

PLANNING COMMISSION INTERVIEWS – 6:30PM



TOWN OF FRONT ROYAL, VIRGINIA TOWN COUNCIL MEETING
Monday, March 14, 2016 @ 7:00pm in the Warren County Government Center

1. Pledge of Allegiance
2. Moment of Silence
3. Roll Call
4. Approval of the Regular Council Meeting minutes of February 22, 2016
5. Receipt of Petitions and/or Correspondence from the Public
6. Reports:
 - a. Report of special committees or Town officials and Town Manager.
 - * **Northern Shenandoah Valley Regional Commission Report**
 - * **Appalachian Trail Communities – Sonja Carlborg**
 - b. Requests and inquiries of Council members.
 - c. Report of the Mayor
 - * **Recognition of Police Department's Officer and Civilian Employee of the Year**
 - d. Proposals for addition/deletion of items to the Agenda.
7. **CONSENT AGENDA ITEMS** –
 - A. COUNCIL APPROVAL – Bid for Easement Machine for Water and Sewer Department
 - B. COUNCIL APPROVAL – Bid for Skid Steer Loader/ Attachments for Streets Department
 - C. COUNCIL APPROVAL – Liaison Committee Meeting Items
 - D. COUNCIL APPROVAL – Resolution for Main Street Extension
 - E. COUNCIL APPROVAL – Virginia Commission for the Arts Local Government Challenge Grant Application
8. **PUBLIC HEARING** – Amendment to the Floodplain Ordinance 175-74-175-81.3 (*1st Reading*)
9. **PUBLIC HEARING** – Ordinance to Amend Town Code 175-65.A. and 175-65.B. Pertaining to By Right in I-2 District (*1st Reading*)
10. **PUBLIC HEARING** – Setting of Tax Rates for Fiscal Year 2016-2017 (*1st Reading*)
11. **COUNCIL APPROVAL** – Ordinance to Amend Town Code Chapters 98 and 138 Pertaining to Food Trucks and Itinerant Merchandising (*2nd Reading*)
12. **RECEIVE PUBLIC INPUT/COUNCIL APPROVAL** – Ordinance to Amend Town Code Chapter 167 Pertaining to Urban Archery (*1st Reading*)
13. **COUNCIL APPROVAL** – Resolution for AMP Solar Project
14. **COUNCIL APPROVAL** – Budget Amendment/Acceptance of VML Insurance Reimbursement
15. **COUNCIL REFER TO PLANNING COMMISSION** - Property Maintenance/Rental Code

7A



Town of Front Royal, Virginia Council Agenda Statement

Page 1
Item No. 7(A)

Meeting Date: March 14, 2016

Agenda Item: COUNCIL APPROVAL – Bid for Easement Machine for Water/Sewer Dept.

Summary: Council is requested to approve a bid from Atlantic Machinery in the amount of \$39,500.00 for an easement machine with transport trailer for the Town's Water and Sewer Maintenance Department.

Budget/Funding: Department of Environmental Services Sewer Line Maintenance FY16 Budget line item 9802-47001, "Machinery & Equipment".

Attachments: Memorandums from Purchasing Agent and Manager of Vehicle Equipment Maintenance, and Quotation Tabulation Sheet

Meetings: None

Staff

Recommendation: Approval X Denial _____

Should Council wish to remove this item from the consent agenda, the following motion would allow approval of this request:

Proposed Motion: I move that Council approve a bid from Atlantic Machinery in the amount of \$39,500.00 for an easement machine with transport trailer for the Town's Water and Sewer Maintenance Department.

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: SB



MEMORANDUM

Date: February 29, 2016
To: Tina Presley, Senior Administrative Assistant
Jennifer Berry, Clerk of Council
From: Cindy Hartman, Purchasing Agent
RE: Agenda Item



On Monday, February 2, 2016, I held a bid opening for the purchase of an easement machine with transport trailer for our Water and Sewer Maintenance Department.

Out of the fifteen (15) direct solicitations I sent out, I received two (2) responses (see attached tabulation sheet). Don McPaters, Manager of Vehicle/Equipment Maintenance, reviewed the submittals to ensure they met all of our specifications. Due to the dollar amount, I will need Council approval before continuing with the purchases. Please add this to the March 14, 2016 Town Council agenda for their action.

Staff recommends the award for the purchase of an easement machine be made to Atlantic Machinery at the cost of \$39,500.00.

Funding is available from the Department of Environmental Services Sewer Line Maintenance FY16 budget line item 9802-47001, "Machinery & Equipment".

MEMORANDUM

TO: Cindy Hartman, Purchasing Agent

FROM: Donald B McPaters, Manager of Vehicle Equipment Maint. *DBM*

SUBJECT: Purchase of Water Sewer Maintenance Department Easement machine and transport trailer.

DATE: February 25, 2016

I have reviewed the specifications for the easement machine and transport trailer for Water Sewer Maintenance Department. We received two bids, one from Atlantic Machinery and one from Mid Atlantic Waste System.

Atlantic Machinery bid a Pipe Hunter Articulating Sidekick unit with tilt transport trailer at a price of \$39,500.00 and met all specifications was low bid.

Mid Atlantic Machinery bid a JAJ series easement machine with a transport trailer at a price \$55,207.00 and they did not meet our specifications on the articulating and to have wheel and tires.

We recommend the low bid of Atlantic Machinery at a price of \$39,500.00.

TOWN OF FRONT ROYAL, VIRGINIA

Quotation Tabulation

Item: EASEMENT MACHINE

Quotation #3

Date: FEBRUARY 22, 2016

Mailed 15

Replied 2

QUANTITY	Vendor Quotation		QUOTATION	QUOTATION
	ATLANTIC MACHINERY SILVER SPRING, MD QUOTATION	MID-ATLANTIC WASTE SYSTEMS EASTON, MD QUOTATION		
EASEMENT MACHINE WITH TRANSPORT TRAILER PER TOWN SPECIFICATIONS	\$39,500.00	\$55,207.00		
Total				
Discount				
Net Quotation				
Terms				

The above proposals verified to specifications and compliance with terms and conditions.

Witness

Witness


Purchasing Agent

7B



Town of Front Royal, Virginia Council Agenda Statement

Page 1
Item No. 7(B)

Meeting Date: March 14, 2016

Agenda Item: COUNCIL APPROVAL – Bids for Skid Steer Loader and Attachments for Streets Department

Summary: Council is requested to approve the following bids from 1) Winchester Equipment Company in the amount of \$53,673.00 for a skid steer loader; 2) Groff Tractor and Equipment in the amount of \$24,695.00 for 24-inch grinding mill and 6-foot snow blower attachment; and 3) Woodstock Equipment in the amount of \$1,989.00 for 6-foot grapple unit for use in the Town's Streets Department for a total amount of \$80,357.00.

Budget/Funding: Department of Environmental Services Department Highway Maintenance FY16 budget line item 4500-R47001, "Motor Vehicles" in the amount of \$63,500.00 carried forward from FY15 budget.
The balance of funding, \$16,857.00, will be drawn from the Highway Maintenance FY16 budget line item 4500-7001 "Motor Vehicles".

Attachments: Memorandums from Purchasing Agent and Manager of Vehicle Maintenance and Quotation Tabulation Sheet

Meetings: None

Staff

Recommendation: Approval X Denial _____

Should Council wish to remove this item from the consent agenda, the following motion would allow approval of this request:

Proposed Motion: I move that Council approve bids from 1) Winchester Equipment Company in the amount of \$53,673.00 for a skid steer loader; 2) Groff Tractor and Equipment in the amount of \$24,695.00 for 24-inch grinding mill and 6-foot snow blower attachment; and 3) Woodstock Equipment in the amount of \$1,989.00 for 6-foot grapple unit for use in the Town's Streets Department.

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: SB



MEMORANDUM

Date: February 29, 2016
To: Tina Presley, Senior Administrative Assistant
Jennifer Berry, Clerk of Council
From: Cindy Hartman, Purchasing Agent
RE: Agenda Item

On Monday, December 7, 2015, I held a bid opening for the purchase of a skid steer loader along with three separate attachments. This equipment will be for our Street Department.

Out of the twelve (12) direct solicitations I sent out, I received four (4) responses, with one of those being a “No Quote” (see attached tabulation sheet). Don McPaters, Manager of Vehicle/Equipment Maintenance, reviewed the submittals to ensure they met all of our specifications. In order for the Town to receive the best value of this quotation, the award is to be split among three (3) vendors, for a total cost of \$80,357.00. Due to the dollar amount, I will need Council approval before continuing with the purchases. Please add this to the March 14, 2016 Town Council agenda for their action.

Staff recommends the award for the purchase of a skid steer loader be made to Winchester Equipment Company at the cost of \$53,673.

In addition, staff recommends the award for the twenty-four inch (24”) grinding mill and the six-foot (6’) snow blower attachments be made to Groff Tractor and Equipment, for a total cost of \$24,695.00

Staff also recommends the award for a 6-foot (6’) grapple unit be made to Woodstock Equipment at the cost of \$1,989.00.

Funding is available from the Department of Environmental Services Highway Maintenance FY16 budget line item 4500-R47001, “Motor Vehicles”, in the amount of \$63,500.00. This is funding carried forward from the FY15 budget. The balance of the funding, \$16,857.00, will be drawn from the Highway Maintenance FY16 budget line item 4500-7001 “Motor Vehicles”.

MEMORANDUM

TO: Cindy Hartman, Purchasing Agent

FROM: Donald B McPaters, Manager of Vehicle Equipment Maint. 

SUBJECT: Bid recommendation on Skid Steer loader with attachments for DES Street Department.

DATE: February 09, 2014

I have reviewed the two bids for the skid steer loaders and three bids for the attachments. We have demo the two skid steer loaders and both machines performed well. I have asked the operators the likes and dislikes between the two machines. They responded that the skid steer from Winchester Equipment was easier to get in and out of and the controls operated smoother. There are some difference in the control panel gauges that I liked on the skid steer from Winchester Equipment. It has a deluxe instrumentation 5" full color LCD screen which enables monitoring of interaction with the machine such as job clock, diagnostics, troubleshooting suggestions, monitoring attachment operations, and maintenance intervals. The difference in the two bids price is Groff was at \$53,545.00 and Winchester Equipment was at \$53,673.00 which is \$128.00 difference.

We bid out a skid steer loader with three attachments that were bid separate. We had a snow blower attachment, 24" high flow planer/grinder, and a brush/root grapple. Groff Tractor and Equipment had the 24" grinder was the lowest price at \$18,00.00 and they were also the lowest on the snow blower at \$6,695.00. Woodstock Equip was the lowest price on the Root/Grapple \$1989.00.

I would go with Winchester Equipment on the skid steer and the lowest price on the attachments.

7C



**Town of Front Royal, Virginia
Council Agenda Statement**

Page 1
Item No. 7(C)

Meeting Date: March 14, 2016

Agenda Item: COUNCIL APPROVAL – Liaison Committee Meeting Items

Summary: Council is requested to approve the addition of the following two items to the Liaison Committee Agenda scheduled for March 17, 2016: 1) Local Labor Joint Resolution and 2) Update of Corridor Agreement Pertaining to Funding from the County of Warren.

Budget/Funding: None

Attachments: Liaison Committee Meeting Agenda from January 21, 2016 and Letter from County Administrator noting the addition of their items.

Meetings: Work Session held March 7, 2016

**Staff
Recommendation:** Approval X Denial _____

Should Council wish to remove this item from the consent agenda, the following motion would allow approval of this request:

Proposed Motion: I move that Council approve the addition of the following two items to the Liaison Committee Agenda scheduled for March 17, 2016: 1) Local Labor Joint Resolution and 2) Update of Corridor Agreement Pertaining to Funding from the County of Warren.

*Note: Motions are the formal & final proposal of Council.

Proposed motions are offered by Staff for guidance.

*To be clear and concise, motions should be made in the positive

Approved By: SB

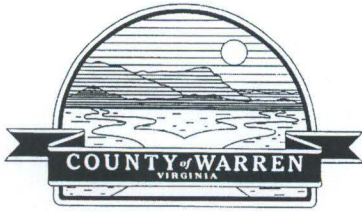


~ AGENDA ~
TOWN/COUNTY LIAISON
COMMITTEE MEETING
Town Administration Building
102 E. Main Street



Thursday, January 21, 2016
6:00 p.m.

1. Call Order to Order, Timothy Darr, Mayor of Front Royal
 - a. Leach Run Parkway
 - b. Wastewater Treatment Plant/Septage Receiving Facility
 - c. Building Inspections Software
 - d. Development Review Committee
 - e. McKay Property Update
 - f. Warren County's in-Town Projects
 - g. Avtex Property - Main Street Extension
 - h. Main Street Application
2. Adjournment



COUNTY OF WARREN

County Administrator's Office
Warren County Government Center
220 North Commerce Avenue, Suite 100
Front Royal, Virginia 22630
Phone: (540) 636-4600
FAX: (540) 636-6066
Email: dstanley@warrencountyva.net

Douglas P. Stanley
County Administrator

February 22, 2016

**BOARD OF
SUPERVISORS**

CHAIR
Linda P. Glavis
South River
District

VICE-CHAIR
Archie A. Fox
Fork
District

Tony F. Carter
Happy Creek
District

Daniel J. Murray, Jr.
North River
District

Thomas H. Sayre
Shenandoah
District

Mr. Steve Burke, Town Manager
Town of Front Royal
P.O. Box 1560
Front Royal, Virginia 22630

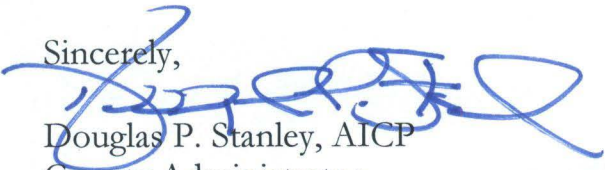
RE: *Liaison Committee Agenda Items*

Dear Steve:

At its meeting on Tuesday, February 16th, the Warren County Board of Supervisors requested that the following items be included for discussion at an upcoming Liaison Committee meeting:

- ▶ Town Commercial Waste Tipping Fee Structure
- ▶ Chris Ramsey Boundary Adjustment Request (TM#20, Parcel 6 – 20.226 acres)

Sincerely,


Douglas P. Stanley, AICP
County Administrator

DPS
Attachments

cc: Warren County Board of Supervisors
Jennifer Berry, Clerk of Council

*Front Royal-Warren County
Rivers of Opportunity-Mountains of Success*

7D



**Town of Front Royal, Virginia
Council Agenda Statement**

Page 1
Item No. 7(D)

Meeting Date: March 14, 2016

Agenda Item: COUNCIL APPROVAL – Resolution for Main Street Extension

Summary: Council is requested to approve a Resolution to submit an application to the Virginia Department of Transportation (VDOT) to participate in the Economic Development Access Program to assist in funding the extension of Main Street through the former Avtex property, as presented.

Budget/Funding: None

Attachments: Resolution

Meetings: Work Session held March 7, 2016

Staff

Recommendation: Approval X Denial _____

Should Council wish to remove this item from the consent agenda, the following motion would allow approval of this request:

Proposed Motion: I move that Council approve a Resolution to submit an application to the Virginia Department of Transportation (VDOT) to participate in the Economic Development Access Program to assist in funding the extension of Main Street through the former Avtex property, as presented.

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: SB



Town of Front Royal, Virginia



**RESOLUTION REQUESTING
ECONOMIC DEVELOPMENT ACCESS
PROGRAM FUNDING
IT FEDERAL LOT 6 OF ROYAL PHOENIX SITE**

WHEREAS, the Town of Front Royal in partnership with the County of Warren and the Economic Development Authority desire to assist in the development Lot 6 of the Royal Phoenix site (former Avtex Superfund site) located south of Kendrick Lane and north of Main Street in the Town of Front Royal, Virginia within the Royal Phoenix; and,

WHEREAS, IT Federal has purchased property located in the Town of Front Royal and will soon enter into a firm contract to construct its facilities on that property for the purpose of technology and data management related service and additional retail and office development; and,

WHEREAS, this new facility is expected to involve new private capital investment in land, building, and equipment of approximately \$40,000,000 and the development by IT Federal is expected to employ 600 persons at this thirty (30) acre site; and,

WHEREAS, operations are expected to begin at this new facility on or about March 2017; and,

WHEREAS, the subject property has no access to a public street or highway and will require construction of a new roadway to connect with Kendrick Lane and ultimately Main Street; and,

WHEREAS, the existing public road network does not provide for adequate access to this facility and it is deemed necessary that improvements be made to extend Main Street; and,

WHEREAS, the Town of Front Royal hereby guarantees that the necessary environmental analysis, mitigation, and fee simple right-of-way and utility relocations or adjustments for this improvement, if necessary will be provided at no cost to the Economic Development, Airport, and Rail Access Fund; and

WHEREAS, the Town of Front Royal acknowledges that no land disturbance activities beyond those associated with the recent reclamation of the site may occur within the limits of the proposed access project prior to any construction activity on this project as a condition of the use of the Economic Development, Airport, and Rail Access Fund; and

WHEREAS, the Town of Front Royal hereby guarantees that all ineligible costs and all costs not justified by eligible capital outlay will be provided from sources other than those administered by the Virginia Department of Transportation.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Council of the Town of Front Royal, Virginia hereby requests that the Commonwealth Transportation Board provide Economic Development Access Program funding to provide an adequate road to this property; and,

BE IT FURTHER RESOLVED that the Mayor and Council of the Town of Front Royal, Virginia that the Town Manager and/or his designee be authorized to act on behalf of the Town Council to execute any and all documents necessary to secure the funding through the Economic Development Access Program up to but not exceeding \$650,000 state funds.

Adopted this 14th day of March, 2016

APPROVED:

Timothy W. Darr, Mayor

Attest:

Jennifer E. Berry, CMC, Clerk of Council

THIS RESOLUTION was approved at the Regular Meeting of the Town of Front Royal, Virginia Town Council on _____ 2016, upon the following recorded vote:

Hollis L. Tharpe	Yes/No	Bret W. Hrbek	Yes/No
Eugene R. Tewalt	Yes/No	Bébhinn C. Egger	Yes/No
John P. Connolly	Yes/No	Jacob L. Meza	Yes/No

Approved as to Form and Legality:

Douglas W. Napier, Esq., Town Attorney

Date: _____

7E



Town of Front Royal, Virginia Council Agenda Statement

Page 1
Item No. 7(E)

Meeting Date: March 14, 2016

Agenda Item: COUNCIL APPROVAL – Virginia Commission for the Arts Local Government Challenge Grant Application for Front Royal Oratorio Society and Blue Ridge Arts Council (BRAC)

Summary: Council has received a request from the Blue Ridge Arts Council (BRAC) and the Front Royal Oratorio Society to re-apply for the Virginia Commission of the Arts Local Government Challenge Grant. BRAC is requesting \$4,500 and the Front Royal Oratorio Society is requesting \$500. Approval of the requests are contingent upon the Virginia Commission of the Arts approving the application and subsequently the Town matching equal the amount of each request. Council is requested to direct staff to submit the application.

Budget/Funding: None, as this is only the application process and numbers will be included in the FY2016-2017 Budget if approved as such.

Attachments: Letters from Blue Ridge Arts Council and Front Royal Oratorio Society and Grant information

Meetings: Work Session held March 7, 2016

Staff

Recommendation: Approval X Denial _____

Should Council wish to remove this item from the consent agenda, the following motion would allow approval of this request:

Proposed Motion: I move that Council approve the submission of an application, by staff, to the Virginia Commission of Arts for the Local Government Challenge Grant in the amount of \$5,000.00 of which \$4,500.00 is for the Blue Ridge Arts Council and \$500.00 is for the Front Royal Oratorio Society.

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: SB



Blue Ridge Arts Council, Inc

305 East Main Street
Front Royal, Virginia 22630
540.635.9909 (Main) 540.635.9908 (Fax)
www.blueridgearts.org

February 4, 2016

TO: Mr. Steven Burke, Town Manager
The Honorable Timothy W. Darr, Mayor
Members of Town Council

FROM: Blue Ridge Arts Council Board of Directors
Sondra LeHew, President
Kym Crump, Executive Director

RE: FY 2016/2017 Budget Request

Blue Ridge Arts Council, Inc. respectfully requests that the Town of Front Royal consider funding our agency in the amount of \$4,500 for the year 2016/2017. This is a level funding request that the arts council has made since FY2014/2105; prior to that, from FY2000/2001 forward the amount was \$5000. The funding is necessary to continue the ongoing development of the cultural arts and enrichment for the citizens and visitors of Front Royal.

This request comes with an addendum that the town submits a Local Government Challenge Grant proposal to the Virginia Commission for the Arts for matching funds of \$5,000 (maximum amount allotted by VCA). The grant request must be submitted before April 1, 2015 (not a postmark deadline). Front Royal has participated in the matching grant program since 1988, and was awarded the \$5,000 maximum match in VCA funds beginning with the funding year FY 2000/2001 through the current year. This is one of the few funding programs that VCA has no plans to reduce funding for during the next budget cycle, and also an opportunity for localities to bring back additional state funds to their constituency.

The Arts Council has utilized the funds from Town and the VCA Local Government Challenge Grant to fund many of our programs; art exhibits showcasing local and regional artists; arts-enrichment programs and instructional programs; and community outreach programs, including a wide variety of entertainment promoting awareness in cultural heritage and

enjoyment for the arts, presented in a variety of formats, including youth recitals, seasonal performance offerings and community concerts.

Last year, the arts council produced over 100 arts events, showcasing the talents of 305 performing and visual artists, and servicing over 17,000 community residents and visitors. This year we proudly celebrate 29 years of service to our community. Blue Ridge Arts Council has been the cultural mainstay in our community thanks in large part to the support of our organization through your continued funding.

The Town of Front Royal has included the arts council in its annual budget since 1988. It has also submitted a grant to the VCA each year. The matching program is very valuable to the council and immediately doubles your investment in the arts council, and brings back taxpayer dollars to our own community.

We realize how difficult and trying the local economy can be, and the many challenges the town faces each year in regards to funding, but feel that we provide a very vital and necessary service to the town and its residents. We value this long and important partnership with the Town of Front Royal.

Again, thank you for your consideration of this request, and your continued support of the arts in Front Royal.



Blue Ridge Arts Council, Inc. Did You Know?

- **Mission and History**

The mission of Blue Ridge Arts Council is to provide a broad base of support for the visual and performing arts, in all segments of the community, by increasing awareness, interest, knowledge and participation. Founded in 1987, Blue Ridge Arts Council is celebrating 29 years of service to the community. A 15 member community based board governs the work of the council, and employs a full time Executive Director and a part-time office manager.

- **Community**

The arts council primarily serves the Town of Front Royal and the County of Warren, and draws a significant audience and support from the residents of Winchester, Rappahannock, Frederick, Clarke, Fauquier and Shenandoah counties.

- **Major Program Areas**

- *Summer Outdoor Concert Series*

A ten week summer outdoor music and entertainment series at the Town Gazebo, highlighting a mix of music types, utilizing artists from the region and the eastern United States. The concerts are free and open to the public, and generally attract audiences of 300 to 600. This series is sponsored through a partnership with the Town of Front Royal, the County of Warren, and the Virginia Commission for the Arts.

- *Warren County Public School Arts Enrichment Partnership*

A partnership program with the local public school system bringing professional theatrical and musical performances into the public schools, servicing 5,100 students in grades K through 12. Residencies are also offered during the year, providing the opportunity for selected students to work closely with writers, dancers, musicians, and artists.

- *Art Exhibits*

A nine exhibit per year program showcasing a variety of regional and national artists, including new and emerging artists, in our gallery at 305 East Main Street. The council also coordinates showings in the following satellite galleries: Warren County Courthouse (2nd floor) and the Warren County Community Center.

- *Community Outreach Programs*

A variety of entertainment programs offered throughout the year to increase awareness and enjoyment in the arts presented in a variety of performance formats. Programs include community concerts, youth recitals in voice, piano and guitar, and seasonal performance offerings. The council is also active in many community organizations and helps in the production of many community events.

- *Instructional Programs*

Periodic continuing learning for adult and youth population is provided through a series of seminars, workshops and classes in the visual and literary art areas. We have ongoing class offerings for youth and adults in visual and performing arts, including dance, piano and voice, utilizing the gallery space a minimum of 4 nights per week.

- **Accomplishments**

Blue Ridge Arts Council produced over 100 arts events, showcasing the talents of 305 visual and performing artists, servicing over 17,000 community members and visitors in FY 2014/2015.

- **Funding**

Blue Ridge Arts Council operates on a budget of \$78,000 for the current fiscal year. Approximately 25% of our funding is supplied through state and local funding, including the Virginia Commission for the Arts, Town of Front Royal, County of Warren and Warren County School Board. The remaining 75% of our revenues are derived through membership, gallery sales, and special event and projects fundraising.



Front Royal Oratorio Society

David Freese, Treasurer
Front Royal Oratorio Society
PO Box 1768
Front Royal, Virginia 22630

Mr. Steven M. Burke, Town Manager
Town Administration Building
102 E. Main Street
Front Royal, Virginia 22630

January 25, 2016

Dear Mr. Burke:

On behalf of the Front Royal Oratorio Society, I am writing to the Town Council to request funding consideration for \$500 in the Town's 2016 budget.

Last year, the Town Council approved the Oratorio Society for \$500. This letter seeks to renew that request for 2016, and if approved, we also ask that the Town Council again apply for matching funds from the Virginia Commission for the Arts (VCA) through its Local Government Challenge Grant program. (We are happy to work with your staff to write the actual application.)

Background

Established in 1960, the Front Royal Oratorio Society is a nonprofit, community-based choir, and stands today as the oldest such choir in the Northern Shenandoah Valley. Our mission is to put the unifying force of choral music at the heart of civic life. We believe music is part of our heritage and that sharing music builds strong communities. Currently, our group of 45 singers ranges in age from 21 to 92, representing virtually every demographic of the local community.

2015/6 Season to Date

The Town's \$500 support in 2015 has been put to good use in our town:

- **March 22, 2015**

Performed Mozart's *Requiem* for the community. 210 people attended. This concert was written up ahead of time in Rappahannock and Culpeper newspapers bringing in many out of town attendees.

- **May 8, 2015**

Performed in Warren County Middle School's "Curtains Up" benefit for Warren County music education programs. We were delighted to be a part of this community variety show and help raise funds for the school system's arts programs.

- **July 3, 2015**

Performed in Front Royal's Independence Day Celebration at the 4H Educational Center. We have participated in this community and family event of patriotic pride for over 20 years.

- **December 6, 2015 Annual Community Christmas Concert**

We performed a highly-successful Christmas concert in December 2015 – our 52nd concert here in our town. Key milestones of this concert are:

- 240 area residents attended – including students; residents of House of Hope, Chapin House and Commonwealth Assisted Living; scores of local residents and families, and attendees from as far away as Martinsburg, Manassas and Harrisonburg.

- **December 31, 2015 – Front Royal's first-ever "First Night"**

We lent our voices and were the opening performance in the evening's festivities at Front Royal United Methodist Church.

- **April 2016**

We are currently preparing two inspiring and uplifting masterworks to perform for the community during the Easter season: Gabriel Faure's *Requiem* and Antonio Vivaldi's *Gloria*. These will be performed with a chamber orchestra. We have invited the choirs of Skyline and Warren County High Schools to join us for this concert.

2016 Request

Our renewed request for \$500 for next year, if approved, will be used for two major concerts – Christmas 2016 and Spring 2017-- and also allow us to participate in community events, as requested during 2016.

Budget

The Society's current annual budget is approximately \$13,000, which primarily covers stipends for our conductor, accompanist and local area musicians. Administrative expenses are minimal. Our sources of revenue are contributions from individuals, freewill offerings taken at our 2 major annual concerts, grants from private and corporate foundations, and paid advertising in our concert program booklets.

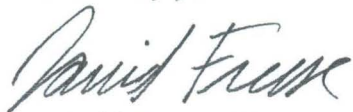
Summary

For more than 50 years, the Front Royal Oratorio Society has been a vital part of the cultural and community fabric here in Front Royal. Our organization brings neighbors together through the arts, while at the same time fostering "hometown" civic pride and encouraging local tourism which is good for area business. We hope that the Town Council will judge our request worthy by approving \$500.00 in its upcoming budget.

Attached are our current 2015/16 budget; a copy of Christmas concert program and publicity showing acknowledgment of the Town's generous contribution.

For any further information, please feel free to contact me at 540-635-4842 or DavidCFreese@yahoo.com

Sincerely yours



David Freese, Treasurer
Front Royal Oratorio Society

Purpose

To encourage local governments to support the arts.

Description

The Commission will match, up to \$5,000, subject to funds available, the tax monies given by independent town, city, and county governments to arts organizations. The money, which does not include school arts budgets or arts programming by parks and recreation departments, may be granted either by a local arts commission/council or directly by the governing board.

Eligible Applicants

Independent city, town, or county governments in Virginia.

Eligible Activities

Grants to independent arts organizations for arts activities in the locality. The Commission does not match payments paid to performers for specific performances. Local governments seeking such funding should apply in the Performing Arts Touring Assistance Program.

Deadline

April 1, 2016 by 5:00 PM, for local government grants awarded in FY17 (July 1, 2016 – June 30, 2017)

NOTE: A local government that has not approved its budget by the grant deadline may apply conditionally and confirm the application as soon as possible.

Amount of Assistance

Up to \$5,000, subject to funds available. The local government match must be from local government funds; federal funds may not be included.

Criteria for Evaluating Applications

- Artistic quality of the organizations supported by the city/county/town
- Clearly defined policies and procedures for awarding local funds to arts organizations
- Degree of involvement of artists and arts organizations in the local process of awarding grants
- Responsiveness to community needs
- Evidence of local government support of the arts

Application/Review/Payment Procedures

1. Local governments submit complete application forms by the deadline (not a postmark deadline). The Commission does not accept application materials via fax or other electronic means (e.g. e-mail).
2. The Commission staff reviews each application for completeness and eligibility.
3. The Commission staff makes recommendations on levels of funding for each application.
4. The Commission board reviews the staff recommendations and takes final action on the applications in June.
5. After confirmation of the grant award, each local government will confirm in writing to the Commission that its governing board has appropriated the matching funds and the funds from the Commission. This confirmation must take the form of the appropriate page of the local government's approved 2015-2016 budget or a copy of the check (s) to the sub grantee (s). The Commission will pay the grant in full after receiving this confirmation no later than February 1, 2016.



Local Government Challenge Grant 2016-2017

Applicants should read the [2016-2017 Online Guidelines for Funding](#) and Grant Conditions to ensure compliance with all conditions. **The grant application deadline is April 1, 2016.** *This is not a postmark date.*

Mail Completed Application to:

Virginia Commission for the Arts
1001 East Broad Street, Suite 330
Richmond, VA 23219
804.225.3132 (Voice/TDD)
www.arts.virginia.gov

INSTRUCTIONS

The Local Government Challenge Grant Application is an interactive, fillable form that has fields in which you must enter text. The boxes for the fields are highlighted. You must fill in every field in order for this application to be considered complete and ready for review. Once you complete the application, print and submit one hard copy with an original signature to the Commission office by 5:00 pm, April 1, 2016. **(This is not a postmark date)**. Save a copy for your files. There is no option to submit an electronic version of this form. For all questions, please contact the Commission staff at (804) 225-3132.

GRANTEE INFORMATION

1. Applicant Local Government Name: Town of Front Royal			
2. Mailing Address: PO Box 1560			
3. Physical Address if different: 104 East Main Street			
3. City: Front Royal	4. County: Warren	5. State: VA	6. Zip: 22630
7. Application Contact: Steven Burke		8. Contact Title: Town Manager	
9. Contact Email: sburke@frontroyalva.com		10. Telephone/Extension: 540-635-8007	
11. Federal Employer ID #: 54-6001299		*12. DUNS Number: 050390749	
**13. VA House #: 15	14. VA Senate #:26	15. VA Congressional District #: 06	

*** All applicants must include their 9-digit DUNS number when applying for a grant.** This requirement is for the local government applicant only. Sub-grantee DUNS numbers are not required. For more information click here: <http://www.dnb.com/get-a-duns-number.html>

**** Give the number of the Virginia House, Senate and the U.S. Congressional district in which the organization is located.** The specific street address of your organization determines these numbers. If you do not know the numbers of the State or U.S. Congressional district in which your organization is located, contact your County Election Commission office or visit: <http://whosmy.virginiageneralassembly.gov>

*Do not list more than one (1) House, Senate or Congressional district in each space.

GRANT AMOUNT REQUEST

Applicant governments must match the amount requested from the Commission on at least a dollar-for-dollar basis with local government funds up to \$5,000; federal funds may not be included. A local government that has not approved its budget by the grant deadline may apply conditionally. After the grant has been approved, any change in the allocation of funds sub-granted to local arts organizations must be approved by the Commission.

16. Amount of Virginia Commission for the Arts assistance requested for FY2017: \$5000

17. Proposed local government arts appropriation for FY2017: \$5000

GRANT INFORMATION

18. What is the process for awarding the above grants?

A funding request is made to the Town by local arts agencies. The request is discussed at a work session and voted on at a regular Town Council meeting.

19. Who is involved in making these decisions?

The Front Royal Town Council makes the final decision(s) and recommendations(s) in awarding funding for the various projects. This is done at regularly scheduled Town Council meetings.

20. What criteria are sought in evaluating applicants?

The criteria used to evaluate the grant are the degree of involvement and applicability to the widest population.

21. List of current board/council members, if a board/council is involved in making funding decisions:

Timothy W. Darr, Mayor

Hollis L. Tharpe, Vice Mayor

Bret W. Hrbek, Council Member

Eugene R. Tewalt, Council Member

Bebhinn C. Egger, Council Member

John P. Connolly, Council Member

Jacob L. Meza, Council Member

22. Give a brief description of the arts organization(s) proposed to receive Commission assistance through the Local Government Challenge Grant in 2016-2017.

BLUE RIDGE ARTS COUNCIL, INC

Blue Ridge Arts Council is a non-profit organization licensed by the Virginia State Corporation with a 15-member community based board and membership from all segments from the community. The Council has been incorporated since 1987 and has continuously brought innovative, high quality arts programs, activities and events to the Front Royal community. The arts council continues to expand their programs and offers a wide array of artistic programs to the community.

SUBGRANTEE (S) INFORMATION

23. Please list which local independent arts organizations will receive the Commission grant money sub-grant. After the Commission grant has been approved, any changes in the allocation of sub-grants to local arts organizations must be approved by the Commission. **Note:** Sub-grants (grants made by the local government) of any Commission funds, not to exceed \$5,000, from the Local Government Challenge grant program may only go to independent Virginia arts organizations for arts activities in the locality. Virginia arts organizations are defined as those organizations whose primary purpose is the arts (production, presentation or support of dance, literary arts, media arts, music, theater, or visual or related arts), that are incorporated in Virginia, and have their headquarters and home seasons, or activities equivalent to a home season, in the state. Units of government and educational institutions cannot be considered arts organizations.

Name of Organization Physical Mailing Address	Sub Grantee Contact Name & Title	Sub Grantee Email Address	Proposed VCA \$ Grant Share
1. Blue Ridge Arts Council Inc	Kym Crump	kcrump@blueridgearts.org	4500
305 East Main Street, Front Royal, VA 22630	Executive Director		
2.			
3.			
4.			

5.			
6.			

Note: Attach additional local independent arts organizations on a separate piece of paper if necessary.

POPULATIONS BENEFITED

24. Select any categories that, by your best estimate, will make up 25% or more of the population that will directly benefit from the award during the period of support. These responses should refer to populations reached directly, rather than through broadcasts or online programming.

Populations Benefited By Race

- ☐ N: American Indian/Alaska Native
- ☐ A: Asian
- ☐ B: Black/African American
- ☐ H: Hispanic/Latino
- ☐ P: Native Hawaiian/Other Pacific Islander
- ☐ W: White
- ☒ G: No single race/ethnic group listed above made up more than 25% of the population directly benefited.

Populations Benefited By Distinct Groups

- ☐ D: Individuals with Disabilities
- ☐ I: Individuals in Institutions (include people living in hospitals, hospices, nursing homes, assisted care facilities, correctional facilities, and homeless shelters)
- ☐ P: Individuals below the Poverty Line
- ☐ E: Individuals with Limited English Proficiency
- ☐ M: Military Veterans/Active Duty Personnel
- ☐ Y: Youth at Risk
- ☒ G: No single distinct group made up more than 25% of the population directly benefit

Populations Benefited By Age

- ☐ 1. Children/Youth (0-18 years)
- ☐ 2. Young Adults ((19-24 years)
- ☐ 3. Adults (25-64 years)
- ☐ 4. Older Adults (65+ years)
- ☒ 5. No single age group made up more than 25% of the population directly benefited

Arts Education

Choose the one item which best describes the funded activities.

- ☐ 50% or more of the funded activities are arts education directed to K through 12 students, higher education students, pre-kindergarten children, and/or adult learners (including teachers and artists).
- ☒ Less than 50% of the funded activities are arts education directed to K through 12 students, higher education students, pre-kindergarten children, and/or adult learners (including teachers and artists).
- ☐ None of the funded activities involve arts education

Certification of Assurances & Grant Conditions for Local Government Grantees

Virginia Commission for the Arts grantees are required to be non-profit Virginia organizations and exempt from federal income tax under Section 501(a), which includes the 501(c)3 designation of the Internal Revenue code, or are units of government, educational institutions, or local chapters of tax exempt national organizations.

No part of any Commission grant shall be used for any activity intended or designed to influence a member of Congress or the General Assembly to favor or oppose any legislation.

Each Commission grantee will:

- provide accurate, current and complete financial records of each grant;
- maintain accounting records which are supported by source documentation;
- maintain effective control over and accountability for all funds, property, and other assets ensuring that assets are used solely for authorized purposes;
- maintain procedures ensuring timely disbursement of funds;
- provide the Commission, or its authorized representatives, access to the grant-related financial records.

The grantee will expend any and all grant funds only for purposes described in the application form and attachments. The grantee must request permission in writing to make changes to the proposed sub grantees, budget, schedule, program and or personnel. The requested changes must be approved in advance by the Commission.

Each Commission grantee will comply with these federal statutes and regulations:

- Title VI, Section 601, of the Civil Rights Act of 1964, which provides that no person, on the ground of race, color or national origin, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- Title IX, Section 1681, of the Education Amendments of 1972, which provides that, with certain exceptions, no person, on the basis of sex or age, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.
- Americans With Disabilities Act and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with physical or mental disabilities in federally assisted programs. Compliance with this Act includes the following: notifying employees and beneficiaries of the organization that it does not discriminate on the basis of handicap and operation of programs and activities which, when viewed in their entirety, are accessible to persons with disabilities. Compliance also includes maintenance of an evaluation plan developed with the assistance of persons with disabilities or organizations representing disabled persons which contains: policies and practices for making programs and activities accessible; plans for making any structural modifications to facilities necessary for accessibility; a list of the persons with disabilities and/or organizations consulted; and the name and signature of the person responsible for the organization's compliance efforts. ("ADA Coordinator")

No final report is required for the Local Government Challenge Grant. Each local government will confirm in writing to the Commission that its governing board has appropriated the matching funds. Confirmation of the match must include either a copy of the appropriate page from the city's/jurisdiction's approved FY2017 budget showing the amount of the award and match or a copy of the check (s) to the sub-grantee (s).

The Commission will pay the grant in full after receiving this confirmation. **The deadline for this confirmation is February 1, 2017.**

In all published material (printed programs, news releases, web news, email alerts, advertisements, flyers, etc.) and announcements regarding the particular activity or activities supported, acknowledgment of the Commission must be made. A suggested phrase is "(organization or activity) is partially supported by funding from the Virginia Commission for the Arts and the National Endowment for the Arts."

This application must be signed by an individual duly authorized by the governing body of the locality to act on its behalf and submitted with every grant application made to the Commission. The signature of the individual indicates the locality's compliance with all of the grant conditions listed above.

The undersigned certifies to the best of his/her knowledge that:

- the information in this application and its attachments is true and correct;
- the filing of this application has been duly authorized by the governing body of the applicant organization;
- the applicant organization agrees to comply with all grant conditions cited above.

The undersigned further certifies that he or she has the legal authority to obligate the applicant locality.

Name of Local Government: Town of Front Royal

Name of Authorizing Official: Steven Burke

Title: Town Manager

Signature of Authorizing Official: _____ Date:

Email of Authorizing Official: sburke@frontroyalva.org

NOTE: Only documents with original signatures will be accepted. Do not send copies or email/fax this application.

8



Town of Front Royal, Virginia Council Agenda Statement

Page 1
Item No. 8

Meeting Date: March 14, 2016

Agenda Item: PUBLIC HEARING – An Amendment to the Town’s Floodplain Ordinance Sections 175-74-175-81.3 (*1st Reading*)

Summary: Council is requested to affirm on its first reading an ordinance to the Town’s Floodplain Ordinance, including updates to sections 175-74 through 175-81.3 of the Town’s Municipal Town Code. The changes were requested by the Virginia Department of Conservation and Recreation as part of their review of the Town’s Floodplain Ordinance using the FEMA Region III Ordinance Review Checklist (VA), as presented.

Budget/Funding: None

Attachments: Ordinance

Meetings: Work Session February 16, 2016.

Staff Recommendation: Approval X Denial _____

Proposed Motion: I move that Council affirm on its first reading an ordinance to the Town’s Floodplain Ordinance, including updates to sections 175-74 through 175-81.3 of the Town’s Municipal Town Code, as presented.

ROLL CALL VOTE REQUIRED

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: SB

AN ORDINANCE TO AMEND FRONT ROYAL TOWN CODE CHAPTER §175-74 THROUGH 175-81.3 (FLOODPLAIN ORDINANCE)

WHEREAS, the amendments to the Town's Floodplain Ordinance were requested by the Virginia Department of Conservation and Recreation as part of their review of the Town's Floodplain Ordinance using the FEMA Region III Ordinance Review Checklist (VA); and,

NOW THEREFORE, BE IT ENACTED, by the Town Council of the Town of Front Royal, Virginia, that Chapter §175-74 through 175-81.3 of the Front Royal Town Code is hereby amended and enacted as

FLOODPLAIN ZONING

175-74 GENERAL PROVISIONS (Floodplain)

A. ~~Statement of Intent: Floodplains are a valuable resource that provide, in addition to flood passage, agricultural land, recreational land, and wildlife habitat. In addition, they provide groundwater recharge and pollution protection services. As such, the Town Plan calls for protecting currently undeveloped floodplains from incompatible development.~~ Statutory Authority: This ordinance is adopted pursuant to the authority granted to localities by Virginia Code § 15.2 – 2280.

B. Purpose: The purpose of these provisions is to prevent: the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

1. Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;
2. Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;
3. Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage; and,
4. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

C. Applicability: These provisions shall apply to all lands within the jurisdiction of the Town of Front Royal and identified as a being in the 1% annual chance of a flood (Special Flood Hazard Area), by the Federal Insurance Administration.

D. Compliance and Liability:

1. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.
2. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes,

such as ice jams and bridge openings restricted by debris. This ordinance does not imply that districts outside the Floodplain District or that land uses permitted within such district will be free from flooding or flood damages.

3. Records of actions associated with administering this ordinance shall be kept on file and maintained by the Zoning Administrator.
4. This ordinance shall not create liability on the part of the Town of Front Royal or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made there under.

E. Abrogation and Greater Restrictions: This ordinance supersedes any ordinance currently in effect in flood-prone districts. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this ordinance.

F. Severability: If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this ordinance are hereby declared to be severable.

G. Administration:

1. *Designation of the Floodplain Administrator*. The Floodplain Administrator is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Zoning Administrator is hereby designated as the Floodplain Administrator for the Town of Front Royal. The Floodplain Administrator may:

- a. Do the work themselves. In the absence of a designated Floodplain Administrator, the duties are conducted by the Town of Front Royal chief executive officer.
- b. Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
- c. Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

2. *Duties and Responsibilities of the Floodplain Administrator*: The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- a. Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).
- b. Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.
- c. Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.

- d. Review applications to determine whether all necessary permits have been obtained from the Federal, State or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the State.
- e. Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE) and have submitted copies of such notifications to FEMA.
- f. Advise applicants for new construction or substantial improvement of structures that are located within an area of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act that Federal flood insurance is not available on such structures; areas subject to this limitation are shown on Flood Insurance Rate Maps as Coastal Barrier Resource System Areas (CBRS) or Otherwise Protected Areas (OPA).
- g. Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.
- h. Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.
- i. Review Elevation Certificates and require incomplete or deficient certificates to be corrected.
- j. Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the Town of Front Royal within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.
- k. Maintain and permanently keep records that are necessary for the administration of these regulations, including:
 - (1) Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and
 - (2) Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, inspection records, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
- l. Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.
- m. Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.
- n. Administer the requirements related to proposed work on existing buildings:

(1) Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.

(2) Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct. Prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.

o. Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other Federal, State, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for Increased Cost of Compliance coverage under NFIP flood insurance policies.

p. Notify the Federal Emergency Management Agency when the corporate boundaries of the Town of Front Royal have been modified and:

(1) Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and

(2) If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

q. Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.

r. It is the duty of the Community Floodplain Administrator to take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the Community, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).

3. *Use and Interpretation of FIRMs.* The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

a. Where field surveyed topography indicates that adjacent ground elevations:

(1) Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;

(2) Are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the SFHA.

b. In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.

c. Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.

d. Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.

e. If a Preliminary Flood Insurance Rate Map and/or a Preliminary Flood Insurance Study has been provided by FEMA:

(1) Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.

(2) Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Section 3.1.A.3. and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.

(3) Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

4. *Jurisdictional Boundary Changes.* In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v), the Town will notify the Federal Insurance Administration and optionally the State Coordinating Office in writing whenever the boundaries of the Town have been modified by annexation or the Town has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area. A copy of a map of the Town, suitable for reproduction, and clearly delineating the new corporate limits or new area for which the Town has assumed or relinquished floodplain management regulatory authority must be included with the notification.

5. *District Boundary Changes.* The delineation of any of the Floodplain Districts may be revised by the Town where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to

any such change, approval must be obtained from the Federal Emergency Management Agency. A completed Letter of Map Revision (LOMR) is a record of this approval.

6. *Interpretation of District Boundaries.* Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Zoning Officer. Should a dispute arise concerning the boundaries of any of the Districts, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.
7. *Submitting Model Backed Technical Data.* A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. The community may submit data via a LOMR. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.
8. *Letters of Map Revision.* When development in the floodplain will cause or causes a change in the base flood elevation, the Town shall require the applicant of the development to notify FEMA by applying for a Conditional Letter of Map Revision and then a Letter of Map Revision.
9. *Penalty for Violations.* Any person who fails to comply with any of the requirements or provisions of this article or directions of the director of planning or any authorized employee of the Town shall be guilty of the appropriate violation and subject to the penalties thereof. Violations and associated penalties related to the floodplain provisions are found under Section 175-145 of this Chapter. In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of Sections 175-74 through 175-81.3. The imposition of a fine or penalty for any violation of, or noncompliance with, the provisions of Sections 175-74 through 175-81.3, shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the Town to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.

175-75 DEFINITIONS (Floodplain)

The following definitions apply to the floodplain regulations found within this chapter, specifically Sections 175-74 through 175-81.3:

A. ACCESSORY STRUCTURE or APPURTENANT STRUCTURE - For purposes of the floodplain regulations of this chapter, shall mean an accessory building not in excess of 200 square feet.

A.B. BASE FLOOD - The flood having a one percent chance of being equaled or exceeded in any given year.

B.C. BASE FLOOD ELEVATION - ~~The Federal Emergency Management Agency designated as the Special Flood Hazard Area.~~ The water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year. The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate map. For the purposes of this ordinance, the base flood is the 1% annual chance flood.

C.D. BASEMENT - Any area of the building having its floor sub-grade (below ground level) on all sides.

D.E. BOARD OF ZONING APPEALS - The Board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this ordinance.

E.F. BREAKAWAY WALL - A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

F.G. DEVELOPMENT- Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

G.H. ELEVATED BUILDING - A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).

H.I. ENCROACHMENT - The advance or infringement of uses, plant growth, fills, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

J. EXISTING CONSTRUCTION – structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975 for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures.”

I.K. FLOOD OR FLOODING -

1. A general or temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters; or,
 - b. The unusual and rapid accumulation or run-off of surface waters from any source.
 - c. Mudflows which are proximately caused by flooding as defined in paragraph (1)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
2. The collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1) (a) of this definition.

L. FLOOD INSURANCE RATE MAP (FIRM) - an official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

M. FLOOD INSURANCE STUDY (FIS) – a report by FEMA that examines, evaluates and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

J.N. FLOODPLAIN OR FLOOD-PRONE AREA - Any land area susceptible to being inundated by water from any source.

K.O. FLOODWAY - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

L.P. FREEBOARD - A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

M.Q. FLOOD-PROOFING - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

R. HIGHEST ADJACENT GRADE - the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

S. HISTORIC STRUCTURE - Any structure that is

1. listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
4. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either
 - a. by an approved state program as determined by the Secretary of the Interior; or,
 - b. directly by the Secretary of the Interior in states without approved programs.

T. HYDROLIC AND HYDRAULIC ENGINEERING ANALYSIS – Analyses performed by a *licensed* professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and FEMA, used to determine the *base flood*, other frequency floods, *flood* elevations, *floodway* information and boundaries, and *flood* profiles.

U. LETTERS OF MAP CHANGE (LOMC) - A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective *Flood Insurance Rate Map* or *Flood Insurance Study*. Letters of Map Change include:

1. **LETTER OF MAP AMENDMENT (LOMA)** - An amendment based on technical data showing that a property was incorrectly included in a designated *special flood hazard area*. A LOMA

amends the current effective *Flood Insurance Rate Map* and establishes that a Land as defined by meets and bounds or *structure* is not located in a *special flood hazard area*.

2. **LETTER OF MAP REVISION (LOMR)** - A revision based on technical data that may show changes to *flood zones*, *flood elevations*, *floodplain* and *floodway* delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a *structure* or parcel of land has been elevated by fill above the *base flood elevation* and is, therefore, no longer exposed to *flooding* associated with the *base flood*. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the *community's* floodplain management regulations.

3. **LETTER OF MAP REVISION, CONDITIONAL (CLOMR)** - A formal review and comment as to whether a proposed *flood* protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of *special flood hazard areas*. A CLOMR does not revise the effective *Flood Insurance Rate Map* or *Flood Insurance Study*.

V. **LOWEST ADJACENT GRADE** - the lowest natural elevation of the ground surface next to the walls of a structure.

N.W. **LOWEST FLOOR** – The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.

X. **MANUFACTURED HOME** - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term “manufactured home” also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Y. **MANUFACTURED HOME PARK OR SUBDIVISION**- a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Z. **MEAN SEA LEVEL** - is an elevation point that represents the average height of the ocean's surface (such as the halfway point between the mean high tide and the mean low tide) which is used as a standard in reckoning land elevation.

Ø.aa. **NEW CONSTRUCTION** - For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of the initial Flood Insurance Rate Map July 15, 1988, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

bb. **POST-FIRM STRUCTURES**- A structure for which construction or substantial improvement occurred after July 15, 1988.

cc. **PRE-FIRM STRUCTURES** - A structure for which construction or substantial improvement occurred on or before July 15, 1988.

P.dd. RECREATIONAL VEHICLE - A vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light-duty truck; and,
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

ee. REPETITIVE LOSS STRUCTURE - A building covered by a contract for flood insurance that has incurred flood-related damages on two occasions, in which the cost of the repair, on the average, equaled or exceeded 25 percent of the market value of the structure at the time of each such flood event; and at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

ff. SEVERE REPETITIVE LOSS STRUCTURE - a structure that: (a) Is covered under a contract for flood insurance made available under the NFIP; and (b) Has incurred flood related damage – (i) For which 4 or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or (ii) For which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.

Q.gg. SPECIAL FLOOD HAZARD AREA - The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year, commonly known as the one-hundred (100) year floodplain.

R.hh. START OF CONSTRUCTION - The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

ii. STRUCTURE - for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

S.jj. SUBSTANTIAL DAMAGE - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

T.kk. SUBSTANTIAL IMPROVEMENT - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the *start of construction* of the improvement. This term includes structures which have incurred *repetitive loss* or *substantial damage* regardless of the actual repair work performed. ~~The term does not, however, include any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.~~ **The term does not, however, include either:**

- (i) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
- (ii) Any alteration of a *historic structure*, provided that the alteration will not preclude the structure's continued designation as a *historic structure*, or
- (iii) Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

II. **VIOLATION** - the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sections 175-74 through 175-81.3 of this Chapter is presumed to be in violation until such time as that documentation is provided.

175-76. **WATERCOURSE** - A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

175-76 ESTABLISHMENT OF FLOODPLAIN DISTRICTS

A. Basis of Districts - The various floodplain districts shall include special flood hazard areas. The basis for the delineation of these districts shall be the Flood Insurance Study (FIS) and the Flood Insurance Rate Map (FIRM) for the Town of Front Royal prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated June 3, 2008, as amended.

B. The Floodway District, also referred to as the AE zone, is delineated, for purposes of this ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the Special Flood Hazard Area without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this District are specifically defined in Table 4 of the above-referenced Flood Insurance Study and shown on the accompanying Flood Boundary and Floodway Map or Flood Insurance Rate Map. The following provisions shall apply within the Floodway District of an AE zone:

1. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator. Development activities which increase the water surface elevation of the base flood may be allowed, provided that the applicant first applies – with the Town's endorsement – for a Conditional Letter of Map Revision (CLOMR), and receives the approval of

the Federal Emergency Management Agency. If the requirements of this section are satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction standards.

2. The placement of manufactured homes (mobile homes) is prohibited, except when replacing an existing manufactured home in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.

C. The Flood-Fringe District shall be that area of the Special Flood Hazard Area not included in the Floodway District. The basis for the outermost boundary of the District shall be the Special Flood Hazard Area elevations contained in the flood profiles of the above-referenced Flood Insurance Study and as shown on the accompanying Flood Boundary and Floodway Map or Flood Insurance Rate Map.

D. The Approximated Floodplain District shall be those areas identified as an A Zone on the maps accompanying the Flood Insurance Study. ~~In these zones, no detailed flood profiles or elevations are provided, but the Special Flood Hazard Area boundary has been approximated.,~~ also referred to as the A Zone, as illustrated on the FIRM accompanying the Flood Insurance Study (FIS) shall be those areas for which no detailed flood profiles or elevations are provided, but the one percent annual chance floodplain boundary has been approximated. For these areas, the following provisions shall apply:

1. The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one percent annual chance floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the FIS. For these areas, the base flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one percent annual chance flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this base flood elevation. For development proposed in the approximate floodplain the applicant must use technical methods that correctly reflect currently accepted practices, such as point on boundary, high water marks, or detailed methodologies hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.
2. The Floodplain Administrator reserves the right to require a hydrologic and hydraulic analysis for any development. When such base flood elevation data is utilized, the lowest floor shall be elevated to or above the base flood plus twelve (12) inches. Additional elevation above 12 inches over the base flood is recommended if possible because it may reduce the cost of flood insurance.
3. During the permitting process, the Floodplain Administrator shall obtain:
 - a. The elevation of the lowest floor (in relation to mean sea level), including the basement, of all new and substantially improved structures; and,
 - b. If the structure has been flood-proofed in accordance with the requirements of this article, the elevation (in relation to mean sea level) to which the structure has been flood-proofed.
4. Base flood elevation data shall be obtained from other sources or developed using detailed methodologies comparable to those contained in a FIS for subdivision proposals and other proposed

development proposals (including manufactured home parks and subdivisions) that exceed fifty lots or five acres, whichever is the lesser.

175-77 OVERLAY CONCEPT (Floodplain)

A. The Floodplain Districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Ordinance Map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

B. If there is any conflict between the provisions or requirements of the Floodplain Districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.

C. In the event any provision concerning a Floodplain District is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

175-78 FLOODPLAIN DISTRICT BOUNDARIES

A. The boundaries of the Special Flood Hazard Area and Floodplain Districts are established as shown on the Flood Boundary and Floodway Map and/or Flood Insurance Rate Map which is declared to be a part of this ordinance and which shall be kept on file at the Town of Front Royal Planning offices.

B. District Boundary Changes: The delineation of any of the Floodplain Districts may be revised by the Town of Front Royal where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

C. Interpretation of District Boundaries: Interpretations of the boundaries of the Floodplain Districts shall be made by the Zoning Administrator. Should a dispute arise concerning the boundaries of any of the Districts, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

175-79 DISTRICT PROVISIONS (Floodplain)

A. Permit Requirement: All uses, activities, and development occurring within any floodplain district shall be undertaken only upon the issuance of a Zoning Permit. Such development shall be undertaken only in strict compliance with the provisions of the Ordinance and with all other applicable codes and ordinances, as amended, and the Town of Front Royal Subdivision Regulations. Prior to the issuance of any such permit, the Zoning Administrator shall require all applications to include compliance with all applicable state and federal laws.

B. Site Plans and Permit Applications: All applications for development within any floodplain district and all building permits issued for the floodplain shall incorporate the following information:

1. For structures to be elevated, the elevation of the lowest floor (including basement).
2. For structures to be flood-proofed (non-residential only), the elevation to which the structure will be flood-proofed.

3. The elevation of the Base Flood at the site.

4. Topographic information showing existing and proposed ground elevations.

175-80 GENERAL STANDARDS (Floodplain)

In all special flood hazard areas the property owner is ultimately responsible for insuring the following provisions have been considered:

A. New construction and substantial improvements shall be anchored to prevent floatation, collapse or lateral movement of the structure.

B. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

C. New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

D. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

E. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

F. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

G. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

H. Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance shall meet the requirements of "new construction" as contained in this ordinance.

I. Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced and does not constitute a substantial improvement.

J. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U. S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and the Federal Insurance Administration.

K. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

L. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state anchoring requirements for resisting wind forces.

175-81 SPECIFIC STANDARDS (Floodplain)

In all special flood hazard areas where base flood elevations have been provided in the Flood Insurance Study or generated according to Section 175-81.1(A), the following provisions shall apply:

A. Residential Construction: New construction or substantial improvement of any residential structure in any flood zone shall have the lowest floor, including basement, elevated no lower than one (1) foot above the base flood elevation.

B. Non-Residential Construction: New construction or substantial improvement of any commercial, industrial, or non-residential building shall have the lowest floor, including basement, elevated to no lower than one (1) foot above the base flood elevation. Buildings located in all AE and AH zones may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the Base Flood Elevation (BFE) plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by the Floodplain Administrator.

C. The space below the lowest floor ~~Elevated Buildings~~: Enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

1. Not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas;
2. Be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
3. Include, in Zones A and AE measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:
 - a. Provide a minimum of two openings on different sides of each enclosed area subject to flooding.
 - b. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.
 - c. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.
 - d. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade.

- e. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
- f. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

D. Standards for Manufactured Homes and Recreational Vehicles: All recreational vehicles placed on sites must be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions). **either**

1. In all designated Special Flood Hazard Areas, all manufactured homes placed, or substantially improved, on individual lots or parcels, must meet all the requirements for the zone in which they are located for new construction, including the elevation and anchoring requirements in this ordinance; or,
2. All recreational vehicles placed on sites must either
 - a. Be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or
 - b. Where allowed under the general zoning regulations of this Chapter, may be kept on the site for 180 days or more when all applicable floodplain standards for manufactured homes are complied with.

175-81.1 STANDARDS FOR APPROXIMATED FLOODPLAIN

A. When base flood elevation data or floodway data have not been provided, the Zoning Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or any other source, in order to administer the provisions of Section. When such base flood elevation data is utilized, the Zoning Administrator shall obtain:

1. The elevation (in relation to the mean sea level) of the lowest floor (including the basement) of all new and substantially improved structures; and,
2. If the structure has been flood-proofed in accordance with the requirements of Section 175-81(B) of this ordinance, the elevation in relation to the mean sea level to which the structure has been flood-proofed.

B. When the data is not available from any source as in Section 175-81.1(A), the lowest floor of the structure shall be elevated to no lower than one (1) foot above the highest adjacent grade.

C. Base flood elevation data shall be provided for subdivision proposals and other proposed development proposals that exceed fifty lots or five acres, whichever is the lesser.

D. Standards for Subdivision Proposals.

1. All subdivision proposals shall be consistent with the need to minimize flood damage;
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and
4. Base flood elevation data shall be obtained from other sources or developed using detailed methodologies, hydraulic and hydrologic analysis, comparable to those contained in a Flood Insurance Study for all major subdivision proposals and major site development plans, as defined under Chapter 148 of the Town Code.

E. Existing Structures in the Floodplain Areas. Any structure or use of a structure or premises must be brought into conformity with these provisions when it is changed, repaired, or improved, unless one of the following exceptions is established before the change is made:

1. The floodplain manager has determined that
 - a. change is not a substantial repair or substantial improvement; and,
 - b. no new square footage is being built in the floodplain that is not complaint; and, c. no new square footage is being built in the floodway; and,
 - d. the change complies with this ordinance and the VA USBC; and,
 - e. the change, when added to all the changes made during a rolling 5 year period does not constitute 50% of the structure's value.
2. The changes are required to comply with a citation for a health or safety violation.
3. The structure is a historic structure and the change required would impair the historic nature of the structure.

175-81.2 STANDARDS FOR THE FLOODWAY DISTRICT

The following provisions shall apply within the Floodway District:

Encroachments, including fill, new construction, substantial improvements and other developments are prohibited unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge. The preceding uses, activities and development occurring within any floodway district shall be undertaken only upon the issuance of a Special Use Permit. Development activities in which an increase in the water surface elevation of the base flood may be allowed, provided that the applicant first applies – with the Town of Front Royal endorsement – for a conditional Flood Insurance Rate Map and floodway revision, and receives the approval of the Federal Emergency Management Agency. However, other activities such as demolition in which there is not an increase in the water surface elevation, will require a zoning permit in lieu of a special use permit.

175-81.3 FLOODPLAIN VARIANCES: FACTORS TO BE CONSIDERED

~~In passing upon applications for Floodplain Variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the Zoning Ordinance and consider the following additional factors:~~

A. Variances shall be issued only upon (i) a showing of good and sufficient cause, (ii) after the Board of Zoning Appeals has determined that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) after the Board of Zoning Appeals has determined that the granting of such variance will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

B. While the granting of variances generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. Variances may be issued by the Board of Zoning Appeals for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of this section.

C. Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

D. In passing upon applications for variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

~~A.~~1. The showing of good and sufficient cause.

~~B.~~2. The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any Floodway District that will cause any increase in the Special Flood Hazard Area elevation.

~~C.~~3. The danger that materials may be swept on to other lands or downstream to the injury of others.

~~D.~~4. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

~~E.~~5. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

~~F.~~6. The importance of the services provided by the proposed facility to the community.

~~G.~~7. The requirements of the facility for a waterfront location.

~~H.~~8. The availability of alternative locations not subject to flooding for the proposed use.

~~I.~~9. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

~~J.~~10. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

~~K.~~11. The safety of access by ordinary and emergency vehicles to the property in time of flood.

~~L.~~12. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

13. The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

~~M.~~14. Such other factors which are relevant to the purposes of this ordinance.

E. The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

~~Variances shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.~~

F. Variances shall be issued only after the Board of Zoning Appeals has determined that the variance will be the minimum required to provide relief from exceptional hardship to the applicant.

G. The Board of Zoning Appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the Special Flood Hazard Area elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

H. A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

This ordinance effective upon passage.

APPROVED:

Timothy W. Darr, Mayor

ATTEST:

Jennifer E. Berry, Clerk of Council

THIS ORDINANCE was approved at the Regular Meeting of the Town of Front Royal, Virginia on its second reading, conducted _____ 2016, upon the following recorded vote:

John P. Connolly	Yes/No	Bret W. Hrbek	Yes/No
Hollis L. Tharpe	Yes/No	Eugene R. Tewalt	Yes/No
Bébhinn C. Egger	Yes/No	Jacob L. Meza	Yes/No

A public hearing on the above was held on _____, 2016 having been advertised in the Northern Virginia Daily on _____, 2016 and _____, 2016.

Approved as to form and legality:

Douglas W. Napier, Town Attorney

Date: ____/____/____

9



**Town of Front Royal, Virginia
Council Agenda Statement**

Page 1
Item No. 9

Meeting Date: March 14, 2016

Agenda Item: PUBLIC HEARING – An Ordinance To Amend Town Code 175-65A and 175-65B Pertaining to I-2 Districts By Right Allowances (*1st Reading*)

Summary: Council is requested to affirm on its first reading an ordinance to amend the Front Royal Municipal Town Code Sections 175-65A and 175-65B that would allow Business Offices, Professional Offices, Technology Businesses and Schools in the I-2 District by right without the need for a special use permit, as presented.

Budget/Funding: None

Attachments: Ordinance

Meetings: Work Session February 16, 2016.

**Staff
Recommendation:** Approval X Denial

Proposed Motion: I move that Council affirm on its first reading an ordinance to amend the Front Royal Municipal Town Code Sections 175-65A and 175-65B that would allow Business Offices, Professional Offices, Technology Businesses and Schools in the I-2 District by right without the need for a special use permit, as presented.

ROLL CALL VOTE REQUIRED

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: SB

**AN ORDINANCE TO AMEND FRONT ROYAL TOWN CODE CHAPTER §175-65A and 75-65B
PERTAINING TO I-2 DISTRICT**

WHEREAS, the purpose of this ordinance is allow Business Offices, Professional Offices, Technology Businesses and Schools in the I-2 District by right without the need of special use permit; and,

NOW THEREFORE, BE IT ENACTED, by the Town Council of the Town of Front Royal, Virginia, that Chapter **§175-65A and 175-65B** of the Front Royal Town Code is hereby amended and enacted as

175-65 USE REGULATIONS (I-2)

A. Subject to the standards and requirements set forth in this Chapter, except as prohibited or restricted by separate restrictions of record that may pertain to property within the I-2 District, the following uses of land and buildings are permitted by-right in the I-2 District:

RESIDENTIAL:

Caretaker quarters

COMMERCIAL:

Automobile and truck sales lots and leasing agencies, in accordance with 175-44.E

Automobile garage (auto repair)

Automobile service stations (gas stations)

Business Offices

Coal and wood yards, lumberyards and feed/seed stores

Commuter parking facilities

Contractor's offices, display rooms and storage

Furniture stores

Lumber and building supply

Professional Offices

Technology Business

Veterinary hospitals

INDUSTRIAL:

Distribution facilities

Light Manufacturing

Woodworking and upholstery shop.

Wholesale

ORGANIZATIONAL:

Laboratory, pharmaceutical and/or medical

Schools

MISCELLANEOUS:

Accessory uses, structures and buildings

Home occupations

Open Space

Public facilities.

Public parks and playgrounds

Public utilities

Signs, as set forth in Section 175-106

Special childcare services

Such other uses as determined similar to one or more enumerated uses by the Zoning Administrator

B. The following uses are permitted within the I-2 District only by approval of a special use permit, except as prohibited or restricted by separate restrictions of record that may pertain to property within the I-2 District:

RESIDENTIAL:

COMMERCIAL:

Airport (including heliports)

Assembly Halls.

Barber and beauty shops

~~Business Offices~~

Catering Services

Clubs

Daycare and daycare facilities

Kennels

~~Professional Offices~~

Recreation facility, commercial

Restaurant, including drive-in restaurants

Retail Stores

~~Technology Business~~

INDUSTRIAL:

Automobile Graveyard

Hazardous Material Storage

Heavy Manufacturing

Medium Manufacturing

Scrap metal processing

ORGANIZATIONAL:

MISCELLANEOUS:

Any use permitted under Section 175-65.A., or specifically listed above under this subsection, that proposes to occupy a building or structure that exceeds the height requirements of Section 175-67, subject to the requirements of Section 175-136. Additional heights approved by a special use permit shall be required to increase the required setback and yard area requirements by an equivalent distance from each property line.

Communications Towers and cable television facilities, with wireless telephone (cell phone) communications tower subject to the supplemental provisions prescribed in Section 175-110.4.

Conservation Areas

Mini-warehouses

Parking Structures

This ordinance effective upon passage.

APPROVED:

Timothy W. Darr, Mayor

ATTEST:

Jennifer E. Berry, Clerk of Council

THIS ORDINANCE was approved at the Regular Meeting of the Town of Front Royal, Virginia on its second reading, conducted _____ 2016, upon the following recorded vote:

John P. Connolly	Yes/No	Bret W. Hrbek	Yes/No
Hollis L. Tharpe	Yes/No	Eugene R. Tewalt	Yes/No
Bébhinn C. Egger	Yes/No	Jacob L. Meza	Yes/No

A public hearing on the above was held on _____, 2016 having been advertised in the Northern Virginia Daily on _____, 2016 and _____, 2016.

Approved as to form and legality:

Douglas W. Napier, Town Attorney

Date: ____/____/____

10



Town of Front Royal, Virginia Council Agenda Statement

Page 1
Item No. 10

Meeting Date: March 14, 2016

Agenda Item: PUBLIC HEARING – Fiscal Year 2016-2017 Tax Rates (*1st Reading*)

Summary: Council is requested to consider the Fiscal Year 2016-2017 real estate tax rate at \$0.14 per \$100 assessed value, which represents an increase of \$0.01 over the current year's rate with the additional \$0.01 to be used for the construction of the new Police Headquarters on Monroe Avenue and to be rescinded upon completion of the debt service payments for the project; personal property tax rate at \$0.64 per \$100 assessed value, which represents no increase over the current year's rate. Council is further requested to affirm on its first reading an ordinance to amend Front Royal Town Code Section 75-44.C. accordingly.

Budget/Funding: None

Attachments: Ordinance

Meetings: Work Session held February 16, 2016

Staff Recommendation: Approval X Denial

Proposed Motion:

Motion 1:

I move that Council affirm on its first reading that the Fiscal Year 2016-2017 real estate tax rate remain the same at \$0.13 per \$100 assessed value, and the personal property tax rate remain the same at \$0.64 per \$100 assessed value. I further move that Council affirm on its first reading Front Royal Town Code Section 75-44.C.

Motion 2:

I move that Council affirm on its first reading an increase of \$0.01 for Fiscal Year 2016-2017 real estate tax rate from \$0.13 to \$0.14 per \$100 assessed value, to be used for the construction of the new Police Headquarters on Monroe Avenue and to be rescinded upon completion of the debt service payments for the project. I further move that the tax rate for personal property tax rate remain the same at \$0.64 per \$100 assessed value. I further move that Council affirm on its first reading an ordinance to amend Front Royal Town Code Section 75-44.C. accordingly.

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: SB

TOWN CODE EXCERPT

75-44 DELINQUENT TAX LISTS - MAILING OF BILLS; DUE DATES, PENALTY AND INTEREST; IMPOSITION OF THE TAXES AND RATES

A. The Town Treasurer, personally or through the Director of Finance, shall, in January each year, send or cause to be sent by United States mail to each taxpayer assessed with real and personal property taxes and levies for that year amounting to five dollars (\$5.00) or more as shown by an assessment book in the Office of the Director of Finance, a bill or bills setting forth the amount due. If the said Director or Treasurer intends to seek collection of a tax in an amount less than five dollars (\$5.00), he shall send or cause to be sent to the taxpayer a bill as set forth above. Notwithstanding any of the foregoing, failure of the said Director or Treasurer to send or of the taxpayer to receive a bill shall not affect the taxpayer's obligation to pay the full amount of said taxes by the due date.

B. On and after January 1, 2010, tax payments for real estate and personal property shall become due and payable to the Town of Front Royal on a semiannual basis, with one-half of the annual assessment of such taxes due on or before June 5th of each year after January 1, 2010, and the additional one-half of such taxes due on or before December 5th of each such year. A penalty of 10% of the tax past due or ten dollars (\$10.00), whichever is greater, shall be added to any tax not paid by the aforesaid due date, provided that in no case may the penalty exceed the amount of the tax assessed. In addition, interest shall be added to any delinquent taxes and penalties at the rate of 10% per year, with interest commencing on the first day of the month following the date on which any such taxes became due and payable.

C. There is hereby imposed upon all real property within the limits of the Town of Front Royal, Virginia, a tax in the amount of thirteen cents (\$0.13) per one hundred dollars (\$100.00) of assessed valuation, and a tax upon all tangible personal property located within the limits of the Town of Front Royal, Virginia, in the amount of sixty cents (\$0.64) per one hundred dollars (\$100.00) of assessed valuation. The tax on all personal property shall include all Machinery and Tools. The tax on all real property shall include all mobile homes. The tax imposed upon real property within the limits of the Town of Front Royal, Virginia, shall be decreased by \$0.02 to \$0.11 per \$100 assessed value, which is reinstatement of the previous Real Estate Tax Rate for Fiscal Year 2013-2014, upon completion of payment of debt service of the new Police Department Headquarters and construction of Leach Run Parkway; and Town Code Section 75-44.C, shall thereupon be amended accordingly to reflect said decrease and reinstatement of such previous reduced Real Estate Tax Rate.

11



Town of Front Royal, Virginia Council Agenda Statement

Page 1
Item No. 11

Meeting Date: March 14, 2016

Agenda Item: COUNCIL APPROVAL – An Ordinance to Amend Town Code Chapters 98 and 138 Pertaining to Food Trucks and Itinerant Merchandising (*2nd Reading*)

Summary: Council is requested to adopt on its second and final reading an ordinance to amend Front Royal Town Code Chapters 98 (Business, Professional and Occupational Licensing) and Chapter 138 (Solicitors and Vendors) to provide expanded use of food trucks and itinerant merchandising in the Town of Front Royal. If approved, individuals seeking to conduct sales regulated by the Town Code would be required to obtain a permit through the Town Manager's Office prior to conducting sales. In addition, individuals would need to pay the appropriate business license fees and have a site approved by the Front Royal Planning Commission for itinerant merchandising. Council discussed this amendment further in a work session held on March 7, 2016 and it was suggested to reduce the Itinerant Merchant License Fee from \$500.00 to \$250.00 in Town Code Section 98-61.A.3.

Budget/Funding: None

Attachments: Original Ordinance and application

Meetings: Work Sessions held January 4 and 11, 2016 and March 7, 2016. Public Hearing held February 22, 2016.

Staff Recommendation: Approval X Denial _____

Proposed Motion:

Motion 1:

I move that Council adopt on its second and final reading an ordinance to amend Front Royal Town Code Chapters 98 (Business, Professional and Occupational Licensing) and Chapter 138 (Solicitors and Vendors) to provide expanded use of food trucks and itinerant merchandising in the Town of Front Royal, as presented at the public hearing held on February 22, 2016.

Motion 2:

I move that Council adopt on its second and final reading an ordinance to amend Front Royal Town Code Chapters 98 (Business, Professional and Occupational Licensing) and Chapter 138 (Solicitors and Vendors) to provide expanded use of food trucks and itinerant merchandising in the Town of Front Royal. I further move to reduce the Itinerant Merchant License Fee from \$500.00 to \$250.00 in the ordinance presented at the public hearing held on February 22, 2016.

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: SB

**AN ORDINANCE TO AMEND AND RE-ENACT FRONT ROYAL MUNICIPAL TOWN
CODE SECTION 98-45 PERTAINING TO LICENSING OF COMMERCIAL
SOLICITORS; SECTION 98-61 PERTAINING TO LICENSING OF PEDDLER AND
ITINERANT MERCHANTS; AND, CHAPTER 138 PERTAINING TO PEDDLERS,
SOLICITORS AND ITINERANT MERCHANTS**

WHEREAS, ordinance amendments to Town Code Chapter 98 (Business, Professional and Occupational Licensing) and Chapter 138 (Solicitors and Vendors) are to provide expanded use of food trucks (itinerant merchants) in the Town of Front Royal; and,

WHEREAS, the proposed amendments focus regulations for sales through peddling, soliciting, or transient locations and definitions for each; and,

NOW THEREFORE, BE IT ENACTED by the Town Council of the Town of Front Royal, Virginia that Chapters 98 and 138 of the Town of Front Royal Municipal Code are hereby amended and re-enacted as follows:

~~98-45 COMMERCIAL SOLICITORS~~

~~A. A commercial solicitor shall be defined as any person, whether a principal, agent or salesman, who engages in, does, or transacts any temporary or transient business in the town by going from house to house or from private residence to private residence for the purpose of taking orders or offering to take orders for the sale of goods, wares or merchandise or taking orders for services to be performed in the future. A commercial solicitor shall not carry goods, wares or merchandise from house to house, except those which are used for display purposes only and are not for sale. For licensing and taxing purposes a commercial solicitor shall be deemed an itinerant merchant as defined in Virginia Code Section 58.1-3717 (B.). This section shall not apply to wholesalers or to insurance underwriters. Upon written application, the Front Royal Town Council may waive the requirement of a solicitor's license for representatives of charitable, religious, civic, political, educational, service and fraternal organizations engaged in commercial solicitation exclusively for the benefit of their respective organizations. This section shall not apply to charitable or civic organizations registered under the provisions of Virginia Code Section 57-49, et seq. Every commercial solicitor shall be licensed, unless otherwise exempt under this section.~~

~~B. For every license to engage in business as a commercial solicitor, there shall be paid a license tax of fifty dollars (\$50.) per week, up to a maximum of two hundred dollars (\$200.) for any calendar year~~

~~C. Before a commercial solicitor's license may be issued, that person must possess a solicitor's permit as provided in Town Code Section 135-3 et seq.~~

98-45 LICENSING - COMMERCIAL SOLICITORS

Any commercial solicitor as defined by Town Code Chapter 138 shall be subject to the following license taxes:

A. **Commercial Solicitor License Tax**

1. All Commercial Solicitors - \$50.00 per week, up to a maximum of \$200.00 per calendar year.
2. Any non-profit civic, charitable, or educational organization may receive a waiver of license tax upon application to and approval of the Front Royal Town Council.

B. Violation

Any commercial solicitor who shall solicit sales without a license shall be guilty of a Class 1 Misdemeanor and shall be fined not less than fifty dollars (\$50.00) nor more than two thousand five hundred dollars (\$2,500.00) for each offense, and in addition, shall be required to obtain the appropriate license from the Town.

C. Enforcement

It shall be the duty of the Police Officers and other Officers of the Town to enforce the provisions of this section and to have warrants issued against any person committing a violation.

98-61 PEDDLERS

A. Peddlers defined.

1. Any person who shall carry from place to place any goods, wares, or merchandise and offers to sell or barter the same, or actually sells or barter the same, shall be deemed to be a peddler.
2. Persons who do not keep a regular place of business, whether it is a house, vehicle, vacant lot or elsewhere, open at all times in regular business hours and at the same place, who shall offer for sale goods, wares and merchandise, may be deemed peddlers under this Article. Persons who keep a regular place of business, open at all times in regular business hours and at the same place, who shall, elsewhere than at such regular place of business, personally or through their agents, offer for sale or sell and, at the time of such offering for sale, deliver goods, wares and merchandise, may also be deemed peddlers as above, except for sidewalk sales adjacent to a regular place of business, but this section shall not apply to those who sell or offer for sale, in person or by their employees, ice, wood, charcoal, meat, milk, butter, eggs, poultry, fish, oysters, game, vegetables, fruits or other family supplies of a perishable nature or farm products grown or produced by them and not purchased by them for sale, but a dairyman who uses upon the streets of the Town one (1) or more wagons may sell and deliver from his wagons, milk, butter, cream and eggs without procuring a peddler's license.
3. All persons who do not keep a regular place of business, whether it is a house, vehicle, vacant lot or elsewhere, open at all times in regular business hours at the same place, who shall offer for sale rugs, furniture, appliances or clothing which is delivered at the time of sale shall be deemed peddlers and shall not be licensed under any separate section.
4. Those vendors of secondhand merchandise who sell their goods and wares as part of an approved or permitted flea market or yard sale and are licensed as such shall not be deemed peddlers. Those vendors of new merchandise at flea markets shall be deemed peddlers.

5. a. ~~All persons vending Christmas trees or fireworks who do not keep a regular place of business, whether it is a house, vehicle, vacant lot or elsewhere, open at all times during regular business hours at the same place, but who offer said items for sale during a portion of the year on or about the season of a celebrated holiday shall not be deemed peddlers except for purposes a license tax imposed pursuant to Virginia Code Section 58.1-3717.~~
- b. ~~Christmas trees are defined as decorative bushes, trees, wreaths and like foliage associated with the celebration of a recognized holiday occurring on December 25 of each year. The term "Christmas" shall have no religious connotation under this ordinance.~~
- c. ~~All vendors of Christmas trees and fireworks who do not keep a regular place of business as defined herein shall pay a license tax of one hundred dollars (\$100.). Any nonprofit civic, charitable or educational organization may receive a waiver of this license tax upon application to and approval of the Front Royal Town Council.~~

~~B. Place of sale:~~

1. ~~It shall be unlawful for any peddler to occupy or partially occupy while selling, or sell from, the private property of another without written permission of the private property owner in the possession of the peddler while selling or peddling.~~
2. ~~All peddlers shall be required to sell or offer for sale their goods, wares or merchandise only:~~
 - a. ~~along the following streets: Royal and Shenandoah Avenues. Provided, however, that it shall be unlawful to occupy or partially occupy, while selling or to sell from, any portion of the street right of way.~~
 - b. ~~upon the property of a shopping center as set forth in Section 175-111.~~
 - c. ~~at all flea market sites in the Town of Front Royal operating as flea markets by special permit or otherwise operating as flea markets in accordance with the Town's Zoning Ordinance.~~
3. ~~This subsection shall not apply to persons who sell or offer for sale, in person or by their employees, ice, wood, charcoal, meat, milk, butter, eggs, poultry, fish, oysters, game, vegetables, fruits or other supplies or farm products of a perishable nature.~~

~~C. Delivery of goods on day of sale. For the purpose of this section, any delivery made on the day of sale shall be construed as equivalent to delivery at the time of sale. Any person claiming exemption from the provisions of this section on the ground that he is delivering goods, wares or merchandise previously sold to the customer shall, upon request of any police, tax or revenue officer, or assessing official, furnish evidence of his claim other than his mere statement, which evidence may be an invoice or signed order describing the goods, wares or merchandise involved and the amount and price thereof. Failure to furnish such evidence shall be sufficient ground for charging the person making such delivery with a violation of this section, and, in any prosecution for a violation of this section, the claim aforesaid must be corroborated by satisfactory evidence.~~

~~D. Levy of license tax on retail peddlers:~~

1. ~~There is hereby imposed upon peddlers license taxes in accordance with the following schedules:~~

- ~~a. Peddlers of meat, milk, butter, eggs, poultry, fish, oysters, games, vegetables, fruits or other family supplies of a perishable nature not grown or produced by the peddler: fifty dollars (\$50.00). There shall also be imposed a license tax of fifty dollars (\$50.00) per vehicle for every vehicle over one used to peddle the above-stated products.~~
- ~~b. All other peddlers shall pay a license tax of five hundred dollars (\$500.00).~~

~~2. The license tax authorized by this subsection shall not apply to a peddler who sells to licensed dealers or retailers only; a regular wholesaler dealer who shall at the same time sell or deliver merchandise to retail merchants; a distributor or vendor of motor fuels and petroleum products or seafood; a farmer; a farmers' cooperative association; a producer of agricultural products; a manufacturer who is subject to Virginia tax on intangible personal property and who peddles only the goods, wares or merchandise manufactured by him at a plant whose intangible personal property is taxed by the Commonwealth of Virginia.~~

~~3. Any peddler who shall peddle for sale or sell or barter without a license shall be guilty of a misdemeanor and shall be fined not less than fifty dollars (\$50.) nor more than five hundred dollars (\$500.) for each offense and, in addition, shall be required to purchase the appropriate peddler's license from the Town of Front Royal.~~

~~E. Exemption as to certain dealers in ice, etc. No peddler's license shall be required, under the provisions of this section, of dealers in ice, wood or coal, who peddle same from vehicles, provided that such dealers have taken out a merchant's license in the Town.~~

~~F. Exemption as to person selling farm or domestic products. Nothing contained in this section shall be construed as imposing any tax upon a person selling farm or domestic products within the Town when the products to be sold are grown or produced by such person, but proof shall be shown that such products are so raised by the party offering them for sale. Before any exemption certificate shall be issued to any person as a grower, producer or manufacturer, the applicant for such exemption certificate shall first file with the Assessor a written statement, duly sworn to and attested to by a Notary Public or Justice of the Peace to his community, setting out in full and in detail the facts claimed to make such applicant a grower, producer or manufacturer, and no exemption certificate shall be issued by the Assessor until such statement, duly sworn to, shall have been produced and filed. The notary public or Justice of the Peace executing such written statement shall be given in full.~~

~~G. Enforcement of section. It shall be the duty of the police officers and other officers of the Town to enforce the provisions of this section and to have warrants issued against any person committing a violation.~~

98-61 LICENSING – PEDDLERS & ITINERANT MERCHANTS

Any peddler or itinerant vendor as defined by Town Code Chapter 138 shall be subject to the following license taxes:

A. Itinerant Merchant License Tax

1. Christmas Tree & Fireworks Vendors - \$100.00 per calendar year.
2. Fresh Farm Product Vendors - Farm grown by merchant exempt per Va. Code § 58.1-3717; if product is purchased by merchant and resold, merchant is considered an Itinerant Merchant.
3. All Other Itinerant Merchant - \$500.00 per calendar year. The tax shall be pro-rated based upon the date of issuance, however the minimum tax amount shall be \$250.00.
4. Any non-profit civic, charitable, or bona-fide educational organization may receive a waiver of license tax upon application to and approval of the Front Royal Town Council.
5. Merchants selling food and merchandise during a Special Event that has been issued permit by the Town shall be exempt from the license tax.

B. Peddler License Tax

1. Fresh Farm Product Vendors - Farm grown by merchant exempt per Va. Code § 58.1-3717; if product is purchased by merchant and resold, merchant is considered a peddler.
2. All Other Peddlers - \$500.00 per calendar year.
3. Any non-profit civic, charitable, or bona-fide educational organization may receive a waiver of license tax upon application to and approval of the Front Royal Town Council.
4. The license tax authorized by this subsection shall not apply to a peddler who sells to licensed dealers or retailers only; a regular wholesaler dealer who shall at the same time sell or deliver merchandise to retail merchants; a distributor or vendor of motor fuels and petroleum products or seafood; or a manufacturer who is subject to Virginia tax on intangible personal property and who peddles only the goods, wares, or merchandise manufacture by him at a plant whose intangible personal property is taxed by the Commonwealth of Virginia.
5. Delivery of food or merchandise ordered by phone, internet, or mail from a fixed place of business issued a business license for operation shall be exempt from the license tax.

C. Violation

Any peddler or itinerant merchant who shall offer for sale or sell or barter without a license shall be guilty of a Class I Misdemeanor and shall be fined not less than fifty dollars (\$50) no more than two thousand five hundred dollars (\$2,500) for each offense, and in addition, shall be required to purchase the appropriate license from the Town.

D. Enforcement

It shall be the duty of the Police Officers and other officers of the Town to enforce the provisions of this section and to have warrants issued against any person committing a violation.

Chapter 138
Solicitors and Vendors
General Provisions

~~138-1 GOING ON PRIVATE PREMISES~~

~~The going upon the property of private residences in the Town by solicitors, peddlers, hawkers, and itinerant vendors, not having been requested or invited to do so by the owners or occupants of such residences, for the purpose of soliciting orders for the sale of goods, wares and merchandise, or for the purpose of disposing of, peddling or hawking goods, wares and merchandise, or for the purpose of solicitating contributions without having first obtained a permit or an exemption under the provisions of Virginia Code Section 57-48 et seq. shall be unlawful.~~

~~138-2 VIOLATIONS AND PENALTIES~~

~~Any person violating the provisions of this Article shall be punished by a fine of not more than five hundred dollars (\$500.) and imprisonment for not more than six (6) months in jail, either or both.~~

SOLICITOR'S PERMIT

~~138-3 APPLICABILITY~~

~~A. For the purpose of this Article, any person who goes from house to house or from private residence to private residence in the Town selling or offering to sell, taking orders or offering to take orders, bartering or offering to barter any goods, wares or merchandise or offering services to be performed in the future or at any location soliciting funds and contributions shall be deemed a "solicitor"; provided, however, that this Article shall not apply to wholesalers or to insurance underwriters, but the requirements of this Article shall apply to any person collecting or attempting to collect any payment due from any purchaser where the collector and the original seller are not one and the same.~~

~~B. This Article shall not apply to those charitable and civic organizations registered with the Commissioner of Agriculture and Consumer Services in accordance with the provisions of Virginia Code Sections 57-49 et seq., pertaining to the registration of charitable organizations. Upon written application, the Front Royal Town Council may waive the requirement of a solicitor's permit for representatives of charitable, religious, civic, political, educational, service and fraternal organizations seeking contributions in the Town of Front Royal.~~

~~138-4 PERMIT REQUIRED~~

~~It shall be unlawful for any person to act as solicitor within the Town without first securing a solicitor's permit from the Chief of Police or his designated subordinate. The solicitor's permit shall be in addition to a business license for all commercial solicitation.~~

~~138-5 APPLICATION~~

~~Any person desiring a permit, as required in Section 138-4, shall make application therefor to the Chief of Police or his designated subordinate on a form to be provided, stating the name and address of the person or firm which he represents, the kind of goods offered for sale or the kind of services to be performed. At the time of filing for such application the applicant shall also submit for the inspection of the Chief of Police or his designated subordinate written proof of his identity, which may be in the form of an automobile operator's or owner's license or a bona fide identification card issued to the applicant by the person for or through whom or under those auspices the applicant is authorized to conduct such activity. Such applicant shall state whether he has ever been convicted of any offense involving moral turpitude and shall further furnish such information or evidence as the Chief of Police or his designated subordinate may deem necessary to confirm the identity and past experience of the applicant or person or firm he represents.~~

~~138-6 PHOTOGRAPHING~~

~~The applicant for a solicitor's permit, as required in Section 138-4 shall be photographed.~~

~~138-7 FEE~~

~~The person issued a solicitor's permit, as required in Section 138-4 shall pay to the Town a fee of five dollars (\$5.) therefor, which fee shall cover the cost of investigation and issuance of the permit.~~

~~138-8 ISSUANCE~~

~~Upon compliance by the applicant for solicitor's permit, as required by Section 138-4, with the preceding sections of this Article, the Chief of Police or his designated subordinate shall, after such investigation as reasonably appears necessary, issue to such applicant a solicitor's permit, which shall be dated and signed by the Chief of Police or his designated subordinate; provided, however, that the Chief of Police or his designated subordinate shall not be required to issue such a solicitor's permit to any person who shall have been convicted of any crime or misdemeanor involving moral turpitude or to any person who is unable to substantiate the prior reliability of himself or the person or firm he represents.~~

~~138-9 TERM OF PERMIT~~

~~A solicitor's permit issued under this Article shall be good for a period of thirty (30) days and no longer.~~

~~138-10 RENEWAL~~

~~A solicitor's permit issued under this Article may be renewed on its expiration date for an additional like period, upon the execution of a renewal application setting forth that the statements made in the original application are true and accurate statements at the time the renewal application is filed or a renewal application setting forth all changes in the original application required by a~~

~~change in facts since the date of filing the original application. For each renewal permit, the applicant shall pay the town a fee of three dollars (\$3.).~~

~~138-11~~ — ~~TRANSFERABILITY~~

~~A solicitor's permit issued under this Article shall be nontransferable.~~

~~138-12~~ — ~~CONDITIONS~~

~~A solicitor's permit, as required by Section 138-4, shall be issued subject to the following conditions:~~

~~A. The holder shall have his solicitor's permit in his possession at all times and shall exhibit the same at any time upon request by any police officer of the Town or by any purchaser or by any person being solicited.~~

~~B. The holder of a solicitor's permit shall make no false statements or misrepresentations of facts in the course of carrying on the activity for which the permit is granted and shall conduct himself at all times in an orderly and lawful manner.~~

~~C. For the sale or delivery, either or both, of any goods, wares or merchandise, there shall be a written order or invoice, in duplicate, showing name and address of firm represented by the solicitor, issued and signed by the solicitor, signed by the purchaser, stating the terms and conditions of the sale, a description of the goods, wares or merchandise, the quantity and price thereof, the date of sale or the date of delivery, either or both, and the amount paid in advance, if any. The duplicate of such order or invoice shall be given to the purchaser.~~

~~D. The holder shall not sell, distribute or circulate literary material or canvass or solicit orders therefor or for goods or merchandise from pedestrian or vehicular traffic on or adjacent to any streets within the limits of the Town, in such manner as will interfere with the normal and usual use of such street.~~

~~138-12.1~~ — ~~ENTERING UPON PRIVATE PREMISES RESTRICTED~~

~~Regardless of whether or not a solicitor's permit has been issued, no person shall enter in or upon any house, building or private property of any type without the prior consent of the owner or occupant thereof, where there is placed or posted on the premises in a conspicuous position at or near the usual means of ingress a sign or other form of notice stating or indicating that the owner or occupant thereof forbids or otherwise does not desire persons engaged in solicitation, peddling or selling to enter upon the premises.~~

~~138-13~~ — ~~REVOCATION; HEARING~~

~~A. Any solicitor's permit issued under this Article may be revoked by the Chief of Police, after notice and hearing, for any fraud, misrepresentation or false statement contained in the application, for failure to observe the conditions of the permit or upon any subsequent conviction of any crime or misdemeanor involving moral turpitude.~~

~~B. Notice of the hearing for revocation of a permit shall be in writing, setting forth the specific reason or reasons for the hearing and the time and place thereof. Such notice shall be given to the~~

holder of the permit at least two (2) days, if by personal service, and at least three (3) days, if by local mail, addressed to the holder's last known local address, prior to the stated hearing.

C. In the case where protection of the public interest necessitates such action, the Chief of Police may direct immediate revocation of a solicitor's permit by personal service of a notice thereof by the Chief of Police or his designated subordinate upon the holder or the person he represents. Wherein action in this manner is taken, the holder of the permit shall immediately discontinue those activities granted by the permit and this Article, but the holder shall be entitled to a hearing within two (2) days from the revocation, and the notice of the revocation shall designate the time and place of the hearing.

138-14 ——— DESIGNATION OF SUBORDINATE TO PERFORM DUTIES OF CHIEF OF POLICE WHEN ABSENT.

The Chief of Police, when personally unable to discharge the responsibilities herein set forth because of absence from the Town or otherwise, shall designate one (1) of his subordinates to perform the duties required of the Chief of Police under this Article.

Chapter 138 **PEDDLERS, SOLICITORS AND ITINERANT MERCHANTS**

138-1. Permit Required.

To promote the safety of our residents, it shall be unlawful for any person to engage in the business of peddling, itinerant merchandising, or soliciting as defined in this Chapter, within the limits of Front Royal, Virginia, without first obtaining a permit as provided herein. Issuance of a permit does not relieve an individual from obtaining a business license (Town Code Chapter 98) from the Town's Finance Department prior to engaging in operation in the business of peddling, itinerant merchandising, or soliciting.

138-2. Definitions.

Itinerant Merchant: One who offers merchandise, goods, food or services for sale or barter from a stationary but temporary site within the Town.

Peddler: One who moves from place to place within the Town and offers merchandise, goods, food or services for sale or barter at no definite place of business.

Town: Front Royal, Virginia.

Town Manager: The Town Manager of Front Royal, Virginia or their designated agent.

Solicitor (Commercial Solicitor): Any person, whether a principal, agent, or salesman, who engages in transient business by going from residence to residence for the purpose of taking orders or offering to take orders for the sale of goods, wares, or merchandise or taking orders for services to be performed in the future. A commercial solicitor shall not carry goods, ware, or merchandise except for display purposes only, and shall not sell items directly.

Vehicle: Every device in, upon or by which any person or property is or may be transported or drawn including any wheeled conveyance.

138-3 Permit Application

138-3.1. Exemption from Permit Requirements.

- A. The following shall be exempt from the permit requirements but shall be required to comply with Sections 7, 8, 9, and 10 of this Chapter:
1. Persons selling fresh farm products or family supplies in accordance with Virginia Code Section 58.1-3717;
 2. Persons selling newspapers;
 3. Persons selling for wholesale concerns who only solicit orders from or sell to retail dealers in Front Royal for resale or other commercial purposes or to manufacturers for manufacturing or other commercial purposes;
 4. Wholesalers soliciting orders or selling to others for retail, resale, or upon manufacturers for manufacturing and selling at wholesale at place of manufacture;
 5. Children of or under the age of 16, except when they are acting as agents of adults covered by this article;
 6. Delivery of food or merchandise ordered by phone, internet, or mail from a fixed place of business issued a business license for operation;
 7. Merchants selling food and merchandise during a Special Event that has been issued permit by the Town; and
 8. Tax exempt civic, charitable, government or educational organizations receiving a waiver of this Chapter by the Town Manager.
- B. All persons qualifying for exemptions from this Section must present proof of such qualification to the Town Manager and be granted exemption from the permit requirements of this Chapter as provided in Section 138-3.1.

138-3.2. Application for Permit or Exemption.

- A. Applicants for permits under this Chapter must file with the Town Manager a sworn application in writing on a form to be furnished by the Town, which shall give the following information:
1. Name, date of birth, social security number (optional), contact phone number, and email address.
 2. Address.

3. A brief description of the nature of the business and the goods to be sold.
 4. Driver's License Number or State ID Number.
(Additional information required for non-exempt applications)
 5. If employed, the name and address of the employer, federal employment identification number (optional), together with a written employment contract or other written document from the employer establishing the exact relationship.
 6. The location and the length of time during the current year when the peddling or itinerant merchandising will take place in the Town.
 7. Name and address of Virginia registered agent, if there is a registered agent for the business.
 8. If a vehicle is to be used, a description of the same, together with the license number or other means of identification.
 9. Proof of Virginia retail sales tax registration and the retail sales tax number issued, if applicable.
 10. Proof of approval by the Virginia Department of Health for sale of food products.
 11. The finger and thumb prints of the applicant shall be taken at the time of application.
 12. The names and contact phone numbers of at least two (2) persons who will certify as to the applicant's good character and business responsibility, or in lieu of the names of references, any other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to promptly evaluate such character and business responsibility.
 13. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation, the nature of the offense and the penalty affixed therefor.
 14. The application shall provide two (2) recent front facing passport size photographs which accurately depict the applicant's appearance at the time of application.
- B. At the time of filing of the application for permit, a fee of twenty dollars (\$20.00) shall be paid to the Town Manager, to cover the cost of investigation and processing of the application. There shall be no fee for an exemption application.

138-4. Investigation and Issuance.

Upon receipt of such application, the original shall be referred to the Town Manager, who shall make an investigation of the applicant's business responsibility and character.

- A. Unless the Town Manager determines otherwise after completion of an investigation, the Town Manager will issue the applicant a permit within thirty (30) days following the date of the filing of the application.

- B. After investigation and finding that the health, safety, and welfare of the public so demands, the Town Manager may refuse to issue a permit to an applicant for reasons including, but not limited to, the following:
1. Conviction of any felony or crime of moral turpitude (including, by way of illustration and not limitation, crimes of sexual misconduct and distribution of controlled substances or paraphernalia) within the five (5) years immediately preceding the date of filing of the application.
 2. Fraud, misrepresentation or intentional false statement of material or relevant facts contained in the application.
 3. Lack of necessary permits or licenses to conduct the business proposed to be conducted.
- C. The Town Manager shall endorse on the application their approval, execute a permit addressed to the applicant for the carrying on of the business applied for and deliver to the applicant their permit. Such permit shall contain the signature of the issuing officer and shall show the name, address and photograph of said applicant, the kind of goods to be sold thereunder, the date of issuance and the length of time the same shall be operative, as well as the permit number and other identifying description of any vehicle used in such peddling or itinerant merchandising. The Town Manager shall keep a permanent record of all permits issued.
- D. In determining whether the applicant's character and business responsibility is satisfactory, the Town Manager, or their designated agent, shall consider evidence revealed by the investigation which shows honesty, reliability, and knowledge of the business to be engaged in. A permit shall be denied or revoked if the applicant is shown to be guilty of moral turpitude. In the event the results of the initial investigation are unclear as to the nature of the applicant's character and business responsibility, an additional investigation of the applicant shall be made.

138-5. Transfer.

No permit or exemption letter issued under the provisions of this Chapter shall be used by any person other than the one to whom it was issued.

138-6. Renewal

All permits issued under the provisions of this Chapter shall be valid from the date issued and shall expire on December 31 of the year of issuance regardless of the date issued. The holder of any permit may seek renewal thereof upon the filing of a written renewal application. The renewal application shall reflect any information changed from the previous year's application and it shall be approved upon verification by the Town Manager that the applicant for renewal has complied with the laws of the Commonwealth.

138-7. Peddling and Itinerant Merchandising,

No peddler or itinerant merchant shall have any exclusive right to any location on public property, nor shall he or she:

- A. Be permitted a stationary location on any public sidewalk or street;
- B. Display any sign on a street, sidewalk, or other public place visible to vehicular traffic, except for signs that are actually imprinted on the exterior body of a licensed motor vehicle;
- C. Make any sale or delivery to any person while such person is located in the roadway;
- D. Make any sale, offer or delivery to any driver or passenger in a motor vehicle while the motor vehicle is stopped at a red light or while in a moving traffic lane;
- E. Conduct business from any street or center median strip of any street;
- F. Restrict access to any legally parked vehicle;
- G. Operate in any other way that would restrict the flow of pedestrian or vehicular traffic;
- H. Conduct any business on any private or public property, street, or sidewalk between the hours of 10:00 pm and 6:00 am except if operating through a Special Events Permit issued by the Town
- I. Leave a vehicle overnight at the approved location. All equipment must be removed from the site by the end of the business day, unless otherwise approved by the Town; and
- J. Leave any cart or table unattended on any public property, street, or sidewalk.

Each peddler and itinerant merchant shall provide receptacles for the disposal of waste materials or other litter created in the immediate area of any stationary location from which sales, offers of sales or deliveries are taking place, and they shall request customers to place all waste and litter in the receptacles and they shall remove and dispose of the waste materials and litter.

138-8. Place of Sale - Peddler & Itinerant Merchants

- A. All peddlers and itinerant merchants may only be located in the areas designated by the Town's Zoning Map as C-1, Community Business District, C-2, Downtown Business District, or the Mixed Use Campus District.
- B. It shall be unlawful for any itinerant merchants to occupy or partially occupy while selling, or sell from, the private property of another without written permission of the private property owner.
- C. All itinerant merchants shall obtain approval from the Department of Planning & Zoning prior to selling from private property. Approval shall be based upon submittal of a plat, site plan, or sketch plan identifying the location of the property on which the activity is to be conducted and showing the location of the structure from which the sale or exchange activity will occur, the area under the control of such person, parking spaces and provisions for well-defined vehicular entrances and exits. Such application shall state the name, address and telephone number of the person or persons conducting the activity, the days and hours of operation, and shall include evidence of the property owner's permission to use the property, as required above, as well as a copy of the approved plat or site plan. A copy of the permit issued by the Town Manager or the designee as well as a copy of the approved plat, site plan, or sketch plan and the written permission of the property owner shall be kept at the site of the activity.

138-9. Residence Door-to-Door Hours.

Door-to-door sales shall only take place between the hours of 9:00 a.m. and 8:00 p.m.

138-10. Exhibition of Permit or Exemption Letter.

Peddlers or itinerant merchants are required to conspicuously display their permits at their vehicles or temporary stands or if they have none, to exhibit their permits or exemption letter upon request.

138-11. Records.

The Town Manager shall maintain a record for each permit issued, and record the reports of violation thereon.

138-12. Revocation of Permit.

- A. Permits issued under the provision of this Chapter may be revoked by the Town Manager after notice and hearing for any of the following causes:
 - 1. Fraud, misrepresentation or intentional false statement contained in the application for permit.
 - 2. Conviction of any felony or crime of moral turpitude (including, by way of illustration and not limitation, crimes of sexual misconduct and distribution of controlled substances or paraphernalia).
 - 3. Conviction of any crime involving fraud in the conduct of his or her business.
 - 4. Permit holder operates their peddling or itinerant merchandising that creates a public safety hazard as identified by Fire Marshal, Chief of Police, or their designee.
 - 5. Any violation of this Chapter or of Chapter 110 of the Front Royal Code.
- A. Notice of the hearing for revocation of a permit shall be given in writing, setting forth specifically the grounds of the revocation and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permit holder at their last known address at least five (5) days prior to the date set for hearing. Failure to appear for a hearing does not preclude permit revocation.

138-13. Appeal.

- A. Any person aggrieved by the action of the Town Manager, or the designated agent, in the denial of an application for a permit or in the decision with reference to the revocation of a permit shall have the right of appeal. Such appeal shall be taken by filing with the Clerk of the Town Council within ten (10) days after the notice of action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds of appeal.
- B. The Clerk of the Town Council shall notify the Town Manager of the filing of an appeal.

- C. Upon filing an appeal, the party aggrieved shall be entitled to a hearing by the Town Council. The time and place of the hearing shall be scheduled by the Clerk of Council at any time after the filing of an appeal upon notice by the Clerk of Council mailed to the party to the action at the address required to be stated by the appellant at the time of the filing of the appeal. Such appeals may be continued by the Town Council.
- D. The party shall have the right to present their case in person or by counsel licensed to practice law in the Commonwealth of Virginia.
- E. The Town Council shall consider the case record as well as statements offered by an interested party and shall determine whether the Town Manager abused their discretion under the rules and standards set forth in this Chapter. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence in civil actions.

138-14. License Tax.

The License Tax for activities defined in this Chapter shall be provided in the following Chapters:

- A. Peddlers & Itinerant Merchants – Chapter 98-61
- B. Commercial Solicitors – Chapter 98-45

138-15. Penalty for Violation of Chapter.

Any person violating any provision of this Chapter shall be guilty of a Class 1 Misdemeanor with penalties specified in Town Code Chapter 1-15.

138-16. Severance Clause.

The provisions of this Chapter are hereby declared to be severable, and if any section, sentence, clause or phrase of this Chapter shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses or phrases of this Chapter, but they shall remain in effect, it being the legislative intent that this Chapter shall stand, notwithstanding the invalidity of any part.

This ordinance is effective upon passage.

APPROVED:

Timothy W. Darr, Mayor

ATTEST:

Jennifer E. Berry, Clerk of Council

THIS ORDINANCE was approved at the Regular Meeting of the Town of Front Royal, Virginia on its second reading, conducted _____2016, upon the following recorded vote:

Bébhinn C. Egger	Yes/No	Bret W. Hrbek	Yes/No
John P. Connolly	Yes/No	Hollis L. Tharpe	Yes/No
Eugene R. Tewalt	Yes/No	Jacob L. Meza	Yes/No

A public hearing on the above was held on _____, 2016, having been advertised in the Northern Virginia Daily on _____, 2016, and _____, 2016. The Ordinance was enacted at the Regular Meeting of the Town Council held _____2016, to become effective immediately.

Approved as to form and legality:

Douglas W. Napier, Town Attorney

Date: ____/____/____



TOWN OF FRONT ROYAL
SOLICITOR, PEDDLER, & ITINERANT MERCHANT
PERMIT APPLICATION
\$20.00 Application Fee

☐ EXEMPTION REQUEST (Application Fee is Waived)

☐ COMMERCIAL SOLICITOR

☐ PEDDLER

☐ ITINERANT MERCHANT

PLEASE PRINT LEGIBLY

APPLICANT: _____ **DATE:** _____

SOCIAL SECURITY NO.: _____ **DATE OF BIRTH:** _____

HOME ADDRESS (street, city, state, zip): _____

PHONE NUMBER: _____ **EMAIL ADDRESS:** _____

NATURE OF BUSINESS/PRODUCT: _____

DRIVER'S LICENSE OR ID (State/Number): _____

STOP HERE IF APPLYING FOR EXEMPTION

BUSINESS NAME: _____

BUSINESS FEDERAL ID NO.: _____

BUSINESS ADDRESS (street, city, state, zip): _____

NAME & CONTACT PHONE NO. OF LOCAL AGENT: _____

LOCATION OF OPERATION: _____

DAYS & HOURS OF OPERATION: _____

VEHICLE DESCRIPTION & LICENSE PLATE NO.: _____

REFERENCES & PHONE NOS: _____

I hereby certify that the statements made and constituting part of this application are true and correct. I am aware that any misrepresentation of any information may be grounds for denial. I have been provided and am familiar with the ordinances and regulation pertaining to this application. I further understand that any violation of the laws of the Commonwealth of Virginia or the Ordinances of the Town of Front Royal can result in the denial of this permit or suspension/revocation of my business license.

I have no previous criminal history and have never been charged or convicted with a criminal offense, fined, imprisoned, placed on probation, received a suspended sentence or forfeited bail for any offense in a criminal court. I have never had a business license denied, suspended, or revoked.

I hereby agree and indemnify, hold harmless, and defend the Town of Front Royal and its employees, officials, and agents from any and all liability or claims of liability arising from any operations, activities, or status of applicant performed or existing pursuant to the activities authorized under this application.

Signature of Applicant

Date

Approved by the Town Manager

Date



TOWN OF FRONT ROYAL

SOLICITOR, PEDDLER, & ITINERANT MERCHANT REGISTRATION

Town Code Chapters 98 & 138

To promote the safety of our residents, it shall be unlawful for any person to engage in the business of peddling, itinerant merchandising, soliciting or canvassing as defined in this Chapter without a permit. Permit holders must also obtain any necessary business licenses prior to operating. For the purposes of this permit application, the Town Code establishes the following definitions:

Solicitor (Commercial Solicitor): Any person, whether a principal, agent, or salesman, who engages in transient business by going from residence to residence for the purpose of taking orders or offering to take orders for the sale of goods, wares, or merchandise or taking orders for services to be performed in the future. A commercial solicitor shall not carry goods, ware, or merchandise except for display purposes only, and shall not sell items directly.

Itinerant Merchant: One who offers merchandise, goods, food or services for sale or barter from a stationary but temporary site within the Town.

Peddler: One who moves from place to place within the Town and offers merchandise, goods, food or services for sale or barter at no definite place of business.

In addition to the information requested on this application, the following will be required prior to permit approval:

1. Itinerant Merchants shall provide a plan/plat/sketch of the location for operation that demonstrates compliance with Town Code parking requirements and written permission from property owner.
2. The finger and thumb prints of the applicant shall be taken.
3. The application shall provide two (2) recent front facing passport size photographs which accurately depict the applicant's appearance at the time of application.
4. Payment of an application fee of \$20.00 (Waived for Exemption Application)

Any individual who is determined to not meet the requirements established by the Town Code for issuance of a permit as determined by the Town Manager may appeal the decision to the Town Council through the Clerk of Council within ten (10) days of permit issuance denial.

Any person violating any provision of Chapter 138 by operating without a permit shall be guilty of a Class 1 misdemeanor. Every day of a continuing violation shall be deemed a separate offense for the purposes of these penalties.

Special Provisions

- Door-to-door sales shall only take place between the hours of 9:00 a.m. and 8:00 p.m.
- Peddlers or vendors are required to conspicuously display their permits at their vehicles or temporary stands or if they have none, to exhibit their permits or exemption letter upon request.
- Each peddler or vendor shall provide receptacles for the disposal of waste materials or other litter created in the immediate area of any stationary location from which sales, offers of sales or deliveries are taking place.
- No permittee shall enter upon private property posted "No Soliciting" or similar signage.
- No permittee shall enter uninvited into a private building, structure, or room.
- Peddlers and Itinerant Merchants shall be restricted to Commercial Zoning and Mixed Use Campus Districts.

12



Town of Front Royal, Virginia Council Agenda Statement

Page 1
Item No. 12

Meeting Date: March 14, 2016

Agenda Item: RECEIVE PUBLIC INPUT/COUNCIL APPROVAL – An Ordinance to Amend Town Code Chapter 167 (Weapons) to add Urban Archery Hunting to replace the Deer Management Plan under grant adopted by Virginia Board of game and Inland Fisheries and Town Council (*1st Reading*)

Summary: On February 22, 2016, Council moved to postpone action on the original ordinance as presented at the Public Hearing (**Version 1 Ordinance**). Council is requested to affirm on its first reading the revised ordinance as presented at the Work Session held on March 7, 2016 containing recommended changes from the Virginia Game and Inland Fisheries “VGIF” (**Version 2 Ordinance**) to amend Front Royal Town Code Chapter 167 (Weapons) to add Urban Archery Hunting to replace the Deer Management Plan. Council discussed this ordinance amendment further in a work session held March 7, 2016 and asked for a definition of “appropriate backstop”. Staff have contacted VGIF for this information. The Town Attorney has confirmed that the revisions to the original ordinance are not substantial enough to advertise for a new public hearing.

Budget/Funding: None

Attachments: Version 1 and Version 2 of Ordinances

Meetings: Work Sessions held January 19, February 1, 2016 and March 7, 2016. Public Hearing was held on February 22, 2016

Staff Recommendation: Approval X Denial _____

Proposed Motion: I move that Council affirm on its first reading the version of an ordinance as modified by DGIF (**Version 2**) to amend Front Royal Town Code Chapter 167 (Weapons) to add Urban Archery Hunting to replace the Deer Management Plan, as presented.

ROLL CALL VOTE REQUIRED

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance
*To be clear and concise, motions should be made in the positive

Approved By: SB

VERSION ONE

AN ORDINANCE TO AMEND AND RE-ENACT FRONT ROYAL MUNICIPAL TOWN CODE CHAPTER 167 (WEAPONS) TO ADD URBAN ARCHERY HUNTING

WHEREAS, an Ordinance amendment to Chapter 167 (Weapons) to add Urban Archery Hunting to replace the Deer Management Plan in the Town of Front Royal Municipal Code; and,

NOW THEREFORE, BE IT ENACTED by the Town Council of the Town of Front Royal, Virginia that Chapter 167 of the Town of Front Royal Municipal Code is hereby amended and re-enacted as follows:

Chapter 167 **WEAPONS**

167-1 DEFINITIONS

ARROW – A shaft-like projectile intended to be shot from a bow.

AMMUNITION – A cartridge, pellet, ball, missile, or projectile adapted for use in a weapon.

BOW – Any longbow, recurve bow, compound bow, or crossbow having a peak draw of 10 pounds or more, intended and capable of shooting an arrow. The “bow” does not include bows that have a peak draw of less than 10 pounds or are intended to be used principally at toys.

FIREARM – Any weapon which will, or is designed to, or may be readily converted to, expel a projectile, or in which ammunition may be used or discharged by explosion; provided, however, that stud nailing guns, rivet guns, and similar construction equipment neither designed nor intended as weapons, shall not be deemed firearms.

PNEUMATIC GUN – Any implement designed as a gun that will expel a BB pellet, or other ammunition by action of pneumatic pressure. This definition shall include a paintball gun that expels by action of pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.

REASONABLE CARE – The use of pneumatic guns such that the gun is being discharged so that its BBs, pellets, or other ammunition will be contained on the property by a backstop, earthen embankment or fence. The discharge of BBs, pellets, or other ammunition across or over the bounds or property shall create the rebuttable presumption that the use of the pneumatic gun was not conducted with reasonable care.

TOWN COUNCIL – The Town Council of the Town of Front Royal, Virginia.

167-2 DISCHARGE OF FIREARMS

A. No person shall discharge a firearm of any description within the Town, with the exception of the following:

1. Any law enforcement officer in the performance of official duties, *except as provided by Virginia Code §29.1-529*;
2. Any other person whose said willful act is otherwise justified or excusable at law in the protection of life or property, or is otherwise specifically authorized by law. *This shall not apply to control of wildlife by non law enforcement personnel*;
3. Any otherwise lawful discharge while actually engaged in target practice on shooting ranges or other facilities lawfully established and maintained;
4. The use of blank ammunition at athletic events, military funerals, theatrical performances or events of similar character; or,
- ~~5. Lawfully hunting deer pursuant to a specific grant of authority under a Deer Management Plan adopted by the Virginia Board of Game and Inland Fisheries and the Town Council.~~

167-3 DISCHARGE OF PNEUMATIC GUNS

A. It shall be unlawful for any person to discharge any pneumatic gun in the Town that are in the opinion of the Town Council so heavily populated as to make such conduct dangerous to the inhabitants thereof:

1. In or within 300 feet of any dwelling, commercial building, or shelter for animals, with the exception of the following:
 - a. Any otherwise lawful discharge while actually engaged in target practice on shooting ranges or other facilities lawfully established and maintained;
 - b. On other property where firearms may be legally discharged; or,
 - c. On private property with permission of the owner or legal possessor thereof when conducted with reasonable care to prevent a projectile from crossing the bounds of the property.

B. It shall be unlawful for any minor under the age of 16 to use a pneumatic gun unless such minor is under the supervision of a parent, guardian, or other adult supervisor approved by a parent or guardian of such minor. Minors above the age of 16 may, with the written consent of a parent or guardian, use a pneumatic gun on private property with the consent of the owner. Any minor, whether permitted by a parent or guardian to use a pneumatic gun or not, shall be responsible for obeying all laws, regulations, and restrictions governing such use.

(Ord. No. 3-12 Amended Entire Section 1-23-12-Effective Upon Passage)

167-4 DISCHARGE OF MISSILE PROJECTING WEAPONS

A. It shall be unlawful to discharge any non-firearm or non-pneumatic missile projecting gun or weapons to include bows, crossbows, and slingshots within the Town, with the exception of the following:

1. Any law enforcement officer in the performance of official duties;
2. Any other person whose said willful act is otherwise justified or excusable at law in the protection of life or property, or is otherwise is specifically authorized by law;
3. Any otherwise lawful discharge while actually engaged in target practice on shooting ranges or other facilities lawfully established and maintained; and,
4. Lawfully hunting wildlife pursuant to *the Urban Archery regulations provided below. a specific grant of authority under a Wildlife Management Plan adopted by the Virginia Department of Game and Inland Fisheries and the Town Council.*
5. *Target shooting of bows and crossbows for use during the Town's Urban Archery Season is permitted with appropriate backstop on property with written consent of the owner of the property.*

167-5 THROWING OF STONES

It shall be unlawful for any person to throw a stone or other missile in the streets or public property with the intent to do harm to people, animals, or property.

167-6 URBAN ARCHERY

Archery hunting is permitted within the Town limits by licensed hunters during an approved Virginia Department of Game and Inland Fisheries (DGIF) Archery Season. In addition to the Urban Archery Season for deer, archery deer hunting is also allowed during the early archery deer season, the general firearms deer season, and the late archery deer season. Hunting for other wildlife is permitted only during the season approved by DGIF. Licensed archery hunters must abide by all applicable section of the Virginia State Code and Virginia Hunting Regulations (including bag limits and tagging/checking requirements). It shall be unlawful for any person, while archery hunting to violate any of the following additional Town restrictions:

- A. *Discharge of an arrow is permitted only in order to hunt wildlife in season or for target practice. No discharge of an arrow shall be made toward any animal other than those in approved hunting season.*
- B. *Any person discharging archery equipment shall, at all times while engaged in such activity, have in their possession written permission from the landowner(s) to discharge such weapon on the private property. Approval from landowner(s) of a total aggregate, contiguous area of one-half (1/2) acres at minimum is required to conduct archery hunting.*
- C. *No person shall discharge archery equipment from, over, or across any street, sidewalk, alley, roadway, or public land or public place within the Town limits or toward any building or dwelling in such a manner that an arrow may strike it.*
- D. *No person shall discharge archery equipment unless from an elevated position of at least ten (10) feet above the surrounding terrain. Any disabled hunter unable to hunt from such platform must comply with all regulations established by the Virginia Department of Game and Inland Fisheries.*
- E. *Except for target shooting, discharge of archery equipment is not permitted within one hundred (100) feet of any dwelling except with written consent of the owner of said structure.*

- F. Discharge of archery equipment is not permitted within one hundred (100) feet of any school property line.
- G. Any person discharging archery equipment shall use reasonable care to ensure the arrow does not cross any property line and enter any property on which the hunter does not have permission to hunt. The discharge of an arrow across or over the boundaries of a property for which no permission has been given by the property owner shall create a rebuttable presumption that the use of the archery equipment was not conducted with reasonable care.
- H. The hunter is responsible for the disposition of the animal carcass to the local/regional landfill. Carcasses shall be double bagged. Field dressing of the animal shall be by agreement between the landowner and the hunter. No field dressing of the animal shall occur on Town owned property without express written permission from the Town Manager or designee.
- I. No person shall hunt within the Town limits by use of dog or dogs.

167-67 VIOLATIONS

A. Violations of this Section involving firearms shall constitute a Class 3 1 misdemeanor punishable by a fine of not more than ~~five hundred dollars (\$500.00)~~ two thousand five hundred dollars (\$2,500.00) and twelve (12) months in jail.

B. Violations of this Section involving pneumatic guns, missile projecting weapons, or throwing stones shall constitute a Class 4 misdemeanor punishable by a fine of not more than two hundred fifty dollars (\$250.00).

C. Violations of the Urban Archery Section shall constitute a Class 1 misdemeanor punishable by a fine of not more than two thousand five hundred dollars (\$2,500.00).

This ordinance is effective upon passage.

APPROVED:

Timothy W. Darr, Mayor

ATTEST:

Jennifer E. Berry, Clerk of Council

THIS ORDINANCE was approved at the Regular Meeting of the Town of Front Royal, Virginia on its second reading, conducted _____ 2016, upon the following recorded vote:

Bébhinn C. Egger Yes/No

Bret W. Hrbek Yes/No

John P. Connolly Yes/No

Hollis L. Tharpe Yes/No

Eugene R. Tewalt Yes/No

Jacob L. Meza Yes/No

A public hearing on the above was held on _____, 2016 having been advertised in the Northern Virginia Daily on _____, 2016 and _____, 2016. The Ordinance was enacted at the Regular Meeting of the Town Council held _____ 2016, to become effective immediately.

Approved as to form and legality:

Douglas W. Napier, Town Attorney

Date: ____/____/____

VERSION 2

AN ORDINANCE TO AMEND AND RE-ENACT FRONT ROYAL MUNICIPAL TOWN CODE CHAPTER 167 (WEAPONS) TO ADD URBAN ARCHERY HUNTING

WHEREAS, an Ordinance amendment to Chapter 167 (Weapons) to add Urban Archery Hunting to replace the Deer Management Plan in the Town of Front Royal Municipal Code; and,

NOW THEREFORE, BE IT ENACTED by the Town Council of the Town of Front Royal, Virginia that Chapter 167 of the Town of Front Royal Municipal Code is hereby amended and re-enacted as follows:

Chapter 167 **WEAPONS**

167-1 DEFINITIONS

ARROW- A shaft-like projectile intended to be shot from a bow.

AMMUNITION- A cartridge, pellet, ball, missile, or projectile adapted for use in a weapon.

BOW – Any longbow, recurve bow, compound bow, or crossbow having a peak draw of 10 pounds or more, intended and capable of shooting an arrow. The "bow" does not include bows that have a peak draw of less than 10 pounds or are intended to be used principally at toys.

FIREARM -Any weapon which will, or is designed to, or may be readily converted to, expel a projectile, or in which ammunition may be used or discharged by explosion; provided, however, that stud nailing guns, rivet guns, and similar construction equipment neither designed nor intended as weapons, shall not be deemed firearms.

PNEUMATIC GUN – Any implement designed as a gun that will expel a BB pellet, or other ammunition by action of pneumatic pressure. This definition shall include a paintball gun that expels by action of pneumatic pressure plastic balls filled with pain for the purpose of marking the point of impact.

REASONABLE CARE – The use of pneumatic guns such that the gun is being discharged so that its BBs, pellets, or other ammunition will be contained on the property by a backstop, earthen embankment or fence. The discharge of BBs, pellets, or other ammunition across or over the bounds or property shall create the rebuttable presumption that the use of the pneumatic gun was not conducted with reasonable care.

TOWN COUNCIL – The Town Council of the Town of Front Royal, Virginia.

167-2 DISCHARGE OF FIREARMS

A. No person shall discharge a firearm of any description within the Town, with the exception of the following:

1. Any law enforcement officer in the performance of official duties;
2. Any other person whose said willful act is otherwise justified or excusable at law in the protection of life or property, or is otherwise specifically authorized by law.
This shall not apply to control of wildlife by non law enforcement personnel;
3. Any otherwise lawful discharge while actually engaged in target practice on shooting ranges or other facilities lawfully established and maintained;
4. The use of blank ammunition at athletic events, military funerals, theatrical performances or events of similar character; or,

5. Taking of a deer under a kill permit pursuant to Code of Virginia §29.1-529.

~~5. Lawfully hunting deer pursuant to a specific grant of authority under a Deer Management Plan adopted by the Virginia Board of Game and Inland Fisheries and the Town Council.~~

167-3 DISCHARGE OF PNEUMATIC GUNS

A. It shall be unlawful for any person to discharge any pneumatic gun in the Town that are in the opinion of the Town Council so heavily populated as to make such conduct dangerous to the inhabitants thereof:

1. In or within 300 feet of any dwelling, commercial building, or shelter for animals, with the exception of the following:
 - a. Any otherwise lawful discharge while actually engaged in target practice on shooting ranges or other facilities lawfully established and maintained;
 - b. On other property where firearms may be legally discharged; or,
 - c. On private property with permission of the owner or legal possessor thereof when conducted with reasonable care to prevent a projectile from crossing the bounds of the property.

B. It shall be unlawful for any minor under the age of 16 to use a pneumatic gun unless such minor is under the supervision of a parent, guardian, or other adult supervisor approved by a parent or guardian of such minor. Minors above the age of 16 may, with the written consent of a parent or guardian, use a pneumatic gun on private property with the consent of the owner. Any minor, whether permitted by a parent or guardian to use a pneumatic gun or not, shall be responsible for obeying all laws, regulations, and restrictions governing such use.

167-4 DISCHARGE OF MISSILE PROJECTING WEAPONS

A. It shall be unlawful to discharge any non-firearm or non-pneumatic missile projecting gun or weapons to include bows, crossbows, and slingshots within the Town, with the exception of the following:

1. Any law enforcement officer in the performance of official duties;
2. Any other person whose said willful act is otherwise justified or excusable at law in the protection of life or property, or is otherwise specifically authorized by law;
3. Any otherwise lawful discharge while actually engaged in target practice on shooting ranges or other facilities lawfully established and maintained; and,
4. Lawfully hunting wildlife pursuant to *the Urban Archery regulations provided below. a specific grant of authority under a Wildlife Management Plan adopted by the Virginia Department of Game and Inland Fisheries and the Town Council.*
5. *Target shooting of bows and crossbows is permitted with appropriate backstop on property with written consent of the owner of the property.*

167-5 THROWING OF STONES

It shall be unlawful for any person to throw a stone or other missile in the streets or public property with the intent to do harm to people, animals, or property.

167-6 URBAN ARCHERY

Archery hunting is permitted within the Town limits by licensed hunters during an approved Virginia Department of Game and Inland Fisheries (DGIF) Archery Season. In addition to the Urban Archery Season for deer, archery deer hunting is also allowed during the early archery deer season, the general firearms deer season, and the late archery deer season. Hunting for other wildlife is permitted only during the season approved by DGIF. Licensed archery hunters must abide by all applicable section of the Virginia State Code and Virginia Hunting Regulations (including bag limits and

tagging/checking requirements). It shall be unlawful for any person, while archery hunting to violate any of the following additional Town restrictions:

A. Discharge of an arrow is permitted only in order to hunt wildlife in season or for target practice. No discharge of an arrow shall be made toward any animal other than those in approved hunting season.

B. Any person discharging archery equipment shall, at all times while engaged in such activity, have in their possession written permission from the landowner(s) to discharge such weapon on the private property. Approval from landowner(s) of a total aggregate, contiguous area of one-half (1/2) acres at minimum is required to conduct archery hunting.

C. No person shall discharge archery equipment from, over, or across any street, sidewalk, alley, roadway, or public place within the Town limits or toward any building or dwelling in such a manner that an arrow may strike it.

D. No person shall discharge archery equipment unless from an elevated position of at least ten (10) feet above the surrounding terrain. Any disabled hunter unable to hunt from such platform must comply with all regulations established by the Virginia Department of Game and Inland Fisheries.

E. Except for target shooting, discharge of archery equipment is not permitted within one hundred (100) feet of any dwelling except with written consent of the owner of said structure.

F. Discharge of archery equipment is not permitted within one hundred (100) feet of any school property line. Use of archery equipment on school property for school sanctioned activities shall be excluded from this restriction.

G. Any person discharging archery equipment shall use reasonable care to ensure the arrow does not cross any property line and enter any property on which the hunter does not have permission to hunt. The discharge of an arrow across or over the boundaries of a property for which no permission has been given by the property owner shall create a rebuttable presumption that the use of the archery equipment was not conducted with reasonable care.

H. The hunter is responsible for the disposition of the animal carcass to the local/regional landfill. Carcasses shall be double bagged. Field dressing of the animal shall be by agreement between the landowner and the hunter. No field dressing of the animal shall occur on Town owned property without express written permission from the Town Manager or designee.

I. No person shall hunt within the Town limits by use of dog or dogs.

167-67 VIOLATIONS

A. Violations of this Section involving firearms shall constitute a **Class 3-1 misdemeanor punishable by a fine of not more than ~~five hundred dollars (\$500.00)~~ two thousand five hundred dollars (\$2,500.00) and twelve (12) months in jail.**

B. Violations of this Section involving pneumatic guns, missile projecting weapons, or throwing stones shall constitute a Class 4 misdemeanor punishable by a fine of not more than two hundred fifty dollars (\$250.00).

C. Violations of the Urban Archery Section shall constitute a Class 1 misdemeanor punishable by a fine of not more than two thousand five hundred dollars (\$2,500.00) and twelve (12) months in jail.

This ordinance effective upon passage.

APPROVED:

Timothy W. Darr, Mayor

ATTEST:

Jennifer E. Berry, Clerk of Council

THIS ORDINANCE was approved at the Regular Meeting of the Town of Front Royal, Virginia on its second reading, conducted _____ 2016, upon the following recorded vote:

John P. Connolly	Yes/No	Bret W. Hrbek	Yes/No
Hollis L. Tharpe	Yes/No	Eugene R. Tewalt	Yes/No
Bébhinn C. Egger	Yes/No	Jacob L. Meza	Yes/No

A public hearing on the above was held on _____, 2016 having been advertised in the Northern Virginia Daily on _____, 2016 and _____, 2016.

Approved as to form and legality:

Douglas W. Napier, Town Attorney

Date: ____/____/____

13



**Town of Front Royal, Virginia
Council Agenda Statement**

Page 1
Item No. 13

Meeting Date: March 14, 2016

Agenda Item: COUNCIL APPROVAL – Resolution for AMP Solar Project

Summary: Council is requested to consider approval of a Resolution to proceed with the development and construction of the Solar Project with American Municipal Power (AMP) and NextEra to include the lease and interconnection agreement, as presented. Council is also requested to direct the Mayor, Town Manager, Town Attorney and the Director of Energy Services to sign all necessary documents.

Budget/Funding: None

Attachments: Resolution, Interconnection Agreement, Lease Agreement

Meetings: Work Session held March 7, 2016

Staff

Recommendation: Approval X Denial

Should Council wish to remove this item from the consent agenda, the following motion would allow approval of this request:

Proposed Motion: I move that Council approve a Resolution to proceed with the development and construction of the Solar Project with American Municipal Power (AMP) and NextEra to include the lease and interconnection agreement, as presented. I further move that Council direct the Mayor, Town Manager, Town Attorney and the Director of Energy Services sign all necessary documents.

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: SB

TOWN OF FRONT ROYAL, VIRGINIA

RESOLUTION NO. _____

**TO APPROVE THE FORM AND AUTHORIZE THE EXECUTION OF
A POWER SALES CONTRACT WITH AMERICAN MUNICIPAL POWER, INC.
AND TAKING OTHER ACTIONS IN CONNECTION THEREWITH REGARDING
PARTICIPATION IN THE AMP SOLAR PROJECT II**

WHEREAS, the Town of Front Royal, Virginia ("hereinafter Municipality") owns and operates an electric utility system for the sale of electric power and associated energy for the benefit of its customers;

WHEREAS, in order to satisfy the electric power and energy requirements of its electric utility system, Municipality has heretofore purchased, or desires to do so in the future, economical, environmentally sound and reliable capacity and energy from, or arranged by, American Municipal Power, Inc. (hereinafter "AMP"), of which Municipality is a Member;

WHEREAS, Municipality, acting individually and, along with other municipalities and other political subdivisions that own and operate electric utility systems, jointly, endeavors to arrange for reliable, reasonably priced supplies of electric power and energy for resale;

WHEREAS, it is efficient and economical to act jointly in such regard;

WHEREAS, AMP is an Ohio nonprofit corporation, organized to own and operate facilities, or to provide otherwise, for the generation, transmission or distribution of electric capacity and energy, or any combination thereof, and to furnish technical services on a cooperative, nonprofit basis, for the mutual benefit of its over 130 Members, such Members, including the Municipality, being, and to be, political subdivisions of their respective states that operate electric systems in, as of the date of adoption hereof, Delaware, Kentucky, Michigan, Ohio, Pennsylvania, Indiana, Maryland, Virginia and West Virginia;

WHEREAS, each Member owns and operates its electric system for the benefit of its customers, or, in the case of AMP Member Delaware Municipal Electric Corporation (“DEMEC”), its members and their customers;

WHEREAS, certain Members, including the Municipality, have determined they require additional, long-term sources of reliable, environmentally sound and reasonably priced electric capacity and energy and have requested that AMP arrange for the same;

WHEREAS, AMP has investigated, planned and developed a structure (“Development”) for a solar project for the benefit of its Members;

WHEREAS, in furtherance of such purpose, Municipality, along with other Members (collectively “Participants”) request and AMP agrees to continue Development and provide certain solar interconnection facilities (“Interconnection”), to negotiate, and if favorable to the Members, execute a Solar Power Purchase Agreement, between AMP and a NextEra Energy Resources Project Company (“NextEra”), for the purchase of 80 MWs (AC) or more of solar generated renewable electric energy and other Products as therein defined (the “NextEra PPA”) from solar photovoltaic systems to be located at multiple sites and interconnected with a Member electric utility system (“Host Member”) of certain AMP Members or DEMEC Member (collectively AMP Solar Project II), including the electric utility system of Municipality;

WHEREAS, the NextEra PPA provides, among other things, significant opportunities for the Participants to receive from AMP reliable, economic, solar generated renewable capacity and energy through a Power Sales Contract with AMP regarding AMP Solar Project II substantially in the form on file with the Clerk (the “Solar PSC”);

WHEREAS, AMP has resolved, in accordance with the NextEra PPA, to prepay a portion of AMP’s energy purchase obligations under the NextEra PPA and the Municipality requests AMP, on behalf of itself and the other Participants, to finance the prepayment, the Development and Interconnection costs of AMP Solar Project II through the issuance of bonds by AMP (the “Bonds”), in order to offer shares of the capacity and related energy derived from the solar systems at a more economical price to Participants, and to take

such other actions which AMP and, in certain cases, the Participants, deem necessary to enable AMP to fulfill its obligations under the Solar PSC to sell and transmit, or otherwise make available, electric capacity and energy to the Participants;

WHEREAS, in order to obtain such sources of electric capacity and energy from AMP Solar Project II, the Municipality is willing to pay AMP under the Solar PSC for its respective rights to such electric capacity and energy and transmission service at rates that are sufficient, but only sufficient, to enable AMP to (i) recover all costs and expenses incurred with respect to, and arrangements for the development, financing and payment for, the prepayment, including, without limitation, the debt service on the Prepayment Bonds, and other costs and expenses related to AMP Solar Project II, the NextEra PPA and the related service arrangements undertaken by AMP to enable it to fulfill its obligations under the Solar PSC, and (ii) recover any other expenditures or revenues authorized under the Solar PSC;

WHEREAS, Municipality desires, and AMP has agreed, that Municipality be a Host Member whereby one or more of the Project's solar electric generation systems will be located within the Municipality and interconnected to the Municipality's electric distribution system; and

WHEREAS, in order to effectively take the necessary steps to arrange for and have AMP timely deliver the solar generated renewable electric energy and other Products, this Resolution is declared to be an emergency measure.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FRONT ROYAL, VIRGINIA:

SECTION 1. That the Solar PSC between Municipality and AMP, substantially in the form as currently on file with the Clerk, including Appendices thereto, is approved, and the Mayor is hereby authorized to execute and deliver such Solar PSC, with such changes as the Mayor may approve as neither inconsistent with this Resolution nor materially detrimental to the Municipality, with execution of the PSC to be conclusive evidence of such approval.

SECTION 2. That the Mayor is hereby authorized to acquire on behalf of the Municipality, as a Participant, as defined in the Solar PSC, a Project Share from AMP and to execute and deliver any and all documents necessary to become a Participant in the AMP Solar Project II pursuant to the conditions set forth herein and in the Solar PSC and to carry out its obligations thereunder.

SECTION 3. That it is further acknowledged and understood that because the Participants will finalize the precise Project Shares to be acquired by each Participant electing to enter into the Solar PSC after all such Participants execute and deliver the Solar PSC and all Project Facilities are constructed, the Mayor in connection with the execution and delivery of the Solar PSC, is authorized and directed to determine and acquire Municipality's Project Share (not including any potential Step-Up as defined in the Solar PSC), of up to a nominal amount of 3000 kilowatts, after consultation with AMP and the other Participants regarding the Project Share available pursuant to said Solar PSC, such Project Share to be set forth in Appendix A of the Solar PSC, such determination as to such Project Share being conclusively evidenced by the adoption of Appendix A to the Solar PSC, as authorized therein.

SECTION 4. That the Mayor of this Municipality, as a part of such officer's official duties, is hereby appointed as Municipality's representative for any meetings or determinations of the Participants or the Participants Committee pursuant to the Solar PSC and is authorized and directed, acting for, in the name of and on behalf of this Municipality, to vote Municipality's Project Share with regard to any determinations regarding the AMP Solar Project II as set forth in the Solar PSC.

SECTION 5. That the Mayor may appoint, in writing from time to time as necessary, another representative of the Municipality as his or her alternate to carry out the duties set forth in Sections 3 and 4 hereof.

SECTION 6. That the Mayor is hereby authorized and directed to negotiate a site lease for land owned by the Municipality and an interconnection agreement with AMP or NextEra (either of whom has the authority to assign such lease and interconnection

agreement) for the Project's solar electric generation systems that will be located within the Municipality and interconnected to the Municipality's electric distribution system.

SECTION 7. That any necessity of competitive bidding that may arguably be required for the Municipality to execute the Solar PSC is hereby waived as in the best interest of the Municipality.

SECTION 8. That it is found and determined that all formal actions of this Municipality Town Council concerning and relating to the adoption of this Resolution were taken in conformance with applicable open meetings laws and that all deliberations of the Town Council and of any committees that resulted in those formal actions were in compliance with all legal requirements including any applicable open meetings requirements.

SECTION 9. That if any other prior Ordinance or Resolution is found to be in conflict with this Resolution, then the provisions of this Resolution shall prevail. Further, if any portion of this Resolution is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof.

AMP CONTRACT NO. _____

**INTERCONNECTION AGREEMENT
BETWEEN
THE TOWN OF FRONT ROYAL, VIRGINIA
AND
AMERICAN MUNICIPAL POWER, INC
AND
[NEXTERA PROJECT COMPANY]**

THIS INTERCONNECTION AGREEMENT ("Agreement") is made this _____ day of _____, 2016 by and between [NextEra Project Company] ("Project Owner"), American Municipal Power, Inc. ("AMP"), and the Town of Front Royal, Virginia, a political subdivision duly organized and existing under and by virtue of the laws of the Commonwealth of Virginia that owns and operates an electric utility system ("Host").

WHEREAS AMP and Project Owner have entered into a Solar Power Purchase Agreement ("Solar PPA") dated as of _____, 2016.

WHEREAS AMP and Host have entered or will enter into a Solar Power Sales Contract ("Solar PSC") regarding the AMP Phase II Solar Project dated as of _____, 2016;

WHEREAS Project Owner intends to install and operate or cause to be installed and operated a solar generation facility (the "Solar Facility") to be built on a site leased to Project Owner, located at [address not yet assigned?], near 730 Manassas Avenue, Front Royal, Virginia _____ ("Site"). The Solar Facility is projected to have a Capacity of approximately 2.5 megawatts ("MW")(AC); and,

WHEREAS AMP, Host and Project Owner desire to enter into this Agreement for the purposes of interconnecting the Solar Facility to the Host's electric utility system (the "System") through the Interconnection Facilities (hereinafter defined) in order to enable AMP to make available, or from time to time deliver, electric Capacity, Energy and

Environmental Attributes from the Solar Facility into the Host's System in accordance with this Agreement and the Solar PSC.

NOW THEREFORE, the Parties agree as follows:

I. Definitions.

The definitions of capitalized terms herein shall be as set forth in the Solar PPA, in addition to those noted below.

A. Host shall mean the Host noted above.

B. Interconnection Facilities shall mean the equipment on both sides of the Point of Interconnection that is presently in place or has been mutually determined is necessary in order to interconnect with and deliver Capacity and Energy from the Solar Facility to Host's System, as set forth in Appendix A hereto. Interconnection Facility includes the additions, modifications, and/or reinforcements to Host's System that Host, in the exercise of its reasonable judgment and consistent with Prudent Practice, deems necessary to support receipt and subsequent distribution of Capacity and Energy from the Solar Facility.

C. Lease shall mean the Lease Agreement between Project Owner and Host, dated as of [DATE], for the Site.

D. Peak Load Contribution ("PLC") shall mean the average of Host's load at the time of PJM's five (5) coincident peaks ("CPs") from the summer prior to the relevant delivery year.

E. Peak-Shaving shall mean the operation of a generator during a PJM system wide peak or the Transmission Owner's zonal transmission peak. Peak-shaving reduces Host's PLC and/or Network Service Peak Load (transmission billing demand).

F. Point of Interconnection shall mean the point at which the Solar Facility interconnects with the facilities of Host as specified in Appendix A.

II. Term.

1 Subject to the conditions contained herein, this Agreement shall become effective
2 upon execution and shall be co-terminus with the length of the Lease, including any
3 successive Power Sales Contract entered into subsequent to the sale or assignment of
4 the Solar PSC, approved by Host in duly enacted Resolution No. _____ and for six (6)
5 months thereafter ("Interconnection Term"), unless terminated earlier for any reason set
6 forth in this Agreement. For the avoidance of doubt, the termination of the Solar PPA shall
7 not result in the termination of this Agreement.
8

9 **III. Interconnection Service.**

10 **A. Project Owner and AMP Responsibilities.**

11 1. Project Owner shall be responsible for all costs of design,
12 construction, installation, and maintenance of the Interconnection Facilities on Project
13 Owner's side of the Point of Interconnection as set forth in Appendix A. Such design,
14 construction, installation, and maintenance shall be in accordance with Prudent Practice.
15 Project Owner shall be solely responsible for the construction and installation of the
16 Interconnection Facilities on Project Owner's side of the Point of Interconnection. Any
17 Interconnection Facilities listed in Appendix A that are installed on Host's side of the Point
18 of Interconnection shall become the property of Host on the Commercial Operation Date,
19 with Host possessing full and unencumbered title thereto.

20 2. Project Owner shall provide Host access to Project Owner site and
21 Interconnection Facilities at no cost to Host for the purpose of ensuring safe and reliable
22 operations of Host's System.

23 3. AMP shall be responsible for procuring and paying for all ancillary
24 services it requires with respect to bidding Capacity available from and scheduling the
25 Energy produced by the Solar Facility.

26 4. Project Owner shall be responsible for installing and maintaining
27 compatible metering and communications equipment to accurately account for the
28 Capacity, associated Energy and reactive power made available or delivered to Host's
29 System. Host shall have access to such metering data on a real time basis.
30

1 B. Host Responsibilities.

2 1. Subject to Article III(A)(1), AMP and/or Host shall operate and
3 maintain the Interconnection Facilities on Host's side of the Point of Interconnection. AMP
4 and/or Host agrees to operate and maintain those Interconnection Facilities in
5 accordance with Prudent Practice.

6 2. Host shall timely review and have the right to approve, such approval
7 not to be unreasonably conditioned or withheld, the design, construction and installation
8 of the Interconnection Facilities and the in service date thereof.

9
10 C. Mutual Responsibilities.

11 1. During the term of this Agreement, each Party shall inform the others
12 of any changes to its respective facilities that might reasonably be expected to affect the
13 operation of the other Party's facilities.

14 2. Host and Project Owner shall cooperate in good faith in connection
15 with the development, construction, testing, start-up and operation of the Solar Facility.

16 3. Host and Project Owner shall cooperate in connection with the use
17 of the Solar Facility for Peak Shaving or as a demand response resource in accordance
18 with Section III (D)(4) below.

19 4. At AMP's and Project Owner's request, Host will cooperate in
20 investigating whether or not additions to the Solar Facility, including but not limited to,
21 installations of battery storage, is reasonable, economic and beneficial.

22
23 D. Terms and Conditions.

24 1. Continuity of Service. Host may require AMP and Project Owner to
25 curtail, interrupt or reduce deliveries of Capacity and Energy if, in the exercise of Host's
26 reasonable judgment exercised in accordance with Prudent Practice, such delivery of
27 Capacity and Energy would have a material adverse impact on the quality of service
28 rendered by Host to its customers by interfering with the safe and reliable operation of
29 Host's System, until the condition has been corrected. Host shall use all reasonable
30 efforts to mitigate the extent and duration of such curtailment, interruption or reduction.

1 Except in the case of an emergency, Host shall give AMP and Project Owner reasonable
2 notice prior to any curtailment, interruption or reduction, the reason for its occurrence and
3 its probable duration.

4 2. Disconnection. Host shall have the right to disconnect the
5 Interconnection Facilities from Host facilities, if in the exercise of its reasonable judgment
6 exercised in accordance with Prudent Practice, it determines that an emergency exists
7 that is likely to adversely affect or impair the reliability of the Solar Facility or facilities on
8 Host's side of the Point of Interconnection. Host shall reconnect to its System as soon as
9 is practicable consistent with Prudent Practice.

10 3. Interconnection Equipment Modifications.

11 a. Project Owner shall pay or reimburse Host for the cost of any
12 necessary modifications to the Interconnection Facilities consistent with Prudent Practice
13 to maintain interconnection service to the Solar Facility that Host would not have incurred
14 but for the interconnection of the Solar Facility.

15 b. Project Owner shall provide Host reasonable written prior
16 notice of any additions, modifications and/or reinforcements to the Interconnection
17 Facilities that Project Owner has reasonably determined to be necessary consistent with
18 Prudent Practice.

19 4. Demand Response and Peak Shaving Policy.

20 a. Host and AMP recognize that PJM limits the registration of
21 demand response resources physically served by the Host to the Host's PLC such that a
22 Host may not have more demand response resources than it has PLC.

23 b. The Solar Facility shall take priority over existing jointly-owned
24 generation, Host-owned generation or other end-use customer Capacity resources when
25 PLC is allocated for demand response. Existing jointly-owned generation and Host-
26 owned generation shall share the remaining available PLC on a pro rata basis. Host's
27 retail customer demand response is allocated PLC after assigning PLC to jointly-owned
28 generation and Member-owned generation. It is Host's authority and responsibility to
29 determine how to allocate PLC remaining after new and existing jointly-owned generation
30 has received its PLC.

1 c. Capacity and transmission credits from the Solar Facility
2 includes kW's peak-shaved by that generation. These kW's are added back to the Host's
3 load to calculate Host's Capacity and transmission charges.

4 PJM measures compliance for wholesale demand response
5 resources by using Host's interconnection point. If Host has more than one
6 interconnection, the interconnection meters are summed together. All wholesale
7 generating units behind the same meter are measured at the same interconnection,
8 regardless of ownership.

9 To the extent current PJM rules affecting this Section III D(4) are
10 modified, Host and AMP shall negotiate in good faith to modify this Section III D(4) to
11 reflect such changes while balancing the benefits and burdens of the Parties pursuant to
12 this agreement and the PSC.

13
14 **IV. Operating Committee.** AMP, Project Owner and the Host shall each appoint one
15 (1) representative to an operating committee (the "Operating Committee") which shall
16 meet, at the reasonable request of either Party, as often as necessary to provide
17 information regarding the operations and obligations hereunder but in no event less than
18 once a year, and to discuss and act upon such other matters as are appropriate and
19 convenient. The Operating Committee shall act only by unanimous agreement and shall
20 keep written minutes of its meetings and actions.

21
22 **V. Event of Default.** Any one (1) or more of the following events shall constitute an
23 event of default hereunder:

24 A. Any Party's failure to observe or perform or cause to be observed or
25 performed any other term, covenant, agreement under this Agreement, and continuation
26 of this failure for a period of thirty (30) days after any Party's written notice to the others
27 specifying the nature of such Party's failure, provided, however, that such failure shall not
28 constitute a default if it is curable but cannot with reasonable diligence be cured by such
29 Party within a period of sixty (60) days, provided such Party proceeds to cure the failure
30 with reasonable diligence and in good faith;

1 B. Project Owner's abandonment of the Solar Facility; or,

2 C. The filing of a petition in bankruptcy or insolvency, for reorganization or the
3 appointment of a receiver or trustee of all or a portion of Project Owner's property, by or
4 against Project Owner in any court pursuant to any statute either of the United States or
5 of any state; and Project Owner's failure to secure a dismissal of the petition within one
6 hundred twenty (120) days after its filing.

7
8 **VI. Compensation.** As Host is provided significant benefits from acting as a Host, no
9 additional compensation shall be required hereunder.

10
11 **VII. Limitations and Other General Provisions.**

12 A. Standard of Care. Each Party to this Agreement shall use its reasonable
13 commercial efforts to provide the services and perform the obligations required to be
14 provided and performed pursuant to this Agreement and shall act at all times in a manner
15 consistent with Prudent Practice.

16 B. Limitation of Remedies, Liability and Damages. No Party shall have any
17 liability to the other for any costs, damages or liability arising from its failure to provide
18 such services or perform such obligations absent willful and wanton misconduct by such
19 Party. THE PARTIES AGREE THAT THE EXPRESS REMEDIES AND MEASURES OF
20 DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES
21 HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY
22 OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR
23 MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, SUCH
24 PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND
25 ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO
26 REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, SUCH
27 PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH
28 DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND
29 ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, NO
30 PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE,

1 EXEMPLARY, SPECIAL OR INDIRECT DAMAGES, LOST PROFITS OR OTHER
2 BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR
3 OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN
4 IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT
5 REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE
6 NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR
7 CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES
8 REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES
9 ACKKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO
10 DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT
11 AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION
12 OF THE HARM OR LOSS. Each Party agrees that it will carry or cause to be carried
13 such insurance as is customary in the electric utility industry to protect it against losses
14 and damages that may arise in connection with the ownership, operation and
15 maintenance of the Solar Facility. Each Party shall pay all costs and expenses, including
16 reasonable attorneys' fees, related to such Party's failure to comply with the provisions of
17 this Agreement.

18 C. Force Majeure. Neither Host nor Project Owner shall be considered in
19 default under this Agreement if prevented from fulfilling any obligation due to an event of
20 *Force Majeure*. The Party unable to perform shall: (i) notify the other Parties in writing,
21 by telephone or electronic transmission within a reasonable time after the occurrence of
22 the event; (ii) be excused only while such *Force Majeure* event exists; and, (iii) make good
23 faith efforts to expeditiously alleviate such situation. No Party shall be required by the
24 foregoing provisions to settle a strike, lockout or other labor dispute affecting it except
25 when, according to its own best judgment, such a settlement is advisable.

26 D. Amendments. This Agreement may be amended only in writing signed by
27 all Parties hereto.

28
29 E. Assignment.

1 1. With prior notice to the Host and without consent, Project Owner may
2 transfer, assign or sublet this Agreement and its rights and obligations hereunder to an
3 Affiliate of Project Owner.

4 2. With prior notice to the Host and without consent, Project Owner may
5 transfer, assign or sublet this Agreement and its rights and obligations hereunder as
6 collateral to a Project Investor in connection with debt or tax equity financing or refinancing
7 of the Solar Facility. Host shall provide such consents to collateral assignment or other
8 documents (including estoppel certificates related to a tax equity financing) as may be
9 reasonable requested by Project Owner in connection with the financing or refinancing of
10 the Solar Facility; *provided, however*, that Project Owner shall reimburse Host and AMP,
11 as applicable, for any and all costs or expenses incurred in connection therewith.

12 3. Any other assignments of this Agreement by a Party without the prior
13 express written consent of the non-assigning Parties is prohibited; provided that such
14 consent shall not be unreasonably withheld, conditioned or delayed.

15 F. Counterparts. This Agreement may be executed in one (1) or more
16 counterparts, each of which shall be deemed to be an original but all of which together
17 will constitute one (1) and the same instrument.

18 G. Entire Agreement. This Agreement contains the entire agreement between
19 AMP, Project Owner and Host with respect to the matters provided herein, and any
20 agreement made after the execution of this Agreement between AMP, Project Owner and
21 Host shall be ineffective to change, modify, waive, release, discharge, or terminate this
22 Agreement, in whole or in part, unless that agreement is in writing and signed by the Party
23 against whom enforcement is sought.

24 H. No Waiver of Breach. The failure of any Party to seek redress for violation
25 of, or to insist on the strict performance of any covenant, agreement, term, provision, or
26 condition of this Agreement shall not constitute a waiver of the covenant, agreement,
27 term, provision, or condition. The receipt or payment hereunder with knowledge of the
28 breach of any covenant, agreement, term, provision, or condition of this Agreement shall
29 not be deemed a waiver of that breach.

1 I. No Third Party Beneficiaries. Nothing in this Agreement is intended or shall
2 be construed to give any person, other than the Parties hereto, any legal or equitable
3 right, remedy or claim under or in respect of this Agreement or any provision contained
4 herein. Nothing in this Agreement shall be construed to create any duty, standard of care
5 or liability to any person not a Party to this Agreement.

6 J. Headings. The section and subsection headings and captions appearing in
7 this Agreement are inserted only as a matter of convenience and shall not be given any
8 legal effect.

9 K. Severability. If any restriction, covenant or provision of this Agreement shall
10 be adjudged by a court of competent jurisdiction to be void as going beyond what is
11 reasonable in all the circumstances for the protection of the interests of the Party seeking
12 to enforce such restriction, covenant or provision, the provisions of this Agreement shall
13 be interpreted to carry out to the greatest extent possible the intent of the Parties and to
14 provide to each party a reasonable approximation of the benefits such Party would have
15 received under this Agreement if such restriction, covenant or provision had been
16 enforceable.

17 L. Officials Not Liable. No official or employee of any Party shall be personally
18 liable for any matter arising from or in any way connected to this Agreement.

19 M. Notices.

20 All Notices given by Host to AMP hereunder shall be directed to:

21 Attn: Marc Gerken, P.E.
22 President/CEO
23 American Municipal Power, Inc.
24 1111 Schrock Road, Suite 100
25 Columbus, Ohio 43229
26 Telephone: 614-540-1100
27 Facsimile: 614-540-1113
28

29 With a copy to:

30
31 Attn: John W. Bentine
32 Senior Vice President/General Counsel
33 American Municipal Power, Inc.
34 1111 Schrock Road, Suite 100

Columbus, Ohio 43229
Telephone: 614-540-6401
Facsimile: 614-540-6397

All Notices given by Host to Project hereunder shall be directed to:

[NextEra Energy Resources Project Company]
c/o NextEra Energy Resources, LLC
700 Universe Boulevard
Juno Beach, Florida 33408
Attn: Matthew Handel, Vice President
Phone: 561-304-6040
Email: Matt.Handel@nee.com

With copy to:

NextEra Energy Resources, LLC
700 Universe Boulevard
Juno Beach, Florida 33408
Attn: Vice President and General Counsel
Phone: 561-691-7126
Email: Mitch.Ross@nee.com

All Notices given by AMP to Host hereunder shall be directed to:

Attention: [TITLE]
[TO COME]

If to AMP, all such Notices shall be given as specified in the notice provisions of the Solar PSC.

The Parties shall update the notice addresses and contacts by written notice to the other as appropriate.

N. Governing Law. The terms and provisions of the Agreement and the rights and obligations of the Parties hereto shall be in accordance with the Solar PSC and shall be governed by and construed in accordance with the laws of the State of Ohio.

O. Limited Obligation. All obligations of the Host under this Agreement are limited obligations of the Host, payable solely from the revenues of the Host's System.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed.

AMERICAN MUNICIPAL POWER, INC.

TOWN OF FRONT ROYAL, VIRGINIA

By: _____
Marc S. Gerken, P.E.
President/CEO

By: _____
[SIGNATOR'S NAME]
[SIGNATOR'S TITLE]

Approved as to Form and Attest:

Approved as to Form and Attest:

By: _____
John W. Bentine
Senior VP/General Counsel

By: _____
[HOST LEGAL ADVISOR]

[NEXTERA PROJECT COMPANY]

By: _____
Matthew Handel
Vice President

Approved as to Form and Attest:

By: _____
Jill Toothman
Senior Attorney

INTERCONNECTION FACILITIES

[TO COME]

4846-0198-7118, v. 1

**SOLAR PROJECT
LEASE AGREEMENT**

This Lease Agreement (this “Lease”) is made and entered into as of the ____ day of _____, 2016, (“Effective Date”) by and between the Town of Front Royal, Virginia, a municipal corporation (“Lessor”), with an address at P.O. Box 1560, Front Royal, Virginia 22630, and DG AMP Solar, LLC, with an office at 700 Universe Boulevard, Juno Beach, Florida 33408 (“Lessee”).

WITNESSETH:

WHEREAS, the Lessor owns property near the property commonly known as 730 Manassas Avenue in Front Royal, Virginia and more particularly described on Exhibit A (the “Property”) and desires to lease to Lessee that portion of the Property described and depicted in Exhibit A-1 attached hereto and made a part hereof (the “Premises”); and

WHEREAS, Lessee desires to lease the Premises for the purpose of placing on it a solar photovoltaic electronic generating facility and ancillary or related services and facilities thereto (the “Solar Electric Facility”) used in the provision of reliable, environmentally sound and reasonably priced electric power to Lessor and certain other members of American Municipal Power, Inc. (hereinafter “AMP”) ; and

WHEREAS, a portion of the electric energy and certain related products produced by the Solar Electric Facility, among other such facilities, will be sold to Lessor; and

WHEREAS, the Lessor will recognize electric system reliability benefits as a result of the placement of the Solar Electric Facility in its community; and

WHEREAS, the Lessee has agreed to cause the Solar Electric Facility, as hereinafter defined, to be constructed, improved, repaired, replaced and operated on the Premises; and

WHEREAS, Lessor and Lessee desire to set forth in writing the terms and conditions of this Lease.

NOW, THEREFORE, in consideration of the mutual obligations, representations and promises contained in this Lease, the parties hereto agree as follows:

1. DESCRIPTION

1.01 For valuable consideration, Lessor hereby leases to Lessee and Lessee rents from Lessor the Premises. This Lease and the Premises are subject to all liens, encumbrances, conditions, rights, easements, restrictions, rights-of-way, covenants, other matters of record and zoning and building laws, ordinances,

regulations and codes governing the Premises.

2. **TERM AND RENT**

2.01 **Term.** Lessee's obligation to pay rent and occupy the Premises in accordance with this Lease shall begin on the Effective Date and expire five (5) years thereafter (the "Initial Term"), unless terminated earlier for any reason set forth in this Lease. Lessor and Lessor may renew the Lease, upon mutual agreement prior to the then-effective termination date, for up to six (6) consecutive five (5) year terms (each, a "Renewal Term"). If so renewed, the Lease shall expire on the earlier of (i) thirty (30) years and six (6) months from the Effective Date, or (ii) at such time as the Lessee provides written notice to the Lessor specifying the termination date of the Solar Project Power Sales Contract between AMP and Lessor and designated as AMP Contract No. _____ (the "Power Sales Contract") and for six (6) months after such termination date, unless terminated earlier for any reason set forth in this Lease. The Initial Term and all Renewal Terms shall be referred to herein as the "Lease Term".

2.02 **Rent.** During the Lease Term, Lessee shall pay rent to Lessor, without notice or demand and without abatement, reductions, or set-off for any reason, at P.O. Box 1560, Front Royal, Virginia 22630. Rent shall be payable as follows: One Dollar (\$1.00) on the date this Lease is signed by both parties covering the period from such date to the end of the Lease Term, the receipt and sufficiency of which is hereby acknowledged by the parties.

2.03 **Taxes.**

a. **Lessee's Taxes.** Subject to timely receipt from Lessor of the relevant statement for Taxes pursuant to this Section, Lessee shall pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("Taxes") levied or assessed against the Premises and all improvements thereon. Lessor shall submit the annual statement for Taxes to Lessee within thirty (30) days after the date Lessor receives the statement from the taxing authority. Lessee may elect to have the statement for Taxes sent directly to Lessee. In such event, Lessee shall pay all Taxes to the appropriate taxing authority prior to delinquency. If Lessee receives such statement directly, Lessee shall submit a copy of the statement for Taxes to Lessor within thirty (30) days after the date Lessee receives the statement from the taxing authority.

b. **Failure to Pay.** In the event of the failure of Lessee to pay the Taxes prior to

delinquency, the Lessor shall have the right to cure such default by payment of those Taxes and any penalties or interest on such Taxes which are due, and to add or deduct, as the case may be, such amounts to the other payments due under this Lease.

c. Lessee's Right to Contest. Lessee may contest the legal validity or amount of any such Taxes for which it is responsible under this Lease, and may institute such proceedings as it considers necessary, provided that Lessee shall bear all expenses in pursuing such contest or proceeding. With respect to any Taxes which may constitute a lien on the Premises, Lessee shall promptly pay such Taxes unless the proceeding in which it contests such Taxes shall operate to prevent or stay the collection of the Taxes so contested or unless Lessee removes any such lien by bonding or otherwise. Lessor agrees to render to Lessee all reasonable assistance in contesting the validity or amount of any such Taxes, including joining in the signing of any reasonable protests or pleading which Lessee may deem advisable to file; provided, however, that Lessee shall reimburse Lessor for its reasonable out-of-pocket expenses, including reasonable attorneys' fees incurred in connection with providing such assistance.

3. USE OF PREMISES

3.01 Lessee shall have the right to use the Premises for the construction, operation and maintenance of the following items: Solar Electric Facility and facilities connecting the Solar Electric Facility and all necessary and reasonable purposes associated therewith, except that any use shall be subject to the terms and conditions of that certain Interconnection Agreement by and between Lessee, Lessor and AMP relating to the Solar Electric Facility (the "Interconnection Agreement"). Lessee shall make no alterations to the Premises other than those contemplated herein without permission of Lessor (which permission shall not be unreasonably withheld), except as may be provided herein. Lessor has no right and shall not claim a right in any fixture placed on the Premises, except as may be claimed as a result of abandonment, default or termination of this Lease as herein provided.

3.02 Grant of Easements. In addition to the Lease and the right of use and possession given to Lessee thereby, Lessor grants to Lessee, its agents, employees, contractors, subcontractors and invitees, all necessary easements over the Property (to the extent that the Premises do not include the entire Property) that may be reasonably necessary to allow for the installation and unencumbered maintenance, alteration and/or operation of a Solar Electric Facility, including but not limited to (i) a non-exclusive easement for audio, visual, view, light, reflection, electromagnetic, electrical and radio frequency interference and any

other effects attributable to the Solar Electric Facility, (ii) an exclusive easement to use, convert, maintain and capture the free and unobstructed view of the sun and solar resources over and across the Property, (iii) an exclusive easement over, on or under the Property to install, operate, maintain, improve and replace, from time to time, wires and conduits for interconnection between the Solar Electric Facility and the electrical grid, and (iv) a non-exclusive easement for vehicular and pedestrian ingress and egress over the Property by means of any existing roads or lanes thereon, or otherwise by such route or routes as Lessor or Lessee may construct from time to time; (v) the right to grade, level, fill, clear and replant ground; and to use on-site sand, gravel, or other materials suitable for road cover solely to construct the Solar Electric Facility and related facilities on the Premises, all to the extent permitted by law and in accordance with any applicable permits (collectively the "Easements"). As reasonably requested by Lessee, Lessor shall grant such other easements, rights of way, and other rights or encumbrances necessary for the completion, maintenance and operation of Lessee's Solar Electric Facility, across, over, under or through the Property.

4. LAWS AND REGULATIONS

4.01 Compliance with Legal Requirements. Lessee shall promptly comply with all laws and ordinances, and all orders, rules, regulations, and requirements of federal, state, and municipal governments and appropriate departments, commissions, boards, and offices of these governments ("Legal Requirements") throughout the term of this Lease, and without cost to Lessor. Lessee shall promptly comply with these Legal Requirements whether they are foreseen or unforeseen, or ordinary or extraordinary, except that any compliance with Legal Requirements associated with Lessor's use of the Property shall be the sole responsibility of the Lessor.

4.02 Contest of Legal Requirements. Lessee shall have the right, after prior written notice to Lessor, to contest the validity of any Legal Requirements by appropriate legal proceedings, provided Lessor shall not be subject to any criminal or civil liability as a result of any legal contest. Lessee shall indemnify and hold Lessor harmless from all loss, claims, and expenses, including reasonable attorneys' fees, as a result of Lessee's failure to comply with Legal Requirements or any contest relating to Legal Requirements, except any contest of any Legal Requirement enacted by Lessor, subsequent to the Effective Date.

5. LIENS AND ENCUMBRANCES

5.01 Mortgage of Premises. Lessee may, upon notice to Lessor, but without requiring Lessor's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in the Premises. These various security interests in all or a part of the Premises are collectively referred to as a "Lessee Mortgage" and the holder of such security interest, a "Lessee Mortgagee." Any Lessee Mortgagee shall use the Premises only for the uses permitted under this Lease. Whenever Lessee has granted a security interest under this Section, it will give Lessor notice of the Lessee Mortgage (including the name and address of the Lessee Mortgagee for notice purposes) to Lessor; provided that failure to give this notice shall not constitute a default under this Lease.

a. Notice of Default and Opportunity to Cure. As a precondition to exercising any rights or remedies related to any alleged default by Lessee under this Lease, Lessor shall give written notice of the default to each Lessee Mortgagee at the same time it delivers notice of default to Lessee, specifying in detail the alleged event of default and the required remedy. Each Lessee Mortgagee shall have the right to cure any default as Lessee, and/or the right to remove any Lessee Assets or other property owned by Lessee or such Lessee Mortgagee located on the Lessor's Premises to the same extent as Lessee. The cure period for any Lessee Mortgagee shall be the later of (i) the end of the Lessee cure period; (ii) thirty (30) days after such Lessee Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided below. Failure by Lessor to give a Lessee Mortgagee notice of default shall not diminish Lessor's rights against Lessee, but shall preserve all rights of the Lessee Mortgagee to cure any default and to remove any Lessee Assets or other property of Lessee or the Lessee Mortgagee located on the Lessor's Premises.

b. Extended Cure Period. If any default by Lessee under this Lease cannot be cured without the Lessee Mortgagee obtaining possession of all or part of the Premises, then any such default shall be deemed remedied if a Lessee Mortgagee: (i) within sixty (60) days after receiving notice from Lessor, acquires possession of all or part of the Premises, or begins appropriate judicial or non-judicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Premises performs all other obligations as and when the same are due in accordance with the terms of this Lease. If a Lessee Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified

above for commencing proceedings shall be extended for the period of such prohibition.

c. Lessee Mortgagee Liability. Any Lessee Mortgagee whose interest in the Premises is held solely for security purposes shall have no obligation or liability under this Lease unless and until the Lessee Mortgagee succeeds to absolute title to the Premises and the rights of Lessee under this Lease. A Lessee Mortgagee shall be liable to perform obligations under this Lease only for and during the period it directly holds such absolute title.

d. Certificates & Other Documents. Lessor shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Lease, if such be the case) and consent to assignment and non-disturbance agreements as Lessee or any Lessee Mortgagee may reasonably request from time to time. Lessor and Lessee shall cooperate in amending this Lease from time to time to include any provision that may be reasonably requested by Lessee or any Lessee Mortgagee to implement the provisions contained in this Lease or to preserve a Lessee Mortgagee's security interest.

e. Lessee Mortgagee's Right to Enforce Mortgage & Assign. Each Lessee Mortgagee shall have the right, in its sole discretion: (i) to assign its Lessee Mortgage; (ii) to enforce its lien and acquire title to all or any portion of the Premises by any lawful means; (iii) to take possession of and operate all or any portion of the Premises and to perform all obligations to be performed by Lessee under this Lease, or to cause a receiver to be appointed to do so; and (iv) to acquire all or any portion of the Premises by foreclosure or by an assignment in lieu of foreclosure and thereafter, without Lessor's consent, to assign or transfer all or any portion of the Premises to a third party. Any Lessee Mortgagee or other party who acquires Lessee's interest in the Premises pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee by this Lease which are incurred or accruing after such Lessee Mortgagee or other party no longer has ownership or possession of the Premises.

f. New Agreement. If the Premises is foreclosed upon or there is an assignment in lieu of foreclosure, or if this Lease is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Lessee or any Lessee Mortgagee or other purchaser at a foreclosure sale shall have arranged to the reasonable satisfaction of Lessor for the payment of all Lease Rent or other charges due and payable by Lessee as of the date of such event, then Lessor shall execute and deliver to Lessee or such Lessee Mortgagee or

other purchaser at a foreclosure sale, or to a designee of one of these parties, as the case may be, a new agreement ("New Agreement") which (i) shall be for a term equal to the remainder of the Term of this Lease before giving effect to such rejection or termination; (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Lease (except for any requirements that have been fulfilled by Lessee or any Lessee Mortgagee or other purchaser at a foreclosure sale prior to rejection or termination of this Lease); and (iii) shall include that portion of the Premises in which Lessee or such other Lessee Mortgagee or other purchaser at a foreclosure sale had an interest on the date of rejection or termination. If more than one Lessee Mortgagee makes a written request for a New Agreement pursuant to this provision, the New Agreement shall be delivered to the Lessee Mortgagee requesting such New Agreement whose Lessee Mortgage has lien priority, and the written request of any other Lessee Mortgagee whose lien is subordinate shall be void and of no further force or effect. The provisions of this Section shall survive the termination, rejection or disaffirmation of this Lease and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Lessor, Lessee and each Lessee Mortgagee, and, from the effective date of such termination, rejection or disaffirmation of this Lease to the date of execution and delivery of such New Agreement, such Lessee Mortgagee or other purchaser at a foreclosure sale may use and enjoy the Premises without hindrance by Lessor or any person claiming by, through or under Lessor; provided that all of the conditions for the New Agreement as set forth above are complied with.

g. Lessee Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Lease to the contrary, the Parties agree that so long as any Lessee Mortgage remains outstanding, this Lease shall not be materially modified or amended, and Lessor shall not accept a surrender, cancellation or release of all or any part of the Premises from Lessee, prior to expiration of the Term of this Lease, without the prior written consent of the Lessee Mortgagee holding such Lessee Mortgage. This provision is for the express benefit of and shall be enforceable by each Lessee Mortgagee as if it were a party named in this Lease.

5.02 Lessor Not Liable For Labor, Services, or Materials Furnished to Lessee. Lessor shall not be liable for any labor, services, or materials furnished to or to be furnished to Lessee or any sub-lessee in connection with any work performed on or at the Premises after the execution of this Lease and no mechanics' liens or other lien or encumbrance for any labor, services, or materials shall attach to or affect Lessor's fee estate or reversion in the Premises.

6. INSURANCE AND INDEMNITY

6.01 Fire and Extended Coverage Insurance. At all times during the term of this Lease, Lessee shall maintain, at its sole cost, insurance or self-insurance covering its property located on the Premises.

6.02 Property and Personal Injury Liability Insurance. At all times during the Lease Term, Lessee shall maintain, at its sole cost, commercial general public liability insurance against claims and liability for personal injury, death, and property damage arising from the use, occupancy, disuse, or condition of the Premises, Lessee's property located thereon and Lessee's activities thereon. The insurance shall be carried by insurance companies authorized to transact business in Virginia, selected by Lessee. The insurance shall be maintained for the mutual benefit of Lessor and Lessee, and any succeeding owners of the fee title in the Premises. The insurance policy or policies shall name Lessee as insured and Lessor as additional insured.

6.03 Indemnification. Lessor shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from Lessee's use of the Premises or any property on the Premises, or caused by or arising from any act or omission of Lessee, or any of its agents, employees, licensees, or invitees, or by or from any accident, fire, or other casualty on the Premises, or occasioned by the failure of Lessee to maintain the Premises in safe condition. Lessee waives all claims and demands on its behalf against Lessor for any loss, damage or injury not caused by Lessor's negligent or intentional acts or omissions, and agrees to indemnify and hold Lessor entirely free and harmless from all liability for any loss, damage, costs, or injury of other persons, and from all costs and expenses arising from any claims or demands of other persons concerning any loss, damage, or injury, relating to the Premises or the Lessee's use of the Premises, caused other than by the negligent or intentional act or omission of Lessor.

7. CONDEMNATION

7.01 Although the parties agree that the Premises are and will continue to be dedicated to public use, nonetheless it is possible that local, state or federal governments may attempt to acquire all or any part of the Premises for other public or quasi-public purposes by condemnation in an action or proceeding in eminent domain. Upon such taking, should such taking destroy the current use, this Lease shall terminate and Lessor shall be entitled to receive the entire award or compensation for the taking of the Premises or any part of the Premises, except Lessee shall be entitled to any damages specifically awarded to it.

8. LESSOR REPRESENTATIONS AND WARRANTIES

8.01 Lessor's Representations. Lessor hereby represents and warrants to Lessee that:

a. Lessor has no actual knowledge of any existing physical conditions of the Premises which would prevent, significantly restrict or make more expensive Lessee's development of the Premises for the purposes specified in this Lease, or which could, with the passage of time, or the giving of notice, constitute a violation of any currently applicable governmental law, ordinance, order, rule or regulation.

b. Lessor has not received notice, oral or written, of and does not have any actual knowledge that there are any mining, mineral or water extraction or development projects in progress or planned to commence on or under the Premises or any portion thereof.

c. The execution of this Lease will not constitute a violation of nor be in conflict with nor constitute a default under any term or provision of any agreement or instrument to which Lessor is a party or by which the Premises or any part thereof is bound.

d. Lessor has no knowledge of any pending or threatened proceedings in eminent domain, or for a sale in lieu thereof, affecting the Premises or any portion thereof, or of any plans for a possible widening of the streets abutting the Premises. If Lessor learns of any litigation or administrative action proposed, threatened or instituted with respect to the Premises, Lessor shall give Lessee prompt notice thereof.

e. Without having made any specific investigation thereof, and without undertaking to do so, Lessor has no actual knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Lessee's development of the Premises pursuant to this Lease. To the best of Lessor's knowledge, the Premises is currently in material compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Premises.

f. To the best of Lessor's knowledge, neither the Premises nor any part thereof violates any Environmental Law. Without limiting the foregoing, except as disclosed in writing to Lessee, to the best of Lessor's knowledge no Hazardous Materials have been disposed of on the Premises or have been accumulated or burned on the Premises, no part of the Premises or any improvements thereon contain asbestos or asbestos-containing materials (including, without limitation, acoustical plaster, fireproofing, pipe and boiler insulation or similar materials), and no underground storage tanks are located on or under the Premises. "Environmental Law" means all laws of any governmental authority having jurisdiction over the Premises addressing pollution or

protection of the environment and all amendments to such laws and all regulations implementing any of the foregoing. "Hazardous Material" shall mean any pollutant, contaminant, hazardous substance, hazardous waste, medical waste, special waste, toxic substance, petroleum-derived substance, waste or additive, asbestos, polychlorinated biphenyl (PCB), radioactive material, or other compound, element or substance in any form (including products) regulated or restricted by or under any Environmental Law.

g. The representations and warranties set forth in this Section shall survive the execution and delivery hereof.

8.02 Lessor Covenants.

a. Lessor covenants and agrees to give Lessee exclusive possession of the Premises during the Lease Term, free and clear of all structures, lessees and occupants. Lessor may enter onto the Premises during the Lease Term with reasonable advance notice to Lessee and in such event Lessor shall at all times be accompanied by a representative of Lessee, except (1) upon bona fide emergency to protect life and property and/or (2) in order to maintain, repair or replace Lessor's existing improvements or construct, install, maintain, repair and/or replace future improvements located on or adjacent to the Premises (nothing in this paragraph shall alter the rights between Lessor and Lessee with respect to the maintenance of, possession of, or improvement to the Premises). Except for entry by Lessee under the terms of this Lease, Lessor agrees, for itself and for parties under its control, not to allow entry upon the Premises and shall not interfere with or handle any of Lessee's equipment or the Solar Electric Facility without written authorization from Lessee.

b. Lessor does not and shall not have a lien on, or any interest in, any of Lessee's personal property, including, but not limited to, the Solar Electric Facility, Lessee's inventory, trade fixtures, removable equipment, fixtures and all improvements ("Lessee's Assets"), and all of Lessee's Assets shall be deemed the personal property of Lessee in accordance with applicable state law and the UCC. Lessor expressly waives any lien or related rights, if any, granted or conferred upon Lessor by Applicable Law on any of Lessee's Assets, and to the extent any such lien is nevertheless imposed upon Lessee's Assets, Lessor subordinates such lien to the lien of any "Lessee Mortgagee", and will specifically acknowledge the rights of any Lessee Mortgagee. This provision is operative without execution of any further documentation, and may be relied on by any Lessee Mortgagee in extending credit to Lessee. Any Lessee Mortgagee shall be a third-party beneficiary

of this section of this Lease and may take action against Lessor (i) to enforce its rights and Lessee's rights or (ii) in the event of a breach by Lessor of its duties under this provision.

c. Lessor covenants and agrees that if there is a mortgage or mortgages encumbering the Premises, as of the reference date of this Lease, (each, a "Lessor Mortgage"), then Lessor agrees to make all payments under each such Lessor Mortgage when due. In the event that Lessor receives from the mortgagee of any such Lessor Mortgage any notice that payments under such Lessor Mortgage are overdue, Lessor shall so notify Lessee and each Lessee Mortgagee by sending a copy of such notice to Lessee within the earlier of (i) five (5) days of receipt, and (ii) three (3) business days prior to the date by which a default under or in respect of such Lessor Mortgage could occur. If Lessee or any Lessee Mortgagee determines that it would be in Lessee's interest to make such payments under such Lessor Mortgage on Lessor's behalf following receipt of such notice, Lessee shall have the right to make such payments and to credit the payments so made against the rent payment next due under the Lease.

d. Except for Lessor Mortgages existing on the Effective Date (for which Lessor shall have delivered an SNDA) and Taxes not yet due and payable, Lessor shall not permit any monetary liens to encumber the Premises which have priority over the Lease. In the event Lessor encumbers the Premises subsequent to the date of this Lease, (i) the Lease shall retain its priority position, and (ii) the holder of each Lessor Mortgage or security interest shall execute and deliver to Lessee a fully executed and acknowledged non-disturbance agreement in a commercially reasonable form, and reasonably acceptable to Lessee and any Lessee Mortgagee whereby the holder agrees, among other things, to recognize Lessee's rights under this Lease and not to disturb Lessee's possession and use of the Premises and such other appurtenant rights and easements in the Premises. With respect to other monetary encumbrances (i.e., mechanics' liens, judgment liens, tax liens, etc.), Lessor shall take any such actions as are required to prevent any material adverse effect to Lessee's use hereunder as a result of such encumbrances.

e. Lessor agrees that whenever it is provided in this Lease that the prior consent or approval of Lessor is required, Lessor will not unreasonably withhold, condition or delay the giving of such consent or approval.

9. DEFAULT

9.01 Events of Default. Any one or more of the events listed in Sub-paragraphs (a) through

(e) of this Section 9.01 shall constitute a default under this Lease (each, an “Event of Default”).

- a) Lessee’s failure to pay rent within forty-five (45) days after the rent becomes due and payable in accordance with the terms, covenants and agreements of this Lease.
- b) Lessee’s failure to observe or perform or cause to be observed or performed any other term, covenant, or agreement under this Lease, and continuation of this failure for a period of thirty (30) days after Lessor’s written notice to Lessee specifying the nature of Lessee’s failure; however, a failure as described in this Subparagraph (b) shall not constitute a default if it is curable but cannot with reasonable diligence be cured by Lessee within a period of thirty (30) days, and if Lessee proceeds to cure the failure with reasonable diligence and in good faith,
- c) Lessee’s abandonment of the Premises and improvements. For the purposes of this Lease, “abandonment” shall be defined as vacating the Premises with the intention of not returning.
- d) The occurrence of both the following events at the date of the commencement of this Lease or during the Term:
 - i) Filing of a petition in bankruptcy or insolvency, for reorganization or the appointment of a receiver or trustee of all or a portion of Lessee’s property, by or against Lessee in any court pursuant to any statute either of the United States or of any state.
 - ii) Lessee’s failure to secure a dismissal of the petition within sixty (60) days after its filing.
- e) Lessee’s assignment of the leasehold interest under this Lease for the benefit of creditors, except as permitted by Section 5.01 of this Lease.

9.02 Notice of Election to Terminate Lessee’s Possession. If any Event of Default occurs, Lessor may, after the expiration of any and all applicable cure periods, elect to terminate Lessee’s right of possession under this Lease after thirty (30) days from the date of service of notice of the election. If this notice is given, then at the expiration of the thirty (30) days all Lessee’s rights, title and interest in the Premises shall expire completely, and Lessee shall quit and surrender the Premises to Lessor without penalty or recourse whatsoever.

9.03 Lessor's Entry After Termination of Lessee's Possession. At any time after the termination of Lessee's right of possession under this Lease, Lessor may enter and possess the Premises by summary proceedings, ejectment, or otherwise, and Lessor may remove Lessee and all other persons and property from the Premises. If Lessor takes the actions described in this Section 9.03, Lessor may then possess the Premises.

9.04 Rent on Expiration or Termination. The expiration or termination of this Lease shall not relieve Lessee of its liability and obligation to pay the rent and any other charges accrued prior to these events, or relieve Lessee of liability for damages for breach. These liabilities and obligations of Lessee shall survive any expiration or termination of the Lease. Upon expiration or termination, Lessor shall be entitled to keep all prepaid rent and Lessee waives any claim therefore.

9.05 Costs Incurred Due to Breach. Lessee expressly agrees to pay all expenses that Lessor may incur for reasonable attorney's fees or brokerage commissions, and all other costs paid or incurred by Lessor for enforcing the terms and provisions of this Lease, restoring the Premises to good order and condition, or otherwise repairing the same and for maintaining the Premises and any of Lessee's property left on the Premises, or for disposing of any of Lessee's property left on the Premises.

9.06 Limitation of Liability. Except for the indemnification pursuant to Section 6.03 and Section 10.01 of this Lease, and except as set forth in in Section 9.07 below, neither party shall be liable to the other, or any of their respective agents, representatives or employees for any lost revenue, lost profits, incidental, punitive, special or consequential damages, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

9.07. Lessor Default. Lessor shall be in default of this Lease if it shall fail to meet any of its obligations under the terms of this Lease and shall not cure such default within thirty (30) days after receiving notice thereof from Lessee (or if such default cannot be cured through the exercise of reasonable diligence within such thirty (30) day period, if Lessor fails to commence corrective action within such thirty (30) day period and thereafter diligently prosecutes same to completion) ("Lessor Default"). Upon the occurrence of a Lessor Default, Lessee shall have the option to pursue any one or more of the following remedies without any further notice or demand whatsoever: (i) terminate this Lease without being liable for prosecution or any claim of damages therefor; and (ii) pursue any and all other action or remedies that may be available to Lessee at law or in equity, including but not limited to all loss or damage which Lessee

may suffer by reason of a termination of this Lease and the loss of the value of the leasehold interest and Solar Electric Facility. In the event of a Lessor Default, Lessee shall provide written notice of such default to AMP as well as Lessor. AMP's address for such notice shall be as follows:

American Municipal Power, Inc.
1111 Schrock Road, Suite 100
Columbus, Ohio 43229
Attn: General Counsel

10. **EXPIRATION OF TERM**

10.01 **Lessee's Delivery of Possession after Termination or Expiration.** On the expiration date of this Lease, or the termination of Lessee's possession under this Lease, or any entry or possession of the Premises by Lessor after a default (collectively referred to as the "Expiration Date"), Lessee shall promptly quit and surrender the Premises, remove its property and deliver to Lessor actual possession and ownership of the Premises in good order, condition and repair. Lessee shall remove its property from the Premises and dispose of it in accordance with generally recognized engineering principles at the time the property is removed and in accordance with all applicable laws, rules and regulations. Lessee shall be responsible for any cleaning of waste, hazardous waste, or other substance placed on the Premises (by anyone other than Lessor or its agents, employees or invitees) during the Term and repair any surface damage; further, if clean-up of the Premises is recommended or ordered by EPA or other governmental officials, including local, state or federal, as a result of Lessee's action or omission during the Term, Lessee will indemnify Lessor for and defend Lessor against all claims made and fines assessed in regard thereto, including reasonable attorney fees associated therewith. Finally, in the event decommissioning is required, Lessee shall cause the decommissioning at its expense and post any required bond or security associated therewith.

11. **GENERAL PROVISIONS**

11.01 **No Waiver of Breach.** The failure of either party to seek redress for violation of, or to insist on the strict performance of any covenant, agreement, term, provision, or condition of this Lease shall not constitute a waiver of the covenant, agreement, term, provision, or condition. The receipt or payment of rent with knowledge of the breach of any covenant, agreement, term, provision, or condition of this Lease shall not be deemed a waiver of that breach.

11.02 **Waiver of Any Provision Must Be Written.** No provision of this Lease shall be deemed to

have been waived, unless the waiver is in writing and signed by the party against whom enforcement is sought. Each right and remedy of Lessor provided for in this Lease shall be cumulative and in addition to every other right or remedy provided for in this Lease, or now or later existing at law, in equity, by statute or otherwise.

11.03 Governing Agreements. This Lease contains the entire agreement between Lessor and Lessee with respect to the lease of the Premises, and any agreement made after the execution of this Lease between Lessor and Lessee shall be ineffective to change, modify, waive, release, discharge, terminate, or effect a surrender or abandonment of this Lease, in whole or in part, unless that agreement is in writing and signed by the party against whom enforcement is sought. Notwithstanding the foregoing, Lessor and Lessee acknowledge that other agreements, including but not limited to the Power Sales Contract and the Interconnection Agreement (collectively, the “Other Agreements”), may govern certain aspects of the relationship between Lessor and Lessee in connection with the Solar Electric Facility. Lessor and Lessee further acknowledge that certain costs and expenses allocated to Lessee pursuant to this Lease, including but not limited to allocations set forth in Sections 4.01, 4.02, 5.02, 6.01, 6.02, 6.03, 9.05, 9.06, 10.01 and 11.14, may be wholly or partially re-allocated to Lessor or AMP by the terms of the Other Agreements.

11.04 Notices. All notices and demands of any kind that either party may be required or may desire to give to the other in connection with this Lease must be given by certified mail, return receipt requested, with postage fully prepaid or overnight delivery by nationally recognized service, and addressed to the party to be served at the party’s address as set forth above. Any notice shall be deemed received on first attempted delivery. Any party may change the address to which notices to that party are to be directed by notice given in the manner provided in this Section 11.04.

11.05 Lessor’s Entry and Inspection of Premises. Lessor, or its agents or designee, shall have the right to enter the Premises during reasonable business hours for inspection, or to complete any work that may be necessary because of Lessee’s default under any of the terms, covenants, and conditions of this Lease continuing beyond the applicable periods of grace. Any entry by Lessor shall be made pursuant to Lessee’s safety and security procedures.

11.06 Partial Invalidity or Unenforceability. If any term, covenant, or condition of this Lease shall be invalid or unenforceable to any extent, the remainder of the terms, covenants, and conditions of this Lease shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

11.07 Individuals Benefited by Lease. This Lease shall inure to the benefit of and be binding on

Lessor and Lessee and their respective successors and assigns except as otherwise provided in this Lease.

11.08 Effective Date. This Lease shall be effective and the term shall commence on the Effective Date.

11.09 Authority. The undersigned specifically represent that they are authorized to execute this Lease and that the parties have the right and capacity, respectively, to perform the acts contemplated by this Lease.

11.10 Engineering Standards and Laws. Lessee shall conduct its activities on the Premises in a good and workmanlike manner and in accordance with acceptable construction and engineering standards and in compliance with all applicable federal, state and local laws, rules and regulations.

11.11 No Warranty. Lessor does not warrant or represent that the Premises are safe, healthful or suitable for the purposes for which it is permitted to be used under the terms of this Lease.

11.12 City Officials Not Liable. No Lessor official or employee shall be personally liable for any matter arising from or in any way connected to this Lease.

11.13 Memorandum of Lease. Lessee may record a Memorandum of Lease in the public records of the county in which the Premises is located. Lessee shall pay for its preparation and recordation and Lessor and Lessee shall execute the Memorandum of Lease attached hereto as Exhibit B contemporaneously with the execution hereof.

11.14 Utilities. Lessee shall pay all utility charges, if any, including, but not limited to water, gas, electricity and sewer, used in and about the Premises, all such charges to be paid by Lessee to the utility company or municipality furnishing the same before the same shall become delinquent.

11.15 Transfer, Assign or Sublet.

a. Assignment by Lessor. It is hereby expressly acknowledged by Lessor that this Lease runs with the Land and is not otherwise assignable by Lessor.

b. Assignment by Lessee. Lessee shall have the right, without Lessor's consent, to sell, convey, lease, or assign all or any portion of its interest in the Premises, on either an exclusive or a non-exclusive basis, or to grant subleases, co-leases, leases, licenses or similar rights with respect to the Premises (collectively, "Assignment"), to AMP or to any Affiliate of Lessee or to any Lessee Mortgagee (as defined herein) or specifically to NextEra Energy Resources, LLC, a Delaware

limited liability company or any of its Affiliates (collectively “Assignee”). “Affiliate” shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person. Each Assignee shall use the Premises only for the uses permitted under this Lease. “Person” shall be any legal entity, including but not limited to any corporation, limited liability company, partnership, limited partnership, limited liability limited partnership, or any other legal entity established under the laws of any jurisdiction. When Lessee makes any Assignment under this Section, Lessee shall give notice to Lessor of such Assignment (including the interest conveyed by the Assignment and address of the Assignee for notice purposes) to Lessor. Any Assignment by Lessee to (i) AMP, (ii) NextEra Energy Resources, LLC, or (iii) a Person who directly or indirectly controls Lessee shall release Lessee from obligations assigned thereby which accrue after the date that liability for such obligations is assumed by the Assignee.

11.16 Mutual Waiver of Subrogation. Each party hereby waives any and all claims which arise or which may arise in its favor and against the other party hereto during the Lease Term or any extension or renewal thereof for any and all loss of, or damage to, any of its property located within or upon or constituting a part of the Solar Electric Facility, to the extent that such loss or damage is recovered under an insurance policy or policies and to the extent such policy or policies contain provision(s) permitting such waiver of claims. Each party agrees to request its insurers to issue policies containing such provisions.

11.17 Estoppel Certificate. Lessor and Lessee shall execute and deliver to each other, within 15 business days after request therefor by the other party, a certificate addressed as indicated by the requesting party and stating:

- (a) whether or not this Lease is in full force and effect;
- (b) whether or not this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments;
- (c) whether or not there are any existing defaults or Events of Default hereunder known to the party executing the certificate, and specifying the nature thereof;
- (d) whether or not any particular Article, Section, or provision of this Lease has been complied with; and
- (e) such other matters as may be reasonably requested by the requesting party.

11.18 Counterparts. This Lease may be executed in counterparts, each of which shall constitute original documents, but all of which together shall constitute one and the same instrument.

11.19 Applicable Law. This Lease shall be interpreted and enforced in accordance with the

laws of the State of Virginia.

11.20 Headings. The headings of the several sections hereof are inserted for convenience only and shall not control or affect the interpretation of the provisions hereof.

11.21 Force Majeure. If Lessor or Lessee shall be delayed, hindered in or prevented from the performance of any acts required hereunder, other than the payment of Rent, by reason of an event of force majeure, then performance of such acts shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equal to the period of such delay.

11.22 No Joint Venture. Nothing contained in this Lease shall be interpreted as creating a joint venture, partnership, or any other relationship between the parties, other than the relationship described in this Lease.

11.23 Reserved.

11.24 Quiet Enjoyment and Warranty of Title. Lessor covenants that Lessee, upon payment of the rentals reserved herein and the performance of each and every one of the covenants, agreements and conditions on the part of Lessee to be observed and performed, shall and may, peaceably and quietly, have, hold and enjoy the Premises for the term aforesaid, free from molestation, eviction or disturbance (except as allowed or permitted by this Lease). Lessor warrants that Lessor holds a fee simple interest in the Premises and that the Premises are free of any liens, encumbrances or restrictions of any kind that may interfere with Lessee's anticipated use of the Premises. During the Term of this Lease, Lessor covenants and agrees that neither Lessor nor its agents, lessees, invitees, guests, licensees, successors or assigns will (i) interfere with, impair or prohibit the free and complete use and enjoyment by Lessee of its rights granted by this Lease; or (ii) take any action which will interfere with or impair Lessee's access to the Premises for the purposes specified in this Lease. Lessor further covenants that, to the best of Lessor's knowledge, there are no outstanding written or oral leases, purchase or sale agreements or other agreements or restrictions encumbering, or in any way affecting the Premises, and no person or entity has any right with respect to the Premises, whether by option to purchase, contract or otherwise, that would prevent or interfere with any of Lessee's rights under this Lease.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the Effective Date.

TOWN OF FRONT ROYAL, VIRGINIA

DG AMP SOLAR, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by _____, the _____ of the Town of Front Royal, Virginia.

By: _____

Name: _____

My Commission Expires: _____

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by _____, as the _____ of DG AMP Solar, LLC.

By: _____

Name: _____

My Commission Expires: _____

EXHIBIT A
PROPERTY DESCRIPTION

All that certain tract or parcel of land with all the improvements thereon and appurtenances thereunto belonging, lying and being situate in the Shenandoah Magisterial District of Warren County, Virginia and shown on the attached plat prepared by William A. Hall, C.L.S., dated October 13, 1978 and being more particularly described as follows:

Beginning at an iron pin set in the northeasterly line of the Southern Railway mainline right of way at Front Royal Junction, and in the easterly line of Manassas Avenue extended as shown on a plat recorded in Deed Book 118, at Page 443, thence leaving the railway North $38^{\circ}12'35''$ East, 760.77 feet running with the easterly line of Manassas Avenue extended to an iron pin set in the center of Leach Run; thence leaving the easterly line of Manassas Avenue North $52^{\circ}30'57''$ West, 50.00 feet running with the centerline of Leach Run to a corner of the property acquired by the Town of Front Royal from the Estate of J. F. Donaldson by deed dated 21 December 1973 and recorded in Deed Book 208, at page 92, said point being in the westerly line of Manassas Avenue extended; thence leaving Manassas Avenue and running

[Continued on next page]

with the property line of the Town of Front Royal along the center line of Leach Run, the average courses and distances of which are
 North 41°56'40" West, 242.00 feet; thence
 North 12°43'17" West, 86.33 feet; thence
 North 39°46'31" West, 47.74 feet; thence
 North 54°57'31" West, 113.14 feet; thence
 North 25°54'56" West, 107.50 feet; thence
 North 56°40'42" West, 189.71 feet; thence
 North 44°15'24" West, 105.88 feet; thence
 North 23°01'09" West, 75.63 feet; thence
 North 29°57'07" West, 104.02 feet; thence
 North 08°54'39" East, 79.95 feet; thence
 North 31°14'05" West, 133.71 feet; thence
 North 14°14'04" West, 65.44 feet; thence
 North 27°52'05" West, 70.58 feet; thence
 North 10°34'11" West, 50.16 feet; thence
 North 18°19'31" West, 40.42 feet; thence
 North 31°37'18" West, 100.61 feet; thence
 North 09°11'00" East, 52.23 feet; thence
 North 59°05'57" West, 232.62 feet to the point of intersection of Leach Run and Happy Creek, a point in the line of the property acquired by the Riverton Lime Company, Inc. From W. E. Carson by deed dated 23 April 1918 and recorded in Deed Book 21 at Page 322; thence leaving the property of the Town of Front Royal and running with the centerline of Happy Creek the average courses and distances of which are North 07°12'51" West, 212.53 feet; thence North 67°07'55" West, 31.22 feet; thence North 04°19'38" East, 205.86 feet; thence North 22°34'39" East, 393.81 feet; thence North 38°40'12" East, 106.79 feet to a corner of the property acquired by T. Brooks Mims and Beatrice R. Mims, his wife, from R. Alton Morrison by deed of partition dated 6 April 1967 and recorded in Deed Book 152 at page 391, said point bearing North 76°16'44" West, 21.96 feet from an iron pin set; thence leaving Happy Creek South 76°16'44" East, 978.48 feet running with line of the Mims property to an iron pin found by a triple dead cedar tree; thence South 06°15'41" East, 340.62 feet to an iron pin found; thence South 03°53'06" West, 787.98 feet to an iron pin found; thence South 82°07'11" East, 1856.90 feet to an iron pin found at a corner of the property acquired by Donatienne Von Ludwig, et al, from the Estate of J. F. Donaldson by deed dated 1 August 1974 and recorded in Deed Book 214, at Page 616; thence leaving the property of Mims South 07°56'11" East, 763.69 feet running with the line of the property of Von Ludwig to an iron pin found; thence South 14°35'04" West, 1268.51 feet to an iron pin found; thence South 48°46'24" West, 445.91 feet to an iron pin found; thence South 13°25'19" West, 160.59 feet to a point in the northerly line of the Southern Railway right of way and crossing over an iron pin found 2.39 feet from said point; thence leaving the property of Von Ludwig and running with the line of the Southern Railway along a curve to

the right having a radius of 2259.01 feet, an arc of 1020.60 feet and a chord bearing and distance of North 69°30'52" West, 1011.94 feet to a point of compound curve; thence running with a curve to the right having a radius of 3786.83 feet, an arc of 93.19 feet and a chord bearing and distance of North 55°52'00" West, 93.19 feet, thence North 46°04'32" West, 100.00 feet; thence North 52°02'29" West, 98.75 feet; thence North 59°11'04" West, 99.81 feet; thence North 51°21'23" West, 99.14 feet; thence running with a curve to the right having a radius of 3786.83 feet, an arc of 600.02 feet and a chord bearing and distance of North 44°37'21" West, 599.39 feet to the point of beginning. Containing 144.506 Acres of land.

This being the identical real estate acquired by J. F. Donaldson as an heir at law of John W. Donaldson and from Andrew L. Donaldson and Rebecca Donaldson, husband and wife, by deed dated December 19, 1945 of record in the Clerk's Office of the Circuit Court of Warren County, Virginia in Deed Book 64, at Page 452; and from Gretta M. Wallihan, divorced, by deed dated June 24, 1950 of record in the aforesaid Clerk's Office in Deed Book 76, at page 339, less and except out-conveyances in Deed Book 204, at Page 599, Deed Book 208, at Page 365, Deed Book 214, at Page 616, Deed Book 208, at Page 92, and Deed Book 207, at Page 447.

EXHIBIT A-1

PREMISES DESCRIPTION AND DEPICTION

[Description and Depiction of Premises to be inserted – pending from surveyor.]

EXHIBIT B
MEMORANDUM OF LEASE

This instrument was prepared
by and after recording return to:

Andrew K. Fritsch, Esquire
NextEra Energy Resources, LLC
700 Universe Boulevard LAW/JB
Juno Beach, Florida 33408-2657

(This space reserved for recording information)

MEMORANDUM OF SOLAR PROJECT LEASE AGREEMENT

This Memorandum of Solar Project Lease Agreement is executed and effective this _____ day of _____, 2016 by and between the Town of Front Royal, Virginia (“Lessor”), with an address of P.O. Box 1560, Front Royal, Virginia 22630, and DG AMP Solar, LLC (“Lessee”) with an address of 700 Universe Boulevard, Juno Beach, Florida 33408.

Witnesseth

1. **Lease.** Pursuant to that certain Solar Project Lease Agreement between Lessor and Lessee with an Effective date of _____, 2016, Lessee has leased from Lessor in accordance with the provisions specified in the Lease, that certain real property situated in Warren County, Virginia, and more particularly described in **Exhibit A** attached hereto and incorporated by reference (the “**Demised Premises**”), for the purpose of constructing, installing, operating, inspecting, maintaining, repairing, testing, enlarging, modifying, removing, and replacing the solar Equipment (as defined in the Lease) and any additional equipment required to generate, measure, and transmit solar power.
2. **Lease Term.** The term of the Lease commences on _____ and continues to and until _____ (the “**Term**”).
3. **Notice.** This Memorandum is prepared for the purpose of recordation in order to give notice of the existence of and Term of the Lease.
4. **Counterparts.** This Memorandum may be executed in one or more counterparts, each of which is an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the Effective Date set forth above.

WITNESSES:

LESSOR:

TOWN OF FRONT ROYAL, VIRGINIA

Print
name:_____

By:_____
Name:_____
Title:_____

Print
name:_____

STATE OF _____)
)
COUNTY OF _____)

On this, the ____ day of _____, 2016, before me, a Notary Public in and for the State of Virginia, personally appeared _____, _____ of the Town of Front Royal, Virginia, personally known to me or who provided _____ as identification, and who acknowledged himself/herself to be an authorized officer of the Town of Front Royal, Virginia, and that he/she, as such officer, executed the foregoing instrument for the purposes therein contained and that he/she was duly authorized to do so.

In Witness Whereof, I hereunto set my hand and official seal.

(seal)

Print Name: _____
Notary Public, State of _____
Notary Commission No.: _____
My Commission Expires: _____

WITNESSES:

LESSEE:

DG AMP SOLAR, LLC

By: _____

Print
name: _____

Name: _____

Title: _____

Print
name: _____

STATE OF _____)

)

COUNTY OF _____)

On this, the ____ day of _____, 2016, before me, the undersigned notary public, personally appeared _____, as _____, of DG AMP Solar, LLC, personally known to me, to be the person who subscribed the foregoing instrument and acknowledged that she executed the same on behalf of said corporation and that she was duly authorized to do so.

In Witness Whereof, I hereunto set my hand and official seal.

(seal)

Print Name: _____

Notary Public, State of _____

Notary Commission No.: _____

My Commission Expires: _____

EXHIBIT A
DEMISED PREMISES

4841-0491-4990, v. 1

14



Town of Front Royal, Virginia Council Agenda Statement

Page 1
Item No. 13

Meeting Date: March 14 2016

Agenda Item: COUNCIL APPROVAL – Budget Amendment and Acceptance of VML Insurance Reimbursement

Summary: Council is requested to approve a budget amendment and acceptance of a Virginia Municipal League (VML) insurance reimbursement in the amount of \$31,414.63 for a Town storage building that collapsed from the weight of the snow during the Town's major snow event that occurred from 1/22/16-1/24/16. The pole building is located at the "Farm" on Manassas Avenue Extended, collapsed from the weight of the snow. It was recommended by the VML insurance adjuster that the building was beyond repair and needed to be torn down and replaced. This is the estimate cost for demolition of the building as well as replacement.

Budget/Funding: 1000-3410205 [Insurance Recoveries] \$31,414.63
4203-7009 [Buildings & Structures] \$31,414.63

Attachments: None

Meetings: None

Staff

Recommendation: Approval X Denial _____

Proposed Motion: I move that Council approve a budget amendment and acceptance of a Virginia Municipal League (VML) insurance reimbursement in the amount of \$31,414.63 for a Town storage pole building, located on the "Farm" on Manassas Avenue Extended, that collapsed from the weight of the snow during the Town's major snow event that occurred from 1/22/16-1/24/16.

ROLL CALL VOTE REQUIRED

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: SB

15



**Town of Front Royal, Virginia
Council Agenda Statement**

Page 1
Item No. 15

Meeting Date: March 14, 2015

Agenda Item: COUNCIL REFER TO PLANNING COMMISSION the Property Maintenance and Rental Code

Summary: Councilman Hrbek has requested that Council consider referring the Property Maintenance and Rental Code to the Front Royal Planning Commission for evaluation.

Budget/Funding: None

Attachments: None

Meetings: Work Session held March 7, 2016

Staff Recommendation: Approval X Denial _____

Proposed Motion: I move that Council refer the evaluation of the Property Maintenance and Rental Code to the Front Royal Planning Commission.

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance
*To be clear and concise, motions should be made in the positive

Approved By: SB