~~Section 3 TERM OF FRANCHISE~~

~~The term of the franchise shall be for a period of twenty (20) years from the effective date of this ordinance.~~

~~Section 4 POLES AND CONDUITS~~

~~For the purpose of providing telephone service, Centel is authorized to erect and maintain telephone poles, towers, cables, wires, conduits and accessory structures and equipment upon, along, across, over and under the public streets, avenues, alleys, roads, parks, turnpikes, waterways and other places of the Town of Front Royal, but the Town reserves the right to refuse to permit the erection of poles and overhead cables on such streets and public ways as it deems necessary in accordance with the Town's plans for removal of poles and overhead lines from certain areas and for reasons of safety or for other legitimate reasons.~~

~~The location of such poles, towers, conduits and accessory equipment and structures shall be subject to the approval of the Town of Front Royal and shall be in accordance with the standards and requirements for location, construction and maintenance which are set forth by the Town Engineer.~~

~~Section 5 REPAIRS~~

~~Centel shall promptly repair or replace any sidewalk, street or other property of the Town which may be damaged or displaced by Centel in the erection and operation and maintenance of its telephone system. Centel will exercise reasonable precautions to avoid damage to the facilities of the Town and to the facilities of any other use of the poles, towers, conduits and other property of the Town of Front Royal. In the event that Centel fails or refuses to repair any damage to the property of the Town of Front Royal upon ten (10) working or business days written notice to~~

~~Centel, the Town may then undertake to repair or replace any damaged or displaced Town property, and the expense of such repairs or replacement shall be paid to the Town by Centel and may be recovered in any manner prescribed by law, including application of the performance bond imposed hereunder.~~

~~Section 6 INDEMNIFICATION~~

~~To the extent permissible by Applicable Law, Centel agrees and bonds itself by the acceptance of this ordinance to indemnify, keep and hold the Town of Front Royal free and harmless from liability on account of injury to persons or property growing out of the negligence or willful misconduct of Centel, or its employees or agents in the construction, improvement, maintenance, repair and operation of its telephone lines, structures and equipment. Nothing herein, however, shall be construed to render Centel liable for the negligence or willful misconduct of the Town of Front Royal, its agents or employees or the negligence of other persons or entities other than those set forth herein.~~

~~To the extent permissible by Applicable Law, the Town agrees and bonds itself, by the passage of this ordinance, to idemnify, keep and hold Centel free and harmless from liability on account of injury to person or property growing out of the negligence or willful misconduct of the Town, or its employees or agents in the construction, improvement, maintenance, repair and operation of its electric utility lines, structures and equipment. Nothing herein, however, shall be construed to render the Town liable for the negligence or willful misconduct of Centel, its agents or employees or the negligence of other persons or entities other than those set forth herein.~~

~~Section 7 MAINTENANCE~~

~~The rights and privileges set forth herein are granted to Centel upon the expressed condition and understanding that Centel will maintain its properties, works and structures located within the Town of Front Royal in good and safe repair and order at all times during the term of this franchise agreement.~~

~~Section 8 INSPECTIONS~~

~~The Town of Front Royal and its employees or agents shall have the right at any time to make inspections, upon reasonable notice, of Centel's telephone system or any part thereof.~~

~~Section 9 ANNUAL PAYMENT~~

~~Annual pole rental payments will be disbursed by the parties in accordance with the terms and conditions of the separate Pole Attachment Agreement entered by the Town and Sprint.~~

~~Section 10 PERFORMANCE BOND~~

~~Centel, as a condition of franchise approval, shall execute a bond in the amount of $1,000.00 with security acceptable to the Town of Front Royal to ensure Centel's satisfactory performance of its obligations under this franchise.~~

~~Section 11 EMERGENCIES~~

~~Town may remove any part of the system in the case of fire, disaster or other emergencies threatening life or property, as determined by Town. In such event, neither Town nor any agent, contractor or employee thereof, shall be liable to Centel or its customers or third parties for any damages caused them or the system, such as for, or in connection with, protecting, breaking through, moving, removal, altering, tearing down or relocating any part of the system.~~

~~Section 12 NEW DEVELOPMENTS~~

~~Centel will use commercially reasonable efforts to install facilities underground in new subdivisions in accordance with Town Code Section 148-37 to the extent such code is consistent with Applicable Law. "Applicable Law", as used in this ordinance, shall mean all applicable laws, tariffs, government regulations and orders, including, but not limited to, the regulations and orders of the Federal Communications Commission and the Virginia State Corporation Commission.~~

~~Section 13 TEMPORARY RELOCATION~~

~~Upon fifteen (15) business days notice Centel shall temporarily raise or lower its wires or other equipment upon the request of any person including without limitation, a person holding a building moving permit issued by Town. Centel may charge a reasonable rate for this service not to exceed its actual direct costs.~~

~~Section 14 VACATION OF STREET~~

~~If a street or public way where Centel has facilities is vacated, eliminated, discontinued or closed, Centel shall be notified of same and all rights of Centel under this Franchise Ordinance to use same shall terminate and Centel shall immediately remove its system from such street or public way unless Centel obtains all necessary easements from the affected property owners to use the former street or public way or a court order the provision of such easements. Where reasonably possible and to the extent consistent with the treatment of other utility facilities in the former street or public way, Town shall reserve easements for Centel to continue to use the former street or public way. Centel shall bear the cost of any removal or relocation of its system unless the vacation is primarily for the benefit of a private party, in which case the private party shall bear such costs. Centel shall be provided thirty (30) days notice of any proposed vacation proceedings involving its facilities.~~

~~Section 15 UNDERGROUND STREET CROSSING~~

~~Whenever Centel must place its system or other facilities beneath the traveled or paved portion of the streets or public wasy, unless otherwise approved in advance by Town, Centel shall do so by boring and not by excavation of a trench in which to place cable conduit. Boring shall be done wherever possible, so that the excavations necessary for it are not in the paved portion of the right-of-way.~~

~~Section 16 TREE TRIMMING~~

~~Centel may trim trees upon and overhanging the public ways pursuant to Town Code. Centel shall notify all adjacent property owners at least two (2) days in advance of its tree trimming; provided, however, in the event that the Town Manager has determined the existence of an emergency situation, such requirement of notice may be waived by the Town Manager.~~

~~Section 17 CUSTOMER SERVICE STANDARDS~~

~~Subject to Applicable Law. Centel shall comply with all applicable Customer Service standards as established and made applicable to Centel by the Virginia State Corporation Commission.~~

~~Section 18 GOVERNING LAW~~

~~In any controversy or dispute concerning the terms of the franchise, the laws of the Commonwealth of Virginia shall apply.~~

~~Section 19 SEVERABILITY~~

~~In the event that any section, subsection, sentence, clause, phrase or a portion of the Franchise Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and will be severed from all other portions without affecting the validity of the remainder.~~

~~Section 20 COMPLIANCE WITH LAWS~~

~~The validity of this ordinance, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Franchisee, shall be governed by Applicable Law.~~

~~Section 21 SUCCESSORS OR ASSIGNEES~~

~~All the rights and privileges hereby granted to Centel may be exercised by an successor or assignees of Centel, but said successor or assignee shall be subject to the provisions, obligations, stipulations and requirements hereby prescribed. The Town reserves the right to increase the required performance bond imposed hereunder for any successor or assignee.~~

~~Section 22 FRANCHISE RIGHTS~~

~~The Town of Front Royal grants to Centel a franchise for local exchange telephone service, telecommunications service and related activities, and for no other purpose.~~

~~PUBLIC PASSENGER BUS SERVICE~~

~~Adopted 6-28-04; Renewed 8-24-09; 9-22-14; 11-25-19)~~

~~**180-185 PUBLIC SERVICE BUS SERVICE FRANCHISE**~~

~~**Section 1 FRANCHISE GRANTED**~~

~~The Virginia Regional Transit, hereinafter known as "VRT", its lessees, successors and assigns, for the term and subject to the conditions and limitations hereinafter stated, is hereby granted a Franchise to occupy and use the streets, roads, avenues, alleys and other public places of the Town of Front Royal, Virginia, and to designate, maintain and use adjacent sidewalks for the operation of public passenger bus transportation services to the people of Front Royal utilizing the FTA 5311 Rural Transit Program (Section 5311 of the Federal Surface Transportation Efficiency Act).~~

~~**Section 2 PURPOSE OF THE FRANCHISE**~~

~~The purpose of the Franchise is to permit VRT the right and privilege of operating a public passenger bus transportation service consisting of one or more passenger buses or mini-buses, wheelchair lift equipped and ADA compliant, driven by VRT-employed drivers with commercial driver's licenses, within the Town of Front Royal, and such portions of Warren County as the Town, the County, and VRT shall mutually agree, subject to the conditions and agreements as hereafter set forth.~~

~~**Section 3 TERM OF FRANCHISE**~~

~~The term of the Franchise shall be for a period of five (5) years from the effective date of this Ordinance. The Town Council adopted this ordinance November 25, 2019.~~

~~**Section 4 BUSES**~~

~~For the purpose of providing public passenger bus service, VRT is authorized to operate buses capable of seating a minimum of thirteen (13) and a maximum of thirty-five (35) passengers along one or more routes to be determined by the Town following route surveys made by VRT. The buses shall be equipped with wheelchair lifts and shall be compliant with the Americans with Disabilities Act. The buses may bear such decorations, logos or insignias as shall be prescribed by Town Council. VRT shall perform such routine and appropriate maintenance of its bus(es) as shall be necessary to ensure uninterrupted, safe and effective service of this Franchise. VRT shall further employ drivers who have been appropriately trained and licensed for the operation of public passenger buses, who have been familiar with the Town of Front Royal and the route(s) established therein, who have been submitted to a criminal background investigation, initial drug screening, and who are subject to periodic random drug testing pursuant to Federal regulations.~~

~~**Section 5 REPAIRS**~~

~~VRT shall promptly repair or replace any sidewalk, street, or other property of the Town which may be damaged or displaced by VRT in the operation of its public bus system. In the event that VRT fails or refuses to repair any damage to the property of the Town of Front Royal upon ten~~

~~(10) days written notice to VRT, the Town may then undertake to repair or replace any damaged or displaced Town property, and the expense of such repairs or replacement shall be paid to the Town by VRT, and may be recovered in any manner prescribed by law, including application of the performance bond imposed hereunder.~~

~~Section 6 INDEMNIFICATION~~

~~VRT agrees and bonds itself, by the acceptance of this Ordinance, to indemnify, keep and hold the Town of Front Royal free and harmless from liability on account of injury to persons or property growing out of the negligence of VRT, or its employees, or agents in the operation of its public bus service. Nothing herein, however, shall be construed to render VRT liable for the negligence of the Town of Front Royal, its agents or employees, or the negligence of other persons or entities.~~

~~Section 7 MAINTENANCE~~

~~The rights and privileges set forth herein are granted to VRT upon the expressed condition and understanding that VRT will maintain its vehicles located within the Town of Front Royal in good and safe repair and order at all times during the terms of this Franchise Agreement.~~

~~Section 8 INSPECTIONS~~

~~The Town of Front Royal, its employees or agents, shall have the right at any time to make inspections, upon reasonable notice, of VRT's buses or any part thereof.~~

~~Section 9 ANNUAL PAYMENT AND OPERATION~~

~~VRT's operation under this Franchise Agreement shall be subject to an annual payment to the Town of Front Royal of ONE DOLLAR ($1.00). The cost of operation of the Franchise shall be borne as follows:~~

~~A. Beginning on or about (November 25, 2019 and ending November 25, 2024), sixty-eight percent (68%) of the hourly costs of the operation, as invoiced from VRT to the Town, shall be paid to VRT by Federal and State contributions under the FTA 5311 Program. Thirty-two percent (32%) of the hourly costs shall be paid to the VRT by the Town of Front Royal from such general funds as may be required to total the thirty-two percent (32%) local match.~~

~~B. VRT shall apply for capital asset grant assistance from the Virginia Department of Rail and Public Transportation to purchase an appropriate vehicle or vehicles for revenue service. The Town shall contribute the local match amount required to draw down such funding which traditionally has been and presently is 4%. The Town will be made aware of any such requirements or changes to the local match percentage prior to vehicle purchase commitment.~~

~~C. VRT shall replace revenue vehicles used under this Franchise in accordance with the Federal Transit Administration Useful Life Criteria as described in FTA Circular 5010.1D; and as~~

~~approved through VRT's capital replacement grant requests through the Commonwealth of Virginia Department of Rail and Public Transportation.~~

~~D. In the event that VRT fails to receive funds for the cost operation of the Franchise in accordance with the payment schedule set forth above, and then VRT shall have the right to terminate the operation of the Franchise upon thirty (30) days prior written notice to the Town.~~

~~Section 10 PASSENGER FARES~~

~~VRT drivers shall collect from each passenger a fare to be set and determined by the Town Council by resolution. In setting fares, the Town Council may establish separate rates for adults, senior citizens, persons with physical disabilities, students and children. Town Council may provide for the advance purchase of tickets or tokens to be used for the payment of fares by passengers.~~

~~Section 11 SCHEDULES~~

~~VRT's bus(es) shall operate on such schedules(s) as shall be established and adopted by the Town Manager or his designee, pursuant to route surveys completed by VRT or by demand or both. Buses shall not operate on the following holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day.~~

~~Section 12 ROUTES AND STOPS~~

~~VRT's bus(es) shall operate on such route(s) and regularly make such scheduled stops at locations established by the Town Manager or his designee, pursuant to route surveys completed by VRT or by demand or both. VRT shall be responsible for the marking of regular bus stops by appropriate signage containing route name or number and schedule for stop, as shall be appropriate.~~

~~Section 13 COMPLIANCE WITH LAWS~~

~~VRT and its drivers shall comply with all state and local traffic, registration, licensing and inspection laws, including, but not limited to, Sections 46.2-107, 46.2-694 and 46.2-695 of the Code of Virginia (1950), as amended.~~

~~Section 14 INSURANCE~~

~~VRT, as a condition of Franchise approval, shall obtain and maintain throughout the term of the Franchise a General Liability insurance policy in the amount of not less than TEN MILLION DOLLARS ($10,000,000.00) from an insurance provider approved to do business within the Commonwealth of Virginia, and shall name the Town of Front Royal as an additional insured party.~~

~~Section 15 BOND~~

~~VRT, as a condition of Franchise approval, shall execute a bond in the amount of ONE THOUSAND DOLLARS ($1,000.00) with security acceptable to the Town of Front Royal to ensure VRT's satisfactory performance of its obligation under this Franchise.~~

~~Section 16 GOVERNING LAW~~

~~In any controversy or dispute concerning the terms of the Franchise, the laws of the State of Virginia shall apply.~~

~~Section 17 SEVERABILITY~~

~~In the event that any section, subsection, sentence, clause, phrase or a portion of the Franchise Ordinance is for any reasons held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and will be severed from all other portions without affecting the validity of the remainder.~~

~~Section 18 EQUAL OPPORTUNITY REQUIRED~~

~~VRT shall not refuse to hire, or employ, nor bar, nor discharge from employment, nor discriminate against any person, because of sex, race, creed, religion, age or national origin.~~

~~Section 19 SUCCESSORS OR ASSIGNEES~~

~~The rights, privileges and obligations hereby granted to VRT may not be assigned without express written consent of the Town Council.~~

~~All rights and privileges hereby granted to VRT may be exercised by any successor or assignee of VRT but said successor or assignee shall be subject to the provisions, obligations, stipulations and requirements hereby prescribed. The Town reserves the right to increase the required performance bond imposed hereunder for any successor or assignee.~~

~~Section 20 FRANCHISE RIGHTS~~

~~The Town of Front Royal grants to VRT an exclusive Franchise for the operation of a public passenger bus service and for no other purpose.~~

~~Section 21 REMEDIES~~

~~A. The sole remedy for any violation of this Franchise shall be limited to the following. Upon the occurrence of any uncured default in the obligations of the Franchise, Town shall have the right:~~

> ~~1. To compel the Franchisee by mandamus or injunction to cure and correct any violation or default of the terms and obligations of the Franchise;~~

~~2. To suspend or revoke the Franchise. Upon such revocation, the Franchise shall be automatically deemed null and void and have no force or effect, and Franchisee shall remove its equipment from Town as and when requested by Town.~~

~~B. In the event that the Town believes that grounds for suspension or revocation exist or have existed the Town may notify the Franchisee in writing set forth the nature and facts of such non-compliance. If within thirty (30) days following such written notification that the Franchisee has not furnished reasonably satisfactory evidence that corrective action has been taken or is being actively and expeditiously pursued, or that the alleged violations did not occur, or that the alleged violations were beyond the Franchisee's control, the Town shall publish a notice setting forth the time, place, and general purpose of a public hearing to consider suspension or revocation of the Franchise notice of such hearing at least ten (10) days prior to such public hearing. The Franchisee and any interested person shall be entitled to be heard at such hearing. Upon a finding by the Town Council of uncorrected defaults in the terms and obligations under this Franchise, the Council shall have the option to suspend or revoke the Franchise.~~

THIS ORDINANCE SHALL BE EFFECTIVE UPON PASSAGE

APPROVED:

____

Lori A. Cockrell, Mayor

ATTEST:

____

Tina L. Presley, Clerk of Council

This Ordinance was approved at the Regular Meeting of the Town of Front Royal, Virginia Town Council conducted on _______________________, 2024 upon the following recorded vote:

R. Wayne Sealock	__Yes __No	H. Bruce Rappaport	__Yes __No
Joshua L. Ingram	__Yes __No	Melissa DeDomenico-Payne	__Yes __No
Amber F. Morris	__Yes __No	Glenn E. Wood	__Yes __No

A public hearing on the above was held on _______________________having been advertised in the Northern Virginia Daily on____.

Approved as to Form and Legality:

____

George M. Sonnett, Jr., Town Attorney Dated: ____________________________

AN ORDINANCE FOR THE ADOPTION OF
THE CODE OF THE TOWN OF FRONT ROYAL,
VIRGINIA

IN ORDER to provide for the revision and recodification of the ordinances of the Town of Front Royal, Virginia, as a body of law entitled, "THE CODE of the Town of Front Royal, Virginia," which was last revised and recodified in 1965, and in order to provide for the repeal of certain ordinances not included therein, with exceptions as noted, and for such other purposes as may hereafter be stated

BE IT ORDAINED AND ENACTED by the Council of the Town of Front Royal, Virginia, as follows:

(1) There is hereby adopted by the Council of the Town of Front Royal, Virginia, that certain Code entitled, "The Code of the Town of Front Royal, Virginia", containing certain ordinances of a general and permanent nature as revised, compiled, consolidated and codified in the chapters therein, to-wit: Chapters 1 through 180 inclusive.

(2) The provisions of the "The Code of the Town of Front Royal, Virginia", as revised and recodified, shall be in force and effect immediately upon the adoption of this ordinance.

(3) All ordinances of the Town of Front Royal, Virginia, which were enacted on or before October 8, 1984, which are not contained in the revised and recodified "Code of the Town of Front Royal, Virginia", hereby adopted, and which are not excepted herein, are hereby expressly repealled effective immediately upon the adoption of this ordinance.

(4) The repeal provided for in the preceding section of this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the adoption of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the adoption of this ordinance; nor shall such repeal affect any ordinance or resolution promising or guaranteeing payment of money by or for the Town or authorizing the issue of any bonds of the Town or any evidence of indebtedness or any contract or obligation assumed by the Town; nor shall it affect any right or franchise conferred by ordinance or resolution of the Town on any person or corporation; nor shall it affect any ordinance adopted for purposes which have been consumated or any ordinance which is temporary, although general in effect, or special, although permanent in effect; nor shall it affect any of the following ordinances or any amendment thereto:

a. Any appropriation ordinance;

b. Any ordinance levying or imposing taxes;

c. Any ordinance providing for any public improvements;

d. Any ordinance making any assessment;

e. Any ordinance opening, relocating, closing, altering or naming any streets or alleys;

f. Any ordinance relative to salaries, wages or compensation or bonds of town employees and officials or members of town boards or commissions;

g. Any ordinance establishing, extending or contracting the corporate limits of the Town;

h. Any ordinance relative to changes in the Zoning Map;

i. Any ordinance relative to electrical connection charges for connection with the electrical lines or system;

j. Any ordinance relative to rates charged by the Town for electricity supplied by the Town;

k. Any ordinance designating parking meter zones;

l. Chapter 23, Section 23-1, 23-2, 23-3, and 23-4, of the 1965 Code of the Town of Front Royal, pertaining to voting precincts. (These sections will be renumbered and included in Chapter 34 of the Code adopted herein).

m. Chapter 1, Section 1-1, 1-2, 1-3, 1-4, 1-5, 1-6, and 1-7 of the 1965 Code of the Town of Front Royal, pertaining to General Provisions. (These sections will be renumbered and included in a Chapter of the Code adopted herein).

n. Chapter 2, Article III, Section 2-43, of the 1965 Code of the Town of Front Royal, pertaining to the Industrial Development Authority. (This section will be renumbered and included in a Chapter of the Code adopted herein.).

(5) If any part, section, subsection, sentence, clause, word, or phrase of this ordinance or of "The Code of the Town of Front Royal, Virginia", is for any reason declared by a Court of competent jurisdiction to be unconstitutional or invalid, it shall be severred from the body of this ordinance or Code, and such decision shall not affect the validity of the remainder of this ordinance or of such Code.

(6) The following ordinances as printed in the revised addition of "The Code of the Town of Front Royal, Virginia" are surplusage and are not to be included as part of the newly adopted

Code, to-wit:

a. §110-27. Slander and Liable.

b. §134-14. Petition by Property Owners for Extension of Sewer Service.

c. §134-15. Report to Petitioners.

d. Chapter 31 (page 3101), Pertaining to the Police Department.

e. Chapter 16, Section 16-1, 16-2, 16-3, 16-4, 16-5, 16-6, 16-7, 16-8, 16-9, and 16-10, Pertaining to the Industrial Development Commission.

f. Chapter 43, Sections 43-1, 43-2, 43-3, 43-4, 43-5, 43-6, 43-7, and 43-8, Pertaining to Air Pollution.

g. Chapter 51 (page 5101), Pertaining to Abandoned Bicycles.

The aforementioned sections and chapters are hereby declared to be reserved for future use.

(7) Neither the repeal provided for in §3 of this ordinance nor the provisions of "The Code of the Town of Front Royal, Virginia" shall be construed to affect any ordinance passed after October 8, 1984.

(8) A copy of "The Code of the Town of Front Royal, Virginia" shall be filed in the office of the Town Clerk, and shall be made available to persons desiring to examine the same.

APPROVE:

John K Marlow

JOHN K. MARLOW, Mayor

ATTEST:

Anne W. Schilling

ANNE W. SCHILLING, Town Clerk

The above ordinance was adopted on its first reading at the regular meeting of the Town Council held on February 11, 1985, was published in the Warren Sentinel on February 21 and February 28, 1985, and was finally enacted at the next regular meeting of the Town Council held on March 11, 1985.

COUNCIL REGULAR WORK SESSION AGENDA STATEMENT

Meeting Date: September 3, 2024 Item# 02F

Agenda Item: Resolution to Cancel October 15th and November 4th Work Sessions

Summary: The Virginia Municipal League (VML) Conference will be held October 13 – 15, 2024. Several members of Town Council will be attending therefore leaving the possibility of not having a quorum at the Tuesday, October 15th regular work session. Several members of Town Council and the Mayor will be running for re-election on November 5th therefore leaving the possibility of not having a quorum at the Monday, November 4th regular work session. Council is requested to consider cancelling both regular work sessions through a resolution to be approved at the September 23rd regular meeting under the consent agenda.

Budget/Funding: N/A

Staff Recommendation: Approve the resolution under the consent agenda of September 23rd as presented.

RESOLUTION
TO CANCEL REGULAR WORK SESSIONS
October 15 and November 4, 2024

WHEREAS, Regular Work Sessions are scheduled for Tuesday, October 15, 2024 and Monday, November 4, 2024 and,

WHEREAS, October 13 – 15, 2024 is the Annual Virginia Municipal League Conference and November 4, 2024 is the day before Election Day constituting an unforeseen probable issue of low attendance at the October 15th and November 4th work sessions; and,

WHEREAS, to avoid the possibility of not having a quorum it is in the best interest of the community to cancel the regular work sessions of October 15th and November 4th; and,

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the Town Council of the Town of Front Royal approve the cancellation of the regularly scheduled work sessions of October 15, 2024 and November 4, 2024.

APPROVED:

____

Lori A. Cockrell, Mayor

ATTEST:

____

Tina L. Presley, Clerk of Council

This Resolution was approved at the Regular Meeting of the Town of Front Royal, Virginia Town Council conducted on ___________________________, 2024 upon the following recorded vote:

R. Wayne Sealock	__Yes __No	H. Bruce Rappaport	__Yes __No
Joshua L. Ingram	__Yes __No	Melissa DeDomenico-Payne	__Yes __No
Amber F. Morris	__Yes __No	Glenn A. Wood	__Yes __No

****

Approved as to Form and Legality:

____

George M. Sonnett, Jr., Town Attorney Dated: __________________________

COUNCIL REGULAR WORK SESSION
AGENDA STATEMENT

Meeting Date: September 3, 2024 Item# 03A

Agenda Item: Property Maintenance Update

Summary: As a follow up to the Derelict Structures presentation from March 2024, Planning and Zoning staff will present Town Council with a progress report. After the initial presentation, staff have been working with several property owners to bring them into compliance with State and Town Codes.

The PowerPoint Presentation will be available at the work session

Budget/Funding: None at this time

Staff Recommendation: None at this time

Town of Front Royal Planning and Zoning

102 E. Main St.
PO Box 1560
Front Royal, VA 22630

Main: 540-631-2802
Fax: 540-631-2727
dwells@frontroyalva.com

May 24, 2024

[redacted]

NOTICE OF UNSAFE STRUCTURE

Re: 240 Blue Ridge Ave, Front Royal, VA 22630, Tax Map # 20A7 4 178

On May 22, 2024, as the Maintenance Code Official for the Town of Front Royal, I determined the above-mentioned property to be unsafe as the result of a structure fire. During my inspection I observed a single-family dwelling that is structurally unsafe and constitutes a danger to the health, safety and welfare of any occupants or the public. This property shall be demolished per the Virginia Maintenance Code, Part III of the Uniform Statewide Building Code (USBC) referencing the 2021 International Property Maintenance Code (IPMC), or you may consult with a Registered Design Professional to have the single-family dwelling brought back into compliance by renovation.

To address the condition of the Property, you have thirty (30) calendar days from the date of this letter to submit a written abatement plan to the Department of Planning and Zoning for consideration. This abatement plan shall be in writing and needs to identify the method of abatement (repair or demolition) and a prompt timeframe for completion of this abatement of the unsafe structure. **Please note that (1) a Town zoning and (2) County building permit is required for all demolition work and most repair work**.

If a written abatement plan is not received by the Department of Planning and Zoning within thirty (30) calendar days, the Town will proceed with all available actions to abate the conditions of the Property, which may include demolition and removal of the unsafe structure.

THIS STRUCTURE IS UNFIT FOR HABITATION AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL

Please contact our office no later than June 24, 2024, with a plan of action.

Respectfully,

D. Wells

Daniel Wells
Property Maintenance Official

Town of Front Royal Planning and Zoning

102 E. Main St.
PO Box 1560
Front Royal, VA 22630

Main: 540-631-2802
Fax: 540-631-2727
dwells@frontroyalva.com

May 24, 2024

[redacted]

NOTICE OF UNSAFE STRUCTURE

Re: 124 W Strasburg Rd, Front Royal, VA 22630, Tax Map # 20A122 1 6

On May 22, 2024, as the Maintenance Code Official for the Town of Front Royal, I determined the above-mentioned property to be unsafe as the result of a structure fire. During my inspection I observed a single-family dwelling that is structurally unsafe and constitutes a danger to the health, safety and welfare of any occupants or the public. This property shall be demolished per the Virginia Maintenance Code, Part III of the Uniform Statewide Building Code (USBC) referencing the 2021 International Property Maintenance Code (IPMC), or you may consult with a Registered Design Professional to have the single-family dwelling brought back into compliance by renovation.

To address the condition of the Property, you have thirty (30) calendar days from the date of this letter to submit a written abatement plan to the Department of Planning and Zoning for consideration. This abatement plan shall be in writing and needs to identify the method of abatement (repair or demolition) and a prompt timeframe for completion of this abatement of the unsafe structure. **Please note that (1) a Town zoning and (2) County building permit is required for all demolition work and most repair work**.

If a written abatement plan is not received by the Department of Planning and Zoning within thirty (30) calendar days, the Town will proceed with all available actions to abate the conditions of the Property, which may include demolition and removal of the unsafe structure.

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Please contact our office no later than June 24, 2024, with a plan of action.

Respectfully,

D. Wells

Daniel Wells
Property Maintenance Official

Town of Front Royal Planning and Zoning

102 E. Main St.
PO Box 1560
Front Royal, VA 22630

Main: 540-631-2802
Fax: 540-631-2727
dwells@frontroyalva.com

May 24, 2024

[redacted]

NOTICE OF UNSAFE STRUCTURE

Re: 105 W. 18th Street, Front Royal, VA 22630, Tax Map # 20A2 1 11

On May 22, 2024, as the Maintenance Code Official for the Town of Front Royal, I determined the above-mentioned property to be unsafe as the result of a structure fire. During my inspection I observed a single-family dwelling that is structurally unsafe and constitutes a danger to the health, safety and welfare of any occupants or the public. This property shall be demolished per the Virginia Maintenance Code, Part III of the Uniform Statewide Building Code (USBC) referencing the 2021 International Property Maintenance Code (IPMC), or you may consult with a Registered Design Professional to have the single-family dwelling brought back into compliance by renovation.

To address the condition of the Property, you have thirty (30) calendar days from the date of this letter to submit a written abatement plan to the Department of Planning and Zoning for consideration. This abatement plan shall be in writing and needs to identify the method of abatement (repair or demolition) and a prompt timeframe for completion of this abatement of the unsafe structure. **Please note that (1) a Town zoning and (2) County building permit is required for all demolition work and most repair work**.

If a written abatement plan is not received by the Department of Planning and Zoning within thirty (30) calendar days, the Town will proceed with all available actions to abate the conditions of the Property, which may include demolition and removal of the unsafe structure.

THIS STRUCTURE IS UNFIT FOR HABITATION AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL

Please contact our office no later than June 24, 2024, with a plan of action.

Respectfully,

D. Wells

Daniel Wells
Property Maintenance Official

Town of Front Royal Planning and Zoning

102 E. Main St.
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May 24, 2024

[redacted]

NOTICE OF UNSAFE STRUCTURE

Re: 339 Osage St, Front Royal, VA 22630, Tax Map # 20A7 6 44

On May 22, 2024, as the Maintenance Code Official for the Town of Front Royal, I determined the above-mentioned property to be unsafe as the result of a structure fire. During my inspection I observed a single-family dwelling that is structurally unsafe and constitutes a danger to the health, safety and welfare of any occupants or the public. This property shall be demolished per the Virginia Maintenance Code, Part III of the Uniform Statewide Building Code (USBC) referencing the 2021 International Property Maintenance Code (IPMC), or you may consult with a Registered Design Professional to have the single-family dwelling brought back into compliance by renovation.

To address the condition of the Property, you have thirty (30) calendar days from the date of this letter to submit a written abatement plan to the Department of Planning and Zoning for consideration. This abatement plan shall be in writing and needs to identify the method of abatement (repair or demolition) and a prompt timeframe for completion of this abatement of the unsafe structure. **Please note that (1) a Town zoning and (2) County building permit is required for all demolition work and most repair work.**

If a written abatement plan is not received by the Department of Planning and Zoning within thirty (30) calendar days, the Town will proceed with all available actions to abate the conditions of the Property, which may include demolition and removal of the unsafe structure.

THIS STRUCTURE IS UNFIT FOR HABITATION AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL

Please contact our office no later than June 24, 2024, with a plan of action.

Respectfully,

Daniel Wells
Property Maintenance Official

COUNCIL REGULAR WORK SESSION
AGENDA STATEMENT

Meeting Date: September 3, 2024 Item# 03B

Agenda Item: Suggestions for Recognizing John Marlow in the Gazebo Area located on Main Street

Summary: At the August 12th regular work session, it was asked that Council gather suggestions naming the gazebo or gazebo area after former Mayor John Marlow and how to incorporate those suggestions. Below is the excerpt from the minutes of August 12th adopted minutes.

New Business

A. Recognition of Former Mayor John Marlow in the Main Street Gazebo Area – Mayor Cockrell advised that this request was asked of Council a few months ago but explained that the family wanted more time to decide what they would like to see memorialized in Mr. Marlow's name. She further advised that the family contacted her last week stating that they would like to see either the gazebo or the gazebo area memorialized. There was much discussion on what should be named and how it should be named. Since two members of Council were not in attendance Council agreed to place this on a work sessions in September to gather suggestions naming the gazebo or gazebo area and how to incorporate.

Budget/Funding: N/A

Staff Recommendation: Council takes desired action

CLOSED MEETING
AGENDA STATEMENT

Meeting Date: September 3, 2024 Item# 04

MOTION ON TO GO INTO CLOSED MEETING
[to be approved by affirmative recorded vote, with motion set forth in detail in the minutes]

I move that Town Council convene a closed meeting, pursuant to Sections 2.2-3711 and 2.2-3712 of the Code of Virginia, for the following purposes and that Council consider taking action on these matters in open session:

1) pursuant to §2.2-3711(A)(1) of the Code of Virginia, for the discussion, consideration, assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees, or employees of any public body, more specifically the Planning Commission and Town Attorney.

Motion to Certify Closed Meeting at its Conclusion
[At the conclusion of the Closed Meeting, immediately re-convene in open meeting and take a roll call vote on the following:]

I move that Council certify that to the best of each member's knowledge, as recognized by each Council member's affirmative vote, that only such public business matters lawfully exempted from Open Meeting requirements under the Virginia Freedom of Information Act as were identified in the motion by which the Closed Meeting was convened were heard, discussed or considered in the Closed Meeting by Council, and that the vote of each individual member of Council be taken by roll call and recorded and included in the minutes of the meeting of Town Council.

Moved ____________________________ ***Seconded*** ___________________

VM Sealock ________ ***Ingram*** ________ ***Morris*** ________ ***Rappaport*** ________ ***DeDomenico-Payne*** _____ ***Wood*** ________