

November 3, 2016

Clarke County Board Of Supervisors
Regular Meeting
Main Meeting Room

1:00 p.m.

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held in the Berryville Clarke County Government Center, 101 Chalmers Court, 2nd Floor, Berryville, Virginia conducted on Thursday, November 3, 2016.

Board Members Present

Mary L.C. Daniel – Berryville District; David S. Weiss - Buckmarsh / Blue Ridge District;
Terri T. Catlett - Millwood / Pine Grove District; Barbara J. Byrd – Russell District; Bev B.
McKay – White Post District

Board Members Absent

None

Staff Present

David Ash, Tom Judge, Gordon Russell, Brandon Stidham, Lora Walburn

Constitutional / State Offices

Tony Roper

Press

Cathy Kuehner - The Winchester Star

Others Present

Robina Rich Bouffault, Tom Dunning and other citizens

1) Call to Order

At 1:01 pm, Chairman Weiss called the meeting to order.

2) Adoption of Agenda

David Wess requested the addition of the following items:

- Add to Miscellaneous: Town Actions on Berryville Area Development Plan

Vice Chair McKay moved to adopt the agenda as amended. The motion carried by the following vote:

Barbara J. Byrd	-	Aye
Terri T. Catlett	-	Aye
Mary L.C. Daniel	-	Aye
Beverly B. McKay	-	Aye
David S. Weiss	-	Aye

3) Citizens Comment Period

George Archibald, resident Town of Berryville, provided a written statement for the record on file in the November 3, 2016 Board of Supervisors Regular Meeting material.

4) VDOT Update

Due to a scheduling conflict, VDOT representatives were unable to attend.

David Ash related that the Lake Frederick traffic signal will be activated on November 10.

Supervisor Byrd stated that she was in discussion with VDOT and constituents regarding access to Route 7 from private drives.

5) Christ Church Sewer Extension Request Review

*TO: Board of Supervisors
 FROM: Brandon Stidham, Planning Director
 RE: Christ Church Sewer Extension Request – Planning Department analysis
 DATE: October 27, 2016*

In response to the issue of extending the Millwood Sewer District to enable public sewer connection for Christ Church, the Planning Department offers the following comments.

Zoning Ordinance

In order to serve the Christ Church property located at 809 Bishop Meade Road (Tax Map #30AA-93), the Millwood Sewer District would have to be extended to include one additional parcel – the Robbins property located at 90 Linden Lane (Tax Map #30A-A-87).

Both properties are zoned Rural Residential (RR). The Christ Church property is 3.5 acres in size and the Robbins property is 5.0 acres in size. The County's sliding-scale zoning system does not apply to RR District properties – instead, residential development is based upon minimum lot size. For parcels that are not located in a Sewer Service Area, the minimum lot size is one acre. For parcels in a Sewer Service Area, the minimum lot size is 30,000 square feet.

The Robbins property currently contains one residence and could be potentially subdivided into a maximum of five one-acre lots if required building envelopes, wells, and on-site septic systems could be accommodated on each lot. If the Sewer Service Area is extended, the Robbins property could be potentially subdivided into a maximum of seven 30,000 square foot lots assuming building envelopes can be accommodated. Building setbacks are the same for one acre lots and 30,000 square foot lots. So to summarize, extending the Sewer District to the Robbins property would increase its potential development capacity by two lots.

Comprehensive Plan

In evaluating the requested Sewer District extension's degree of conformance with the County's Comprehensive Plan, Staff identified four specific provisions that directly and indirectly address this matter.

The Comprehensive Plan emphasizes the overarching land use goal of focusing growth in designated areas where public infrastructure can be provided readily and economically. These areas include the incorporated Towns and the two business intersection areas at Waterloo and Double Tollgate. They also include, to a lesser extent, the unincorporated villages which include Millwood. From the Summary Statement of Purpose:

Land use decision-making shall emphasize directed, controlled growth on a rural, smalltown scale in designated areas where public infrastructure can be efficiently provided. These areas include the Towns of Berryville and Boyce as well as other villages and business intersections described in this Plan and its Implementing Component Plans. (Summary Statement of Purpose)

Likewise, the Plan also includes language to prevent the extension of public infrastructure into the County's agricultural areas and properties under conservation easement. These areas would be properties zoned AOC and FOC and located outside of the incorporated towns and unincorporated villages. The following two references are from the Plan's Objective 1 (Agriculture) and Objective 11 (Capital Improvement Planning and Fiscal Responsibility):

- With the exception of telecommunication and high-speed internet facilities, discourage extension of public utilities and other growth-inducing public facilities into agricultural areas and land under permanent conservation easement. (Objective 1, Agriculture/Policy #9)*
- Prohibit the extension of capital improvements into areas not designated for growth in the Comprehensive Plan that would be subjected to increased development pressures by such extensions. Such improvements would include public water, public sewer, schools, public facilities but would not include passive recreational resources and high-speed internet facilities. (Objective 11, Capital Improvement Planning and Fiscal Responsibility/Policy #3)*

The Plan also discusses the need for further detailed planning and policy development for the unincorporated villages in the form of a Village component plan:

- *Objective 8 recommends the creation of a Village Plan for the established villages of Millwood, Pine Grove, and White Post. The County currently does not designate these villages as designated growth areas despite the fact that they each possess a concentration of residential and commercial uses. Furthermore, Millwood and White Post both have public water and/or sewer services. The primary purpose will be to provide strategies to help address future land use requests and infrastructure needs while simultaneously ensuring that the villages' character is maintained and unintended, unplanned growth does not occur in the future. (New Proposed Implementing Component Plans, Chapter III)*

Creation of a Village Plan is on the Planning Commission's long-range work plan but has not commenced. Staff notes that the primary purpose of the Village Plan will be to create new guidance for land use decision-making in an effort to avoid "unplanned growth." Since the Sewer District extension could potentially result in a maximum of two additional lots – and only under ideal circumstances for development – Staff does not believe the absence of a Village Plan should impact the evaluation of this request.

Conclusion

Given the very limited potential for increased development and absent specific Comprehensive Plan guidance to the contrary, Staff has identified no planning or zoning concerns with the request to extend the Sewer District to serve the Christ Church and Robbins properties. We yield to the Sanitary Authority and their staff to provide specific recommendations on public sewer capacity and cost of infrastructure.

If you have any questions or concerns in advance of the meeting, please do not hesitate to contact me.

Brandon Stidham provided an overview. Highlights of review include:

- The Clarke County Sanitary Authority [CCSA] recommends approval.
- Three connections needed for church, rectory and pantry.
- If subdivided in future, potentially seven connections on the adjoining property.
- A remodeling in excess of \$10,000 automatically triggers connection.
- Approval will require a text amendment to County Code.
- Supervisor Byrd requested further discussion with Clarke County Sanitary Authority.
- Supervisor Daniel requested input from the county's engineer regarding the impact of ten connections.
- Supervisor Daniel reminded that extension could require easement purchases.
- Supervisor Catlett suggested Planning Commission review.
- Vice Chair McKay, CCSA Liaison, stated that the CCSA has sufficient capacity.
- Follow Up Items:
 - Clarification of the language as to when hook ups are required, as well as timing.

- Need information from the church on proposed renovations.
- Research how best to notify affected property owners.
- Verify number of hook ups and communicate with the Clarke County Sanitary Authority.
- Verify line route.
- Investigate language about adding a sunset clause if Church does not pursue.
- Vice Chair McKay stated that Anderson, CCSA’s engineering firm might be able to answer some of the Board’s questions.
- Tom Dunning, Church representative, opined that the Church wished to avoid excessive cost. He stated that he would seek information from the CCSA.

Supervisor Daniel moved to set public hearing for Tuesday, December 20, 2016, at 6:30 pm or as soon thereafter as the matter may be heard. The motion carried by the following vote:

Barbara J. Byrd	- Aye
Terri T. Catlett	- Aye
Mary L.C. Daniel	- Aye
Beverly B. McKay	- Aye
David S. Weiss	- Aye

6) ComCast Franchise Agreement

In response to Mr. Archibald’s request for amendment to the agreement presented during the Citizens Comment Period, David Ash advised that 5.1.4 of the proposed agreement covered the issue raised. Mr. Ash informed the Supervisors that the County used dark fiber to protect internal operations and the proposed agreement provided the County use at approximately one third of the cost. He added that the agreement did not cover and nor was it intended to cover technology.

Chairman Weiss advised that federal regulation governed the franchise.

Supervisor Daniel noted that the amendment proposed by Mr. Archibald was not necessary but it was correct. She also reminded that if PEG channels were added ComCast would charge a user fee. She stated that she was satisfied with the agreement as written.

David Ash stated for the record that the contract was non-exclusive and the County could enter into a franchise agreement with any other company that wanted to provide serve in the county.

George Archibald interjected comment that attempted to link the cable franchise agreement with the telecommunications study. Chairman Weiss explained that the telecommunications study was a completely separate issue.

Supervisor Catlett moved to authorize the franchise agreement as presented. The motion carried by the following vote:

Barbara J. Byrd	-	Aye
Terri T. Catlett	-	Aye
Mary L.C. Daniel	-	Aye
Beverly B. McKay	-	Aye
David S. Weiss	-	Aye

Final Draft 6/20/2016

CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN COMCAST and CLARKE COUNTY, VIRGINIA

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between Clarke County, a political subdivision of the Commonwealth of Virginia (hereinafter, "County") and Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC (hereinafter, "Grantee").

The County, having determined that the financial, legal, and technical ability of the Grantee 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 Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

SECTION 1 - Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Code of Virginia, Article 1.2, § 15.2-2108.19, and the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act"), unless otherwise defined herein.

- 1.1 "Access Channel" means a video Channel, which Grantee shall make available to the County without charge for non-commercial public, educational, or governmental access use for the transmission of video programming as directed by the County.
- 1.2 "Act" means the Communications Act of 1934.
- 1.3 "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.
- 1.4 "Basic service tier" means the service tier that includes (i) the retransmission of local television broadcast channels and (ii) public, educational, and governmental access channels required to be carried on the basic tier.

- 1.5 “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.
- 1.6 “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.
- 1.7 “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.
- 1.8 “Channel” shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4).
- 1.9 “Communications Act” means the Communications Act of 1934, as amended.
- 1.10 “Control” means the ability to exercise de facto or de jure control over day-to-day policies and operations or the management of corporate affairs.
- 1.11 “County” means Clarke County, as organized and existing under the laws of the Commonwealth of Virginia, and the area within its territorial limits.
- 1.12 “Educational Access Channel” means an Access Channel available for the use of the Clarke County Public Schools.
- 1.13 “Effective Date” means June 30, 2015.
- 1.14 “FCC” means the Federal Communications Commission or successor governmental entity thereto.
- 1.15 “Force majeure” means an event or events reasonably beyond the ability of Grantee 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, environmental restrictions, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles

to which Grantee's facilities are attached or to be attached or conduits in which Grantee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.

- 1.16 "Franchise" means the initial authorization, or renewal thereof, issued by the County, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance, resolution or otherwise, which authorizes the construction and operation of the Cable System.
- 1.17 "Franchise Agreement" or "Agreement" means this Cable Franchise Agreement and any amendments or modifications hereto.
- 1.18 "Franchise Area" means the present legal boundaries of the County as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.
- 1.19 "Government Channel" means an Access Channel dedicated to carriage of programming related to the government of Clarke County, the County, and any other municipality located within Clarke County.
- 1.20 "Grantee" means Comcast of California/Maryland/Pennsylvania/Virginia/ West Virginia, LLC.
- 1.21 "Gross Revenue" means all amounts which are received by Grantee from the operation of the Cable System to provide Cable Service in the Franchise Area. The Grantee shall maintain its books in accordance with generally accepted accounting principles ("GAAP"). Gross Revenue shall include, without limitation, the following:
 - 1.21.1 Any revenue received from Subscribers, including but not limited to revenue for basic service, expanded basic service, other tier services, additional outlets, and pay-per-view service, or for the distribution of any other Cable Service, as defined by federal law, over the System;
 - 1.21.2 Revenue received from Subscribers for installation, change in service and reconnection charges and similar fees, attributable to the provision of Cable Service;
 - 1.21.3 Revenue received from Subscribers for converters, remote controls or other equipment leased or rented to Subscribers in connection with the delivery of Cable Services to such Subscribers;
 - 1.21.4 Revenue received from Subscribers for service charges and late fees related to delinquent accounts, as attributable to the provision of Cable Service;
 - 1.21.5 Revenue received from third parties, including advertising revenue, home shopping commissions, leased access payments (except as limited herein). In computing Gross Revenue from sources other than Grantee's Subscribers, including without limitation, revenue derived from the sale of advertising, home shopping services, guide sales, the lease of channel capacity on its Cable System, or any other such revenues derived from the operation of the Cable System to provide Cable Service, the amount of such revenues attributable or allocated to Grantee shall be in accordance with GAAP.

- 1.21.6 Fees collected from Subscribers for the payment of cable franchise fees to be paid to the County; such cable franchise fees shall not be deemed to be taxes and are not deducted from the total gross revenue figure on which Franchise fees are paid.

Provided, however, that 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) 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 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 rules, regulations, standards, or orders of the Federal Communications Commission.

- 1.22 "Information Services" shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20).
- 1.23 "Institutional Network" or "I-Net" means the fiber optic cable and related facilities constructed for Clarke County by Adelphia Cable LLC, the Grantee's predecessor-in-interest, and any additional such facilities constructed at the County's direction.
- 1.24 "Internet Access" means dial-up or broadband access service that enables Subscribers to access the Internet.
- 1.25 "Non-Cable Services" means any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Services, Internet Access, and Telecommunications Services.
- 1.26 "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal businesses hours" must include some evening hours at least one night per week and/or some weekend hours.
- 1.27 "Normal Operating Conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. See 47 C.F.R. § 76.309(c)(4)(ii).

- 1.28 "PEG" means public, educational, and governmental.
- 1.29 "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 County.
- 1.30 "Public Rights-of-Way" means the surface, the air space above the surface, and the area below the surface of any public street, road, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, waterway, easement, or similar property in which the County 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 to the "Public Rights-of-Way" shall be deemed to be a representation or guarantee by the County that its interest or other right of control to use such property is sufficient to permit its use for such purposes, and the Grantee shall be deemed to gain only those rights to use as are properly in the County and as the County may have the undisputed right and power to give.
- 1.31 "Service Interruption" means the loss of picture or sound on one or more cable channels.
- 1.32 "Subscriber" means a Person who lawfully receives Cable Service delivered over the Cable System with Grantee's express permission.
- 1.33 "Telecommunication Services" shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46).
- 1.34 "Title VI" means Title VI of the Communications Act.
- 1.35 "Transfer" means any transaction in which (i) an ownership or other interest in the Grantee 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 Grantee is transferred; or (ii) the rights and obligations held by the Grantee 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 Grantee to the parent of the Grantee or to another Affiliate of the Grantee; (b) transfer of an interest in the Franchise granted under this Franchise Agreement or the rights held by the Grantee under the Franchise granted under this Franchise Agreement to the parent of the Grantee or to another Affiliate of the Grantee; (c) any action that is the result of a merger of the parent of the Grantee; (d) any action that is the result of a merger of another Affiliate of the Grantee; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Grantee in the Franchise or the System used to provide Cable Service in order to secure indebtedness.
- 1.36 "Video programming" means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

SECTION 2 - Grant of Authority

- 2.1 Grant. The County hereby grants to the Grantee under the Code of Virginia and the Cable Act

a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Rights-of-Ways within the Franchise Area for the purpose of providing Cable Service, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Rights-of-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. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

- 2.2 Term of Franchise. The term of the Franchise granted hereunder shall be fifteen (15) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated.
- 2.3 Renewal. Any renewal of this Franchise shall be governed by and comply with Section 626 of 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 County.
- 2.5 Grant Not Exclusive. The Franchise and the right it grants to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the County reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise Agreement.
- 2.6 Police Powers. Nothing in the Franchise Agreement shall be construed to prohibit the reasonable, necessary and lawful exercise of the County's police powers. However, if the reasonable, necessary and lawful exercise of the County's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise Agreement to the mutual satisfaction of both parties to ameliorate the negative effects on the Grantee of the material alteration.
- 2.7 Competitive Equity. The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; the Franchising Authority acknowledges and agrees that the franchise agreement shall be governed by §15.2-2108.26 of the Code of Virginia.

SECTION 3 - Construction and Maintenance of the Cable System

- 3.1 Permits and General Obligations. The Grantee 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. All transmission and distribution structures, poles, other lines, and equipment installed by the Grantee 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 Rights-of-Ways and the

rights and reasonable convenience of property owners who own property that adjoins any such Public Rights-of-Way.

3.2 Conditions of Street Occupancy.

- 3.2.1 New Grades or Lines. If the grades or lines of any Public Rights-of-Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from the County (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. However, to the extent any other users of the Public Rights-of-Way are compensated for the required relocation of the facilities, Grantee shall also be compensated in a similar fashion, to the extent any third party conditions governing the applicable funding allows for or does not preclude Grantee reimbursement.
- 3.2.2 Relocation at Request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the County to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee 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 Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.
- 3.2.3 Restoration of Public Rights-of-Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Public Rights-of-Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Rights-of-Way to a condition reasonably comparable to the condition of the Public Rights-of-Way existing immediately prior to the disturbance.
- 3.2.4 Safety Requirements. The Grantee 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 applicable safety codes. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.
- 3.2.5 Trimming of Trees and Shrubbery. The Grantee 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 Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.
- 3.2.6 Aerial and Underground Construction. At the time of any Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in the portion of the Franchise Area in which construction is being performed are underground, the Grantee shall place its Cable System's transmission

and distribution facilities underground; provided that such underground locations are actually capable of accommodating the Grantee'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 municipal utilities are both aerial and underground, the Grantee 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 Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.2.7. Undergrounding and Beautification Projects. In the event all users of the Public Rights-of-Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. However, to the extent any other users of the Public Rights-of-Way are compensated for the required relocation of the facilities, Grantee shall also be compensated in a similar fashion, to the extent the applicable funding allows for or does not preclude franchisee reimbursement.

SECTION 4 - Service Obligations

4.1 General Service Obligation.

4.1.1 The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and is within one (1) mile as measured in strand footage from the nearest point on the Cable System trunk or feeder line from which a usable cable signal can be obtained. For purposes of this section, a home shall be counted as a "dwelling unit" if, and only if, such home is located within four hundred (400) feet of the public right of way. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within two hundred (200) feet of the Grantee's distribution cable at the standard installation rate. Should, through new construction, an area within the Franchise Area meet the density requirements, Franchisee shall provide Cable Service to such area within one (1) year after it confirms that the density requirements have been met following notice from the Franchising Authority that one or more residents has requested service.

4.1.2 The Grantee may impose an additional charge in excess of its regular installation charge, but not in excess of its actual cost which may include cost of material, labor, design and any necessary easements, for any service installation at a location that is more than two hundred (200) feet from the Public Rights-of-Way. Such additional charge shall be paid by the developer, home owners association, landowner or other Person requesting Cable Service in an area that does not meet the density and distance standards.

4.2 New Developments. The Grantee agrees to use commercially reasonable efforts to inform itself of all newly planned developments within the County and to work with developers to

cooperate in pre-installation of facilities to support Cable Service.

- 4.3 Programming. The Grantee shall offer to all Subscribers a diversity of video programming services.
- 4.4 No Discrimination. The Grantee 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 Grantee are satisfied; provided, however, that the Grantee may deny service for good cause, including but not limited to theft of Grantee's services, vandalism of its property, or abuse or harassment of its representatives. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice. Grantee shall assure that access to Cable Services is not denied to any group of potential residential cable Subscribers because of the income of the residents of the local area in which such group resides.
- 4.5 Provision of Maps to the County. The Grantee shall provide the County, upon written request and no more than once per calendar year an up-to-date strand map of its facilities in the Franchise Area. The County shall treat such maps as proprietary information, exempt from release or disclosure under the Virginia Freedom of Information Act, and shall use the maps only for purposes of planning and managing construction within and in the immediate vicinity of the public rights-of-way.
- 4.6 Additional Maps. Should the County request access to more detailed maps of the Cable System, then the Grantee shall permit the County to review such maps at a specified location in northern Virginia.
- 4.7 Removal and Relocation. In accordance with applicable law, the County shall have the power at any time to order and require the Grantee to remove or relocate any pole, wire, cable or other structure owned by the Grantee that is dangerous to life or property. In the event that the Grantee, after notice, fails or refuses to act within a reasonable time, the County shall have the power to remove or relocate the same at the sole cost and expense of the Grantee, which cost shall be summarized by the County.

SECTION 5 - PEG Services

5.1 PEG Channels.

- 5.1.1 In order to ensure availability of PEG programming, Grantee shall make available up to two (2) Access Channels on the Basic Service Tier, upon request of the County. One Access Channel shall be designated as the Educational Access Channel, and the other shall be designated as the Government Access Channel (jointly, "PEG Channels"). The County may request that Grantee make either or both PEG Channels available at any time by submitting a request in writing, and Grantee shall make the Channel or Channels available within nine (9) months of the date of the request.

- 5.1.2 The PEG Channels shall be carried on channel numbers to be assigned by Comcast at

the time they are made available. Thereafter, PEG Channel assignments may be changed and the entity responsible for managing any affected PEG Channel shall be given thirty (30) days advance notice of the change. If the Grantee decides to change the channel designation for any of the PEG Channels, it must provide thirty (30) days prior written notice to the County, and shall reimburse the County, and/or the designated PEG provider in an amount not to exceed one thousand dollars (\$1000) for reasonable, documented costs incurred by the County or other PEG users, including, but not limited to, technical costs, logo modifications, stationary, promotion, and advertising.

5.1.3 Grantee shall provide an upstream fiber optic connection and all necessary headend equipment for the purpose of providing PEG Access video origination between the following locations and Grantee's headend within nine (9) months of receiving a written request from the County: the meeting chamber in the Berryville-Clarke County Government Center and Grantee's headend, and Clarke County High School. The upstream connections referred to in this paragraph shall be referred to as a "Return Link" or as the "Return Links." The Grantee shall maintain both upstream links in good operating condition, and shall ensure that such link is at all times capable of transmitting PEG Access programming signals from the origination point to the headend without material distortion or degradation, in accordance with applicable industry technical standards.

5.1.3.1 If the County submits a request for either or both of the Return Links on or before the third anniversary of the Effective Date, the Grantee shall provide the requested link or links at its sole cost and expense, at no cost to the County, and without itemizing the cost of the link or links on Subscriber bills. If, however, the County requests a link after the third anniversary of the Effective Date, the Grantee shall provide the requested link or links only if (i) the County agrees to bear the cost of construction and installation of the necessary fiber optic plan and equipment; (ii) the County consents to the itemization of Subscriber bills of the entire cost of such construction and installation; or (iii) the County and the Grantee agree on an alternative funding plan, which may consist of, without limitation a combination of payments by the County and itemization on Subscriber bills. The County may also submit a request for either or both Return Links in conjunction with the Town of Berryville, in which case references to the County in this paragraph shall be read to include the County and the Town.

5.1.4. Grantee shall not interfere with the ability of competing cable operators and open video system operators designated by the County (the "Competing Operators") to obtain the content of any of the programming on the PEG Channels. Grantee shall not object to the connection of compatible equipment to facilities located at the County's PEG programming origination facility or facilities by Competing Operators for the purpose of obtaining access to the PEG Channel signals and transporting such signals to their Subscribers by means of their own facilities, nor shall Grantee object to the transmission of the PEG Channel signals by Competing Operators.

5.1.5. The PEG Channels shall be carried on the Basic Service tier. The Grantee shall monitor the two (2) PEG Access Channels for technical quality and shall ensure that they are maintained so that they are capable of transmitting signals in accordance with technical standards equivalent to those which apply to the Cable System's commercial channels.

Grantee shall insure that there is no material degradation in the quality of the Access Channel signals that are received by the Grantee for distribution by Grantee over the Cable System, as a result of the condition of the Return Links or associated equipment owned by Grantee.

- 5.2 PEG and I-NET Capital Support. In support of the County's production of local PEG programming and the Institutional Network, if the County submits a written request, Grantee shall provide an annual capital grant to the County ("PEG and I-Net Capital Grant") in the amount of fifty cents (\$0.50) per Subscriber per month. Grantee's obligation to pay the PEG and I-Net Capital Grant shall commence ninety (90) days after the end of the billing quarter during which the County's request was received (the "Grant Commencement Date"). Such grant shall be used by the County for PEG access equipment, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities, as well as for I-Net capital purposes. Payment of the PEG and I-Net grant shall be made annually. The PEG and I-Net Grant payment, along with a brief summary of the information upon which it is based, shall be delivered to the County annually, no later than sixty (60) days after each anniversary of the Grant Commencement Date.
- 5.3 PEG Indemnification. All local producers and users of any of the PEG facilities or Channels shall agree in writing to hold harmless Grantee and the County from any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. Furthermore, all local producers and users of any of the PEG facilities or Channels shall agree in writing, and the County shall require that such local producer or user agree in writing, to authorize Grantee to transmit programming consistent with this Agreement.
- 5.4 Itemization. To the extent permitted by federal law, the Grantee shall be allowed to recover the costs arising from the provision of the PEG and I-Net Grant from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. The parties agree that none of such costs constitutes or is part of any Franchise fee, and all such costs fall within one or more of the exceptions listed in 47 U.S.C. § 542.
- 5.5 I-Net Agreement. The County and the Grantee have agreed to the terms of a Fiber Use Agreement (the "Fiber Agreement"), pursuant to which the Grantee grants the County the continuing right to use the I-Net. The Grantee acknowledges that any and all payments made to the Grantee by the County pursuant to the Fiber Agreement are capital in nature and that amounts payable to the Grantee pursuant to the Fiber Agreement may be paid from the PEG and I-Net Grant. The Grantee expressly waives any claim that such payments are prohibited by any provision of applicable law.

SECTION 6 - Communications Tax and Franchise Fee

- 6.1 Communications Tax. Grantee shall comply with the provisions of Section 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 this 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. § 641, as amended, is imposed on the sale of Cable Services by the Grantee to Subscribers in the County.
- 6.2 Payment of Franchise Fee to County. 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. § 641, as amended, Grantee shall pay to the County a Franchise fee of five percent (5%) of annual Gross Revenue, beginning on 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 Title VI of the Communications 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 Grantee submit an incorrect amount, Grantee 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 Grantee showing the basis for the computation, and a breakdown by major revenue categories (such as Basic Service, premium service, etc.). The County shall have the right to reasonably request further supporting information for each Franchise fee payment, subject to the confidentiality provision of Section 8.3.3.
- 6.4 Limitation on Franchise Fee Actions. The period of limitation for recovery of any Franchise fee payable hereunder shall be five (5) years from the date on which payment by Grantee is due.
- 6.5 Bundled Services. This Section 6.5 shall only apply if state or federal law does not otherwise address the computation of franchise fees or gross revenues in connection with the provision of Cable Service as part of a bundle or package with any Non-Cable Service. If the Grantee bundles Cable Service with Non-Cable Service, the Grantee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the Franchise fee payments under this Agreement.
- 6.6. Audit.
- 6.6.1 Subject to the confidentiality requirements of Section 8.3.3 of this Agreement, the County, or such Person or Persons designated by the County, shall have the right to inspect and copy records and the right to audit and to recompute any amounts determined to be payable under this Franchise, without regard to by whom they are held. If an audit discloses an overpayment or underpayment of franchise fees or of the PEG and I-Net grant, the County shall notify the Grantee of such overpayment or underpayment within ninety (90) days of the date the audit was completed. The County, 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.

- 6.6.2 Subject to the confidentiality requirements of Section 8.3.3 of this Franchise, the Grantee shall be responsible for providing to the County all records necessary to confirm the accurate payment of franchise fees and the PEG and I-Net grant. The Grantee shall maintain such records for five (5) years. The County's audit expenses shall be borne by the County unless the audit determines the payment to the County should be increased by more than five percent (5%) in the audited period, in which case the costs of the audit shall be paid by the Grantee to the County within thirty (30) days following written notice to the Grantee by the County of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid by Grantee to the County, such amount shall be subject to an interest charge of the Prime rate plus one percent (1%). If the audit determines that there has been an overpayment by the Grantee, the Grantee may credit any overpayment against its next payment; and, the County shall waive the interest charge on any past due amounts that were a result of such overpayment by the Grantee. The auditor shall not be compensated on a success based formula, e.g., payment based on a percentage of any underpayment, if any.
- 6.6.3 The audit provisions set forth in this subsection shall similarly apply to the PEG and I-NET support payments specified in subsection 5.2 of this Franchise.

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

- 7.1 Customer Service Standards. Customer service requirements are set forth in Exhibit B, which shall be binding unless amended by written consent of the parties.
- 7.2 Customer Bills. Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that (i) is not misleading and (ii) does not omit material information. Notwithstanding anything to the contrary in Section 7.2, above, the Grantee may, in its sole discretion, consolidate costs on Subscriber bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).
- 7.3 Privacy Protection. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 8 - Oversight and Regulation by County

- 8.1 Oversight of Franchise. In accordance with applicable law, the County shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Grantee'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 Grantee's compliance with the provisions of this Franchise Agreement.
- 8.2 Technical Standards. The Grantee 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 Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The County 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 Maintenance of Books, Records, and Files.

8.3.1 Books and Records. Throughout the term of this Franchise Agreement, the Grantee agrees that the County, upon reasonable prior written notice to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor Grantee's compliance with the provisions of this Franchise Agreement at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. Such books and records shall include any records required to be kept in a public file by the Grantee pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by the County shall be retained by the Grantee for a minimum period of three (3) years.

8.3.2 File for Public Inspection. Throughout the term of this Franchise Agreement, the Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

8.3.3 Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, except as provided herein. The County shall further have the right to have independent consultants employed by the County review such disclosed information, contingent upon and subsequent to the execution by such consultants of any relevant non-disclosure agreements ("NDA") that may be required by the Franchisee. Such confidential information shall be subject to the following, to be applied as is most practicable for the purposes of this Agreement:

8.3.3.1 To the extent an exemption under the Virginia Freedom of Information Act permits the County to maintain the confidentiality of submitted information and the Grantee submits such information to the County, the County shall maintain the confidentiality of such information and not disclose it to any public request; or

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

8.3.3.3 Franchisee must provide the following documentation to the County: (i) specific identification of the information; (ii) statement attesting to the reason(s) the Franchisee believes the information is confidential; and (iii) statement that the documents are available at the Franchisee's designated offices for inspection by

the County.

8.3.4 At all times, the County shall take reasonable steps to protect the proprietary and confidential nature of any books, records, maps, plans or other County-requested documents that are provided pursuant to this 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.

8.4 Records Required. The Grantee shall at all times maintain:

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

8.4.2 Records of outages for a period of three years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

8.4.3 Records of service calls for repair and maintenance for a period of three years after resolution by Grantee, 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; and

8.4.4 Records of installation/reconnection and requests for service extension for a period of three years after the request was fulfilled by Grantee, indicating the date of request, date of acknowledgment, and the date and time service was extended.

8.5 FCC Testing. Within fourteen (14) days of a written request by the County, a written report of test results of FCC performance testing will be provided to the County Manager.

8.6 Annual Report. Upon receipt of a written request from the County, and no later than one hundred twenty (120) days after the end of the Grantee's fiscal year, the Grantee shall submit a written report to the County, in a form reasonably satisfactory to the County, which shall include:

8.6.1 An annual summary of complaints, identifying both number and nature of the complaints received and an explanation of the disposition.

8.6.2 A copy of the Grantee's rules, regulations and policies available to Subscribers of the Cable System, including but not limited to (i) all Subscriber rates, fees and charges; (ii) copies of the Grantee's contract or application forms for Cable Services; and (iii) a detailed summary of the Grantee's policies concerning the processing of Subscriber complaints; delinquent Subscriber disconnect and reconnect policies; Subscriber privacy and any other terms and conditions adopted by the Grantee in connection with the provision of Cable Service to Subscribers.

8.7 Periodic Review.

- 8.7.1 The County may hold a performance evaluation hearing every year within sixty (60) days of each anniversary of the Effective Date of this Franchise. All such evaluation hearings shall be open to the public. The purpose of said evaluation hearing shall be to, among other things, (i) review the Grantee's compliance to the terms and conditions of this Franchise Agreement, with emphasis on PEG Access Channels, facilities and support; customer service and complaint response; and (ii) hear comments, suggestions and/or complaints from the public. The County shall provide the Grantee with advance, written notice regarding any known compliance matters that the County intends to address at the hearing.
- 8.7.2 The County shall have the right to question the Grantee on any aspect of this Franchise Agreement including, but not limited to, the operation, maintenance and/or removal of the Cable System. During review and evaluation by the County, the Grantee shall fully cooperate with the County and/or his or her designee(s), and produce such documents or other materials relevant to such review as are reasonably requested from the County. Any Subscriber or other Person may submit comments during such review hearing, either orally or in writing, and such comments shall be duly considered by the County.
- 8.7.3 Within sixty (60) days after the conclusion of such review hearing(s), the County may issue a written report with respect to the Grantee's compliance. If noncompliance is found which may result in a violation of any of the provisions of this Franchise Agreement, the Grantee shall respond in accordance with Section 12.1.

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 County, 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 Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the County certificates of insurance designating the County and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the County. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the County from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement

- 10.2 Indemnification. The Grantee shall indemnify, defend and hold harmless the County, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that result from the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the County shall give the Grantee timely written notice of its obligation to indemnify and defend the County within a reasonable time of receipt of a claim or action pursuant to this Section. If the County determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the County.

SECTION 11 - System Description and Service

- 11.1 System Capacity. During the term of this Agreement the Grantee's Cable System shall be capable of providing a minimum of eighty (80) channels of video programming with satisfactory reception available to its Subscribers in the Franchise Area.
- 11.2 Service to School and Government Buildings. The Grantee shall provide without charge within the Franchise Area one (1) service outlet activated for Basic Service to each existing public building listed in Exhibit A, including, without limitation, each public school, each public library, each location occupied by the County police department, each location occupied by fire and rescue operations, and other locations occupied or used by the County government for county government purposes. The Grantee's obligation under Section 11.2, as it may be related to service locations outside of the Franchise Area, is contingent on the Grantee's right to reasonable access to facilities allowing it to serve those locations; notwithstanding the foregoing, the Grantee acknowledges that, as of the Effective Date, the Grantee has such access to all the facilities listed on Exhibit A. During the term of this Agreement, the County may designate additional such locations to receive one (1) service outlet activated for Basic Service by submitting a request for service to the Grantee, and Grantee shall install the service outlet, including the drop line and any necessary equipment, within sixty (60) days of the County's designation for any drop up to but not exceeding two hundred (200) feet. Exhibit A shall be deemed amended accordingly. For all service outlets, if it is necessary to extend the Grantee's trunk or feeder lines more than two hundred (200) feet solely to provide service to any such school or public building, the County shall have the option either of paying Grantee's direct costs for such extension in excess of two hundred (200) feet, or of releasing Grantee from the obligation to provide service to such building. Furthermore, Grantee shall be permitted to recover, from any public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one (1) outlet, or concealed inside wiring, or a service outlet requiring more than two hundred (200) feet of drop cable; provided, however, that Grantee shall not charge for the provision of Basic Service to the additional service outlets once installed. The County may extend its one (1) outlet to additional locations throughout the building at its own installation expense without an additional monthly fee for the provision of Basic Service to those locations.
- 11.3 Standby Power. The Grantee shall provide standby power generating capacity at the headend and at all hubs. The Grantee shall maintain motorized standby power generators capable of up to twenty-four (24) hours duration at the headend and all hubs, with automatic response systems to alert the Grantee's Local Management Center when commercial power is interrupted. The power supplies serving the distribution plant shall be

capable of providing power to the Cable System for not less than two (2) hours, in the event of an electrical outage.

- 11.4 Emergency Alert System. Grantee shall comply with the Emergency Alert System requirements of the FCC in order that emergency messages may be distributed over the System.

SECTION 12 - Enforcement of Franchise

- 12.1 Notice of Violation. In the event that the County believes that Grantee has not complied with the terms of the Franchise, the County shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the County shall notify Grantee in writing of the exact nature of the alleged noncompliance.
- 12.2 Grantee's Right to Cure or Respond. Grantee shall have thirty (30) days from receipt of the written notice described in Section 13.1 to: (i) respond to the County, if Grantee contests (in whole or in part) the assertion of noncompliance; (ii) cure such default; or (iii) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the County of the steps being taken and the projected date that they will be completed.
- 12.3 Enforcement. Subject to applicable federal and state law and the terms and conditions of this Agreement, the County may apply one or a combination of the following remedies if the County determines that the Grantee is in default of any provision of the Franchise:
- 12.3.1 Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or relief; or
- 12.3.2 Commence an action at law for monetary damages or seek other equitable
- 12.3.3. In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 12.4; or,
- 12.3.4. Assess liquidated damages, or apply any other remedy provided for in this Agreement or applicable federal, state or local laws.
- 12.4 Revocation. Should the County seek to revoke the Franchise, the County shall give written notice to Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the County has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a public hearing. The County shall cause to be served upon the Grantee, 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 revoke the Franchise.
- 12.4.1 At the designated hearing, Grantee shall be provided a fair opportunity for full participation, in accordance with the standards and procedures then applicable for legislative matters before the County Council.

12.4.2 Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the County shall determine (i) whether an Event of Default has occurred; (ii) whether such Event of Default is excusable; and (iii) whether such Event of Default has been cured or will be cured by the Grantee. The County shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Grantee to effect any cure. If the County determines that the Franchise shall be revoked, the County shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of the County to an appropriate court, which shall have the power to review the decision of the County *de novo*. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the County.

12.4.3 The County may, at its sole discretion, take any lawful action which it deems appropriate to enforce the County's rights under the Franchise in lieu of revocation of the Franchise.

12.5 Performance Guarantees.

12.5.1 To ensure the performance of its obligations under this Franchise, the Grantee shall establish a security fund in the form of a letter of credit for the County in the amount of twenty thousand dollars (\$20,000) (the "Security Fund"). Recovery under the letter of credit shall be in accordance with the procedures set forth in Section 12.6.3. If at the time of recovery under the letter of credit by the County, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Grantee to the County until it is paid. Within thirty (30) days of being notified that any amount has been recovered by the County, the Grantee shall restore the letter of credit to the total amount specified above.

12.5.2 To further ensure the Grantee's faithful performance of its obligations hereunder, the Grantee shall obtain and maintain during the entire term of the Franchise, and any renewal or extensions thereof, a performance bond from a financial institution licensed to do business in Virginia in the amount of ten thousand dollars (\$10,000).

12.6. Liquidated Damages.

12.6.1 Because the Grantee's failure to comply with provisions of this Franchise may result in injury to the County and because it may be difficult to quantify the extent of such injury, the County and the Grantee agree that, subject to the procedures in Section 12.6.3, liquidated damages may be assessable against the Grantee for certain violations of provisions of this Franchise, and that such liquidated damages may be chargeable to the Grantee's Security Fund up to the limits specified below in the event of non-payment by the Grantee. On an annual basis from the Effective Date of the Franchise, liquidated damages in total will not exceed ten thousand dollars (\$10,000) (the "Liquidated Damages Cap"). The Grantee hereby agrees that the liquidated damages

specified herein are reasonable and do not constitute a penalty or fine. The liquidated damages shall not apply when non-compliance is caused by Force Majeure events and shall only apply from the date of notice being provided to the Grantee unless otherwise provided for or consistent with the time periods of notice and cure specific to certain liquidated damages.

- 12.6.1.1 Failure to supply information, reports, or filings lawfully required under the Franchise: **\$50 per day** for each day the violation continues after the Grantee is given a thirty (30) day period to cure the failure and then written notice has been provided to the Grantee by the County of such continuing violation;
- 12.6.1.2 Failure to file, obtain, maintain or replenish the security fund in a timely fashion: **\$200 per day**, following a fourteen (14) day cure period;
- 12.6.1.3 For violation of applicable technical standards established by the FCC or other lawful authority: **\$100 per day** for each day the violation continues after a thirty (30) day cure period;
- 12.6.1.4 For each day during which the County determines that the Grantee has violated customer service standards pursuant to Exhibit B, except for those standards set forth in Subsection 12.6.1.5 below: \$200 per violation, following a seven (7) day cure period, except that such cure period does not apply to customer service standards that themselves provide a time to act or a specific cure period;
- 12.6.1.5 For failure to meet customer service standards with regard to telephone answering time, time to transfer a call to a customer service representative, or excessive busy signals: if such standards are not met according to the terms in which such standards are established in Exhibit B: \$100 for each quarter in which such standards were not met if the failure was by less than 5%; \$200 for each quarter in which such standards were not met if the failure was by 5% or more but less than 15%; and \$300 for each quarter in which such standards were not met if the failure was by 15% or more;
- 12.6.1.6 For failure to comply with the requirements for the provision of PEG programming: **\$50 per day**.
- 12.6.2 The County Administrator or the Board of Supervisors may reduce or waive any of the above-listed liquidated damages if the County Administrator or the Board of Supervisors determines that such waiver is in the best interests of the County.
- 12.6.3 If the County Administrator, following reasonable notice to the Grantee to cure any problem (except for specific notice periods as may be contained in this Agreement) that might result in liquidated damages pursuant to the Agreement, determines that the assessment of liquidated damages is justified, he or she shall issue to the Grantee, by certified mail, a notice of intention to assess liquidated damages. The notice shall set forth the basis of the assessment, and shall inform the Grantee that liquidated damages will be assessed from the date of the notice unless the assessment notice is appealed for hearing before the Board of Supervisors and the Board of Supervisors rules (1) that

the violation has been corrected, or (2) that an extension of the time or other relief should be granted, or (3) the Board of Supervisors disagrees with the findings of the County Administrator. If the Grantee desires a hearing before the Board of Supervisors, it shall send a written notice of appeal, by certified mail, to the County Administrator within ten (10) days of the date on which the County Administrator sent the notice of intention to assess liquidated damages. After the hearing, if the Board of Supervisors sustains, in whole or in part, the County Administrator's assessment of liquidated damages, the Board of Supervisors may at any time thereafter draw upon the security fund for the amount reviewed by the Board of Supervisors after providing the Grantee thirty (30) days to pay said amount. Unless the County Administrator indicates to the contrary, said liquidated damages shall be assessed beginning with the date on which the County Administrator sent the notice of intention to assess liquidated damages and continuing thereafter until such time as the violation ceases, as determined by the County Administrator.

- 12.7 Technical Violation. The County agrees that it is not its intention to subject the Grantee 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 instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise Area.

SECTION 13 - Miscellaneous Provisions

- 13.1 Force Majeure. The Grantee 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 herein.
- 13.2 Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the County:
Clarke County
101 Chalmers Court, Suite B Berryville, VA 22611
Attn: County Administrator

To the Grantee:
Comcast
600 Hays Avenue
Staunton, Virginia 24401
Attn: Paul Comes/Government Affairs Department

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

- 13.3 Entire Agreement. This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the County and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. If the terms of this Agreement are materially altered due to changes in governing law (including but not limited to the law of the Franchisors), then the parties shall negotiate in good faith to reconstitute this Agreement in a form that is consistent with such law and also, to the maximum extent possible, is consistent with the original intent of Franchisee and the Franchisors and preserves the benefits bargained for by each party.
- 13.4 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 portions hereof, which other portions shall continue in full force and effect.
- 13.5 Incorporation by Reference.
- 13.5.1 All presently and hereafter applicable conditions and requirements of federal, State and local laws, including but not limited to the rules and regulations of the FCC and the Commonwealth of Virginia, as they may be amended from time to time, are incorporated herein by reference to the extent not enumerated herein. All such general laws, rules and regulations, as amended, shall control the interpretation and performance of this Franchise to the extent that any provision of this Franchise conflicts with or is inconsistent with such laws, rules or regulations.
- 13.5.2 Should the Commonwealth of Virginia, the federal government or the FCC require Grantee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the County and Grantee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.
- 13.5.3 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, as applicable to contracts entered into and performed entirely within the Commonwealth.
- 13.6 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 County and the Grantee, which amendment shall be authorized on behalf of the County through the adoption of an appropriate resolution or order by the County, as required by applicable law.

13.7 No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

13.8 No Waiver of Rights.

13.8.1 The failure of the County on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the County, nor to excuse Grantee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

13.8.2 The failure of the Grantee on one or more occasions to exercise a right under this Franchise Agreement or applicable law, or to require performance under this Franchise Agreement, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse the County from performance, unless such right or performance has been specifically waived in writing.

13.9 Administration. The administration of this Agreement shall be vested in the County Administrator, or his or her designee. When not otherwise prescribed herein, all matters herein required to be filed with the County shall be filed with the Manager County Administrator.

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:

Attest: Clarke County

By: ___ Name: _ Title: __

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

By: _____ Name: Mary McLaughlin Title: Regional Senior Vice President Date:

EXHIBIT A

COUNTY FACILITIES LOCATED IN THE COUNTY TO BE PROVIDED COURTESY CABLE SERVICE

Location	Address	
Blue Ridge Fire Station	131 Retreat Rd	Bluemont, VA 20135
Rec Center	370 Al Smith Cir	Berryville, VA 22611
Cooley Upper Campus	34 Westwood Rd	Berryville, VA 22611
Cooley Lower Campus	240 Westwood Rd	Berryville, VA 22611

COUNTY FACILITIES LOCATED IN THE TOWN OF BERRYVILLE TO BE PROVIDED COURTESY CABLE SERVICE

Location	Address	
Government Center	101 Chalmers Ct	Berryville, VA 22611
Sheriff's Office	100 N Church St	Berryville, VA 22611
Circuit Court Building	102 N Church St	Berryville, VA 22611
General District Court	104 N Church St	Berryville, VA 22611
Social Services	311 E Main St	Berryville, VA 22611
Old Library	36 E Main St	Berryville, VA 22611
Enders Fire	9 S Buckmarsh St	Berryville, VA 22611
Johnson-Williams Middle School	200 Swan Ave	Berryville, VA 22611
School Board Office	309 W Main St	Berryville, VA 22611
Pupil Personnel	321 W Main St	Berryville, VA 22611
Alternative Education	317 W Main St	Berryville, VA 22611
High School	627 Mosby Blvd	Berryville, VA 22611

COUNTY FACILITIES LOCATED IN THE TOWN OF BOYCE TO BE PROVIDED COURTESY CABLE SERVICE

Boyce Fire Station	15 Greenway Ave.	Boyce, VA 22620
Boyce Elementary School	309 W. Main St.	Boyce, VA 22620
Sewer Plant	162 Howards Ln.	Boyce, VA 22620

EXHIBIT B

CUSTOMER SERVICE STANDARDS

SECTION 1: DEFINITIONS

- A. Respond: Grantee's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.
- B. Service Call: The action taken by the Grantee to correct a Service Interruption the effect of which is limited to an individual Subscriber.
- C. Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Franchise Area.
- D. Standard Installation: Installations where the Subscriber is within two hundred (200) feet of trunk or feeder lines.
- E. Normal Operating Conditions: Those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are

not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather. Those conditions which are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

SECTION 2: TELEPHONE AVAILABILITY

- A. The Grantee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Grantee representatives trained and qualified to answer questions related to Cable Service in the Franchise Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries at least forty-five (45) hours per week. Grantee representatives shall identify themselves by name when answering this number.
- B. The Franchisee's toll-free telephone numbers will appear on Subscriber bills, the Franchisee's website and in the annual notice.
- C. Grantee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

After the first tier menu (not including a foreign language rollout), if Subscribers do not select any option, the ARU or VRU will forward the call to a queue for a live representative. The Grantee may reasonably substitute this requirement with another method of handling calls from Subscribers who do not have touch-tone telephones.

- D. Under Normal Operating Conditions, calls received by the Grantee shall be answered within thirty (30) seconds. The Grantee shall meet this standard for ninety percent (90%) of the calls it receives at all call centers receiving calls from Subscribers in the County, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by the Grantee at all call centers receiving calls from Subscribers in the County, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting.
- E. Under Normal Operating Conditions, callers to the Grantee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.

Upon request from the County, but in no event more than once a quarter thirty days following the end of each quarter, the Grantee shall report to the County the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

- (1) Percentage of calls answered within thirty (30) seconds as set forth in Subsection 2.D.
- (2) Percentage of time Subscribers received busy signal when calling the customer service center as set forth in Subsection 2.E.

Subject to consumer privacy requirements, underlying activity will be made available to the County for review upon reasonable request.

- F. At the Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters. The Grantee shall notify the County of such a change at least thirty (30) days in advance of any implementation.

SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS

- A. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of the Grantee-supplied equipment and Cable Service. Drop wires in underground service areas that are temporarily placed above ground shall be buried within thirty (30) calendar days of the date and time of the temporary installation, except in those situations where weather conditions make trenching impractical.
- B. Under Normal Operating Conditions, Standard Installations shall be performed within seven (7) business days after an order is placed. The Grantee shall meet this standard under Normal Operating Conditions for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis.
- C. The Grantee shall provide the County with a report upon request from the County, but in no event more than once a quarter thirty (30) days following the end of each quarter, noting the percentage of Standard Installations completed within the seven (7) day period. Those requested outside of the seven (7) day period by the Subscriber will be included as compliant. Subject to consumer privacy requirements, underlying activity will be made available to the County for review upon reasonable request.

At the Grantee's option, the measurements and reporting of above may be changed from calendar quarters to billing or accounting quarters. The Grantee shall notify the County of such a change not less than thirty (30) days in advance.

- D. The Grantee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At the Grantee's discretion, the Grantee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends.
- E. Upon the Subscriber's request, the Grantee's service representatives will have the ability to issue service credits, at their sole discretion, to address Subscriber complaints related to missed appointments.
- F. Under Normal Operating Conditions, the Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment. If the Grantee representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber shall be contacted. The appointment shall be rescheduled, as necessary, at a time which is convenient for the Subscriber.

- G. Between the time a new Subscriber is signed up for service and the time service is installed, he or she shall be afforded a right of rescission.

SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES

- A. The Grantee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, the Grantee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after the County and each affected Subscriber in the Franchise Area have been given fifteen (15) days prior notice of the proposed Significant Outage. Notwithstanding the foregoing, Franchisee may perform modifications, repairs and upgrades to the System without prior notification between 12.01 a.m. and 6 a.m., which may interrupt service.
- B. Grantee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.
- C. Under Normal Operating Conditions, the Grantee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:
 - (1) Within twenty-four (24) hours, including weekends, of receiving Subscriber calls respecting Service Interruptions in the Franchise Area.
 - (2) The Grantee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or the County of a Cable Service problem.
- D. Under Normal Operating Conditions, the Grantee shall complete Service Calls within seventy-two (72) hours of the time Grantee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption.
- E. The Grantee shall meet the standard in Subsection D. of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.
- F. The Grantee shall provide the County with a report upon request from the County, but in no event more than once a quarter within thirty (30) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to the County for review upon reasonable request. At the Grantee's option, the above measurements and reporting may be changed for calendar quarters to billing or accounting quarters. The Grantee shall notify the County of such a change at least thirty (30) day in advance.
- G. Under Normal Operating Conditions, the Grantee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber

must promptly report the problem and allow the Grantee to verify the problem if requested by the Grantee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

- H. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, the Grantee shall issue a credit to every affected Subscriber who contacts the Grantee in connection with such Outage, including, without limitation, to notify Grantee of the Outage, to request a credit, or to inquire as to the remedies available for loss of service related to the Outage. The credit shall be in the amount equal to the respective Subscriber's monthly recurring charges for the proportionate time the Cable Service was out, or in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Grantee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage. Failure to provide a credit in a timely manner in accordance with this section shall be deemed a violation of customer service standards, and subject to all applicable remedies, including, without limitation, liquidated damages pursuant to Section 13.7.1.5 of the Franchise Agreement.
- I. With respect to service issues concerning Cable Services provided to County facilities, Grantee shall Respond to all inquiries from the County within four (4) hours and shall commence necessary repairs within twenty-four (24) hours under Normal Operating Conditions. If such repairs cannot be completed within twenty-four (24) hours, the Grantee shall notify the County in writing as to the reason(s) for the delay and provide an estimated time of repair.
- J. The Grantee shall keep maintenance crew and repair staff to meet the Grantee's obligations under these Customer Service Standards.

SECTION 5: CUSTOMER COMPLAINTS

Under Normal Operating Conditions, the Grantee shall investigate Subscriber complaints referred by the County within seventy-two (72) hours. The Grantee shall notify the County of those matters that necessitate an excess of seventy-two (72) hours to resolve, but those matters must be resolved within fifteen (15) days of the initial complaint. The County may require reasonable documentation to be provided by the Grantee to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that the Grantee shall perform those actions, which, in the normal course of business, are necessary to investigate the Subscriber's complaint and advise the Subscriber of the results of that investigation.

SECTION 6: BILLING

- A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Grantee shall, without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes and/or other governmentally imposed fees. The Grantee shall maintain records of the date and place of mailing of bills.

- B. Every Subscriber with a current account balance sending payment directly to Grantee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.
- C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.
- D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:
 - (1) The Subscriber pays all undisputed charges;
 - (2) The Subscriber provides notification of the dispute to Grantee within five days prior to the due date; and
 - (3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.
 - (4) It shall be within the Grantee's sole discretion to determine when the dispute has been resolved.
- E. Under Normal Operating Conditions, the Grantee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.
- F. The Grantee shall provide a telephone number and address on the bill for Subscribers to contact the Grantee. The County, furthermore, hereby requests that Grantee omit publishing information specified in 47 C.F.R. § 76.952.
- G. The Grantee shall forward a copy of any Cable Service related billing inserts or other mailing sent to Subscribers to the County upon written request.
- H. The Grantee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Grantee may in the future, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of the Grantee, the payment alternative may be limited.

SECTION 7: DEPOSITS, REFUNDS AND CREDITS

- A. The Grantee may require refundable deposits from Subscribers with 1) a poor credit or poor payment history, 2) who refuse to provide credit history information to the Grantee, or 3) who rent Subscriber equipment from the Grantee, so long as such deposits are applied on a non-discriminatory basis.
- B. The Grantee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. The

Grantee shall pay interest on other deposits if required by law.

- C. Under Normal Operating Conditions, refund checks will be issued within next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).
- D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.
- E. Bills shall be considered paid when appropriate payment is received by the Grantee or its authorized agent. Appropriate time considerations shall be included in the Grantee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

SECTION 8: RATES, FEES AND CHARGES

- A. The Grantee shall not, except to the extent expressly permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Grantee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Grantee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect the Grantee's equipment (for example, a dog chew).
- B. The Grantee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

SECTION 9: DISCONNECTION /DENIAL OF SERVICE

- A. The Grantee shall not terminate Cable Service for nonpayment of a delinquent account unless the Grantee provides a notice of the delinquency and impending termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.
- B. Cable Service terminated in error must be restored without charge within twenty- four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.
- C. Nothing in these standards shall limit the right of the Grantee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to the Grantee's equipment, abusive and/or threatening behavior toward the Grantee's employees or representatives, or refusal to provide credit history information or refusal to allow the Grantee to validate the identity, credit history and credit worthiness via an external credit agency.

- D. Charges for Cable Service will be discontinued at the time of the requested termination of service by the Subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by the Grantee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Grantee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by the Grantee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from the Grantee and to receive Cable Service or other multi-channel video service from another Person or entity.

SECTION 10: COMMUNICATIONS WITH SUBSCRIBERS

- A. All Grantee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of the Grantee shall wear a clearly visible identification card bearing their name and photograph. The Grantee shall make reasonable effort to account for all identification cards at all times. In addition, all Grantee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of the Grantee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Grantee vehicles shall have the Grantee's logo plainly visible. The vehicles of those contractors and subcontractors working for the Grantee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Grantee.
- B. All contact with a Subscriber or potential Subscriber by a Person representing the Grantee shall be conducted in a courteous manner.
- C. The Grantee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by the Grantee may be referred to the County.
- D. All notices identified in this Section shall be by either:
- (1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or
 - (2) A separate electronic notification.
- E. The Grantee shall provide reasonable notice to Subscribers of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of the Grantee, and the Grantee shall provide a copy of the notice to the County including how and where the notice was given to Subscribers.
- F. The Grantee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of the Grantee:

- (1) Products and Cable Service offered;
- (2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by the Grantee related to Cable Service;
- (3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;
- (4) Channel positions of Cable Services offered on the Cable System;
- (5) Complaint procedures, including the name, address and telephone number of the County, but with a notice advising the Subscriber to initially contact the Grantee about all complaints and questions;
- (6) Procedures for requesting Cable Service credit;
- (7) The availability of a parental control device; privacy; and
- (8) Grantee practices and procedures for protecting against invasion of
- (9) The address and telephone number of the Grantee's office to which complaints may be reported.

A copy of all notices to Subscribers required by this Subsection 10.F. will be given to the County as soon as possible.

- G. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.
- H. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.
- I. Every notice of termination of Cable Service shall include the following information:
 - (1) The name and address of the Subscriber whose account is delinquent;
 - (2) The amount of the delinquency for all services billed;
 - (3) The date by which payment is required in order to avoid termination of Cable Service; and,
 - (4) The telephone number for the Grantee where the Subscriber can receive additional information about their account and discuss the pending termination.

7) Report on Delinquent Tax Collection

David Ash informed the Board that no action was necessary and the item was added for information only. He advised that a recent Code change allowed counties to contract attorneys to collect delinquent taxes and the report would indicate that Clarke is having some success.



Margaret F. Hardy
Attorney

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October 17, 2016

TO: SHARON KEELER, TREASURER
COUNTY OF CLARKE, VIRGINIA

REPORT ON DELINQUENT TAX COLLECTION
as of September 30, 2016

I.	PARCELS IN PROCESS <i>(March, 2015 to Present):</i>	#	%
	A. Parcels Paid Before Notice	5	1.7
	B. Parcels in Notice	223	75.3
	C. Parcels on Payment Plan	21	7.1
	D. Parcels in Suit	13	4.4
	E. Parcels on Hold	0	0.0
	F. Parcels Paid in Full	33	11.2
	G. Parcels Dismissed	1	0.3
	H. Parcels Ready for Sale	0	0.0
	I. Parcels Sold	0	0.0
	Total In Process	296	100.0
II.	TOTAL TAXES IN PROCESS <i>(March, 2015 to Present):</i>		%
	A. Amount Collected	\$98,170.56	16.7
	B. Amount Uncollected	<u>491,084.90</u>	<u>83.3</u>
	Total In Process	\$589,255.46	100.0
III.	ACTUAL TAX, PENALTY AND INTEREST COLLECTED: (Parcels Received and Parcels in Process)		
	March, 2015 – June, 2015	\$56,454.76	
	July, 2015 – June, 2016	130,306.90	
	July, 2016 – Present	<u>23,881.40</u>	
	Total Paid	\$210,643.06	

Respectfully submitted,

Margaret F. Hardy

- 8) VACo Voting Credentials 2016. Action: Select Voting Delegate and Alternate for the VACo 2016 Annual Meeting.

Supervisor Daniel moved to approve Supervisor Byrd as Voting Delegate and Vice Chair McKay as Alternate. The motion carried by the following vote:

Barbara J. Byrd	- Aye
Terri T. Catlett	- Aye
Mary L.C. Daniel	- Aye
Beverly B. McKay	- Aye
David S. Weiss	- Aye

- 9) 2017 Legislative Priorities

A. Review and Direction

Highlights of Board review include:

- Add: Water Availability.
- Add: Removal of Boards' of Supervisors from Sanitary Districts.
- Add: Drug Court
- Modify: Broadband to include Clarke's high response to the state-wide broadband survey.
- Modify State Tax Reform, Cost and Revenue Shifting and State Year-end Surplus Funds:
 - Support of meals taxes.
 - Support of collection of cigarette taxes.
 - Be more specific about support of equal taxing authority.
- Remove Section: Local Ordinance Violations
- Update legislative priorities and provide to Board for review.

B. Discuss Potential Meeting Dates, Set Date to Meet with Local Legislators

Following discussion, the Board agreed to attempt to schedule the legislative luncheon for the week of December 5 through 9. It also agreed to send an invitation to the winner of 10th District Delegate.

- 10) Telecommunication Study Review and Discuss Potential Meeting Dates

Brandon Stidham advised the Board that the final study should be available by month's end and he would like to arrange a meeting to review with the consultant and the Planning Commission. By consensus, the Board agreed to meet on Tuesday, November 29, at 7:00 pm and to invite the Planning Commission to attend the review.

11) Consent Agenda

Authorize BoS Chair to Execute Documents for Application for Donation – Idlewild River Farm, LLC – Tim Martin

MEMORANDUM

TO: Board of Supervisors, David Ash

FROM: Conservation Easement Authority, Alison Teetor

DATE: October 27, 2016

SUBJECT: Application for Donation – Idlewild River Farm, LLC – Tim Martin

The Clarke County Easement Authority has approved the following easement for donation. The Authority requests the Board of Supervisors to authorize the Chairman to execute deeds, easements, and other documents necessary to complete the transactions.

Tim Martin has submitted an application for an easement donation. The property is located on the east side of the Shenandoah River approximately $\frac{3}{4}$ of a mile north of Route 50. It is accessed off of Slate Ridge Road from Mt. Carmel Road. The parcel is identified as Tax Map# 31-A-6, consisting of 254 acres, with 7 DURs. The property is wooded and vacant. The parcel has nearly a mile of river front and is nearly surrounded by adjacent easements, primarily the Burwell Van Lennep properties.

The parcel is zoned FOC and currently in landuse, in accord with the Commissioner of Revenue's requirements, therefore a donation may be considered if at least two of the following four guidelines are met:

- 1) the parcel's Property Resource Score is at least 35;
- 2) at least one dwelling unit right is extinguished by the conservation easement;
- 3) the parcel is adjacent to a parcel already under permanent conservation easement;
- 4) the property has a minimum area of 40 acres.

The parcel meets all of the criteria, the score was 162.01 due to River frontage, steep slopes and adjacency to other easements. The owner would like to retire 6 of the 7 remaining DURs.

Recommendation: Give final approval for the easement donation.

Authorize BoS Chair to Execute Documents for Application for Donation – Peter Cook, Oakland Orchard, L.P.

MEMORANDUM

TO: Board of Supervisors, David Ash

FROM: Conservation Easement Authority, Alison Teetor

DATE: October 27, 2016

SUBJECT: Application for Donation – Peter Cook, Oakland Orchard, L.P.

The Clarke County Easement Authority has approved the following easement for donation. The Authority requests the Board of Supervisors to authorize the Chairman to execute deeds, easements, and other documents necessary to complete the transactions.

Peter Cook has submitted an application for an easement donation. There are four properties, located on the south side of Lord Fairfax Highway approximately ½ mile south of the West Virginia line on Oakland Orchard Lane. The parcels are identified as Tax Map# 9-A-60, consisting of 32 acres, and existing house and 1 DUR; 9-A-60A consisting of 112 acres with 2 DURs; and 9-A-60B consisting of 50 acres with 3 DURs, 9-A-59 is a 2 acre parcel with an existing pre-1980 house that will be merged with 9-A-60B (see attached plat). Current use of the parcels is for crops and Christmas trees. The parcels are within the Longmarsh Rural Historic District and the existing house and several outbuildings are contributing structures. Parcels 60A and 60B have a portion of Longmarsh Run which has been protected with riparian buffers. The railroad bounds the western side of parcel 60A.

The parcels are zoned AOC and currently in landuse, in accord with the Commissioner of Revenue's requirements, therefore a donation may be considered if at least two of the following four guidelines are met:

- 1) the parcel's Property Resource Score is at least 35;
- 2) at least one dwelling unit right is extinguished by the conservation easement;
- 3) the parcel is adjacent to a parcel already under permanent conservation easement;
- 4) the property has a minimum area of 40 acres.

TM# 9-A-60 meets 2 of the 4 criteria, it scored 61.32 with points given for being in the Longmarsh Rural Historic District, being owned by Mr. Cook for 30-50 years, and being adjacent to an existing VOF easement (Cook). TM# 9-A-60A meets 3 of the 4 criteria, it scored 79.3 with point given for frontage on a primary highway and railroad, inclusion in the Longmarsh Rural Historic District, having a perennial stream and being owned by Mr. Cook for between 30 and 50 years; it is over 40 acres, and is retiring a DUR. TM# 9-A-60B meets all of the criteria. It scored 81.55, with points given for inclusion in the Longmarsh Rural Historic District, having a perennial stream and being owned by Mr. Cook for between 30 and 50 years; it is over 40 acres, and is retiring a DUR; it is adjacent to an existing easement, and it is over 40 acres.

A site visit was conducted October 6th. Mr. Cook was present to show us the property. He also reiterated the request to be permitted structures up to 6,000 sq ft. Members that were present stated that potentially these large structures could be permitted if located in the low area of the properties. Attached is a map that depicts areas below the 540' elevation where if approved large structures could be located. Mr. Cook agreed to identify the proposed area on the survey plat if approved.

Recommendation: Give final approval for the easement donation.

Supervisor Byrd moved to approve the items as presented. The motion carried by the following vote:

Barbara J. Byrd

- Aye

Terri T. Catlett - Aye
 Mary L.C. Daniel - Aye
 Beverly B. McKay - Aye
 David S. Weiss - Aye

12) Board of Supervisors Finance Items for Regular Session

1. Fund Balance Designations

Tom Judge review his request for the Board to Establish the FY 16 fund balance designations.

Supervisor Catlett moved to accept the moving of designated funds as presented. The motion carried by the following vote:

Barbara J. Byrd - Aye
 Terri T. Catlett - Aye
 Mary L.C. Daniel - Aye
 Beverly B. McKay - Aye
 David S. Weiss - Aye

Title: General Fund Balance
Source: Clarke County Joint Administrative Services

<u>Prior Titles</u>	<u>Prior</u>	<u>Current</u>	
General Fund Balance Year End FY 15/16	13,636,042	13,598,905	
Expenditure FY 15/16	(27,155,570)	(26,981,867)	
Revenue FY 15/16	27,118,433	27,311,595	
General Fund Balance Year End FY 15/16	13,598,905	13,928,633	
<u>Designations</u>			
Liquidity Designation @ 12% of FY 16/17 Budgeted Operating Revenue	(\$3,278,655)	(\$3,390,324)	
Stabilization Designation @ 3% of FY 16/17 Budgeted Operating Revenue	(819,664)	(847,581)	
Continuing Local GF Appropriations for Capital Projects	(2,497,453)	(3,087,639)	Was -3,114,604
School Capital/Debt	(1,250,000)		
Government Construction/Debt	(600,578)		
Property Acquisition	(265,000)		
Conservation Easements from Government Savings	(153,462)	(153,462)	
Community Facilities	(\$156,000)		
Comprehensive Services Act Shortfall	(240,724)	(166,866)	
Parks Master Plan	(100,000)	(80,000)	
School Operating Carryover	-	(878,708)	
Government Savings (GenGov, JAS, DSS)	(500,000)	(367,823)	
Energy Efficiency	(50,000)		
Data and Communications Technology	(128,000)	(128,000)	
Recycling and Convenience Center	(814,336)		
Regional Jail Capital Needs	(100,000)		
Vehicle Replacements	(59,000)		
Landfill costs	(50,000)		
Leave Liability	(75,000)	(75,000)	
Economic Development	(200,000)		
CCSA Sewer Fund Shortfall	(150,000)		
FY 16/17 Original Budget Surplus (Deficit)	(503,716)	(4,573,399)	
TOTAL Designations	(11,991,588)	(13,748,802)	
FY 16/17 Expenditure Supplemental	(1,553,655)	(372,354)	Was -370,604
FY 16/17 Revenue Supplemental	446,338	361,304	
Undesignated	500,000	168,781	

2. School Carryover Set Public Hearing.

Tom Judge briefly reviewed his request to set public hearing on December 20, 2016 at 6:30 pm or as soon thereafter as the matter may be heard. "Be it resolved that the FY 17 School Capital Projects fund budgeted expenditure and appropriation be increased \$878, 708, and the General Fund designation for school carryover be decreased in the same amount, all for the purpose of funding certain School capital improvements."

Vice Chair McKay moved to set public hearing for Tuesday, December 20, 2016, at 6:30 pm or as soon thereafter as the matter may be heard. The motion carried by the following vote:

Barbara J. Byrd	- Aye
Terri T. Catlett	- Aye
Mary L.C. Daniel	- Aye
Beverly B. McKay	- Aye
David S. Weiss	- Aye

3. Conservation Easement Purchases Set Public Hearing.

Tom Judge reviewed his request for action to set public hearing December 20, 2016 at 6:30 pm or as soon thereafter as the matter may be heard.

- a. *"Be it resolved that FY 17 budgeted expenditure and appropriation be increased \$70,500, that State and Federal revenue of \$56,750 be recognized, and that the General Fund balance designation for Conservation Easement purchases be decreased \$13,750, all for the purpose of purchasing the Susan Digges easement."*
- b. *"Be it resolved that FY 17 budgeted expenditure and appropriation be increased \$111,375, that State and Federal revenue of \$90,812 be recognized, and that the General Fund balance designation for Conservation Easement purchases be decreased \$20,563, all for the purpose of purchasing the Digges Farm LLC easement."*
- c. *"Be it resolved that FY 17 budgeted expenditure and appropriation be increased \$317,100, that State and Federal revenue of \$311,262 be recognized, and that the General Fund balance designation for Conservation Easement purchases be decreased \$5,838, all for the purpose of purchasing the Cool Spring Farm easement."*

Supervisor Byrd moved to set public hearing for Tuesday, December 20, 2016, at 6:30 pm or as soon thereafter as the matter may be heard on the three proposed actions. The motion carried by the following vote:

Barbara J. Byrd	-	Aye
Terri T. Catlett	-	Aye
Mary L.C. Daniel	-	Aye
Beverly B. McKay	-	Aye
David S. Weiss	-	Aye

4. Acceptance of Bills and Claims – Invoice History Report

Report will be made available at or before the regular meeting.

Supervisor Daniel moved to accept the October invoice history report as presented. The motion carried by the following vote:

Barbara J. Byrd	-	Aye
Terri T. Catlett	-	Aye
Mary L.C. Daniel	-	Aye
Beverly B. McKay	-	Aye
David S. Weiss	-	Aye

15. Joint Administrative Service Board Update

Tom Judge briefly reviewed the September meeting.

- Continue to complete ERP project.
- Go live with utility billing.
- Making an effort to inform the growing number of persons in the hybrid program.

13) Government Projects Update

David Ash provided the monthly project update.

- Ballfield lighting project: Moving forward.
- Parks & Recreation: Work on the new pavilion begins soon.
- Convenience Center: Need to consult the Board Chair.
- General District Court Renovations
 - Number one priority for County Maintenance.
 - Maintenance may have identified reason for moisture in the walls.
 - Maintenance is proposed more exterior work in the spring.

- Maintenance requested HVAC contractor to develop a fail-safe system for attic compressor.
- Will schedule interior work with the courts.

14) Miscellaneous Items

Berryville Area Development Plan

Chairman Weiss informed the Board that Berryville Town Council took action at its October 11, 2016 Regular Meeting that would appear to be in conflict with the Berryville Area Plan.

At Chairman Weiss' request, George Ohrstrom, Berryville Development Authority [BADA] Chair, was present and participated in the discussion.

Highlights of discussion include:

- Change focuses on Older Person Residential district.
 - Increased the number of multi-family units.
 - Changed multi-family from special use to a “by right” use.
 - The Berryville Planning Commission did not recommend approval of the changes adopted by Town Council.
 - Town Council's action taken did not pass unanimously.
 - Discussion should have been conducted in conjunction with a plan amendment.
- Berryville Area Development Authority
 - Authority created through a joint agreement between the Town of Berryville and the Clarke County Board of Supervisors.
 - Should the BADA be rescinded, site plans would require separate review by the planning commissions of each jurisdiction.
- By consensus, the Board agreed to request a joint meeting with Berryville Town Council to discuss:
 - Invite members of the respective Planning Commissions and the BADA to attend.
 - Discuss views of the BADA and the Berryville Area Plan.
 - Perform system evaluation.
 - Review of interim and annual change process.

15) Summary of Required Action

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
Board of Supervisors Meeting Minutes For November 3, 2016 – Regular Meeting		

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
1.	Draft Chapter 180 Code Amendment.	David Ash
2.	Develop and process public hearing notice for Chapter 180 Code amendment.	Lora B. Walburn
3.	Finalize franchise agreement.	David Ash
4.	Complete and forward 2016 VACo Voting Credentials.	Lora B. Walburn
5.	Update 2017 Legislative Priorities.	David Ash
6.	Coordinate Legislative Luncheon.	Lora B. Walburn
7.	Develop and process public hearing notice for School Carryover funds.	Lora B. Walburn
8.	Develop and process public hearing notice for Conservation Easement Purchases.	Lora B. Walburn
9.	Coordinate Joint Meeting with Berryville Town Council re BADA / BAP.	David Ash

16) Board Member Committee Status Reports

Supervisor Barbara J. Byrd

- Board of Social Services: Missing one member. Two new members added.
- Clarke County Humane Foundation: Met and operations going well at the Shelter. Building a small enclosure with a shed is under consideration.
- Conservation Easement: Very active.
- NW Juvenile Detention Center: Meeting coming up.
- Town of Berryville: Meetings well attended.
- Northern Shenandoah Substance Abuse Coalition: Two organizations with one funding the other. Lauren Cummins was instrumental in getting funding to hire a person to handle the drug court. This position will report to Valley Health.
- Career and Technical Committee Subcommittee: Good discussions.

Supervisor Terri Catlett

- Parks and Recreation Advisory Board: Did not meet.
- School Board:
 - Foreign Exchange Program: Policy passed.

- Vacant position in the Millwood Voting District
 - School Board Member Graham is moving from the County.
 - Meet Friday to discuss appointment of interim School Board member.
 - Several interested in the position.
 - Barbara Bosserman added that there could be a special election in 2017 to fill the term that expires 2019 if a judge does not set an alternate date.

Vice Chair Beverly McKay

- Clarke County Sanitary Authority: No meeting this month.
- NSVRC: Met at Inland Port. Export a great number of logs, frozen turkeys and chickens from this point with most of items coming in from a 100 to 150 mile radius.

Supervisor Mary L.C. Daniel

- Library Advisory Council: Annual report included in Board packet.
- Planning Commission:
 - Agri business uses identify.
 - VDOT working with staff on Route 664 – minor subdivision application. VDOT is recommending that the property owner and the County work together on an abandonment. Will following up with Ed Carter.

Chairman David S. Weiss

- Fire and EMS Commission: Brian Lichty hired as Director of Fire, EMS and Emergency Operations starting November 14.
- Economic Development Advisory Committee:
 - Christina Kraybill will be presenting the Berryville Main Street Market Assessment at the November 16 meeting.
 - Studio tour well attended.
 - Will discuss direction of the Economic Development position at the December meeting.
 - Handsome Brook Farm has withdrawn.

17) Closed Session Pursuant to 2.2-3711-A19 Security of County Staff Resources and Facilities and 2.2-3711-A3 Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in

an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

At 3:42 p.m., **Supervisor Catlett moved that the Clarke County Board of Supervisors enter Closed Session pursuant to Closed Session Pursuant to 2.2-3711-A19 Security of County Staff Resources and Facilities and 2.2-3711-A3 Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body. The motion carried by the following vote:**

Barbara J. Byrd	- Aye
Terri T. Catlett	- Aye
Mary L.C. Daniel	- Aye
Beverly B. McKay	- Aye
David S. Weiss	- Aye

At 4:08p.m., the members of the Board of Supervisors being assembled within the designated meeting place, with open doors and in the presence of members of the public and/or the media desiring to attend, **Vice Chair McKay moved to reconvene in open session. The motion carried as follows:**

Barbara J. Byrd	- Aye
Terri T. Catlett	- Aye
Mary L.C. Daniel	- Aye
Beverly B. McKay	- Aye
David S. Weiss	- Aye

Vice Chair McKay further moved to execute the following Certification of Closed Session:

CERTIFICATION OF CLOSED SESSION

WHEREAS, the Board of Supervisors of the County of Clarke, Virginia, has convened a closed meeting on the date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3700 of the Code of Virginia requires a certification by the Board of Supervisors of the County of Clarke, Virginia that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE BE IT RESOLVED, that the Board of Supervisors of the County of Clarke, Virginia, hereby certifies that, to the best of each members knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which the

certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board of Supervisors of the County of Clarke, Virginia.

The motion was approved by the following roll-call vote:

Barbara J. Byrd	-	Aye
Terri T. Catlett	-	Aye
Mary L.C. Daniel	-	Aye
Beverly B. McKay	-	Aye
David S. Weiss	-	Aye

No action was taken on matters discussed in closed session.

Next Regular Meeting Date

The next regular meeting of the Board of Supervisors is set for Tuesday, December 20, 2016 at 1:00 p.m. in the Berryville Clarke County Government Center, Main Meeting Room, 101 Chalmers Court, Berryville, Virginia.

18) Adjournment

At 4:11 pm, being no further business, Chairman Weiss adjourned the meeting.

ATTEST: November 3, 2016

David S. Weiss, Chair

David L. Ash, County Administrator

Minutes recorded and transcribed by: Lora B. Walburn, Deputy Clerk to the Board of Supervisors