TOWN COUNCIL WORK SESSION

Monday, July 15, 2019 @ 7:00 p.m.
Town Hall Council Chambers

COUNCIL/MAYOR RELATED ITEMS:

1. Non-exclusive Cable System Franchise Bid Opening – *Director of Finance*
2. Council Discussion/Goals

TOWN/STAFF RELATED ITEMS

3. Resolution to Petition VDOT for Maintenance Payments for Leach Run Parkway in the Urban Maintenance Inventory System (UMIS) – *Director of Public Works*
4. Budget Amendment and Acceptance of Bids for Façade Improvement Program – *Director of P & Z*
5. CLOSED MEETING – Disposition of Publicly held Real Property

Motion to Go Into Closed Meeting

I move that Town Council convene and go into Closed Meeting for the disposition of publicly held real property, specifically, the sale or vacation of Town right of way to the applicant, Chris Holloway, to that portion of the unimproved right of way on Carter Street, adjoining New Tax Map No. 20A7-15-3 Lot 1A containing 20,000 Sq. Ft., said part of Carter Street to be vacated located along the western side of said Lot 1A and measuring 136.05 feet in length and 40.00 feet in width, as shown on Sheet 2 of 2 on that Plat on titled on Sheet 2 as "Boundary Line Adjustment Between Tax Map 20A7-15-3 Lots 1-6 and 40'Wide Unimproved Portion of Carter Street, Prepared by Brogan Land Surveying, PLC, dated 5/14/19, pursuant to Virginia Code Section 2.2- 3711. A.3., where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of Town Council.

Motion to Certify Closed Meeting at its Conclusion *[At the conclusion of the Closed Meeting, immediately re-convene in open meeting and take a roll call vote on the following:]*

I move that Council certify that to the best of each member's knowledge, as recognized by each Town Council member's affirmative vote, that only such public business matters lawfully exempted from Open Meeting requirements under the Virginia Freedom of Information Act as were identified in the motion by which the Closed Meeting was convened were heard, discussed or considered in the Closed Meeting by Town Council, and that the vote of each individual member of Town Council be taken by roll call and recorded and included in the minutes of the meeting of Town Council.

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Item # 1

Work Session Agenda Form

Date: July 15, 2019

Agenda Item: Bid opening by the Director of Finance pursuant to a duly advertised invitation for bids in accordance with Va. Code §§15.2-2102 and 15.2-2103 for the granting of one or more non-exclusive franchises for a cable television system.

Summary: The Town desires to grant one or more non-exclusive cable television franchises following completion of the statutory invitation for bids process. A full text version of the proposed ordinance and proposed cable franchise agreement was made available to the public at the time of advertisement. If no bids are received consistent with the proposed ordinance, the Town will proceed to negotiate separate non-exclusive cable franchise agreements with interested parties.

Budget/Funding: N/A

Staff Recommendations: The Town Manager recommends that the Town enter into one or more non-exclusive cable franchise agreements.

Work Session

CABLE FRANCHISE AGREEMENT

BETWEEN

THE TOWN OF FRONT ROYAL, VIRGINIA

AND

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CABLE FRANCHISE AGREEMENT

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

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

SECTION 1 -Definition of Terms

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

"ACT" means the Communications Act of 1934.

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

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

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

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

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

"CABLE SYSTEM" or "SYSTEM" means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service that includes video programming and that is provided to multiple Subscribers within a community, except that such definition shall not include (i) a system that serves fewer than 20 Subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only Subscribers without using any public right-of-way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 USC§ 201 et seq., except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric systems; (vi) or any portion of a System that serves fewer than 50 Subscribers in any locality, where such portion is part of a larger System franchised in an adjacent locality; or (vii) an open video system that complies with§ 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.

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

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

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

"FORCE MAJEURE" means an event or events reasonably beyond the ability of Franchisee to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Franchisee's facilities are attached or to be attached or conduits in which Franchisee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.

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

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

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

"FRANCHISEE" shall mean.

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

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

“INSTITUTION NETWORK” means the Town’s communication network.

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

ORDINANCE" includes a resolution.

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

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

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

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

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

"SERVICE OUTAGE" means the complete loss of cable service to five or more subscribers served by the same trunk, node, or feeder line for a period of 15 minutes or more.

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

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

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

SECTION 2 - Grant of Authority

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

nor prohibits the Franchisee from doing so. The Franchisee's authority to provide non-Cable Services shall be subject to applicable law.

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

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

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

SECTION 3- Construction and Maintenance of the Cable System

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

3.2 Conditions of Street Occupancy.

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

to the Franchisee. It is understood that the Franchising Authority does not guarantee that any public funds will be available to help defray the cost of altering or relocating the Cable System to conform to new grades or lines.

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

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

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

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

(F) Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective Town utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable System's transmission and distribution facilities underground; provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical

degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective Town utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Franchisee to construct, operate, or maintain underground any ground- mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment. To avoid overburdening the Public Way, and in furtherance of the health, safety and welfare of the public, Franchisee will at all times utilize Town owned utility poles and conduit when and where available for the construction, repairs and maintenance of the Cable System pursuant to separately negotiated pole attachment and conduit utilization agreements in effect with the Town. The Cable System will be constructed and maintained in such a way as to maximize the use of Town poles and conduit.

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

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

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

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

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

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

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

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

(L) Inspection. The Town shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise to ensure compliance with the terms of the Franchise and applicable laws.

Quality Control. Upon request, the Franchisee will provide information to the Town regarding items of quality control for installation and maintenance activities performed by the Franchisee or its authorized subcontractors.

SECTION 4 - Service Obligations

4.1 General Service Obligations.

(A) The Franchisee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least (30) thirty dwelling units per mile when measured from the nearest point of the existing Cable System from which a usable signal can be obtained. For purposes of this section, a home shall be counted as a "dwelling unit" if such home is within two hundred seventy-five (275) feet of the public right of way. Subject to the density requirement, Franchisee shall offer Cable Service to all new homes or previously unserved homes located within 250 feet of the Franchisee's distribution cable.

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

4.2 New Developments. Franchisee agrees to use commercially reasonable efforts to inform itself of all newly planned developments within the Town and to work with developers to cooperate in pre-installation of facilities to support Cable Service. Should, through new construction, an area within the franchise area meet the density requirement, the Franchisee shall provide Cable Service to such area within six (6) months of receiving notice from the Town that the density requirement has been met.

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

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

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

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

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

SECTION 5 -Public, Educational and Governmental Access Channels

5.1 Franchisee shall designate capacity on up to five (5) channels for public, educational and/or governmental ("PEG") access video programming provided by the Franchising Authority or its designee, such as a public access organization or educational institution. Within one hundred and twenty (120) days of receipt of a written request from the Town to activate an access channel, Franchisee will make such channel(s) available for the Town's use or its designee's use; and such channel(s) shall be carried in HD digital format. Use of a channel position for PEG access shall be provided on the most basic tier of service offered by the Franchisee and in accordance with the Cable Act and the Code of Virginia, and as further set forth below. "Channel position" means a number designation on the Franchisee's channel lineup regardless of the transmission format (analog or digital). Franchisee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. In the event any access channel is reassigned, the Franchisee shall provide the Town with at least thirty (30) days' notice before reassigning the channel, and shall pay the verified reasonable costs of any advertising and promotional materials required due to the channel reassignment, not to exceed $5,000. A PEG access user- whether an individual, educational or governmental user- acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use. Franchisee shall not exercise editorial control over any public, educational, or governmental use of a channel position, except Franchisee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity. The Franchising Authority shall be responsible for developing, implementing, interpreting and enforcing rules for Educational and Governmental Access Channel use.

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

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

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

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

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

5.6 Capital support for PEG access. Franchisee shall pay to Town an initial lump sum capital grant of $25,000 as capital support for PEG access equipment, payable upon Franchisee's execution of this Franchise Agreement, and shall pay two additional capital grants of $25,000 each on the 5th and on the 10th anniversary of the Effective Date.

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

SECTION 6 - Communications Tax and Franchise Fees

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

6.2 Payment of Franchise Fee to Town: In the event that the Communications Tax is repealed and no successor state or local tax is enacted that would constitute a franchise fee for purposes of 47 U.S.C. § 542, Franchisee shall pay to the Town a Franchise fee of five percent (5%) of annual Gross Revenue, beginning 30 days from the effective date of the repeal of such tax (the "Repeal Date"). Beginning on the Repeal Date, the terms of Section 6.2 through 6.6 of

this Agreement shall take effect. In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than thirty (30) days following the end of each calendar quarter. Should Franchisee submit an incorrect amount, Franchisee shall be allowed to add or subtract that amount in a subsequent quarter, but no later than ninety (90) days following the close of the calendar year for which such amounts were applicable; such correction shall be documented in the supporting information required under Section 6.3 below.

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

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

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

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

to be paid by Franchisee to the Town, such amount shall be subject to an interest charge in accordance with the prime rate of interest charged by the Town's primary depository bank.

SECTION 7- Customer Service Standards; Customer Bills; and Privacy Protection

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

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

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

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

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

(E) Local customer service centers and bill payment locations will be open for full service at no cost to customers, including assisting walk-in customers, at least during the hours of 8:30 a.m. – 5:30 p.m. Monday through Friday. "Full service" shall include sales, service complaints and scheduling, equipment exchange, in-person technical support, and bill payment with customer account history access. The Franchisee may relocate the local office to another site within the Town that is convenient for Town subscribers, subject to giving the Town and each subscriber six (6) months written notice prior to the relocation.

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

i. Standard installations will be performed within seven business days after an order has been placed, unless the customer requests a longer period. "Standard" installations are those that are within 275 feet of the existing distribution system.

ii Excluding conditions beyond the control of the Franchisee, the Franchisee will begin repairs on Service Outages promptly and in no event later than eight (8) hours after the outage becomes known.

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

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

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

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

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

i. Products and services offered;

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

iii. Installation and service maintenance policies;

iv. Instructions on how to use the cable service;

v. Channel positions of programming carried on the system;

vi. Refund policy; and

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

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

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

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

7.5 Refund checks will be issued promptly, and no later than three (3) business days from the date of the good faith determination that a refund is warranted.

7.6 Credits for service will be issued promptly, and no later than three (3) business days from the date of the good faith determination that a credit is warranted.

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

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

SECTION 8- Oversight and Regulation by Franchising Authority

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

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

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

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

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

8.4 Records Required: Franchisee shall at all times maintain:

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

(B) Records of Outages and Service Interruptions for a period of one

year after occurrence, or until the applicable compliance measures described in this Franchise are met for four consecutive quarters, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause.

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

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

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

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

8.7 Proprietary Information:

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

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

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

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

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

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

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

SECTION 9- Transfer or Change of Control of Cable System or Franchise

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

SECTION 10- Insurance and Indemnity

I 0.1 The Franchisee shall indemnify hold harmless and defend the Town, its officers, employees, and agents (hereinafter referred to as "indemnitees"), from and against:

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

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

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

10.3 The Franchisee undertakes and assumes for its officers, agents, contractors, subcontractors, and employees all risk of dangerous conditions, if any, on or about any Town owned or controlled property, including streets and public rights-of-ways, except for any claim asserted or liability imposed that arises or is related to gross negligence or intentional misconduct by the indemnities; and the Franchisee hereby agrees to indemnify and hold harmless the indemnitees against and from any claim asserted or liability imposed upon the indemnitees for personal injury

or property damage to any person arising out of the installation, operation, maintenance or condition of the Franchisee's cable system or the Franchisee's failure to comply with any federal, state or local statute, ordinance or regulation, except for any claim asserted or liability imposed upon the indemnitees that arises or is related to gross negligence or intentional misconduct by the indemnitees.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11 - System Description and Service

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

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

(B) The System shall be designed to be an active two-way plant for

subscriber interaction, if any, required for selection or use of Cable Service.

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

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

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

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

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

11.6 Cable Service to School and Government Facilities.

Franchisee shall provide, without charge, at least one cable service outlet activated for basic cable and expanded non-subscription basic service to each facility used by Town government, and by the Warren County Public Schools located within the Town, as well as other such buildings where service is requested in the future that are located within the Franchise Area within 275 feet of the Franchisee's distribution cable. The excess cost for extending service to buildings not within 275 feet of the Franchisee's distribution cable shall be paid by the entity requesting service. The Franchisee shall also provide, without charge, any equipment necessary to receive such service for at least ten (10) outlets at each Town facility stated above, such as a DTA (digital transport adapter) device. Franchisee will provide telecommunication services and facilities for the Institution Network with a minimum connection speed of 1GB, and, to the extent not inconsistent with state and federal law, Franchisee will provide to Town, without charge, dedicated internet access with a minimum connection speed of 1GB to Town Hall and Town Police Department.

11.7 Emergency Powers. In the event of an emergency, or where Franchisee's Cable System creates or is contributing to an imminent danger to health, safety, or property, or an unauthorized use of property, the Franchisee shall remove or relocate any or all parts of Franchisee's Cable System at the Town's request. If the Franchisee fails to comply with the Town's request,

the Town may remove or relocate any or all parts of the Franchisee's cable system upon reasonable notice to the Franchisee. The Town shall use reasonable efforts to minimize the impact on Franchisee's facilities related to any emergency removal or relocation. Franchisee shall be entitled to compensation for expenses incurred for removal or relocation in the event of an emergency to the extent other users of the Public Way are compensated. It is understood that the Franchising Authority does not guarantee that funds will be available to compensate users of the Public Ways for emergency removal or relocation.

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

SECTION 12 -Enforcement of Franchise

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

12.2 Within thirty (30) days after the award of a franchise, the Franchisee shall deposit with the Town a performance bond from a financial institution running to the Town in the amount of one hundred thousand dollars ($100,000.00.). The bond shall be used to insure the Franchisee's faithful performance of all its franchise provisions or defaults under a franchise or the payment by Franchisee of any penalties, liquidated damages, claims, liens, and taxes due the Town which arise by reason of the construction, operation, or maintenance of Franchisee's Cable System in the Town, including restoration of the public rights-of-way and the cost of removal or abandonment of any property of a cable operator.

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

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

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

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

12.6 Non-compliance procedures.

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

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

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

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

12.7 Penalties and Liquidated Damages. Because it may be difficult to calculate the harm to the Franchising Authority in the event of Franchisee's breach of this Franchise Agreement, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the Franchising Authority elects to assess liquidated damages as provided in this Agreement and such liquidated damages have been paid, such damages shall be the Franchising Authority's sole and exclusive remedy. Nothing in this Section shall preclude the Franchising Authority from exercising any other right or remedy with respect to a breach that continues past the time the Franchising Authority stops assessing liquidated damages for such breach. Liquidated damages shall not be assessed until the Franchising Authority has completed the procedures set forth in

Section 12.7 hereof, including holding a public hearing, and notifying the Franchisee by certified or registered mail of the proposed liquidated damages, specifying the violation. The Franchisee shall have thirty (30) days from the date of receipt of the written notice to submit payment. If the Franchisee does not make payment within that period, the Franchising Authority may obtain the amount assessed from the Franchisee's performance bond.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 13 - Inspection of Facilities

13.1 Franchisee shall comply with all applicable federal, state, and local construction and engineering codes and regulations, currently in force or hereafter applicable, to the construction, operation or maintenance of its Cable System within the Town. The Town shall have the right to review Franchisee's construction plans and specifications to assure compliance with the required standards. After construction has been completed, the Town shall have the right to inspect all construction or installation work performed pursuant to the franchise and all applicable federal, state and local building and engineering codes. However, the Town shall not be required to review or approve construction plans and specifications or to make any

inspections. The Franchisee shall be solely responsible for taking all steps necessary to assure compliance with applicable standards and to ensure that its Cable System is installed in a safe manner and pursuant to the terms of the franchise and applicable law.

SECTION 14- Miscellaneous Provisions

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

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

To the Franchising Authority:

Town Manager
Town of Front Royal
P.O. Box 1560
102 E. Main Street
Front Royal, Virginia 22630

And to:

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

To the Franchisee:

And to:

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

different from the provisions of this Franchise Agreement are superseded by the Franchise Agreement.

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

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

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

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

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

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

The Town of Front Royal, Virginia

By: _____ _____
Name: Joseph E. Waltz Date
Title: Town Manager

Approved as to form:

_____
Douglas W. Napier
Town Attorney

Attested by:

_____
Jennifer Berry
Town Clerk

COMMONWEALTH OF VIRGINIA,
COUNTY OF WARREN, to-wit:

The foregoing was acknowledged before me this ____ day of _____, 2019, by Joseph E. Waltz, Town Manager, on behalf of the Town of Front Royal, Virginia.

My commission expires: _____ _____
Notary Public

COMMONWEALTH OF VIRGINIA,
COUNTY OF WARREN, to-wit:

The foregoing was acknowledged before me this ____ day of _____, 2019 by

_____, _____ of _____, on behalf

of the company.

My commission expires: _____ _____
Notary Public

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Work Session Agenda Form

Item # 3

DATE: 7/15/19

AGENDA ITEM: Resolution to Petition VDOT for Maintenance Payments for Leach Run Parkway in the Urban Maintenance Inventory System (UMIS)

SUMMARY: The Virginia Department of Transportation (VDOT) makes payments to municipalities for the maintenance of qualifying highways and requires municipalities requesting lane mileage additions for payments, submit a Resolution for the request. Council is requested to approve the attached Resolution at the August 12, 2019 Council Meeting, for maintenance payments for Leach Run Parkway in the Urban Maintenance Inventory System (UMIS).

BUDGET/FUNDING: **N/A**

STAFF RECOMMENDATION: **Staff recommends approving the Resolution.**

Work Session

RESOLUTION

To petition the Virginia Department of Transportation (VDOT) for maintenance payments for Leach Run Parkway in the Urban Maintenance Inventory System (UMIS)

WHEREAS, pursuant to the provisions of Virginia Code Section 33.2-3 I 9, the Virginia Department of Transportation (VDOT) makes payments to municipalities for the maintenance of qualifying highways; and,

WHEREAS, Virginia Department of Transportation procedures require that municipalities requesting lane mileage additions and deletions for payments under§ 33.2-219 submit Form U-1, "Request for Street Additions, Deletions or Conversions for Municipal Assistance Street Payments", as approved by the municipality's governing body; and,

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Town Council of the Town of Front Royal

1. that the Town of Front Royal hereby petitions the Virginia Department of Transportation to accept those streets listed on Form U-1 for street maintenance payments; a copy of said Form U-1 being attached hereto and made a part of this resolution.

2. that Form U-1 and accompanying maps, and a copy of this resolution, shall be transmitted to the Resident Engineer/Administrator of the Virginia Department of Transportation.

3. that this resolution shall be in full force and effect upon its passage.

APPROVED:

_____

Matthew A. Tederick, Interim Mayor

Attest:

_____

Jennifer E. Berry, MMC, Clerk of Council

THIS RESOLUTION was approved at the Regular Meeting of the Town of Front Royal, Virginia, Town Council conducted on _____, 2019 upon the following recorded vote:

William A. Sealock	Yes/No	Gary L. Gillispie	Yes/No
Eugene R. Tewalt	Yes/No	Jacob L. Meza	Yes/No
Chris Holloway	Yes/No	Letasha T. Thompson	Yes/No

****

Approved as to Form and Legality:

_____

Douglas W. Napier, Town Attorney Dated: _____

Appendix B
Form U-1 (rev. 7-1-17)

LOCAL ASSISTANCE DIVISION
VDOT
REQUEST FOR STREET ADDITION, DELETIONS AND CONVERSIONS FOR
STREET PAYMENTS SECTION 33.2-319
CODE OF VIRGINIA

MUNICIPALITY Front Royal **DISTRICT** Staunton

ACTION REQUIRED (SELECT BELOW)	STREET NAME ROUTE NUMBER	TO TERMINI FROM	R/W (Width) (FEET)	PAVEMENT WIDTH (FEET)	CENTER LANE (MILES)	NUMBER OF LANES	MOVING LANE MILES	Eligibility Code Reference Link	FUNC. CLASS. (TMPD USE except for HR and NOVA)
ADD (New Road)	Leach Run Parkway	John Marsshall Hwy to Happy Creek Rd	103	29		4	0.00	Select one	
SELECT ONE							0.00	Select one	
SELECT ONE							0.00	Select one	
SELECT ONE							0.00	Select one	
SELECT ONE							0.00	Select one	
SELECT ONE							0.00	Select one	
SELECT ONE							0.00	Select one	
SELECT ONE							0.00	Select one	
SELECT ONE							0.00	Select one	
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SELECT ONE							0.00	Select one	
SELECT ONE							0.00	Select one	
SELECT ONE							0.00	Select one	
SELECT ONE							0.00	Select one	

*** Council Resolution and Map Attached**

SIGNED _____
MUNICIPAL OFFICIAL **DATE**

SIGNED _____
AUTHORIZED VDOT OFFICIAL **DATE**

Submit to: District Point of Contact in triplicate

CLASSIFIED BY _____
T&MPD ENGINEER **DATE**

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Work Session Agenda Form

Item # 4

DATE: July 15, 2019

Work Session

AGENDA ITEM: Budget Amendment and Acceptance of Bids for Façade Improvement Program

SUMMARY:

Attached is a tabulation of the bids received on July 9th for the façade improvement program. These bids are scheduled to be review by the Project Management Team on July 11th, and if approved, will need to be accepted by Town Council, including a budget amendment to establish an account to receive grant funds and funds from property owners for payment to the contractor. Town Staff will discuss this with Town Council during the July 15, 2019 Town Council Work Session.

BUDGET/FUNDING:

Grant funds and funds from property owners.

STAFF RECOMMENDATION:

- No action is required at this time.
- Upon approval from the Project Management Team, at a future Town Council regular meeting, Town Council will need to accept the bids and amend the budget to allow for the acceptance of funds and payment of those funds to the contractor.

VENDOR SPREAD SHEET

Town of Front Royal, VA

BID TABULATION SUMMARY
BID: IFB #11-2019 Façade Improvements Phase I
BID/PROPOSAL OPENING DATE: 7/9/2019
BID/PROPOSAL OPENING TIME: 3:00 PM

	BIDDER: ADAMS CONSTRUCTION GROUP, WARRENTON, VA		
DESCRIPTION	**BASE BID A OR ADDITIVE #1**	**BASE BID B OR ADDITIVE #2**	**LUMP SUM PRICE**
BLDG 1: 9 SOUTH ROYAL AVENUE	$41,999.72	$3,807.60	**$45,807.32**
BLDG 2: 11 SOUTH ROYAL AVENUE			**$28,967.56**
BLDG 3: 109 EAST MAIN STREET	$15,972.24	$2,085.36	**$18,057.60**
BLDG 4: 117 EAST MAIN STREET			**$65,902.11**
BLDG 5: 118 EAST MAIN STREET	$68,667.14	$3,983.92	**$72,651.06**
BLDG 6: 206 EAST MAIN STREET			**$37,994.89**
BLDG 7: 210 EAST MAIN STREET	$46,789.69	$3,839.28	**$50,628.97**
BLDG 8: 213 EAST MAIN STREET			**$47,406.53**
BLDG 9: 218 EAST MAIN STREET	ADDITIVE #1: $4,800.00	ADDITIVE #2: $12,240.00	**$48,831.56**
BLDG 10: 220 EAST MAIN STREET	ADDITIVE #1: $8,640.00		**$23,032.78**
BLDG 11: 221-223 EAST MAIN STREET			**$99,431.81**
BLDG 12: 403-405 EAST MAIN STREET			**$81,859.10**

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

Alisa Scott
Prepared by: Alisa Scott, PMP, MBA, VCA, VCO

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

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Work Session Agenda Form

Item #5

Date: July 15, 2019

AGENDA ITEM: **CLOSED MEETING – Disposition of Publicly held Real Property**

SUMMARY: Council is requested to go into closed meeting for the disposition of publicly held real property, specifically, the sale or vacation of Town right of way to the applicant, Chris Holloway, to that portion of the unimproved right of way on Carter Street, adjoining New Tax Map No. 20A7-15-3 Lot 1A containing 20,000 Sq. Ft., said part of Carter Street to be vacated located along the western side of said Lot 1A and measuring 136.05 feet in length and 40.00 feet in width, as shown on Sheet 2 of 2 on that Plat on titled on Sheet 2 as "Boundary Line Adjustment Between Tax Map 20A7-15-3 Lots 1-6 and 40'Wide Unimproved Portion of Carter Street, Prepared by Brogan Land Surveying, PLC, dated 5/14/19, pursuant to Virginia Code Section 2.2- 3711. A.3., where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of Town Council.

BUDGET FUNDING: N/A

STAFF RECOMMENDATION: Council takes desired action

Work Session
CLOSED MEETING