REGULAR TOWN COUNCIL MEETING

TUESDAY, October 15, 2019 @ 7:00pm

Warren County Community Center

1. Pledge of Allegiance
2. Moment of Silence
3. Roll Call
4. Approval of the Regular Council Meeting minutes of September 23, 2019
5. Receipt of Petitions and/or Correspondence from the Public
6. Reports:
    a. Report of special committees or Town officials and Town Manager
    b. Requests and inquiries of Council members.
    c. Report of the Interim Mayor
    d. Proposals for addition/deletion of items to the Agenda.

7. **CONSENT AGENDA ITEMS** – (**ROLL CALL VOTE REQUIRED)**
    A. COUNCIL APPROVAL – Purchase of Forklift for Wastewater Treatment Plant
    B. COUNCIL APPROVAL – Lease Agreement for Parking Spaces - RPS Composites – 211 4th St
    C. COUNCIL APPROVAL – FY20 Budget Amendment for VDOT Primary Extension Funding for N. Shenandoah Avenue from W. 18th Street to W. 14th Street
    D. COUNCIL APPROVAL – Proclamation for World Polio Day
    E. COUNCIL APPROVAL – Bid for Pump Control Valve at Water Plant

8. **PUBLIC HEARING** – An Ordinance to Amend Chapter 134 Pertaining to Water and Sewer Connection Fees and Installation *(1st Reading)*

9. **PUBLIC HEARING** – An Ordinance to Adopt and Re-enact Section 180-181 to Grant A Franchise Agreement for Cable Television to Comcast of California/Maryland / Pennsylvania / Virginia/West Virginia, LLC *(1st Reading)*

10. **PUBLIC HEARING** – An Ordinance to Adopt and Enact 180-182 to Grant A Franchise Agreement for Cable Television to Shenandoah Cable Television, LLC *(1st Reading)*

11. **CLOSED MEETING** - EDA Lawsuit and Personnel

7A

Town of Front Royal, Virginia
Council Agenda Statement

Page 1
Item No. 7A

Meeting Date: October 15, 2019

Agenda Item: COUNCIL APPROVAL – Purchase of Forklift for Wastewater Treatment Plant

Summary: Council is requested to approve the bid of a Toyota Model 8FGCU20 Internal Combustion Lift Truck (Forklift) in the amount of $24,358.00 from Winchester Equipment Company for the use at the Wastewater Treatment Plant. The forklift replaces vehicle #612 (1998 Daewoo GS20 with 1948 hours) and will be sold at the next auction.

Budget/Funding: FY20 budget - Wastewater Plant line item 9801-47005-Motor Vehicles

Attachments: Memorandums from Purchasing Manager and Director of Fleet Management and Vendor Spread Sheet

Meetings: None

Staff Recommendation: Approval ✓ Denial______

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

Proposed Motion: **I move that Council approve the bid of a Toyota Model 8FGCU20 Internal Combustion Lift Truck (Forklift) in the amount of $24,358.00 from Winchester Equipment Company for the use at the Wastewater Treatment Plant.**

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

Approved By: JW

Town of Front Royal, Virginia

Purchasing, Department of Finance

MEMORANDUM

Date: September 19, 2019
To: Tina Presley, Senior Executive Assistant
Town Manager's Office
From: Alisa Scott, Purchasing Manager
RE: Request to Add Consent Agenda Item

The Purchasing Division responded to a request from the Fleet Maintenance Department to purchase a forklift for the Wastewater Treatment Plant. This forklift will replace vehicle #612, a 1998 Daewoo GS20 with 1948 hours and will be sold at auction as surplus. The Department Director, Don McPaters has reviewed the tabulation and the vendor responses to this competitive sealed bid. Staff recommends awarding the Toyota Model 8FGCU20, Internal Combustion Lift Truck in the amount of $24,358.00 to Winchester Equipment Company from Winchester, Virginia.

Due to the type of bid being rolling stock, Town Council is requested to award the purchase. Attached to this memo is the bid tabulation and recommendation memo from Fleet Maintenance. Please add this action item to the next Regular Town Council Meeting agenda.

Funding for this request was included in the FY20 budget in the Wastewater plant line item 9801-47005 Motor Vehicles.

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

MEMORANDUM

TO: Alisa Scott, Purchasing Manager

FROM: Donald B McPaters, Director of Fleet Management.

SUBJECT: Purchase of Wastewater Plant Forklift Budget 2020.

DATE: September 18, 2019

I have reviewed the bid on the Wastewater Plants Bids on the forklift. Winchester Equipment was the low bid and meets out specifications. The price was $24,258.00 for a Toyota Model 8FGCU20 forklift. The forklift will replace #612 forklift which is a #612 1998 Daewoo GS20 with 1948 hours and it will be sold at action. The Wastewater Plant has $ 33,000.00 in 2020 budget 9801-7005 to purchase it.

VENDOR SPREAD SHEET

Town of Front Royal, VA

BID: RFQ #29-2019 WWTP FORKLIFT
BID/PROPOSAL OPENING DATE: 9/17/2019
BID/PROPOSAL OPENING TIME: 2:00 PM

	Vendor Names	
	WINCHESTER EQUIPMENT COMPANY WINCHESTER, VA	**TECHNOLOGY INTERNATIONAL, INC. LAKE MARY, FL**
DESCRIPTION OF REQUESTED GOODS	**QUOTATION**	**QUOTATION**
FORKLIFT PER SPECIFICATIONS	**$24,358.00**	**$24,690.00**

** Denotes non-responsive bid

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

7B

Town of Front Royal, Virginia
Council Agenda Statement

Page 1
Item No. 7B

Meeting Date: October 15, 2019

Agenda Item: COUNCIL APPROVAL – Lease Agreement for Parking Spaces – RPS Composites Virginia, Inc at 211 E 4th Street

Summary: Council is requested to approve a five (5) Year Lease and License Agreement with RPS Composites Virginia, Inc. for ten (10) parking spaces located in front of 211 E 4th Street for annual license fee of $1.00, as presented.

Budget/Funding:

Attachments: Letter from RPS Composites, Maps, Agreement and minutes of September 16 Work Session

Meetings: Work Session held September 16, 2019

Staff Recommendation: Approval ✓ Denial_______

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

Proposed Motion: **I move that Council approve a five (5) Year Lease and License Agreement with RPS Composites Virginia, Inc. for ten (10) parking spaces located in front of 211 E 4th Street for annual license fee of $1.00, as presented.**

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

Approved By: JW

RPS COMPOSITES
ENGINEERED COMPOSITE SOLUTIONS

September 4, 2019

RE: Right of Way Lease Request

To whom it may concern

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

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

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

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

Thank you,

K. Renz

K. Renz
Office Manager

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

LEASE AND L ICENSE AG R EE M E N T

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

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

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

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

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

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

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

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

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

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

5. <u>USE OF PREMISES</u> – RPS shall not assign this Lease and License Agreement or sublicense the Property. RPS shall not permit or allow any dangerous practice or hazardous condition to occur on the Property, shall not violate any State, Federal, or local law concerning the use of the Property, or permit any illegal activity to occur thereon. RPS shall not create or allow any nuisance to be or remain upon the Property, except as set forth herein.

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

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

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

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

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

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

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

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

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

GIVEN under our hands this _____ day of _____________, 2019.

[SIGNATURES NEXT PAGE FOLLOWING]

TOWN OF FRONT ROYAL, VIRGINIA (SEAL)

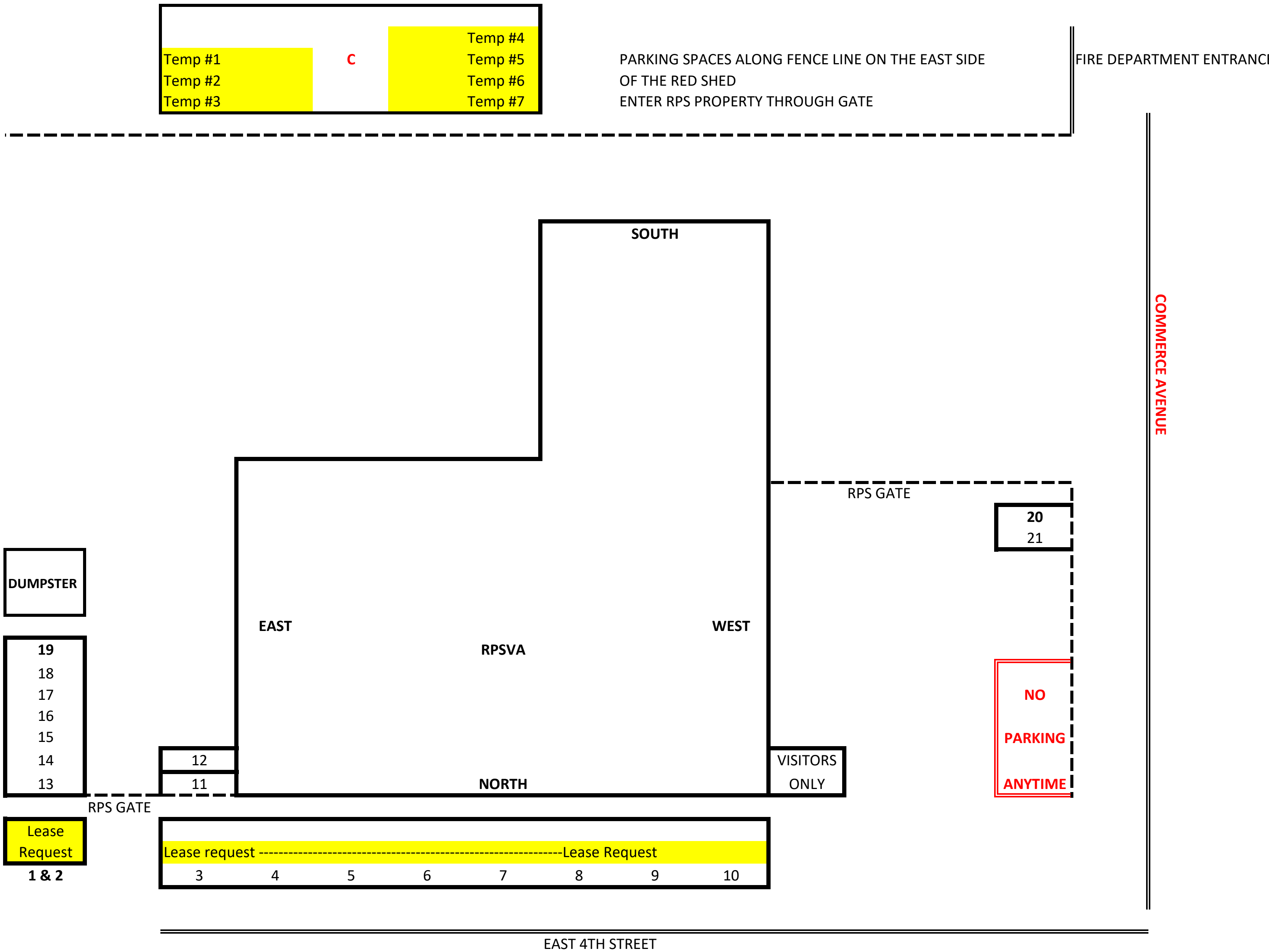
BY: ___________________________________
JOSEPH E. WALTZ, TOWN MANAGER

RPS COMPOSITES VIRGINIA, INC, (SEAL)

BY: ________________________________
NAME/TITLE

APPROVED AS TO FORM:

____
Douglas W. Napier, Town Attorney


Temp #1
Temp #2
Temp #3
C
Temp #4
Temp #5
Temp #6
Temp #7
PARKING SPACES ALONG FENCE LINE ON THE EAST SIDE
OF THE RED SHED
ENTER RPS PROPERTY THROUGH GATE
FIRE DEPARTMENT ENTRANCE
COMMERCE AVENUE
SOUTH
EAST
RPSVA
WEST
NORTH
RPS GATE
20
21
DUMPSTER
19
18
17
16
15
14
13
12
11
VISITORS
ONLY
NO
PARKING
ANYTIME
RPS GATE
Lease
Request
1 & 2
Lease request ---Lease Request
3 4 5 6 7 8 9 10
EAST 4TH STREET

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

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

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

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

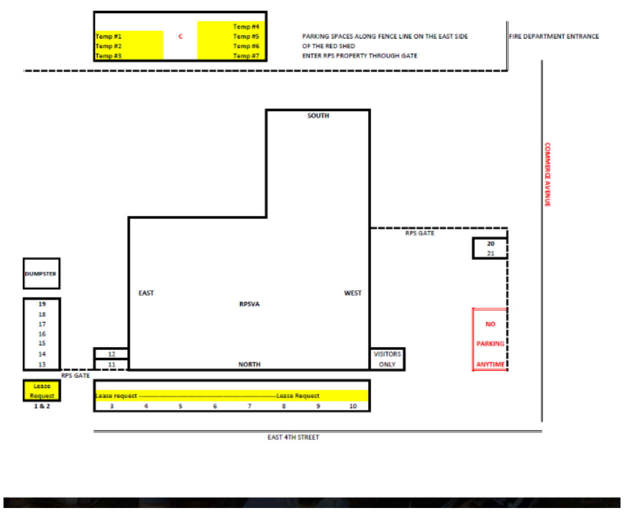
RPS COMPOSITES letter:

September 4, 2019
RE: Right of Way Lease Request
To Whom It May Concern

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

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

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



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

7C

Town of Front Royal, Virginia
Council Agenda Statement

Page 1
Item No. 7C

Meeting Date: October 15, 2019

Agenda Item: COUNCIL APPROVAL – FY20 Budget Amendment for VDOT Primary Extension Funding for N Shenandoah Avenue from W 14th Street to W 18th St

Summary: Council is requested to approve a budget amendment for the FY20 budget to allow for the inclusion of grant funding in the amount of $121,000. The Virginia Department of Transportation (VDOT) has awarded the Town $121,000 from the State of Good Repair Primary Extension Program. This funding will be used to mill and overlay all five (5) lanes of N. Shenandoah Avenue from W. 18th Street to the intersection of W. 14th Street. There is no required local match with this Program and construction costs are not anticipated to exceed the approving funding amount.

Budget/Funding:

4500-3410206	Highway Maintenance Reimbursement	$121,000
4500-47963	Highway Maintenance Revenue Sharing/VDOT	$121,000

Attachments: Standard Project Administration Agreement and Resolution of Support

Meetings: None

Staff Recommendation: Approval ✓ Denial______

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

Proposed Motion: **I move that Council approve a budget amendment in the amount of $121,000 grant funding from the Virginia Department of Transportation (VDOT) State of Good Repair Primary Extension Program to be used to mill and overlay all five (5) lanes of N. Shenandoah Avenue from W. 18th Street to the intersection of W. 14th Street.**

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

Approved By: JW

STANDARD PROJECT ADMINISTRATION AGREEMENT
State-aid Projects

Project Number	UPC	Local Government
U000-112-173	115103	Town of Front Royal

THIS AGREEMENT, made and executed in triplicate this 19TH day of SEPTEMBER 2019, by and between the Town of Front Royal, Virginia, hereinafter referred to as the LOCALITY and the Commonwealth of Virginia, Department of Transportation, hereinafter referred to as the DEPARTMENT.

WHEREAS, the LOCALITY has expressed its desire to administer the work described in Appendix A, and such work for each improvement shown is hereinafter referred to as the Project; and

WHEREAS, the funds shown in Appendix A have been allocated to finance the Project(s) and the funding currently allocated or proposed for the project(s) does not include Federal-aid Highway funds; and

WHEREAS, both parties have concurred in the LOCALITY's administration of the phase(s) of work for the respective Project(s) listed in Appendix A in accordance with applicable federal, state and local laws and regulations.

NOW THEREFORE, in consideration of the mutual premises contained herein, the parties hereto agree as follows:

1. The LOCALITY shall:

   a. Be responsible for all activities necessary to complete the noted phase(s) of each Project shown in Appendix A, except for activities, decisions, and approvals which are the responsibility of the DEPARTMENT, as required by federal or state laws and regulations or as otherwise agreed to, in writing, between the parties.

   b. Receive prior written authorization from the DEPARTMENT to proceed with the project.

   c. Administer the project(s) in accordance with guidelines applicable to Locally Administered Projects as published by the DEPARTMENT.

   d. Provide certification by a LOCALITY official of compliance with applicable laws and regulations on the **State Certification Form for State Funded Projects** or in another manner as prescribed by the DEPARTMENT.

   e. Maintain accurate and complete records of each Project's development of all expenditures and make such information available for inspection or auditing by the DEPARTMENT. Records and documentation for items for which reimbursement will be requested shall be maintained for not less than three (3) years following acceptance of the final voucher on each Project.

f. No more frequently than monthly, submit invoices with supporting documentation to the DEPARTMENT in the form prescribed by the DEPARTMENT. The supporting documentation shall include copies of related vendor invoices paid by the LOCALITY and also include an up-to-date project summary and schedule tracking payment requests and adjustments.

g. Reimburse the DEPARTMENT all Project expenses incurred by the DEPARTMENT if due to action or inaction solely by the LOCALITY the project becomes ineligible for state reimbursement, or in the event the reimbursement provisions of Section 33.2-214 or Section 33.2-331 of the Code of Virginia, 1950, as amended, or other applicable provisions of state law or regulations require such reimbursement.

h. On Projects that the LOCALITY is providing the required match to state funds, pay the DEPARTMENT the LOCALITY's match for eligible Project expenses incurred by the DEPARTMENT in the performance of activities set forth in paragraph 2.a.

i. Administer the Project in accordance with all applicable federal, state, and local laws and regulations. Failure to fulfill legal obligations associated with the project may result in forfeiture of state-aid reimbursements

j. If legal services other than that provided by staff counsel are required in connection with condemnation proceedings associated with the acquisition of Right-of-Way, the LOCALITY will consult the DEPARTMENT to obtain an attorney from the list of outside counsel approved by the Office of the Attorney General. Costs associated with outside counsel services shall be reimbursable expenses of the project.

k. For Projects on facilities not maintained by the DEPARTMENT, provide, or have others provide, maintenance of the Project upon completion, unless otherwise agreed to by the DEPARTMENT.

2. The DEPARTMENT shall:

a. Perform any actions and provide any decisions and approvals which are the responsibility of the DEPARTMENT, as required by federal or state laws and regulations or as otherwise agreed to, in writing, between the parties.

b. Upon receipt of the LOCALITY's invoices pursuant to paragraph 1.f, reimburse the LOCALITY the cost of eligible Project expenses, as described in Appendix A. Such reimbursements shall be payable by the DEPARTMENT within 30 days of an acceptable submission by the LOCALITY.

c. If appropriate, submit invoices to the LOCALITY for the LOCALITY's share of eligible project expenses incurred by the DEPARTMENT in the performance of activities pursuant to paragraph 2.a.

d. Audit the LOCALITY's Project records and documentation as may be required to verify LOCALITY compliance with applicable laws and regulations.

e. Make available to the LOCALITY guidelines to assist the parties in carrying out responsibilities under this Agreement.

3. Appendix A identifies the funding sources for the project, phases of work to be administered by the LOCALITY, and additional project-specific requirements agreed to by the parties. There may be additional elements that, once identified, shall be addressed by the parties hereto in writing, which may require an amendment to this Agreement.

4. If designated by the DEPARTMENT, the LOCALITY is authorized to act as the DEPARTMENT's agent for the purpose of conducting survey work pursuant to Section 33.2-1011 of the Code of Virginia, 1950, as amended.

5. Nothing in this Agreement shall obligate the parties hereto to expend or provide any funds in excess of funds agreed upon in this Agreement or as shall have been included in an annual or other lawful appropriation. In the event the cost of a Project is anticipated to exceed the allocation shown for such respective Project on Appendix A, both parties agree to cooperate in providing additional funding for the Project or to terminate the Project before its cost exceeds the allocated amount, however the DEPARTMENT and the LOCALITY shall not be obligated to provide additional funds beyond those appropriated pursuant to an annual or other lawful appropriation.

6. Nothing in this agreement shall be construed as a waiver of the LOCALITY's or the Commonwealth of Virginia's sovereign immunity.

7. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.

8. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the LOCALITY or the DEPARTMENT shall not be bound by any agreements between the either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the LOCALITY or the DEPARTMENT has, in writing,

receive a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.

9. This agreement may be terminated by either party upon 30 days advance written notice. Eligible Project expenses incurred through the date of termination shall be reimbursed in accordance with paragraphs 1.f, 1.g, and 2.b, subject to the limitations established in this Agreement and Appendix A. Upon termination and unless otherwise agreed to, the DEPARTMENT shall retain ownership of plans, specifications, and right of way for which state funds have been provided, unless all state funds provided for the Project have been reimbursed to the DEPARTMENT by the LOCALITY, in which case the LOCALITY will have ownership of the plans, specifications, and right of way.

THE LOCALITY and DEPARTMENT acknowledge and agree that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

THE LOCALITY and the DEPARTMENT further agree that should Federal-aid Highway funds be added to the project, this agreement is no longer applicable and shall be terminated. The LOCALITY and the DEPARTMENT mutually agree that they shall then enter into a Standard Project Administration Agreement for Federal-aid Projects.

THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors, and assigns.

THIS AGREEMENT may be modified in writing by mutual agreement of both parties.

The remainder of this page is BLANK

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

TOWN OF FRONT ROYAL, VIRGINIA:

Joseph Waltz

Typed or printed name of signatory

Town Manager | 8/21/19

Title | Date

Signature of Witness | 8/21/19 Date

NOTE: The official signing for the LOCALITY must attach a certified copy of his or her authority to execute this agreement.

COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION:

9/19/19

Chief of Policy | Date
Commonwealth of Virginia
Department of Transportation

Brenda Crouch | 9/19/2019

Signature of Witness | Date

Attachment
Appendix A 115103

Appendix A **Date:** 8/20/2019

Project Number: U000-112-173 UPC: 115103 CFDA # Locality: Town of Front Royal

Project Location ZIP+4: 22630-3644	Locality DUNS # 050390749	Locality Address (incl ZIP+4): 102 E. Main St. Front Royal, VA 22630-3337

Project Narrative

Work Description:	Mill and overlay all five lanes of N. Shenandoah Avenue.
From:	NCL Front Royal
To:	Int. 14th Street
Locality Project Manager Contact info:	Steve Scheulen 540-635-7819 sscheulen@frontroyalva.com
Department Project Coordinator Contact Info:	Michael Branscome 540-332-2377 steven.damron@vdot.virginia.gov

Project Estimates

	Preliminary Engineering	Right of Way and Utilities	Construction	Total Estimated Cost	
Estimated Locality Project Expenses	$0	$0	$121,000	$121,000	
Estimated VDOT Project Expenses	$0	$0	$0	$0	
Estimated Total Project Costs	$0	$0	$121,000	$121,000	

Project Cost and Reimbursement

Phase	Estimated Project Costs	Funds type *(Choose from drop down box)*	Local % Participation for Funds Type	Local Share Amount	Maximum Reimbursement (Estimated Cost - Local Share)	Estimated Reimbursement to Locality (Max. Reimbursement - Est. VDOT Expenses)
Preliminary Engineering	$0		0%	$0	$0	
				$0	$0	
				$0	$0	
				$0	$0	
Total PE	$0			$0	$0	$0
Right of Way & Utilities	$0		0%	$0	$0	
				$0	$0	
				$0	$0	
				$0	$0	
				$0	$0	
Total RW	$0			$0	$0	$0
Construction	$121,000	SGR State Funds	0%	$0	$121,000	
				$0	$0	
				$0	$0	
				$0	$0	
				$0	$0	
Total CN	$121,000			$0	$121,000	$121,000
Total Estimated Cost	$121,000			$0	$121,000	$121,000

Total Maximum Reimbursement by VDOT to Locality (Less Local Share)	**$121,000**
Estimated Total Reimbursement by VDOT to Locality (Less Local Share and VDOT Expenses)	**$121,000**

Project Financing

State of Good Repair						**Aggregate Allocations**
$121,000						$121,000

Program and Project Specific Funding Requirements

- This Project shall be administered in accordance with VDOT's Locally Administered Projects Manual.
- This Project shall be administered in accordance with VDOT's Urban Manual.
- This is a limited funds project. The LOCALITY shall be responsible for any additional funding in excess of $121,000.
- This Project shall meet all applicable ADA requirements.
- This Project must be advertised within six months of award funding or be subject to deallocation.
- The LOCALITY will continue to operate and maintain the facility as constructed. Should the design features of the Project be altered by the LOCALITY subsequent to Project completion without approval of the DEPARTMENT, the LOCALITY inherently agrees, by execution of this agreement, to make restitution, either physically or monetarily, as required by the DEPARTMENT.

8/21/19
Authorized Locality Official and Date

Joseph Waltz
Typed or printed name of person signing

8-22-19
Authorized VDOT Official and Date

Steven K. Damron
Typed or printed name of person signing

RESOLUTION OF SUPPORT

Submission of
VDOT'S STATE OF GOOD REPAIR/PRIMARY EXTENSION PAVING PROGRAM
Application for the
Repaving of N. Shenandoah Avenue from W. 14th Street to W. 17th Street

WHEREAS, based on a legislative change effective July 1, 2014, Section 33.2-358 provides that primary extensions maintained by municipalities can receive a portion of the reconstruction and paving allocations previously only distributed to interstate and primary roads with a combined condition index of less than 60 through the Virginia Department of Transportation (VDOT) State of Good Repair/Primary Extension Paving Program; and,

WHEREAS, Town Staff has applied for the FY2020 funding for the repaving of N. Shenandoah Avenue from W. 14th Street to W. 17th Street through VDOT's State of Good Repair/Primary Extension Paving Program at a total project cost of $121,000 and if accepted VDOT will reimburse the Town 100% of the costs; and,

WHEREAS, as part of the application process VDOT has asked for a Resolution from Town Council to approve the submission; and,

NOW THEREFORE BE IT RESOVED, that the Front Royal Town Council approves the submission of an application for the VDOT'S STATE OF GOOD REPAIR/PRIMARY EXTENSION PAVING PROGRAM at 100% funding for the repaving of N. Shenandoah Avenue from W. 14th Street to W. 17th Street.

APPROVED:

William A. Sealock

~~Hollis L. Tharpe, Mayor~~
William A. Sealock
Vice Mayor

Attest:

Jennifer E. Berry

Jennifer E. Berry, CMC, Clerk of Council

THIS RESOLUTION was approved at the Regular Meeting of the Town of Front Royal, Virginia, Town Council conducted on 1-14-, 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 W. Holloway	Yes/No	Letasha T. Thompson	Yes/No

Approved as to Form and Legality:

Douglas W. Napier

Douglas W. Napier, Town Attorney Dated: 1-22-19

7D

Town of Front Royal, Virginia
Council Agenda Statement

Page 1
Item No. 7D

Meeting Date: October 15, 2019

Agenda Item: COUNCIL APPROVAL – Proclamation for *World Polio Day*

Summary: Council is requested to approve a Proclamation proclaiming October 24, 2019 as *World Polio Day* in the Town of Front Royal, as presented

Budget/Funding: None

Attachments: Proclamation

Meetings: None

Staff Recommendation: Approval ✓ Denial______

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

Proposed Motion: **I move that Council approve a Proclamation proclaiming October 24, 2019 as *World Polio Day* in the Town of Front Royal, as presented**

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

Approved By: JW

Rotary International Proclamation

WHEREAS, Rotary is a global network of 1.2 million neighbors, friends, leaders, and problem-solvers who unite and take action to create lasting change in communities across the globe; and

WHEREAS, the Rotary motto, Service Above Self, inspires members to provide humanitarian service, follow high ethical standards, and promote goodwill and peace in the world; and

WHEREAS, Rotary in 1985 launched PolioPlus and in 1988 helped establish the Global Polio Eradication Initiative, which today includes the World Health Organization, U.S. Centers for Disease Control and Prevention, UNICEF, and the Bill & Melinda Gates Foundation, to immunize the children of the world against polio; and

WHEREAS, polio cases have dropped by 99.9 percent since 1988 and the world stands on the threshold of eradicating the disease; and

WHEREAS, to date, Rotary has contributed more than US$1.9 billion and countless volunteer hours to protecting more than 2.5 billion children in 122 countries; and

WHEREAS, Rotary is working to raise an additional $50 million per year, which would be leveraged for maximum impact by an additional $100 million annually from the Bill & Melinda Gates Foundation; and

WHEREAS, these efforts are providing much-needed operational support, medical staff, laboratory equipment, and educational materials for health workers and parents; and

WHEREAS, in addition, Rotary has played a major role in decisions by donor governments to contribute more than $8 billion to the effort; and

WHEREAS, there are over **120** Rotary members in two clubs throughout Front Royal and Warren County that sponsor service projects to address such critical issues as poverty, disease, hunger, illiteracy, and the environment in their local communities and abroad;

THEREFORE, THE TOWN OF FRONT ROYAL hereby proclaims 24 October World Polio Day in Front Royal, Virginia and encourage all citizens to join me and Rotary International in the fight for a polio-free world.

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: _________________________

7E

Town of Front Royal, Virginia
Council Agenda Statement

Page 1
Item No. 7E

Meeting Date: October 15, 2019

Agenda Item: COUNCIL APPROVAL – Purchase of Pump Control Valve for Water Plant

Summary: Council is requested to approve the sole source purchase of a DeZURIK/APCO/Hilton pump control valve for use at the Water Treatment Plant, from Commonwealth Engineering & Sales of Ashland, VA in the amount of $29,609.00.

Budget/Funding: FY20 budget 9601-47001 Machinery & Equipment

Attachments: Memorandums from Purchasing Manager and Water Treatment Plant Manager, Sole Source Justification Form, Letter from DeZURIK, DeZURIK Quotation and Manufacturer's Conditions

Meetings: None

Staff Recommendation: Approval ✓ Denial_______

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

Proposed Motion: **I move that Council approve the sole source purchase of a DeZURIK/APCO/Hilton pump control valve for use at the Water Treatment Plant, from Commonwealth Engineering & Sales of Ashland, VA in the amount of $29,609.00.**

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

Approved By: JW

Town of Front Royal, Virginia

Purchasing, Department of Finance

MEMORANDUM

Date: **October 8th, 2019**

To: **Tina Presley, Senior Executive Assistant**

From: **Alisa Scott, Manager of Purchasing**

RE: **Request to add action item to Town Council Agenda**

Purchasing received a request from the Water Treatment Plant for a pump control valve. Enclosed is a memo from the Water Treatment Plant Manager, Mike Kisner, requesting the sole source purchase; a sole source form, sole source letter, and a quote from Commonwealth Engineering & Sales, authorized sales representative for DeZURIK/APCO/Hilton products.

This purchase qualifies as a sole source procurement in accordance with the Virginia Public Procurement Act because Commonwealth Engineering & Sales of Ashland, VA is the only source practicably available. There are other authorized re-sellers of DeZURIK/APCO/Hilton pump control valves within Virginia that are authorized to sell to Arlington, Fairfax, and Loudoun counties, but this is the only authorized re-seller to sell to this municipality, specifically located in Warren County, VA.

The DeZURIK/APCO/Hilton pump control valves are already in use by the Town. It would be unreasonably expensive to purchase any other type of pump control valve from another manufacturer. The purchase is for $29,609.00 per the attached quoted specifications that is valid for another 45 days and includes freight. The purchase order to Commonwealth Engineering & Sales of Ashland, VA is anticipated to be awarded by the Town Council on or about October 16th, 2019.

Funding for this purchase was anticipated and included in the FY20 budget under 9601-47001 Machinery & Equipment.

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

TOWN OF FRONT ROYAL

DEPARTMENT OF ENVIRONMENTAL SERVICES
Water Treatment Plant
P.O Box 1560
FRONT ROYAL, VIRGINIA 22630-1560

Michael Kisner
Manager of Water Treatment
(540) 636-7474
(540) 636-2890 (Fax)

Memorandum

To: Alisa Scott, Finance Manger

From: Mike Kisner, WTP Manager

Date: 10/10/19

Re: 9601- 47001 Dezurick Valve

The Raw water pump station has been in service since 1994. The three raw water pumps have DeZurick pump control valves on the discharge side of the pump. Number 1 pump control valve lower pilot bearing bore is EXTREMELY worn and at some point, will no longer be able to effectively close. This valve needs to be replaced to continue reliable operations. Funding for the valve replacement is our current budget 9601-47001 Machinery & Equipment. It will take approx. 29 weeks to receive the new valve once the order is placed.

Thanks,
Mike Kisner

SOLE SOURCE JUSTIFICATION FORM

Requesting Department: Public Works / Watertreatment Plant
Description of Commodities of Services: ______________________

____

On the lines below initial all entries that apply to this procurement.

MS/MK **Original manufacturer's equipment or parts subject to specific patent or copyright (Please attach supporting documentation)**

MS/MK **Equipment or parts not interchangeable with similar parts or equipment of another manufacturer (Please attach supporting documentation)**

_______ **Original manufacturer's parts required to maintain equipment warranty (Please attach copy of manufacturer's warranty)**

_______ **This is the only known equipment or part that meets the specialized needs of this department or perform the intended function (Please attach explanation)**

MS/MK **This is the only known vendor that can perform the repair, maintenance, or render the service. (Please attach supporting documentation)**

_______ **Commodities or services are only available from this vendor because of legal requirements. (Please attach explanation)**

_______ **None of the above apply (Please attach explanation)**

Based on the above, I request that competitive purchasing procedures be waived and that the commodities or services be procured as a sole source procurement. I have obtained a price quote from this sole source vendor and the price has been determined to be fair and reasonable based on:

Circle one: **HistoryCost of similar commodities or services**

Published prices **Negotiated cost**

The Town of Front Royal Procedures for Purchasing and Procurement Manual provides that written notification of a sole source purchase must be posted in a designated public area, published in a newspaper of general circulation, or posted on the Town of Front Royal web site.

Iniator: [signature] **Date:** 10/7/19
Signature

Verification by Department Head: [signature]
Signature

DeZURIK
APCO | HILTON

250 Riverside Ave N 320-259-2000 p
Sartell, MN 56377 USA 320-259-2227 f

September 17, 2019

To Whom It May Concern:

Subject: Authorized DeZURIK Agent

Commonwealth Engineering & Sales of Ashland, VA is the sole authorized sales representative of DeZURIK/APCO/Hilton products for the Water and Wastewater Industry for the state of Virginia, with the exception of Arlington, Fairfax, Loudon, and Prince William counties.

Purchase Orders shall be written to DeZURIK, Inc., c/o Commonwealth Engineering & Sales Inc. or direct to Commonwealth Engineering & Sales for any items that will be stocked locally.

Sincerely,

Nick Krippner
Project Sales Specialist
DeZURIK
APCO | HILTON
DeZURIK | APCO | Hilton
250 Riverside Avenue North
Sartell, MN 56377, USA
Phone: 320-259-2292

www.dezurik.com

DeZURIK Quotation

DeZURIK
ApCo | HILTON

To: Front Royal
Mitch Sine
Front Royal, VA
USA
Email msine@frontroyalva.com

Reference:
Invoice Terms: Net 30 Days
Days Valid: 0
Shipping Point:
Delivery Notes:

Date of Quote: 08-22-2019
Quote Number: 156955
Project Name: Front Royal - PEC Control Valve
I.D. (Rep. Use):
Line of Business: 4941 - Water Treatment
Make Order To: DeZURIK, Inc.
C/O Commonwealth Engineering & Sales
Brian Cowan
303 Ashcake Road Suite G
Ashland, VA 23005
USA
Phone 804-752-2959
Email brianc@commengsales.com

Currency and Values expressed in USD ($)

ANY PURCHASE ORDER ISSUED AS A RESULT OF THIS QUOTATION IS SUBJECT TO ALL OF THE MANUFACTURER'S CONDITIONS SET FORTH IN THIS DOCUMENT HEREOF, REASONABLE CONTRACT LANGUAGE NEGOTIATIONS AND FINAL ACCEPTANCE BY DEZURIK AT SARTELL, MN USA.

Line #	Cust. Line # Tag #	Qty	Order Code	Unit Price	Total Price
1		1	PEC,14,F1,CS,NBR,CR,S42SD2*GS-12-PC10,SEH90 Modified **PEC:** Style - DeZURIK Eccentric Plug Valve, Rectangular Port (AWWA C517) **14:** Size - 14 Inch (350mm); (Standard Port), Stainless Steel Bearings, Welded-In Nickel Seat (Except Rubber Lined or Stainless Steel Bodies) **F1:** End Connection - Flanged, Drilled to ASME Class 125/150 **CS:** Body Material - Carbon Steel, ASTM A216, Grade WCB; (Pressure Rating 285 psi (1960 kPa) **NBR:** Packing - .5" - 3" Acrylonitrile-Butadiene Reinforced filler in a PTFE U-ring; 4" & Larger Acrylonitrile-Butadiene Reinforced Multiple V-Ring with External Adjustment, -20 to 180° F. (-29 to 83° C.) **CR:** Plug Facing - Chloroprene; -20 to 180°F (-29 to 83°C) **Coating or Paint:** S42SD2 - 12 mils minimum (non-stainless steel parts) of Blue DeZURIK Epoxy (NSF Std. 61) on Interior and SP5 surface prep AND 12 mils minimum (non-stainless steel parts) of Blue DeZURIK Epoxy (NSF Std. 61) on Exterior and SP5 surface prep **GS-12-PC10:** Actuator Type - G-Series Gear with Double Acting Cylinder Operator **SEH90:** Accessories - (2) Valve Position Indicating Switches; Mechanical; SPDT; 2 Conduit Connections; Enclosure Type 1,3,4,4X,5,6,7,9,12 and 13 **OP/CL:** Switch Action - Switches To Indicate Valve Fully Open & Fully Closed **Modification:** DXX026 - DEZURIK WATER FITTED CYLINDER **Modification:** FXX402 - FLAT FACED FLANGES **Modification:** PXX012 - 1 NATIONAL ACME MOMENTARY BREAK SWITCH WITH SPECIAL ARM TO BREAK AT 95 PERCENT CLOSED	$29,609.00	$29,609.00
Total					$29,609.00

MANUFACTURER'S CONDITIONS

These conditions apply to all quotations, orders and contracts for DeZURIK, Inc. ("we," "us" or "our")

1. CONSTRUCTION AND LEGAL EFFECT: Our sale to you, as the purchaser of goods from us, is limited to and expressly made conditional on your assent to these typed and printed terms and conditions of sale, the face and reverse side hereof ('These Terms"), all of which form a part of the agreement to sell and which supersede and reject all prior writings (including your order), representations, negotiations with respect hereto and any conflicting terms and conditions of yours, any statement therein to the contrary notwithstanding. The sending of the purchase order for the goods referred to herein, whether or not signed by you, or your acceptance of the goods or payment operates as acceptance by you of These Terms. In case of conflict between These Terms and the terms of your purchase order or acceptance, These Terms govern; any different or conflicting terms submitted by you in any purchase order or acceptance shall be deemed objected to by us and shall be of no effect unless specifically agreed to by us in writing. We will furnish only the quantities and goods specifically listed on the face hereof or the pages attached hereto. We assume no responsibility for other terms or conditions or for furnishing other equipment or material shown in any plans and/or specifications for a project to which the goods quoted or ordered herein pertain or refer. Our published or quoted terms and conditions are subject to change without notice prior to acceptance of order.

2. PRICES: Unless otherwise noted on the face hereof, quotations are valid for 30 days, prices are net, FCA carrier, our factory. Stenographic, clerical, and mathematical errors are subject to correction. Until acceptance of order on These Terms, quoted prices and delivery are subject to change. Thereafter, unless otherwise noted, prices are firm for shipment of goods within 12 months from the relevant quotation date. Our prices are based on current prices for material. We will endeavor to obtain the lowest pricing on materials from our suppliers, but if a significant material price increase occurs between order acceptance and shipment date, goods scheduled to ship beyond 12 months of the quotation date are subject to a price adjustment by the amount necessary to cover such increase.

3. DELIVERY: Dates for the furnishing of services and/or delivery or shipment of goods are approximate only and are subject to change. Quoted lead times are figured from the later of date of acceptance of order on These Terms or from the date of receipt of complete technical data and approved drawings as such may be necessary. We shall not be liable, directly or indirectly, for any delay in or failure to perform caused by carriers or suppliers or delays from labor difficulties, shortages, strikes or stoppages of any sort, failure or delay in obtaining materials, customer requested order changes, fires, floods, storms, accidents, causes designated acts of God or force majeure by any statute or court of law or other causes beyond our reasonable control.

4. SHORTAGE, DAMAGE, ERRORS IN SHIPMENT: Our responsibility ceases upon delivery to carrier. Risk of loss, injury or destruction of property, shall be borne by you from and after our delivery to carrier, and such loss, injury or destruction shall not release you from the obligation to pay the purchase price. You shall note receipt for goods that are not in accordance with bill of lading or express receipt and you shall make claim against such carrier for any shortage, damage or discrepancy in the shipment per the ICC Code for Freight Claims promptly. You shall inspect and examine all items and goods covered by the order when unpacking crated or boxed goods, and if damage is discovered, leave as is until the carrier's agent makes examination and notation on freight or express bill of concealed damage. We will render reasonable assistance to help trace and recover lost goods and collect just claims as a business courtesy, but without obligation. We do not guarantee safe delivery.

5. TAXES: Our prices do not include sales, use, excise, occupation, processing, transportation or other similar taxes which we may be required to pay or collect with respect to any of the materials covered hereby under existing or future law. Consequently, in addition to the price specified herein, such taxes shall be paid by you, or you shall provide us with a tax exemption certificate acceptable to the appropriate taxing authorities. You shall also assume and pay any import or export duties and taxes, with respect to the materials covered by the order, and shall hold harmless and reimburse us therefrom.

6. CREDIT AND PAYMENT: Unless otherwise noted on the face hereof, payment of goods shall be (30) days net in US dollars. Prorated payments shall become due with partial shipments. We reserve the right at any time to suspend credit or to change credit terms provided herein, when, in our sole opinion, your willingness or ability to pay your obligations to us is in doubt. Failure to pay invoices at maturity date, at our election, makes all subsequent invoices immediately due and payable irrespective of terms, and we may withhold all subsequent deliveries until the full account is settled and we shall not, in such event, be liable for non-performance of contract in whole or in part. You agree to pay, without formal notice, 1.5% per month of the amount not paid when due, provided that, if such rate is in excess of applicable governing law, you agree to pay the maximum permitted rate.

7. CANCELLATIONS AND CHANGES: Orders which have been accepted by us are not subject to your cancellation or changes in specifications, except upon our written consent, and we may require, as a condition of such consent, appropriate adjustments in price, delivery schedule and other relevant terms, and in the case of cancellation, cancellation charges. In the event we accept your cancellation, you shall be liable for a cancellation charge equal to the higher of (i) 25% of the purchase price of the item(s), or (ii) any loss or cost incurred by us, including cost of materials, labor, engineering, reconditioning and our profit margin.

8. DEFERRED SHIPMENT: If shipment is deferred at your request, payment of the contract price shall become due when you are notified that the equipment is ready for shipment. If you fail to make payment and/or furnish shipping instructions we may either extend time for so doing or cancel contract. In case of deferred shipment at your request, storage and other reasonable expenses attributable to such delay shall be payable by you.

9. LIMITED WARRANTY: Products, auxiliaries and parts thereof that we manufacture are warranted to the original purchaser for a period of twenty-four (24) months from date of shipment from factory, against defective workmanship and material, but only if properly stored, installed, operated, and serviced in accordance with our recommendations. Repair or replacement, at our option, for items we manufacture will be made free of charge, (FOB) our facility with removal, transportation and installation at your cost, if proved to be defective within such time, and this is your sole remedy with respect to such products. Equipment or parts manufactured by others but furnished by us will be repaired or replaced, but only to the extent provided in and honored by the original manufacturers' warranty, in each case subject to the limitations contained therein. No claim for transportation, labor or special or consequential damages or any other loss, cost or damage shall be allowed. You shall be solely responsible for determining suitability for use and in no event shall we be liable in this respect. We do not guarantee resistance to corrosion, erosion, abrasion or other sources of failure, nor do we guarantee a minimum length of service. Your failure to give written notice to us of any alleged defect under this warranty within twenty (20) days of its discovery, or attempts by someone other than us or our authorized representatives to remedy the alleged defects therein, or failure to return product or parts for repair or replacement as herein provided, or failure to install and operate said products and parts according to instructions we furnished, or misuse, modification, abuse or alteration of such product, accident, fire, flood or other Act of God, or failure to pay entire contract price when due shall be a waiver by you of all rights under this warranty. The foregoing guarantee shall be null and void if, after shipment from our factory, the item is modified in any way or a component of another manufacturer, such as but not limited to; an actuator is attached to the item by anyone other than our Factory Service personnel. All orders accepted shall be deemed accepted subject to this limited warranty, which shall be exclusive of any other or previous Warranty, and this shall be the only effective guarantee or warranty binding on us, despite anything to the contrary contained in the purchase order or represented by any of our agents or employees, in writing or otherwise, notwithstanding, including but not limited to implied warranties.

THE FOREGOING REPAIR AND REPLACEMENT OBLIGATIONS ARE IN LIEU OF ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES, INCLUDING ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY OR OTHERWISE, EXPRESSED OR IMPLIED IN FACT OR BY LAW, AND STATE OUR ENTIRE AND EXCLUSIVE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY CLAIM IN CONNECTION WITH THE SALE AND FURNISHING OF SERVICES, GOODS OR PARTS, THEIR DESIGN, SUITABILITY FOR USE, INSTALLATION OR OPERATIONS.

10. INTELLECTUAL PROPERTY. We shall indemnify and hold you harmless from any amount that you are required to pay to a third-party pursuant to final, non-appealable court order as a result of such third-party's claim that a product sold hereunder infringes any United States patent or copyright of such third party; provided that our obligation of indemnification is contingent upon (a) your notifying us of any such claim within 20 days of receipt thereof, (b) your providing us with exclusive control of the defense and/or settlement thereof, and (c) your cooperating with us in such defense and/or settlement. In the event of such a successful infringement claim by the third party, at our option, we shall either (i) modify the product sold hereunder so that it performs comparable functions without infringement, (ii) obtain a royalty-free license for you to continue using the infringing product or (iii) refund to you the then-depreciated fair market value of the infringing component. We shall have no obligation under this Section to the extent a claim is based upon (a) the combination, operation or use of the product with equipment, products, hardware, software, systems or data that was not provided by us, if such infringement would have been avoided in the absence of such combination, operation or use, or (b) your use of the product in any manner inconsistent with our written materials regarding the use of such product. This Section states our entire liability and your exclusive remedy with respect to any alleged infringement arising from the use of the products sold hereunder or any part thereof and is subject to the other limitations contained in These Terms.

11. LIMITATION OF LIABILITY: IN NO EVENT SHALL WE BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, AND OUR LIABILITY, UNDER NO CIRCUMSTANCES, WILL EXCEED THE CONTRACT PRICE FOR THE GOODS AND/OR SERVICES FOR WHICH LIABILITY IS CLAIMED, ANY ACTION FOR BREACH OF CONTRACT BY YOU, OTHER THAN RIGHTS RESPECTING OUR LIMITED WARRANTY DESCRIBED IN SECTION 9 ABOVE, MUST BE COMMENCED WITHIN THE EARLIER OF 12 MONTHS AFTER THE DATE OF SALE.

12. EXPORT CONTROL COMPLIANCE: You agree and acknowledge that the products are sold in accordance with U.S. export control and sanctions laws, regulations and orders, as they may be amended from time to time. You agree to ascertain and comply with all applicable export and re-export obligations and restrictions, including without limitation, U.S. export and re-export controls under the Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR"), and all regulations and orders administered by the U.S. Department of Treasury, Office of Foreign Assets Control (collectively, "U.S. Export Control Laws"). If you are conducting the export from the United States or the re-export from a country outside the United States, you shall comply with such U.S. Export Control Laws and obtain any license or other authorization required to export or re-export the products and related technology. We shall reasonably cooperate and exercise reasonable efforts, at your expense, to support you in obtaining any necessary licenses or authorizations. You shall not export or re-export the products and/or related technology to any country or entity to which such export or re-export is prohibited, including any country or entity under sanction or embargoes administered by the United States. Any diversion contrary to the law of the United States is prohibited. You will not take, and will not solicit us to take, any action that would violate any anti-boycott or any export or import statutes or regulations of the United States or other governmental authorities, and shall defend and indemnify us for any loss or damage arising out of or related to such actions.

13. GENERAL COMPLIANCE WITH LAWS. In addition to your obligations under Section 12 above, you represent and warrant that, in performing your duties under this Agreement, you will comply with, at your sole expense, all applicable laws and regulations of any governmental authority, including your duties involving any required registrations, requirements as to product contents, packaging and labeling, restraint of trade, consumer laws, data privacy and environmental laws. You have had an opportunity to obtain legal advice regarding, and currently comply with, all applicable legal requirements that prohibit unfair, fraudulent or corrupt business practices, including the U.S. Foreign Corrupt Practices Act (FCPA) as well as U.S. and other legal requirements that are designed to combat terrorism and terrorist activities. In addition, neither you nor any of your equity interest owners, officers or directors are named as a "specially designated national' or "blocked person" as designated by the United States Department of the Treasury's Office of Foreign Assets Control under the U.S. PATRIOT Act.

14. INDEMNIFICATION BY YOU. You will indemnify, defend and hold us and our corporate parents and other affiliates and their respective officers, directors, stockholders, members, insurers, attorneys, employees, agents, successors, predecessors, assigns, heirs and personal representatives harmless against any and all liability, claims, suits, actions, losses, liabilities, damages, costs and legal fees arising out of or related to: (i) any conduct of you or any related party as described in Sections 12 or 13 above; or (ii) your breach of any other provision herein.

15. PROPRIETARY INFORMATION: We retain title to all engineering and production prints, drawings, technical data, and other intellectual property, information and documents that relate to the goods and services sold to you. Unless advised by us in writing to the contrary, all such information and documents disclosed or delivered by us to you are to be deemed proprietary to us and shall be used by you solely for the purpose of inspection, installation, and maintenance and not used by you for any other purpose.

16. ARBITRATION: Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The venue for such proceedings shall be St. Cloud, MN.

17. TEXAS WAIVER OF CONSUMER RIGHTS: If you are entitled to its protection, you hereby agree to waive your rights under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Business & Commerce Code, a law that gives consumers special rights and protections. You warrant that, after consultation with an attorney of your own selection, you voluntarily consent to this waiver.

18. APPLICABLE LAW: The rights and duties of the parties shall be governed by the laws of the State of Minnesota.

19. NO OTHER CONTRACT PROVISIONS; OTHER: This is the entire agreement with respect to the products. Terms and conditions of your order shall be without force and effect, except to the extent identical herewith. No dealer, broker, branch manager, agent, employee or representative of ours has any power of authority except to take orders for our products and to submit the same to us, at our factory, for our approval and acceptance on the terms herein or rejection. There are no representations, agreements, obligations, or conditions, expressed or implied, statutory or otherwise, relating to the subject matter hereof, other than herein contained. DeZURIK, Inc. and related terms (we, us and our) shall refer to DeZURIK, Inc. and its affiliates. If any provision hereof is invalid or not enforceable under applicable law, the remaining provisions shall remain in full force and effect. Any assignment of your rights hereunder without our consent (which shall not be unreasonably withheld) shall be void. These Terms shall be binding on your successors and assigns. Our failure to require your performance of any of These Terms shall not serve as a waiver of or diminish our rights to require strict performance of such provision or These Terms.

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Town of Front Royal, Virginia
Council Agenda Statement

Page 1
Item No. 8

Meeting Date: October 15, 2019

Agenda Item: PUBLIC HEARING – An Ordinance to Amend Chapter 134 Pertaining to Water and Sewer Connection Fees and Installation *(1st Reading)*

Summary: Council is requested to affirm on its first reading an ordinance to amend and re-enact Town Code Sections 134-22, 134-22.3, 134-30 and 134-32 pertaining to connection fees and installation for ¾-inch and 1-inch water and sewer service for in-town and out-of-town residential premises, as presented.

Budget/Funding: 9601-3161703 Water Connection Fees
9801-3161703 Sewer Connection Fees

Attachments: Ordinance and minutes of September 9 Work Session

Meetings: Work Session held September 9, 2019

Staff Recommendation: Approval ✓ Denial______

Proposed Motion: **I move that Council affirm on its first reading an ordinance to amend and re-enact Town Code Sections 134-22, 134-22.3, 134-30 and 134-32 pertaining to connection fees and installation for ¾-inch and 1-inch water and sewer service for in-town and out-of-town residential premises, as presented.**

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

Approved By: JW

VERSION 2 (REVISED OCTOBER 8, 2019)

134-22 SANITARY SEWER CONNECTION FEES

FIRST: RESIDENTIAL PREMISES AND UNITS:

A. The connection charge for non-commercial residential premises and units, including residential apartments, houses, condominiums, and hostels, but excluding hotels and motels, will be based on the size of the water meter for water entering the premises from which a sewer connection exits, according to the following:

1. Sewer tap served by up to and including one-inch water meter: five thousand dollars ($5,000.00) each, including installation costs, which installation costs shall be borne by the Town of Front Royal,

2. Sewer tap served by larger than one-inch and larger water meter: For sewer taps served by larger than one-inch (1") and larger water meter, the connection and installation charge shall be the same as the corresponding connection charge as for the same sized sewer tap served by the same sized water meter for non-residential premises. Installation and connection charge for residential premises for sewer taps served by larger than one-inch and larger water meters shall be in accordance with Section 134-22., "*SECOND: NON-RESIDENTIAL PREMISES AND UNITS*".

~~E.~~ 3. The charges for apartments, condominium units and trailers will be two thousand three hundred four dollars ($2,304.00) for sewer service for each unit after the first unit.

~~F.~~ 4.In the event that any multiple-unit complex which initially qualifies for the reduced rates for additional apartment units shall convert such units from a rental basis to an ownership basis, then, at the time of such conversion, the standard fee schedule charges shall be assessed against each single unit that is so converted.

5. Single-family and two-family residential dwellings will be charged according to the standard fee schedule charges for each sewer tap made, with additional charge of four hundred eighty-two dollars ($482.00) for each dwelling unit.

SECOND: NON-RESIDENTIAL PREMISES AND UNITS:

B. The connection charge for sewer service to non-residential premises and units, independent of and in addition to installation costs, will be based on the size of the water meter for water entering the premises from which a sewer connection exits, according to the following:

1. Sewer tap served by three-fourths-inch water meter: nine thousand seven hundred fifty dollars ($9,750.00) each.

2. Sewer tap served by one-inch water meter: twenty-one thousand nine hundred thirty-eight dollars ($21,938.00) each.

3. Sewer tap served by one and one-half-inch water meter: fifty thousand seven hundred dollars ($50,700.00) each.

4. Sewer tap served by two-inch water meter: seventy-nine thousand nine hundred fifty dollars ($79,950.00) each.

5. Sewer tap served by three-inch water meter: one hundred fifty-seven thousand nine hundred fifty dollars ($157,950.00) each.

6. Sewer tap served by four-inch water meter: two hundred four-five thousand seven hundred dollars (245,700.00) each.

7. Sewer tap served by six-inch water meter: four hundred eight-nine thousand four hundred fifty dollars ($489,450.00) each.

8. Sewer tap served by eight-inch water meter: seven hundred eighty-one thousand nine hundred fifty dollars ($781,950.00) each.

9. Sewer tap served by ten-inch water meter: one million nine hundred twenty-three thousand two hundred dollars ($1,123,200.00) each.
10. Sewer tap served by twelve-inch water meter: one million four hundred sixty-four thousand four hundred fifty dollars ($1,464,450.00) each.

THIRD: PROVISIONS APPLICABLE TO ALL PREMISES AND UNITS:
C. The above standard fee schedule charges shall apply to apartments, houses, condominiums, commercial buildings and hostels.
D. For purposes of this fee schedule, the following terms shall have the meanings indicated:
APARTMENT UNIT - A single-dwelling unit in a multiple-unit structure which is occupied on a rental basis.
CONDOMINIUM - A single-dwelling unit in a multiple-unit structure which is occupied on an ownership basis.
UNIT - Any single place of residence, any single place of business or any single hostelry room.
E. The standard fee schedule shall apply to the first unit of any structure. The standard fee schedule charges shall apply to each condominium unit.
F. Commercial and industrial buildings; hotels, motels, inns and other lodging facilities; dormitories; and nursing care facilities with central dining areas will be charged according to the standard fee schedule charges for each sewer tap made, with an additional charge of three hundred seventy-five dollars ($375.00) for each water closet.
G. Notwithstanding the provisions of Section 134-22A, E and G, the connection charges for sewer service provided to structures and facilities which were existing as of May 20, 1991, in the following annexed areas of the Town of Front Royal shall be frozen at rates in effect on the date of May 20, 1991, to wit:
1. The annexed area incorporated into the Town of Front Royal by order of the Annexation Court, effective December 31, 1976, as shown by the plat of record in the annexation file of record in the office of the Clerk of the Circuit Court of Warren County.
2. The annexed area incorporated into the Town of Front Royal by order of the Annexation Court, effective December 31, 1978, as shown by the plat of record in the annexation file of record in the office of the Clerk of the Circuit Court of Warren County. I. All connection fees for sewer services furnished outside of the limits of the Town of Front Royal will be one hundred percent (100%) more than the in-town rates as provided in Section 134-22, Subsections A through H.
J. No connection fee for sewer service shall be accepted by the Town of Front Royal prior to the issuance of a zoning permit and the approval of a building permit application for building development or conversion upon the lot or parcel of land to be served. This provision shall not apply when the lot or parcel of land to be served has an existing structure approved for occupancy.

134-22.3 SANITARY SEWER CONNECTIONS; FURNISHING AND REPAIR

FIRST: RESIDENTIAL PREMISES AND UNITS SERVED BY UP TO AND INCLUDING ONE INCH WATER METERS:
A. Upon appropriate payment of the connection charge as provided in Section 134-22, for non-commercial residential premises and untis, including residential apartments, houses, condominiums, and hostels, but excluding hotels and motels, the Town shall, at its expense, provide, furnish and install the following services, material, labor and equipment.
1. The actual connection into the existing sanitary sewer line and connection with the customer's lateral sewer line.

2. All connection fittings, valves and sleeves.
3. The stub to the customer's property line for the customer's connection.
4. Necessary repairs to any existing sidewalk, pavement, landscaping or lawn caused by the town's sanitary sewer line connection measures.
B. The Town shall be responsible for the cost of maintenance, repair and/or replacement to the above-stated sanitary sewer line connection, materials and equipment. The Town shall not be responsible for the cost of repair, maintenance and/or replacement of any sewer lines, material or equipment located on the customer's property.
C. The customer shall have the option to provide, furnish and install the sanitary sewer connection at his cost and only upon prior written approval by the Town.
E. Subsection A shall not apply in the case of subdividers or developers required to install like improvements under the Town's Subdivision Ordinance (Chapter 148, Subdivision and Land Development). In such cases the town shall have no repair responsibility under Subsection B until and unless said improvements have been dedicated to and accepted by the Town.

SECOND: NON-RESIDENTIAL PREMISES AND UNITS:
A. Upon appropriate payment of the connection charge as provided in Section 134-22, the Town shall, at its option, may provide, [NOTE: THE HIGHLIGHTED WORDS ARE THE WAY THE CURRENT ORDINANCE IS WORDED. DO WE WANT TO MAKE THIS OPTIONAL FOR THE TOWN, OR DO WE WANT THE TOWN TO INSTALL THESE IN CIRCUMSTANCES?] furnish and install the following services, material, labor and equipment. Incurred costs for said services, material, labor and equipment shall be borne and paid for by the property owner.
1. The actual connection into the existing sanitary sewer line and connection with the customer's lateral sewer line.
2. All connection fittings, valves and sleeves.
3. The stub to the customer's property line for the customer's connection.
4. Necessary repairs to any existing sidewalk, pavement, landscaping or lawn caused by the town's sanitary sewer line connection measures.
B. The customer shall be responsible for all costs of the materials and installation of the equipment described in this Section. Upon the request of a customer for service, the Town shall prepare an estimate of the cost of all materials and installation of the meters and connections and all appurtenances to be installed and shall collect the amount from the customer prior to installation. In the event the final charge exceeds or is less than the estimate and payment, an additional billing or refund, respectively, shall be made by the Town. Failure of the customer to pay the additional charge within thirty (30) days may result in disconnection of the service until paid in full, including any reconnection and administrative fee.
C. The Town shall be responsible for the cost of maintenance, repair and/or replacement to the above-stated sanitary sewer line connection, materials and equipment. The Town shall not be responsible for the cost of repair, maintenance and/or replacement of any sewer lines, material or equipment located on the customer's property.
D. The customer shall have the option to provide, furnish and install the sanitary sewer connection at his cost and only upon prior written approval by the Town.
E. Subsection A shall not apply in the case of subdividers or developers required to install like improvements under the Town's Subdivision Ordinance (Chapter 148, Subdivision and Land Development). In such cases the town shall have no repair responsibility under Subsection B until and unless said improvements have been dedicated to and accepted by the Town.

PROVISIONS APLICABLE PARTICULARY TO WATER
134-30 CONNECTION CHARGE ESTABLISHED

FIRST: RESIDENTIAL PREMISES AND UNITS:

A. The connection charge for water service to residential premises and units, including residential apartments, houses, condominiums, and hostels, but excluding hotels and motels, including installation costs, which installation costs shall be borne by the Town of Front Royal, will be based on meter size and service line size. The larger size will dictate the fee in conjunction with the following schedule:
1. Three-fourths-inch (3/4") water tap: four thousand three hundred forty dollars ($4,340.00) each
2. One-inch (1") water tap: five thousand dollars ($5,000.00) each.
3. Larger than one-inch (1") and larger tap: For sewer taps served by larger than one-inch and larger water meter, the connection fee shall be the same as the corresponding connection fee as for the same sized water connection tap fee served by the same sized water connection tap fee for non-residential premises. Installation for residential premises for water taps served by larger than one-inch and larger water meters shall be in accordance with Section 134-32., "*SECOND: NON-RESIDENTIAL PREMISES*".
~~E.~~ 4. The standard fee schedule shall apply to the first unit of any structure. These standard fee schedule charges shall apply to each condominium unit.
~~F.~~ 5.The charges for apartments, condominium units and trailers will be two thousand three hundred seventy-one dollars ($2,371.00) for water service for each unit after the first unit.
6. Single-family and two-family residential dwellings will be charged according to the standard fee schedule charges for each water tap made, with an additional charge of four hundred ninety-six dollars ($496.00) for each dwelling unit.

SECOND: NON-RESIDENTIAL PREMISES AND UNITS:
A. Connection charge for water service to non-residential premises and units, independent of and in addition to installation costs, will be based on meter size and service line size. The larger size will dictate the fee in conjunction with the following schedule:
1. Three-fourths-inch water tap: four thousand three hundred forty dollars ($4,340.00) each.
2. One-inch water tap: eight thousand eight hundred sixteen dollars ($8,816.00) each.
3. One and one-half-inch water tap: twenty thousand one hundred dollars ($20,100.00) each.
4. Two-inch water tap: thirty-one thousand one hundred fifty-four dollars ($31,154.00) each.
5. Three-inch water tap: sixty thousand six hundred thirty-four dollars ($60,634.00) each.
6. Four-inch water tap: ninety-three thousand seven hundred ninety-eight dollars ($93,798.00) each.
7. Six-inch water tap: one hundred eighty-five thousand nine hundred twenty-two dollars ($185,922.00) each.
8. Eight-inch water tap: two hundred ninety-six thousand four hundred sixty-nine dollars ($296,469.00) each.
9. Ten-inch water tap: four hundred twenty-five thousand four hundred forty-two dollars ($425,442.00) each.
10. Twelve-Inch water tap: five hundred fifty-four thousand four hundred fifteen dollars ($554,415.00) each.
B. The connection charge for water service exclusively used for fire-suppression systems will be based on the line size, according to the following fee schedule:

1. Three-inch line or smaller: two thousand one hundred twenty-four dollars ($2,124.00), plus thirty-nine dollars and sixty-seven cents ($39.67) per month.
2. Four-inch line: four thousand two hundred forty-eight dollars ($4,248.00), plus seventy-nine dollars and thirty-two cents ($79.32) per month.
3. Six-inch line: eight thousand four hundred ninety-five dollars ($8,495.00), plus one hundred sixty-one dollars and forty-nine cents ($161.49) per month.
4. Eight-inch line: twelve thousand seven hundred forty-three dollars ($12,743.00), plus two hundred forty dollars and eighty cents ($240.80) per month.
5. Ten-inch line: sixteen thousand nine hundred ninety-one dollars ($16,991.00), plus three hundred twenty dollars and fourteen cents ($320.14) per month.

THIRD: PROVISIONS APPLICABLE TO ALL PREMISES AND UNITS:

C. The above standard fee schedule charges shall apply to apartments, houses, condominiums, commercial buildings and hostels.

D. For the purpose of this fee schedule, the following terms shall have the meanings indicated:

APARTMENT UNIT - A single dwelling unit in a multiple-unit structure which is occupied on a rental basis.

CONDOMINIUM - A single dwelling unit in a multiple-unit structure which is occupied on an ownership basis.

UNIT - Any single place of residence, any single place of business or any single hostelry room.

G. (RESERVED)

H. Commercial and industrial buildings; hotels, motels, inns and other lodging facilities; dormitories; and nursing-care facilities with central dining areas will be charged according to the standard fee schedule charges for each water tap made, with an additional charge of three hundred eighty-seven dollars ($387.00) for each water closet.

~~Single-family and two-family residential dwellings will be charged according to the standard fee schedule charges for each water tap made, with an additional charge of four hundred ninety-six dollars ($496.00) for each dwelling unit.~~ [MOVED TO A. 6. ABOVE.]

I. There will be an additional monthly charge for each water meter exceeding one (1) inch in size according to the following fee schedule:

1. One-and-one-fourth inch meter: seventeen dollars and thirty-five cents ($17.35) per month.
One-and-one-half inch meter: twenty-three dollars and twenty-eight cents ($23.28) per month.
3. Two-inch meter: fifty-five dollars and thirty-one cents ($55.31) per month.
4. Three-inch meter: two hundred ninety dollars and seventeen cents ($290.17) per month.
5. Four-inch meter: three hundred seventy-seven dollars and twenty-two cents ($377.22) per month.
6. Six-inch meter: five hundred eighty dollars and thirty-three cents ($580.33) per month.

J. All connection fees for water service furnished outside the limits of the Town of Front Royal will be one hundred percent (100%) more than the in-town rates as provided above. This section shall not apply to property located in the Belmont Subdivision of Warren County served by the water system constructed by the lot owners and subsequently conveyed to the Town of Front Royal.

K. No connection fee for water service shall be accepted by the Town of Front Royal prior to the issuance of a zoning permit and the approval of a building permit application for building development or conversion upon the lot or parcel of land to be served. This provision shall not apply when the lot or parcel of land to be served has an existing structure approved for occupancy.

L. Notwithstanding the provisions of Section 134-30A through I, the connection charges for water service provided to structures and facilities which were existing as of May 20, 1991, in the following annexed areas of the Town of Front Royal shall be frozen at the rates in effect on the date of May 20, 1991, as follows:

1. The annexed are incorporated into the Town of Front Royal by order of the Annexation Court, effective December 31, 1976, as shown by the plat of record in the annexation file of record in the office of the Clerk of the Circuit Court of Warren County.
2. The annexed area incorporated into the Town of Front Royal by order of the Annexation Court effective December 31, 1978, as shown by the plat of record in the annexation file of record in the office of the Clerk of the Circuit Court of Warren County.

134-32 FURNISHING OF WATER METERS AND APPURTENANCES; REPAIRS

FIRST: RESIDENTIAL PREMISES AND UNITS SERVED BY AND UP TO ONE INCH:

The following shall apply to residential premises and units, including residential apartments, houses, condominiums, and hostels, but excluding hotels and motels:

A. Taps up to and including one inch (1") on development of existing in-fill lots:
1. Upon appropriate payment of the connection charge(s) as provided in Section 134-30, ain consideration whereof, the Town shall provide, furnish and install the following services, material, labor and equipment to residential premises, including residential apartments, houses, condominiums, and hostels, but excluding hotels and motels, including installation costs, which installation costs shall be borne by the Town of Front Royal.

a. The tap (connection) into the existing waterline.

b. All fittings, valves and sleeves deemed necessary by the Town for said tap.

c. All appurtenances deemed necessary by the Town including the service line to the meter, water meter jar, angle valve, yoke bar, flanges, gaskets, back-flow prevention device, ring & lid assembly, and up to five feet of pig-tail at the property. The meter will be located at the Town right-of-way/easement/property line.

d. The Town will own and maintain all appurtenances up to the discharge side of the water meter/back-flow device.

SECOND: NON-RESIDENTIAL PREMISES AND UNITS:

A. Taps ~~under 2"~~ above one inch (1") on development of existing in-fill lots:
1. Upon appropriate payment of the connection charge(s) as provided in Section 134-30, and in consideration whereof, the Town shall provide, furnish and install the following services, material, labor and equipment. Incurred costs for said services, material, labor and equipment shall be borne and paid for by the property owner.
a. The tap (connection) into the existing waterline.
b. All fittings, valves and sleeves deemed necessary by the Town for said tap.
c. All appurtenances deemed necessary by the Town including the service line to the meter, water meter jar, angle valve, yoke bar, flanges, gaskets, back-flow prevention device, ring & lid assembly, and up to five feet of pig-tail at the property. The meter will be located at the Town right-of-way/easement/property line.

d. The Town will own and maintain all appurtenances up to the discharge side of the water meter/back-flow device.

2. The customer shall be responsible for all costs of the materials and installation of the equipment described in this Section. Upon the request of a customer for service, the Town shall prepare an estimate of the cost of all materials and installation of the meters and connections and all appurtenances to be installed, in addition to the connection tap fees described in Section 134-30, and shall collect the amount from the customer prior to installation. In the event the final charge exceeds or is less than the estimate and payment, an additional billing or refund, respectively, shall be made by the Town. Failure of the customer to pay the additional charge within thirty (30) days may result in disconnection of the service until paid in full, including any reconnection and administrative fee.

B. Taps ~~2" and greater~~ above one inch (1”) ~~and~~ on development of any parcels other than existing in-fill lots:

1. The customer will be responsible for the purchase, excavation and installation of the meter vault, water meter, valves, piping, back-flow device, and all other appurtenances deemed necessary by the Town and County.

2. The materials and configuration and installation of all appurtenances shall be in compliance with the Town of Front Royal Standards and Specifications.

3. After the installation and final inspection, the Town of Front Royal will assume full ownership and maintenance of the vault and Town required appurtenances.

C. All services will be protected with back-flow protection devices.

D. For water taps used exclusively for fire suppression systems:

1. The Town will tap the main line and extend the service as a stub to the edge of the right-of-way/easement/property line.

2. The customer will be responsible for the excavation and installation at the edge of the right-of-way/easement/property line for the required vault and appurtenances deemed necessary by the Town of Front Royal and by the customer and in compliance with all applicable codes and regulations.

3. Upon final inspection, the Town will assume responsibility and maintenance for the vault and all appurtenances deemed necessary by the Town of Front Royal.

4. The installation and appurtenances will be in compliance with the Town of Front Royal Standards and Specifications.

E. The Town will not be responsible for the cost of repair, maintenance and/or replacement of any lines, materials or equipment located on the customer's property from and beyond the end point of the Town owned meter vault.

F. The Town thereafter shall be responsible for the cost of repair and/or replacement to the above-stated waterline connection, materials and equipment. The Town shall not be responsible for the cost of repair, maintenance and/or replacement of any lines, material or equipment located on the customer's property from and beyond the end point of the town-installed tail specified at Subsection (E) herein.

G. Subsection A shall not apply in the case of subdividers or developers required to install like improvements under the Town's Subdivision Ordinance (Chapter 148, Subdivision and Land Development). In such cases the Town shall have no repair responsibility under Subsection B until and unless said improvements have been dedicated to and accepted by the Town.

3. Upon final inspection, the Town will assume responsibility and maintenance for the vault and all appurtenances deemed necessary by the Town of Front Royal.

4. The installation and appurtenances will be in compliance with the Town of Front Royal Standards and Specifications.

E. The Town will not be responsible for the cost of repair, maintenance and/or replacement of any lines, materials or equipment located on the customer's property from and beyond the end point of the Town owned meter vault.

F. The Town thereafter shall be responsible for the cost of repair and/or replacement to the above-stated waterline connection, materials and equipment. The Town shall not be responsible for the cost of repair, maintenance and/or replacement of any lines, material or equipment located on the customer's property from and beyond the end point of the town-installed tail specified at Subsection (E) herein.
G. Subsection A shall not apply in the case of subdividers or developers required to install like improvements under the Town's Subdivision Ordinance (Chapter 148, Subdivision and Land Development). In such cases the Town shall have no repair responsibility under Subsection B until and unless said improvements have been dedicated to and accepted by the Town.

This ordinance shall become effective upon passage.

APPROVED:

____
Matthew A. Tederick, Interim Mayor

ATTEST:

____
Jennifer E. Berry, MMC, Clerk of Council

THIS ORDINANCE was approved at the Regular Meeting of the Town of Front Royal, Virginia on its second reading, conducted ___________________2019, upon the following recorded vote:

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

A public hearing on the above was held on __________________________________, 2019, having been advertised in the Northern Virginia Daily on September 28 and October 5, 2019. The Ordinance was enacted at the Regular Meeting of the Town Council held ____2019, to become effective immediately.

Approved as to form and legality:

____
Douglas W. Napier, Town Attorney

Date: ____/____/_____

<u>September 9, 2019 worksession minutes</u>

<u>Tap Fees & Service Presentation</u> – *Public Works*
SUMMARY: The Public Works Director will be presenting a power point presentation on the Town's current tap fee cost and policies associated with it. This presentation will also compare what other local Towns and Cities are providing for services and associated cost.

Mr. Boyer presented the following information to the Town Council:

TAP FEES AND SERVICES: COMPARISON OF LOCAL TOWN AND CITIES

Town of Front Royal services and fees
• Builder/contractor required to install water and sewer taps and service lines from the Main line to the house or business
• Fees are based off the water tap size
• Town inspects work and sets meter once taps are completed
Residential
• Pays tap fees plus water fee of $496 and sewer fee of $482-in-town
• Out of town fees-$992 water and $964 sewer
• Primarily a ¾" tap and **total connection fee** is $15,068-in town
• $30,136-out of town total
• Meter is provided by the town for residential service connections
Commercial and industrial
• Industrial and commercial users must purchase their own meter to meet town construction standards-Neptune R900i e coder
• Hotels, motels, lodging facilities, nursing care facilities-pays tap fees per the size of water connection fee plus each Water closet-$762 per water closet (water & sewer)
• Apartments, condominiums, trailers-pay $2,304 for sewer for each unit after the first unit

TOWN OF FRONT ROYAL SERVICES AND FEES

IN TOWN RATES-	WATER	SEWER	OUT OF TOWN RATES-	WATER	SEWER
3/4”	$4,340	$9,750	3/4”	$8,680	$19,500
1”	$8,816	$21,938	1”	$17,632	$43,876
1.5”	$20,100	$50,700	1.5”	$40,200	$101,400
2”	$31,154	$79,950	2”	$62,308	$159,900
3”	$60,634	$157,950	3”	$121,268	$315,900
4”	$93,798	$245,700	4”	$187,596	$491,400
6”	$185,922	$489,450	6”	$371,844	$978,900
8”	$296,469	$781,950	8”	$592,938	$1,563,900
10”	$425,442	$1,123,200	10”	$850,884	$2,246,400
12”	$554,415	$1,464,450	12”	$1,108,830	$2,928,900

Town of Culpeper services and fees

• Developer or private property owner is responsible for connecting to the existing Water and sewer main

• Once tap fees have been paid, the town will set meter

• Developer or private property owner does have the option to pay the town to perform the installation of water and sewer laterals and town will charge for labor, equipment and materials

TOWN OF CULPEPER SERVICES AND FEES

TAP FEES	WATER	SEWER
5/8”	$6,500	$10,000
1”	$9,900	$12,500
1.5”	$15,000	$20,250
2”	$30,000	$40,500
3”	$45,000	$60,750
4”	$60,000	$81,000

*ABOVE 4INCH IS THE 4” PRICE PLUS $2,000 PER 10,000 MAXIMUM ALLOWABLE GALLONS (WATER) AND $2,700 PER 10,000 MAXIMUM ALLOWABLE GALLONS (SEWER)

Frederick water services and fees

• Frederick water provides and installs 5/8”-2” meters-installs taps but charges builder fees for labor, equipment and materials to install

• Provides and installs service line and meter box assembly to edge of right of way

• Contractor is to install 6” or larger

FREDERICK WATER SERVICES AND FEES

TAP FEES	WATER	SEWER
5/8"	$14,115	$3,076
3/4"	$17,644	$3,845
1"	$28,230	$6,153
1.5"	$49,402	$10,757
2"	$79,044	$17,228
3"	$141,149	$30,764
4"	$169,379	$36,916
6"	$705,746	$153,818
8"	$1,129,193	$246,108
10"	$1,482,066	$323,017
12"	$2,117,237	$461,453

Town of Strasburg services and fees

• Town installs taps but charges builder fees for labor, equipment and materials to install
• Typically cost runs $2,000-$5,000 (added to tap fees)
• Town of Strasburg does not provide meters –cost is $300 (cost is added to tap fees)

Commercial/industrial

• Hotel/motels- pays tap fees per the size of water connection fee plus each guest room- $300 (water) $500 (sewer) ($800 water & sewer)
• Nursing/convalescent homes- pays tap fees per the size of water connection fee plus each patient room-$350 (water) $700 (sewer) ($1,050 water & sewer)
• Hospitals- pays tap fees per the size of water connection fee plus each patient room- $800 (water) $2,000 (sewer) ($2,800 water & sewer)

TOWN OF STRASBURG SERVICES AND FEES

IN TOWN RATES-			OUT OF TOWN RATES		
	WATER	SEWER		WATER	SEWER
3/4"	$6,500	$6,500	3/4"	$9,750	$9,750
1"	$9,200	$10,399	1"	$13,800	$15,599
1.5"	$12,000	$13,599	1.5"	$18,000	$20,399
2"	$14,400	$20,799	2"	$21,600	$31,199
3"	$20,800	$32,798	3"	$31,200	$49,179
4"	$27,200	$51,997	4"	$40,800	$77,996
6"	$44,800	$91,996	6"	$67,200	$137,994
8"	$68,800	$143,993	8"	$103,201	$215,990
10"	$148,001	$279,986	10"	$222,001	$419,979

Town of Woodstock services and fees

• **Single family**-town installs taps but charges labor, equipment and materials to install

• D**evelopments**- builder/contractor required to install water and sewer taps and service lines From the main line to the house or business

Commercial/industrial

• Hotel/motels/hospitals/nursing homes- pays tap fees per the size of water connection fee plus each unit-$750 (water) $1,500 (sewer) ($2,250 water & sewer per unit) plus cost of installation

• Restaurants- pays tap fees per the size of water connection fee plus fee per seating-$100 (water) $150 (sewer) ($350 water & sewer per seating) plus cost of installation

• Laundromats-pays tap fees per the size of water connection fee plus per machine-$1,000 (water) $2,000 (sewer) ($3,000 water & sewer per machine) plus cost of installation

Carwash- pays tap fees per the size of water connection fee plus each bay-$1,500 (water) $3,500 (sewer) ($5,000 water & sewer per bay) plus cost of installation

TOWN OF WOODSTOCK SERVICES AND FEES

TAP FEES	WATER	SEWER
3/4"	$3,300	$4,600
1"	$4,800	$6,800
1.5"	$6,300	$8,900
2"	$8,700	$12,300
3"	$11,900	$16,900
4"	$14,700	$20,900
6"	$17,500	$24,900
8"	$20,400	$28,800

City of Winchester services and fees

• Builder/contractor required to install water and sewer taps and service lines from the main line to the house or business

• Builder is responsible for providing the meter

CITY OF WINCHESTER SERVICES AND FEES

TAP FEES	WATER	SEWER
3/4"	$5,300	$7,200
1"	$8,800	$12,000
1.5"	$17,650	$24,000
2"	$28,250	$38,400
3"	$53,000	$72,000
4"	$88,300	$120,000
6"	$176,650	$240,000

City of Harrisonburg services and fees

• Developer/builder or private property owner pays for the water meter in addition to tap fees

• City of Harrisonburg installs water and sewer taps and service lines from the main line to the house or business and charges the customer labor, equipment & materials

CITY OF HARRISONBURG SERVICES AND FEES

TAP FEES	WATER	SEWER
5/8"	$2,500	$4,500
3/4"	$2,500	$4,500
1"	$6,000	$9,000
1.5"	$12,000	$18,000
2"	$20,000	$30,000
3"	$40,000	$60,000
4"	$60,000	$90,000
6"	$120,000	$180,000
8"	$180,000	$270,000
10"	$300,000	$450,000
12"	$360,000	$540,000

WATER & SEWER TAP FEES TOTALS

Meter Size	Town of Front Royal	Town of Culpeper	Frederick Water	Town of Strasburg	Town of Woodstock	City of Winchester	City of Harrisonburg
¾"	$14,090	$16,500	$21,489	$13,00	$7,900	$12,500	$7,000
1"	$30,754	$22,400	$34,383	$19,599	$11,600	$20,800	$15,000
1.5"	$70,800	$57,650	$60,159	$25,599	$15,200	$41,650	$30,000
2"	$111,104	$70,500	$96,272	$35,199	$21,000	$66,650	$50,000
3"	$218,584	$105,750	$171,913	$53,598	$28,800	$125,000	$100,000
4"	$339,498	$141,000	$206,295	$79,197	$35,600	$208,300	$150,000
6"	$675,372		$859,564	$136,796	$42,400	$416,650	$300,000
8"	$1,078,419		$1,375,301	$212,793	$49,200		$450,000
10"	$1,548,642		$1,805,083	$427,987			$750,000
12"	$2,018,865		$2,578,690				$900,000

Council Discussion:
Council clarified with Staff that the standard household tap size is ¾". Councilman Thompson asked about the rates charged; Mr. Boyer noted that Harrisonburg for example only does a few taps were year. Mr. Waltz noted that it was paying for the infrastructure and buying into the system, he explained that it was paying for the system. He explained that another hard look needed to be taken at the rates perhaps with a cost of service study. Mr. Tewalt noted that in 2012 the rates were the suggested amounts. He stated that it was the expansion of the sewer plant because it was a DEQ

mandate and this is when these rates came in, and the water rates came in before those rates came in, due to *those* water mandates. Mr. Tewalt explained that the charges came in from the mandates of the system implications. Mayor Tederick asked when the Town did the taps were physically were put in by the Town; Mr. Tewalt stated that the taps were put in the installs.

Councilman Sealock asked if Staff had the capability to put the taps in; Mr. Waltz noted that they could though equipment would need to be evaluated. Mr. Tewalt noted that the issue is anything over five feet is a problem. He stated that the Town does not have anything for over five feet for proper trench boxes, there is a lot of limestone to blast rock and that is a huge undertaking regarding equipment. Mr. Holloway noted that the Town must have trench boxes because they address have water repairs constantly.

Mayor Tederick noted that this has been a sore subject for him for some time. He stated that it is a major problem for him. He stated that this is one of the problems with 10% of the cost of building a new home as an issue Mayor Tederick stated that the Council needs to address the tap issues as the Town is not as business friendly as perhaps they think they are. Mr. Sealock noted that he echoes the comments of the Mayor. Mr. Holloway stated that to do a development with ten tap fees is ridiculous. Councilman Tewalt noted the tap fees were to pay the $50-60 million for the water and sewer treatment plant debts. He explained that if the taps are adjusted, then the budget portion for water rates would have to go up to cover the amounts that are lost on tap fees. Mr. Meza noted that if the tap fees are lowered then perhaps more homes would be built.

Mr. Tewalt noted that the Corridor amounts are doubled because they have not paid a penny of the infrastructure for the Town. Mr. Waltz cautioned Council about reducing tap fees without a cost of service study. Mayor Tederick noted that waiting three months for a study was too long for him and he would like to lower the cost $5,000 at the next meeting.

Mayor Tederick asked for more information from Mr. Boyer and for the issue to return to Council as soon as possible. Mr. Waltz noted that a cost of service study would take about three months and stressed the study's importance. Mr. Meza asked about Front Royal Limited Partnership and the impact the tap fees have on their project. Mr. Wilson noted that the cost of survey study does take into consideration FRLP for example.

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Town of Front Royal, Virginia
Council Agenda Statement

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Item No. 9

Meeting Date: October 15, 2019

Agenda Item: PUBLIC HEARING – An Ordinance to Adopt and Re-enact Section 180-181 to Grant a Franchise Agreement for Cable Television to Comcast of California / Maryland/Pennsylvania/Virginia/West Virginia, LLC *(1st Reading)*

Summary: Council is requested to affirm on its first reading an ordinance to adopt and re-enact Section 180-181 of the Town Code to grant a Franchise Agreement for Cable Television to Comcast of California/Maryland/ Pennsylvania/ Virginia / West Virginia, LLC as presented.

Budget/Funding: 1000-3120401 – General Fund Franchise Tax

Attachments: Ordinance, Agreement and Work Session Minutes of April 15

Meetings: Work Session held April 15, 2019

Staff Recommendation: Approval ✓ Denial______

Proposed Motion: **I move that Council affirm on its first reading an ordinance to adopt and re-enact Section 180-181 of the Town Code to grant a Franchise Agreement for Cable Television to Comcast of California/Maryland/ Pennsylvania/ Virginia / West Virginia, LLC as presented.**

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

Approved By: JW

AN ORDIANCE TO ADOPT AND RE-ENACT SECTION 180-181 OF THE FRONT ROYAL TOWN CODE TO GRANT A FRANCHISE AGREEMENT FOR CABLE TELEVISION TO COMCAST OF CALIFORNIA / MARYLAND / PENNSYLVANIA / VIRGINIA /WEST VIRGINIA, LLC FOR THE TOWN OF FRONT ROYAL

WHEREAS, the Town of Front Royal has determined that the financial, legal and technical ability of Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC is reasonably sufficient to provide the services, facilities and equipment necessary to meet the future cable-related needs of the community; and,

NOW, THEREFORE, BE IT ENACTED by the Town Council of the Town of Front Royal, Virginia that Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC is hereby granted a franchise to operate a cable television system within the Town of Front Royal, under the terms and conditions of a Franchise Agreement as follows:

CABLE TELEVISION

180-181 CABLE FRANCHISE AGREEMENT (Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia LLC)

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

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

SECTION 1 – DEFINITION OF TERMS

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

"ACT" means the Communications Act of 1934.

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

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

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

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

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

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

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

"EFFECTIVE DATE" means May 13th, 2018.

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

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

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

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

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

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

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

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

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

"ORDINANCE" includes a resolution.

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

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

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

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

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

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

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

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

SECTION 2 – GRANT OF AUTHORITY

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

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

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

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

SECTION 3- CONSTRUCTION AND MAINTENANCE OF THE CABLE SYSTEM

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

3.2 Conditions of Street Occupancy.

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

Franchisee's wires, cables, poles or other facilities pursuant to the above results in temporary service disruptions.

(B) Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Way, the Franchisee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance. The Town may make the final determination as to the reasonable acceptability of repair and/or replacement of damaged facilities.

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

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

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

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

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

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

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

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

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

SECTION 4 – SERVICE OBLIGATIONS

4.1 General Service Obligations.

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

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

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

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

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

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

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

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

SECTION 5 – PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS CHANNELS

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

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

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

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

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

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

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

5.7 Capital Support for PEG Access.

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

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

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

SECTION 6 – COMMUNICATION TAX AND FRANCHISE FEES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Products and services offered;

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

(iii) Installation and service maintenance policies;

(iv) Instructions on how to use the Cable Service;

(v) Channel positions of programming carried on the System; and

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

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

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

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

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

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

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

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

SECTION 8 – OVERSIGHT AND REGULATION BY FRANCHISING AUTHORITY

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

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

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

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

8.3 Operational Records. Upon no less than thirty (30) business days' written notice to the Franchisee, the Town shall have the right to inspect Franchisee's books and records, including electronic books and records, pertaining to Franchisee's provision of Cable Service in the franchise area at any time during normal business hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise Agreement. Such notice shall specifically reference the Franchisee’s section or subsection which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the Town. Franchisee shall not be required to maintain any books and records for franchise compliance purposes longer than the current year plus three (3) years. The Franchisee shall maintain the records required to compute all operational and customer service compliance measures outlined in this Franchise to demonstrate that the measures are being met for at least four (4) consecutive quarters.

8.4 Records Required. Franchisee shall at all times maintain:

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

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

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

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

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

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

8.7 Proprietary Information.

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

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

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

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

8.8 Reports.

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

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

SECTION 9 – TRANSFER OR CHANGE OF CONTROL OF CABLE 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11 – SYSTEM DESCRIPTION AND SERVICE

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

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

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

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

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

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

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

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

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

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

SECTION 12 – ENFORCMENT OF FRANCHISE

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

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

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

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

12.2 Non-compliance procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12.4 <u>Revocation.</u>

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

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

(ii) At the designated public hearing, the Franchising Authority shall give the Franchisee an opportunity to state its position on the matter, present evidence and question witnesses, in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Virginia, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Franchisee within ten (10) business days. The decision of the Franchising Authority shall be in writing and shall be delivered to the Franchisee by certified mail. The Franchisee may appeal such determination to an appropriate court.

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

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

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

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

SECTION 13 – INSPECTION OF FACILITIES

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

SECTION 14 – MISCELLANEOUS PROVISIONS

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

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

To the Franchising Authority:

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

To the Franchisee:

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

With copies to:

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

And to:

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

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

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

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

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

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

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

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

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

This ordinance shall become effective upon passage.

APPROVED:

____
Matthew A. Tederick, Interim Mayor

ATTEST:

____
Jennifer E. Berry, MMC, Clerk of Council

THIS ORDINANCE was approved at the Regular Meeting of the Town of Front Royal, Virginia on its second reading, conducted _____________________2019, upon the following recorded vote:

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

A public hearing on the above was held on ____________________________ having been advertised in the Northern Virginia Daily on <u>September 28, 2019, and October 5, 2019</u>. The Ordinance was enacted at the Regular Meeting of the Town Council held ____2019, to become effective immediately.

Approved as to form and legality:

____
Douglas W. Napier, Town Attorney

Date: ____/____/_____

CABLE FRANCHISE AGREEMENT

BETWEEN

THE TOWN OF FRONT ROYAL, VIRGINIA

AND

COMCAST OF CALIFORNIA/MARYLAND/PENNSYLVANIA/VIRGINIA/WEST VIRGINIA, LLC

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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 Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC (hereinafter, "Franchisee").

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

SECTION 1 -Definition of Terms

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

"ACT" means the Communications Act of 1934.

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

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

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

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

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

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

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

"EFFECTIVE DATE" means May 13th, 2018.

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

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

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

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

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

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

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

"GROSS REVENUE" means all revenue, as determined in accordance with generally accepted accounting principles (GAAP), that is actually received by the cable operator and derived from the operation of the Cable System to provide Cable Services in the Franchise Area; however, "gross revenue" shall not include: (i) refunds or rebates made to Subscribers or other third parties; (ii) any revenue which is received from the sale of merchandise over home shopping channels carried on the

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

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

"ORDINANCE" includes a resolution.

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

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

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

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

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

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

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

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

SECTION 2 - Grant of Authority

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

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

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

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

SECTION 3- Construction and Maintenance of the Cable System

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

3.2 Conditions of Street Occupancy.

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

(B) Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Way, the Franchisee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance. The Town may make the final determination as to the reasonable acceptability of repair and/or replacement of damaged facilities.

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

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

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

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

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

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

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

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

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

SECTION 4 - Service Obligations

4.1 General Service Obligations.

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

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

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

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

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

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

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

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

SECTION 5 -Public, Educational and Governmental Access Channels

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

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

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

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

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

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

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

5.7 Capital Support for PEG Access.

(A) Franchisee shall pay to Town an initial lump sum capital grant of thirty-one thousand dollars ($31,000) as capital support for PEG access equipment, payable within ninety (90) days from the execution of this Franchise Agreement. If the capital support grant payment is not made within one hundred twenty (120) days from the date of execution of this Franchise Agreement, this

Franchise Agreement shall become null and void, ab initio, without notice. The Franchising Authority will distribute these funds for capital purposes and/or procure equipment in support of the PEG access programming needs of the community.

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

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

SECTION 6 - 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 thirty (30) days from the effective date of the repeal of such tax (the "Repeal Date"). Beginning on the Repeal Date, the terms of Section 6.2 through 6.6 of this Agreement shall take effect. In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than thirty (30) days following the end of each calendar quarter. Should Franchisee submit an incorrect amount, Franchisee shall be allowed to add or subtract that amount in a subsequent quarter, but no later than ninety (90) days following the close of the calendar year for which such amounts were applicable; such correction shall be documented in the supporting information required under Section 6.3 below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Products and services offered;

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

(iii) Installation and service maintenance policies;

(iv) Instructions on how to use the Cable Service;

(v) Channel positions of programming carried on the System; and

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

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

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

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

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

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

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

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

SECTION 8- Oversight and Regulation by Franchising Authority

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

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

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

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

8.3 Operational Records. Upon no less than thirty (30) business days' written notice to the Franchisee, the Town shall have the right to inspect Franchisee's books and records, including electronic books and records, pertaining to Franchisee's provision of Cable Service in the franchise area at any time during normal business hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise Agreement. Such notice shall specifically reference the Franchisee’s section or subsection which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the Town. Franchisee shall not be required to maintain any books and records for franchise compliance purposes longer than the current year plus three (3) years. The Franchisee shall maintain the records required to compute all operational and customer service compliance measures outlined in this Franchise to demonstrate that the measures are being met for at least four (4) consecutive quarters.

8.4 Records Required. Franchisee shall at all times maintain:

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

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

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

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

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

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

8.7 Proprietary Information.

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

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

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

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

8.8 Reports.

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

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

SECTION 9- Transfer or Change of Control of Cable 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11 - System Description and Service

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

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

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

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

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

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

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

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

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

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

SECTION 12 -Enforcement of Franchise

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

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

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

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

12.2 Non-compliance procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12.4 Revocation.

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

(i) The Franchising Authority shall give written notice to the Franchisee of its intent to revoke the Franchise Agreement on the basis of a pattern of non-compliance by the

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

(ii) At the designated public hearing, the Franchising Authority shall give the Franchisee an opportunity to state its position on the matter, present evidence and question witnesses, in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Virginia, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Franchisee within ten (10) business days. The decision of the Franchising Authority shall be in writing and shall be delivered to the Franchisee by certified mail. The Franchisee may appeal such determination to an appropriate court.

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

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

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

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

SECTION 13 - Inspection of Facilities

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

SECTION 14- Miscellaneous Provisions

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

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

To the Franchising Authority:

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

To the Franchisee:

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

With copies to:

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

And to:

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

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

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

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

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

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

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

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

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

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

Comcast of California/Maryland/Pennsylvania/Virginia/
West Virginia, LLC

By: ___________________________________ ___________
Name: Mary McLaughlin Date
Title: Regional Senior Vice President

Attested by:

____
Name: _____________________________
Title: ______________________________

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

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

__________________________, ____________________ of _______________, on behalf

of Comcast of California/Maryland/Pennsylvania/Virginia/ West Virginia, LLC.

My commission expires: ____________ __________________________________
Notary Public

<u>MINUTES OF APRIL 15, 2019 WORK SESSION</u>

1. **<u>Update on Comcast Franchise Agreement</u>** – *Town Manager*

Staff report from the Town Attorney: Staff has been working with Comcast on establishing a new franchise and pole attachment agreement for services in Town. The existing agreements expired on May 13, 2018. At our April 2, 2019 meeting with Josh Brokee, Comcast, he informed the Town that they will be closing the Front Royal customer service center in 60 days (June 1st). He stated it was a business decision and they were closing a total of 5/6 locations. He has provided a summary sheet on how our citizens can still do business with Comcast in town through other vendors.

After reviewing the proposal and knowing the volume of customers that do business in the customer service center, I informed him that this was unacceptable to our citizens. I informed how important this customer service center is to our citizens and how we included specific language in our franchise agreement for the establishment of a center in Town.

Council Discussion:

Councilman Meza asked what the building is currently used for. Mr. Waltz noted that the customer service center was always packed and people are changing out their equipment and paying bills often. Councilman Tewalt noted that if Comcast was not happy they could take their cables and leave. Mr. Meza noted that the Town wanted to keep Comcast if at all possible. Mr. Waltz noted that they were interested in negotiating as soon as possible. He and Mr. Napier noted that there were a few other options to push the matter with Comcast, and also at Council's direction they could see if there were other options for providers available.

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Town of Front Royal, Virginia
Council Agenda Statement

Page 1
Item No. 10

Meeting Date: October 15, 2019

Agenda Item: PUBLIC HEARING – An Ordinance to Adopt and Re-enact Section 180-182 to Grant a Franchise Agreement for Cable Television to Shenandoah Cable Television, LLC *(1st Reading)*

Summary: Council is requested to affirm on its first reading an ordinance to adopt and enact Section 180-182 of the Town code to Grant a Franchise Agreement for Cable Television to Shenandoah Cable Television, Inc., as presented.

Budget/Funding: 1000-3120401 – General Fund Franchise Tax

Attachments: Ordinance and Agreement

Meetings: None

Staff Recommendation: Approval ✓ Denial______

Proposed Motion: **I move that Council affirm on its first reading an ordinance to adopt and enact Section 180-182 of the Town code to Grant a Franchise Agreement for Cable Television to Shenandoah Cable Television, Inc., as presented.**

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

Approved By: JW

AN ORDIANCE TO ADOPT AND ENACT SECTION 180-182 OF THE FRONT ROYAL TOWN CODE TO GRANT A FRANCHISE AGREEMENT FOR CABLE TELEVISION TO SHENANDOAH CABLE TELEVISION, LLC FOR THE TOWN OF FRONT ROYAL

WHEREAS, the Town of Front Royal has determined that the financial, legal and technical ability of Shenandoah Cable Television, LLC is reasonably sufficient to provide the services, facilities and equipment necessary to meet the future cable-related needs of the community; and,

NOW, THEREFORE, BE IT ENACTED by the Town Council of the Town of Front Royal, Virginia that Shenandoah Cable Television, LLC is hereby granted a franchise to operate a cable television system within the Town of Front Royal, under the terms and conditions of a Franchise Agreement as follows:

CABLE TELEVISION

180-182 CABLE FRANCHISE AGREEMENT
(Shenandoah Cable Television, LLC)

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

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

SECTION 1 – DEFINITION OF TERMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"FRANCHISEE" shall mean Shenandoah Cable Television, LLC.

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

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

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

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

"ORDINANCE" includes a resolution.

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

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

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

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

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

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

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

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

SECTION 2 – GRANT OF AUTHORITY

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

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

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

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

SECTION 3 – CONSTRUCTION AND MAINTENANCE OF CABLE SYSTEM

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

3.2 Conditions of Street Occupancy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4 - SERVICE OBLIGATIONS

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

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

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

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

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

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

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

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

SECTION 5 – PUBLIC, EDUCATIONAL AND 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 <u>Public Access.</u> 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 <u>Educational Access</u>. 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 <u>Government Access</u>. A "Governmental Access Channel" is a channel position designated for noncommercial use by the Franchising Authority for the purpose of showing the public local government at work.

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

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

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

SECTION 6 – 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 bill payment location and equipment return location within the Town. In addition, Franchisee will provide for an employee to pick up or drop off equipment free of charge in either of the following ways: (i) by having a Franchise representative to go to the subscriber's residence, or (ii) by using a prepaid mailer. Franchisee also has the option to provide alternative payment drop off locations within the Franchise Area.

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

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

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

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

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

i. Standard installations will be performed within seven business days after an order has been placed, unless the customer requests a longer period. "Standard" installations are those that are within 150 feet of the existing distribution system.

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

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

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

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

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

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

i. Products and services offered;

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

iii. Installation and service maintenance policies;

iv. Instructions on how to use the cable service;

v. Channel positions of programming carried on the system;

vi. Refund policy; and

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

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

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

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

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

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

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

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

SECTION 8 – OVERSIGHT AND REGULATION BY FRANCHISING AUTHORITY

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

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

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

8.2 <u>Technical Standards.</u> 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 <u>Operational Records.</u> 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 <u>Records Required</u>: Franchisee shall at all times maintain:

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

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

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

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

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

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

8.7 Proprietary Information:

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

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

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

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

(a) specific identification of the information;

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

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

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

SECTION 9 – TRANSFER OR CHANGE OF CONTROL OF CABLE 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

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

(A) Any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the indemnitees by reason of any act or omission of the Franchisee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or

any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Franchisee's cable system caused by Franchisee, its contractors, subcontractors or agents or the Franchisee's failure to comply with any federal, state or local statute, ordinance or regulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11 – SYSTEM DESCRIPTION AND SERVICE

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

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

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

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

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

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

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

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

11.6 Cable Service to School and Government Facilities.

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

11.7 Emergency Powers. In the event of an emergency, or where Franchisee's Cable System creates or is contributing to an imminent danger to health, safety, or property, or an unauthorized use of property, the Franchisee shall remove or relocate any or all parts of Franchisee's C a b l e 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 <u>Penalties and Liquidated Damages.</u> Because it may be difficult to calculate the harm to the Franchising Authority in the event of Franchisee's breach of this Franchise Agreement, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the Franchising Authority elects to assess liquidated damages as provided in this Agreement and such liquidated damages have been paid, such damages shall be the Franchising Authority's sole and exclusive remedy. Nothing in this Section shall preclude the Franchising Authority from exercising any other right or remedy with respect to a breach that continues past the time the Franchising Authority stops assessing liquidated damages for such breach. Liquidated damages shall not be assessed until the Franchising Authority has completed the procedures set forth in Section 12.7 hereof, including holding a public hearing, and notifying the Franchisee by certified or registered mail of the proposed liquidated damages, specifying the violation. The Franchisee shall have thirty (30) days from the date of receipt of the written notice to submit payment. If the Franchisee does not make payment within that period, the Franchising Authority may obtain the amount assessed from the Franchisee's performance bond.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 13 – INSPCTION OF FACILITIES

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

SECTION 14- MISCELLANEOUS PROVISIONS

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

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

To the Franchising Authority:

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

Front Royal, Virginia 22630

And to:

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

To the Franchisee:

Chris Kyle
500 Shentel Way
Edinburg, VA 22824

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

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

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

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

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

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

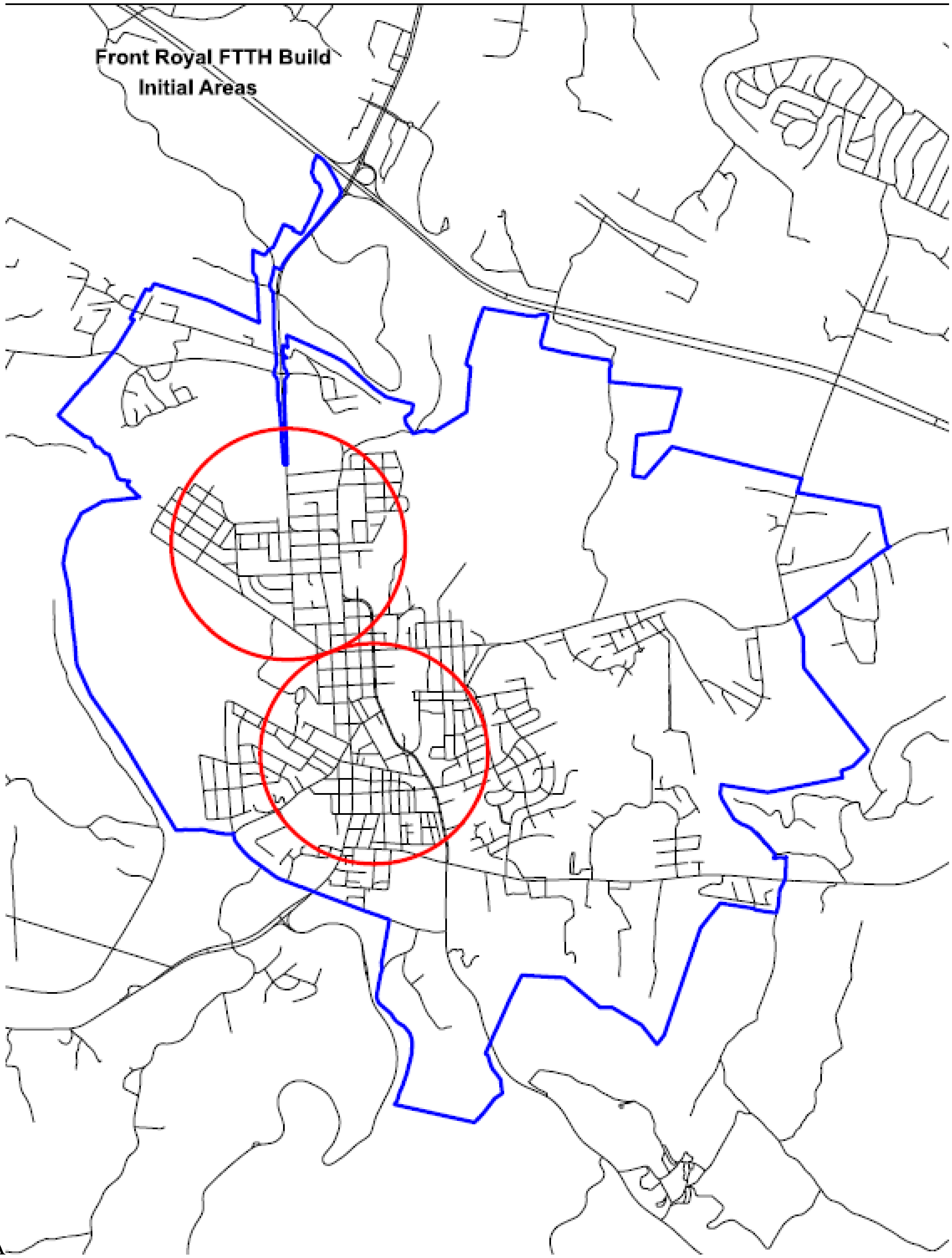

Exhibit A

This ordinance shall become effective upon passage.

APPROVED:

____
Matthew A. Tederick, Interim Mayor

ATTEST:

____
Jennifer E. Berry, MMC, Clerk of Council

THIS ORDINANCE was approved at the Regular Meeting of the Town of Front Royal, Virginia on its second reading, conducted ____________________2019, upon the following recorded vote:

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

A public hearing on the above was held on ____________________________________, 2019, having been advertised in the Northern Virginia Daily on September 28 and October 5, 2019. The Ordinance was enacted at the Regular Meeting of the Town Council held __________________________2019, to become effective immediately.

Approved as to form and legality:

____
Douglas W. Napier, Town Attorney

Date: ____/____/_____

CABLE FRANCHISE AGREEMENT

BETWEEN

THE TOWN OF FRONT ROYAL, VIRGINIA

AND

SHENANDOAH CABLE TELEVISION, LLC

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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 Shenandoah Cable Television, LLC (hereinafter, "Franchisee").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"FRANCHISEE" shall mean Shenandoah Cable Television, LLC.

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

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

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

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

"ORDINANCE" includes a resolution.

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

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

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

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

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

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

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

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

SECTION 2 - Grant of Authority

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

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

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

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

SECTION 3- Construction and Maintenance of the Cable System

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

3.2 Conditions of Street Occupancy.

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

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

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

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

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

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

owned utility poles and conduit when and where available for the construction, repairs and maintenance of the Cable System pursuant to separately negotiated pole attachment and conduit utilization agreements in effect with the Town. The Cable System will be constructed and maintained in such a way as to maximize the use of Town poles and conduit.

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

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

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

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

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

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

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

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

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

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

SECTION 4 - Service Obligations

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

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

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

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

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

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

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

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

SECTION 5 -Public, Educational and 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. At the Town's option, Franchisee shall collect a monthly fee from each subscriber to provide additional capital support for PEG access. The maximum fee that shall be imposed is 0.5% of Franchisee's revenues from basic and expanded cable service, and the fee collected shall be remitted to the Town no later than thirty (30) days following the end of each calendar quarter. Franchisee shall not impose a fee to provide capital support for PEG access unless and until the Town directs Franchisee to impose a fee. The Town shall give Franchisee at least ninety (90) days' notice before Franchisee shall begin collecting the fee. The Town shall allocate such amount to PEG capital uses exclusively. If such fee is imposed, it shall not be deemed to be "franchise fees" within the meaning of 47 U.S.C. Section 542 and such payments shall not be deemed to be (i) "payments-in-kind" or any involuntary payments chargeable against the compensation the Franchisee is to pay the Town pursuant to Section 6 hereof, or (ii) part of the compensation the Franchisee is to pay to the Town pursuant to Section 6 hereof.

SECTION 6 - 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 bill payment location and equipment return location within the Town. In addition, Franchisee will provide for an employee to pick up or drop off equipment free of charge in either of the following ways: (i) by having a Franchise representative to go to the subscriber’s residence, or (ii) by using a prepaid mailer. Franchisee also has the option to provide alternative payment drop off locations within the Franchise Area.

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

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

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

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

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

i. Standard installations will be performed within seven business days after an order has been placed, unless the customer requests a longer period. "Standard" installations are those that are within 150 feet of the existing distribution system.

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

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

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

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

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

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

i. Products and services offered;

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

iii. Installation and service maintenance policies;

iv. Instructions on how to use the cable service;

v. Channel positions of programming carried on the system;

vi. Refund policy; and

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

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

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

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

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

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

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

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

SECTION 8- Oversight and Regulation by Franchising Authority

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

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

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

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

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

8.4 Records Required: Franchisee shall at all times maintain:

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

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

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

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

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

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

8.7 Proprietary Information:

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

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

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

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

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

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

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

SECTION 9- Transfer or Change of Control of Cable 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11 - System Description and Service

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

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

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

(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 service to each facility owned by Town government, and by the Warren County Public Schools located within the Town, as well as other such municipal buildings where service is requested in the future that are located within the Franchise Area within 150 feet of the Franchisee's distribution cable. The excess cost for extending service to buildings not within 150 feet of the Franchisee's distribution cable shall be paid by the entity requesting service.

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

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

SECTION 12 -Enforcement of Franchise

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

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

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

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

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

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

12.6 Non-compliance procedures.

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

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

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

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

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

Franchisee does not make payment within that period, the Franchising Authority may obtain the amount assessed from the Franchisee's performance bond.

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

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

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

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

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

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

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

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

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

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

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

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

(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:

Chris Kyle
500 Shentel Way
Edinburg, VA 22824

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

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

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

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

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

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

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:

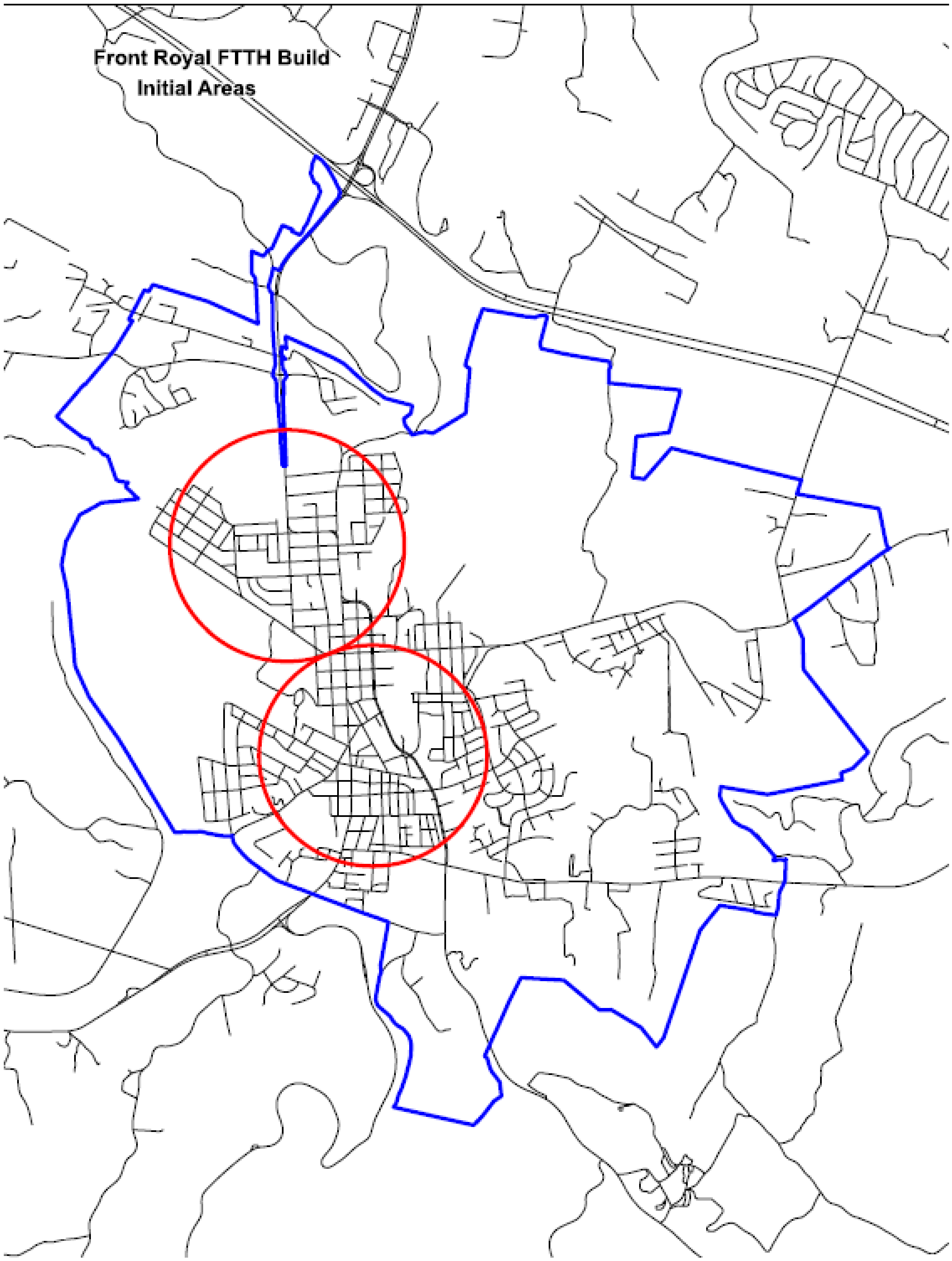
The foregoing was acknowledged before me this ____ day of __________________, 2019 by

_________________________, ____________________ of _______________, on behalf

of the company.

My commission expires: ____________ _________________________________
Notary Public

Exhibit A



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Town of Front Royal, Virginia
Council Agenda Statement

Page 1
Item No. 11

Meeting Date: October 15, 2019

Agenda Item: CLOSED MEETING – EDA Lawsuit and Personnel Matter

Summary: Council is to go into a Closed Meeting for the for Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in Open Meeting would adversely affect the negotiating or litigating posture of the public body; "; pursuant to Section 2.2-3711. A. 7. of the Code of Virginia. **AND** discussion and consideration of performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of Town Council, pursuant to Section 2.2-3711. A. 1. of the Code of Virginia.

Budget/Funding: None

Attachments: None

Meetings: None

Staff Recommendation: Approval ✓ Denial______

Motion to Go Into Closed Meeting - I move that Town Council convene and go into Closed Meeting for Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in Open Meeting would adversely affect the negotiating or litigating posture of the public body; pursuant to Section 2.2-3711. A. 7. of the Code of Virginia AND Discussion and consideration of performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of Town Council, pursuant to Section 2.2-3711. A. 1. of the Code of Virginia.

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

CLOSED MEETING

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

Approved By: JW