



TOWN COUNCIL REGULAR MEETING

21 Main Street

Tuesday, March 14, 2023 at 9:00 AM

AGENDA

Possible additions to the agenda and related materials are not set forth herein.

Times set forth are approximate and may be adjusted as necessary.

I. WORKSESSION - 9:00 AM

A. Closed Session

B. Lease Franchise Agreements

1. Glo Fiber
2. Water Tower

C. Ordinance Changes-

1. Recorder Appointment Designated the Responsibility of the Town Manager
2. Indemnification of Town Employees

D. Town / County Liaison Update

E. Town Council Handbook

1. Rules of Procedure
2. Ethics Statement
3. Boards committees commissions
4. Work Session Meeting Dates

F. Agenda Review

II. REGULAR MEETING - 6:30 PM

1. Swearing in Ceremony for Chief Carter 6:00 PM

A. INVOCATION.

B. PLEDGE OF ALLEGIANCE.

C. CITIZEN'S TIME.

D. APPROVAL OF THE AGENDA.

E. PUBLIC HEARINGS.

- [1.](#) Lease-Franchise Agreement Glo Fiber
- [2.](#) Lease-Franchise Agreement Water Tower
- [3.](#) Indemnification of Town Employees
- [4.](#) Recorder Appointment Designated the Responsibility of the Town Manager

F. CONSENT AGENDA.

G. NEW BUSINESS.

- [1.](#) Opioid Settlement
- [2.](#) Acting Town Manager Extension
- [3.](#) Town Recorder Appointment

H. UNFINISHED BUSINESS.

I. TOWN ATTORNEY'S REPORT.

J. TOWN MANAGER'S REPORT.

K. COUNCILMEMBERS TIME.

L. ADJOURNMENT.

FORM MOTION FOR CONVENING A CLOSED MEETING 03/14/2023

I move that the Council convene in closed session to discuss the following:

 X As permitted by Virginia Code § 2.2-3711 (A)(1), a personnel matter involving:
Discussion, consideration, or interviews of prospective candidates for employment or appointment; OR
assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of
specific public officers, appointees, or employees of the Town;
specifically dealing with **Town Manager Recruitment**

As permitted by Virginia Code § 2.2-3711 (A)(3), a matter involving:
 _____ discussion or consideration of the acquisition of real property for a public purpose; OR
 _____ disposition of publicly held real property
 specifically involving _____ [Give location of property], because discussion in an open
 meeting would adversely affect the City's bargaining position or negotiating strategy.

As permitted by Virginia Code § 2.2-3711 (A)(4), a matter requiring the protection of the privacy of individuals in personal matters not involving the public business.

As permitted by Virginia Code § 2.2-3711 (A)(7), consultation with legal counsel or briefing by staff members or consultants pertaining to:

_____ probable litigation involving _____ [Give subject]; OR

_____ the pending case of _____ [Give case name],

where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the City.

As permitted by Virginia Code § 2.2-3711 (A)(8), consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel, relating to _____ [Give nature of matter].

As permitted by Virginia Code § 2.2-371.1 (A)(29), discussion of the award of a public contract for [Give nature of the contract] involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the City Council.

____ As permitted by Virginia Code § 2.2-3711(A)(19), a matter involving: _____.

[IDENTIFY THE APPLICABLE PARAGRAPH OF § 2.2-3711(A) OR OTHER LAW AND GIVE THE SUBJECT MATTER AND PURPOSE FOR THE CLOSED SESSION.]

Votes:

Ayes:

Nays:

Absent from Vote: None

Absent from Meeting:

CERTIFICATION MOTION AFTER RECONVENING IN PUBLIC SESSION:

(requires a recorded roll call vote)

Item A.

I move that the Council certify that, in the closed session just concluded, nothing was discussed except the matter or matters (1) specifically identified in the motion to convene in closed session and (2) lawfully permitted to be discussed in a closed session under the provisions of the Virginia Freedom of Information Act as cited in that motion.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Vote: None

For Information:

Town Clerk

Effective date: March 14th, 2023

Tommy Cureton, Town Recorder _____.



Office of the Town Manager

Tommy Cureton

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor

Heather Sutphin, Ward 1

William Semple, Ward 2

Brett Hamby, Ward 3

James Hartman, Ward 4 Vice Mayor

Jay Heroux, Ward 5

Paul Mooney, At Large

David McGuire, At Large

Item B.

Council Meeting Date:	March 14, 2023
Agenda Title:	Roadway Maintenance
Requested Action:	Public Hearing for Glo Fiber Agreement
Department / Agency Lead:	Public Works and Utilities and Town Attorney
Staff Lead:	Frank Cassidy

EXECUTIVE SUMMARY

The Town has received a request from Glo Fiber to install fiber lines within our right of ways. This is standard procedure for utility providers to access and conduct work within Town right of ways.

This is in line with the Plan 2040 as follows:

CF-6: Identify telecommunications facility locations to ensure a broad range of communications services that also represent character and viewsheds of the Town.

BACKGROUND

The Town received a request and a proposed agreement from Glo Fiber to install fiber within the Town right of ways. The process is outlined in State Code as Well as Town Code:

Per [Va. Code § 15.2-2101](#):

§ 15.2-2101. Ordinance proposing grant of franchise, etc., to be advertised.

A. Before granting any franchise, privilege, lease or right of any kind to use any public property described in § 15.2-2100 or easement of any description, for a term in excess of five years, except in the case of and for a trunk railway, the city or town proposing to make the grant shall advertise a descriptive notice of the ordinance proposing to make the grant once a week for two successive weeks in a newspaper having general circulation in the city or town. The descriptive notice of the ordinance may also be advertised as many times in such other newspaper or newspapers, published outside the city, town or Commonwealth, as the council may determine. The advertisement shall include a statement that a copy of the full text of the ordinance is on file in the office of the clerk of the city or town council.

B. The advertisement shall invite bids for the franchise, privilege, lease or right proposed to be granted in the ordinance. The bids shall be in writing and delivered upon the day and hour named in the advertisement and shall be opened in public session and marked for identification by the person

designated in the advertisement to receive such bids. The cost of the required advertisement shall be paid by the city or town which shall be reimbursed by the person to whom the grant is made. The city or town shall have the right to reject any and all bids and shall reserve this right in the advertisement.

The agreement has been reviewed by staff and Town Attorney. As per Town and State Code, a Public Hearing with a bid opening must be held prior to authorizing the implementing the agreement.

STAFF RECOMMENDATION

Staff recommends holding the public hearing and receiving bids. If no other bids are received, the Council should award the franchise. If other bids are received, Staff recommends that Council refer them to the Town Manager for evaluation.

Service Level/Policy Impact

This agreement is in line with Plan 2040. Staff will monitor as per the agreement.

Fiscal Impact

As per the terms of the Agreement

Legal Impact

The attached agreement has been reviewed and is presented; the process for advertising and conducting the Public Hearing is in line with Town Attorney’s recommendations and requirements in Town and State Code.

ATTACHMENTS

- 1. Copy of the proposed agreement.

CABLE FRANCHISE AGREEMENT
BETWEEN
TOWN OF WARRENTON
AND
SHENANDOAH CABLE TELEVISION, LLC, D/B/A GLO FIBER

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Exhibit A: Customer Service Standards

FRANCHISE AGREEMENT

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

The Town having determined that the financial, legal, and technical ability of the Franchisee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Franchisee 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, Title 15.2, Chapter 21, 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 - 631 (the "Cable Act"), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words used to refer to the masculine include the feminine, words in the plural number include the singular number, and likewise, words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in the Code of Virginia, Title 15.2, Chapter 21, Article 1.2, §15.2-2108.19, the Cable Act, or herein shall be given their common and ordinary meaning.

1.1. "Cable Service" or "Service" shall mean the one-way transmission to Subscribers of Video Programming or other Programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other Programming service.

1.2. "Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, and as further defined under Section 602 (7) of the Cable Act.

1.3. "Customer" or "Subscriber" shall mean a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Franchisee's express permission.

1.4. "Effective Date" shall mean _____ 2023.

1.5. "FCC" shall mean the Federal Communications Commission, or successor governmental entity thereto.

1.6. "Franchise" shall mean the initial authorization, or renewal thereof, issued by the Franchise Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

1.7. "Franchise Agreement" or "Agreement" shall mean this Agreement and any amendments or modifications hereto.

1.8. "Franchise Area" shall mean the present legal boundaries of the Town of Warrenton as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means during the term of the Franchise, as per the requirements set forth herein.

1.9. "Franchise Authority" shall mean the Town of Warrenton or the lawful successor, transferee, designee, or assignee thereof.

1.10. "Franchisee" shall mean Shenandoah Cable Television, LLC.

1.11. "Gross Revenue" shall mean revenue derived by the Franchisee from the operation of the Cable System in the Franchise Area to provide Cable Service, calculated in accordance with generally accepted accounting principles ("GAAP"). Gross Revenue includes monthly basic cable, premium and pay-per-view video fees, installation fees and subscriber equipment rental fees, and commercial leased access fees. Gross Revenue shall not include program launch support payments, revenue from advertising and home shopping, refundable deposits, late fees, investment income, nor any taxes, franchise fees, or other fees or assessments imposed or assessed by any governmental authority. Gross Annual Revenues shall not include actual bad debt that is written off, consistent with generally accepted accounting principles, provided however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in the Gross Annual Revenues in the period so collected.

1.12. "Normal Business Hours" shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one (1) night per week and/or some weekend hours.

1.13. "Normal Operating Conditions" shall mean 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 conditions or other Force Majeure events. 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.

1.14. "Outage" shall mean the loss of picture or sound on one or more cable channels.

1.15. "Person" shall mean 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 Franchise Authority.

1.16. "Public Buildings" shall mean those buildings owned or leased by the Franchise Authority for government administrative purposes, and shall not include buildings owned by Franchise Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

1.17. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for cable TV access. Public Way shall also mean any easement now or hereafter held by the Franchise Authority within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for cable TV access, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchisee to the use thereof for the purposes of installing, operating, and maintaining the Franchisee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and appurtenant to the Cable System.

1.18. "Service Interruption" shall mean the loss of picture or sound on one or more cable channels.

1.19. "Standard Installation" shall mean the standard one hundred twenty-five foot (125') aerial Drop connection to the existing distribution system.

1.20. "Town" shall mean the Town of Warrenton, Virginia.

1.21. "Video Programming" or "Programming" shall mean the programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

1.22. "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple Video Programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multi-channel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

SECTION 2 - Grant of Authority

2.1. Franchise Grant. The Franchise Authority hereby grants to the Franchisee under the Code of Virginia and the Cable Act a non-exclusive Franchise authorizing the Franchisee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to use, erect, install, construct, repair, alter, add to, inspect, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, underground conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and, including but not limited to, above ground enclosures, markers, and concrete pads, or other related property, equipment, or fixtures as may be necessary, useful, or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be twelve (12) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement, the Code of Virginia, and the Cable Act.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Title 15.2, Chapter 21, Article 1.2 of the Code of Virginia and Section 626 of the Cable Act [47 U.S.C. §546], as amended. The Town's costs related to renewal shall be borne by the Town or recovered out of payments made by Franchisee via the Communications Tax or Franchise Fees under Section 7.1 herein.

2.4 Subject to federal and state preemption, the provisions of this Franchise constitute a valid and enforceable contract between the parties. The material terms and conditions contained in this Franchise may not be unilaterally altered by the Franchising Authority through subsequent amendment to any ordinance, rule, regulation, or other enactment of the Franchising Authority, except in the lawful exercise of the Franchising Authority's police power. If the Town's lawful exercise of its police powers materially alters the rights, benefits, obligations, or duties of this Agreement, Franchisee and the Town shall modify the provisions

of this Agreement to minimize the negative effects on Franchisee of the material alteration.

SECTION 3 - Construction and Maintenance of the Cable System

3.1. Permits and General Obligations. The Franchisee shall be responsible for obtaining all generally applicable permits, licenses, or other forms of approval or authorization prior to the commencement of any activity that materially disturbs the surface of any street, curb, sidewalk or other public improvement in the Public Way, or impedes vehicular traffic. The permit requirements herein shall satisfy all notice and approval requirements to the Town in connection with work completed in relation to the Cable System in the Franchise Area. The issuance of such permits shall not be unreasonably withheld, conditioned, or delayed. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All work shall be done by the Franchisee in accordance with FCC regulations. Notwithstanding the requirements herein, Franchisee shall not be required to obtain a permit for individual drop connections to Subscribers, servicing or installing pedestals or other similar facilities, or other instances of routine maintenance or repair to its Cable System. All transmission and distribution structures, poles, other lines, and equipment installed by the Franchisee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

3.2. Conditions of Street Occupancy.

3.2.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Franchisee shall, upon reasonable advance written notice from the Franchise Authority (which shall not be less than thirty (30) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchise Authority shall notify Franchisee of such funding and make available such funds to the Franchisee within a reasonable timeframe. In the event that funds are not available, Franchisee reserves the right to pass its costs through to its Subscribers in accordance with applicable law.

3.2.2. Relocation at Request of Third Party. The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchise Authority to move any structure, temporarily move its wires to permit the

moving of such structure; provided (i) the Franchisee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Franchisee is given not less than thirty (30) business days advance written notice to arrange for such temporary relocation.

3.2.3. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Way, the Franchisee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance as is practical within twenty (20) business days of completion of the work causing the disturbance. Upon failure of Franchisee to comply within the time specified and the Town having notified Franchisee in writing of the restoration and repairs required, the Town may cause proper restoration and repairs to be made and the expense of such work shall be paid by Franchisee upon demand by the Town.

3.2.4. Safety Requirements. The Franchisee shall undertake all necessary and appropriate commercial 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. 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 Franchisee shall have the authority to trim trees or other natural vegetative growth encroaching or overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Franchisee's sole cost and expense. The Franchisee shall be responsible for any collateral, direct real property damage caused by such trimming.

3.2.6. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable System transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Agreement shall be construed to require the Franchisee to

construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.2.7. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Franchisee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Franchisee's relocation costs shall be included in any computation of necessary project funding by the Franchise Authority or private parties. Franchisee shall be given reasonable notice and access to the public utilities' facilities at the time that such are placed underground and shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way. In the event that public and/or private funds are not available or do not cover the entire direct and actual cost of the relocation, Franchisee reserves the right to pass its costs, or in the case of partial reimbursement from public and/or private funds its incremental cost, through to its Subscribers in accordance with applicable law.

3.2.8. Emergency Removal. The Town reserves the right to remove any portion of a Franchisee's equipment and facilities as may be required in any emergency as determined by the Town. The Town shall use reasonable efforts to minimize the impact on Franchisee's facilities related to any emergency removal. Franchisee shall not be liable for interruption of Cable Service related to any such removal. Franchisee shall be entitled to compensation for expenses incurred for replacement or repair related to any emergency removal by the Town to the extent that other users of the Public Way are so compensated.

3.2.9. Joint Trenching. Franchisee shall cooperate in the planning, locating and construction of its Cable System in utility joint trenches or common duct banks with other telecommunications providers. The Franchise Authority will provide advance notice to Franchisee when it plans to open a trench and Franchisee shall provide notice to the Town, in the form of any required permit under Section 3.1 herein, when it plans to open a trench.

SECTION 4 - Service Obligations

4.1. General Service Obligation. The Franchisee shall make Cable Service available to every occupied residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) occupied residential dwelling units per mile with aerial cable or sixty (60) residential occupied dwelling units per mile with underground cable 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 only be counted as a "dwelling unit" if such home is within two hundred seventy-

five (275) feet of the public right of way. Subject to the density requirement, Franchisee shall offer Cable Service to all new homes or previously unserved homes located within one hundred and fifty (150) feet of the Franchisee's distribution cable at the standard installation rate. Should, through new construction, an area within the Franchise Area meets 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 Franchise Authority that one (1) or more residents have requested Service.

The Franchisee may elect to extend Cable Service to areas that do not otherwise qualify to receive Cable Service under this section if any resident or group of residents agree in writing to pay to Franchisee the cost of construction, including materials, labor, and the total cost of any easement(s) necessary to accomplish the proposed line extension. One half of the cost of construction shall be paid to the Franchisee prior to engineering and the balance shall be paid prior to commencement of construction.

4.2. Programming. The Franchisee shall offer to all Customers a diversity of Video Programming services in accordance with federal law.

4.3. No Unfair Discrimination. Neither the Franchisee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area; provided, however, Franchisee reserves the right to deny service for good cause, including but not limited to non-payment or theft of service, vandalism of equipment, or documented or founded harassment or abuse of Franchisee's employees or agents. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Franchisee are satisfied. Nothing contained herein shall prohibit the Franchisee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its customary business practice.

4.4. New Developments. The Franchise Authority shall provide the Franchisee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchise Authority agrees to require the developer, as a condition of issuing the permit, to give the Franchisee access to open trenches for deployment of cable facilities and at least fifteen (15) business days written notice of the date of availability of open trenches.

4.5. Prohibition Against Reselling Service. No Person shall sell, offer for sale, or resell, without the express prior written consent of the Franchisee, any Cable Service, program or signal transmitted over the Cable System by the Franchisee.

4.6. Local Office. Franchisee's business office or service center shall be conveniently located and open during Normal Business Hours to (i) accept payments and resolve billing difficulties; (ii) give out and exchange or accept returned converters; (iii) schedule service or technician calls; (iv) answer Subscriber inquiries; (v) and resolve complaints. Franchisee may also provide additional bill payment locations through cooperative arrangements with banks, shopping centers and/or similar facilities. Subscribers shall be notified of any change of address of such business office in accordance with FCC regulations.

SECTION 5 - Fees and Charges to Customers

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Franchisee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC rate regulations. Franchisee shall provide thirty (30) days' notice before any new or modified rate, fee, or charge is imposed. The Franchisee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable federal or state law.

SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection

6.1. Customer Service Standards. The Franchise Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Franchisee shall comply in all respects with the customer service requirements established by the FCC and those included in Exhibit A herein.

6.2. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (i) is not misleading and (ii) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Franchisee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622 (c) of the Cable Act [47 U.S.C. §542 (c)].

6.3. Privacy Protection. The Franchisee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto, including the sale or use of Subscriber lists and the monitoring of Subscriber use of the Cable Service.

SECTION 7 - Oversight and Regulation by Franchise Authority

7.1. Communications Tax. In satisfaction of any franchise fee or other Public Way use fee, Franchisee 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.

7.1.1 Franchise Fee. In the event that the Communications Tax is repealed and no successor state or local tax is enacted that would constitute a franchise fee for purposes of 47 U.S.C. § 542, Franchisee shall pay to the Town a Franchise Fee of five percent (5%) of annual Gross Revenue received from the operation of the Cable System to provide Cable Service in the Franchise Area, beginning sixty (60) days from the effective date of the repeal of such tax (the "Repeal Date"); provided, however, that Franchisee shall not be compelled to pay any higher percentage of franchise fees than any other cable operator providing service in the Franchise Area. Beginning on the Repeal Date, the terms of Section 7.1.1 and 7.1.2 of this Agreement shall take effect. In accordance with Title VI of the 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 forty-five (45) days following the end of each calendar quarter. Should Franchisee submit an incorrect amount, Franchisee shall be allowed to add or subtract that amount in a subsequent quarter, but no later than ninety (90) days following the close of the calendar year for which such amounts were applicable. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Franchisee showing the basis for the computation of the Franchise Fees paid during that period. In the event that any Franchise Fee payment is not made on or before the date by which it is due, and following notice by the Town to Franchisee, interest shall be calculated at the then-current prime rate, as published by the Wall Street Journal, and shall be added to the amount of Franchise Fee revenue due to the Town.

7.1.2. Franchise Fees Subject to Audit.

7.1.2.1. Upon notice pursuant to Section 15.2 herein, during Normal Business Hours at Franchisee's principal business office, the Franchising Authority shall have the right to inspect the Franchisee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

7.1.2.2. Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Franchisee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Franchisee shall have thirty (30) days from

the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a “Final Settlement Amount.” For purposes of this Section, the term “Final Settlement Amount(s)” shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Franchisee as a result of any such audit. If the parties cannot agree on a “Final Settlement Amount,” the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

7.1.2.3. Any “Final Settlement Amount(s)” due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Franchisee within thirty (30) days from the date the parties agree upon the “Final Settlement Amount.” Once the parties agree upon a Final Settlement Amount and such amount is paid by the Franchisee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Franchisee’s books and records.

7.2. Oversight of Franchise. In accordance with applicable law, the Franchise Authority shall have the right to, at its sole cost and expense and upon reasonable prior written notice and in the presence of Franchisee’s employee, periodically inspect the construction and maintenance of the Cable System in the Franchise Area as necessary to monitor Franchisee’s compliance with the provisions of this Franchise Agreement.

7.3. Technical Standards. The Franchisee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76.601 et seq. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Franchisee shall comply with such altered, modified or amended standards within a commercially reasonable period after such standards become effective. The Franchise Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC rules. The Town may request that tests and analyses be supervised by a qualified engineer selected by the Town. The cost of any such engineer shall be the responsibility of the Town.

7.4. Maintenance of Books, Records, and Files.

7.4.1. Books and Records. Throughout the term of this Franchise Agreement, the Franchisee agrees that the Franchise Authority may review the Franchisee’s books and records in the Franchise Area as are reasonably necessary to monitor Franchisee’s compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Franchisee pursuant to this

Agreement, at the Franchisee's business office, during Normal Business Hours, and without unreasonably interfering with Franchisee's business operations. All such documents that may be the subject of an inspection by the Franchise Authority shall be retained by the Franchisee for a minimum period of twenty-four (24) months.

7.4.2. File for Public Inspection. Throughout the term of this Franchise Agreement, the Franchisee 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.

7.4.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Franchisee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchise Authority agrees to treat any information disclosed by the Franchisee as confidential and only to disclose it to those employees, representatives, and agents of the Franchise Authority that have a need to know in order to enforce this Franchise Agreement and who agree, through the execution of a non-disclosure agreement, to maintain the confidentiality of all such information. The Franchisee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, maps, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Franchisee to be competitively sensitive. Franchisee may make proprietary or confidential information available for inspection, but not copying or removal of information by the Franchise Authority's representative. In the event that the Franchise Authority has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the Franchisee has designated as confidential, trade secret or proprietary, the Franchise Authority shall notify Franchisee of such request and cooperate with Franchisee in opposing such request.

7.4.4. Reports. Upon written request no later than thirty (30) days following the end of a calendar year, Franchisee shall provide the Franchise Authority, on or before June 30th, an annual report related to the customer service metrics and standards contained in this Agreement, and the outages that occurred, for the previous year. The Franchise authority recognizes that Franchisee complies 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, and therefore shall not report an annual statement of gross revenues. Upon written request, such reports shall be signed by a representative of the Franchisee certifying compliance with the customer service metrics and standards contained in this Agreement. Any reports provided under this Franchise shall be considered confidential and proprietary information and shall not be made publicly available by the Town

except in accordance with this Agreement. Franchisee shall have no obligation to submit quarterly reports.

(a) If the annual report certification indicates areas of non-compliance, upon written request, Franchisee shall file with the Franchise Authority a statement indicating areas of non-compliance along with a remedial plan to correct those areas of non-compliance.

7.4.5. Maps. Upon written request no later than thirty (30) days following the end of a calendar year, Franchisee shall provide the Franchise Authority, on or before March 31st, updated strand maps showing the Cable System equipment installed and in place. The maps shall be provided to the Franchise Authority in electronic format if available. The requirements herein shall satisfy all requirements related to the provision of maps to the Town in connection with work completed in relation to the Cable System in the Franchise Area.

7.5. Performance Evaluation Sessions. A performance evaluation session may be held a maximum of once every three (3) years by the Town during the term of this Franchise.

7.5.1. All evaluation sessions shall be open to the public. Franchisee shall receive ninety (90) days prior written notice of an evaluation session. The purpose of said evaluation session shall be to review the Franchisee's compliance with the terms and conditions of the Franchise.

7.5.2. During review and evaluation by the Town, the Franchisee shall fully cooperate with the Town and/or its designee(s), and subject to the confidentiality provisions of this Franchise, produce such documents or other materials relevant to such evaluation as are reasonably requested by the Town. Topics which may be discussed at any evaluation session may include, but are not limited to, compliance with technical standards, construction standards, consumer protection standards, customer service standards and financial reporting.

7.5.3. Within sixty (60) days after the conclusion of such session(s), the Town shall issue a written report with respect to the Franchisee's compliance. If noncompliance is found which could result in a violation of any of the material provisions of the Franchise, in accordance with §11.1, the Franchisee shall respond and propose a plan for implementing any changes or improvements necessary.

7.5.2. All evaluation sessions shall be announced in accordance with the legal notice requirements of similar public meetings in the Town. The Franchisee shall not be required to notice Subscribers on evaluation sessions.

7.6. Rate Regulation. The Town reserves its right to regulate rates to the extent permitted by applicable law.

SECTION 8 - Transfer or Change of Control of Cable System or Franchise

8.1. Neither the Franchisee nor any other Person may transfer the Cable System or the Franchise without prior written notice to the Franchise Authority. No prior notice shall be required, however, for: (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or in the Cable System in order to secure indebtedness, (ii) a transfer to an entity directly or indirectly owned or controlled by The Franchisee, or (iii) the sale, conveyance, transfer, exchange or release of fifty percent (50%) or less of its equitable ownership. Within thirty (30) days of receiving a notice of transfer, the Franchise Authority may, in accordance with FCC rules and regulations, notify the Franchisee in writing of the additional information, if any, it requires regarding the legal, financial, and technical qualifications of the transferee or new controlling party. The Town shall have no right of first refusal related to any sale of the Cable System.

SECTION 9 - Insurance and Indemnity

9.1. Insurance. Throughout the term of this Franchise Agreement, the Franchisee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the Franchise Authority certificates of insurance designating the Franchise Authority and its officers, boards, commissions, councils, elected officials, and employees as additional insureds and demonstrating that the Franchisee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of Three Million Dollars (\$3,000,000.00) per occurrence for bodily injury or property damage. The Franchisee shall provide workers' compensation coverage in accordance with applicable law. All policies of insurance required by this Section shall be placed with companies which are qualified to write insurance in the Commonwealth of Virginia and which maintain throughout the policy term a Rating of "A-VII" as determined by Best Insurance Rating Services. Franchisee shall provide thirty (30) days' notice to the Town in the event of a material change to any policy required under this Section or in the event of cancellation or non-renewal of any such policy, unless a replacement policy is obtained in conformance with this Section. The notice requirement herein shall replace any similar endorsement requirement in such policies.

9.2. Indemnification. The Franchisee shall indemnify, defend and hold harmless the Franchise Authority, its officers and employees acting in their official capacities from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that directly arise out of the Franchisee's construction, operation, maintenance, or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs,

provided that the Franchise Authority shall give the Franchisee timely written notice of its obligation to indemnify and defend the Franchise Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. The Franchise Authority agrees that it will take all necessary action to avoid a default judgment and not prejudice the Franchisee's ability to defend the claim or action. If the Franchise Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchise Authority.

9.2.1 Franchisee shall not be required to indemnify the Franchise Authority for negligence or misconduct on the part of the Franchise Authority or its officials, boards, commissions, agents, or employees, including and loss or claims related to PEG access Channels in which the Franchise Authority or its designee participates, subject to applicable law.

SECTION 10 - System Description and Service

10.1. System Capacity. During the term of this Agreement, the Franchisee's Cable System shall be capable of providing Video Programming with reception available to its customers in the Franchise Area in accordance with the Cable Act.

10.2. Cable Service to School Buildings. Upon request, the Franchisee shall provide, at no cost to the Franchise Authority, Basic Cable Service and Standard Installation at one (1) outlet to each public grade school (K-12) building, not including "home schools," located in the Franchise Area within one hundred fifty (150) feet of the Franchisee's distribution cable. No charge shall be made for installation or service, except that Franchisee may charge for installation beyond one hundred fifty (150) feet distance of the cable plant and service for more than one (1) drop in each building. For the purposes of this section, the term "school" means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended, and does not include "home schools."

10.3. Cable Service to Governmental and Institutional Facilities. Upon request, the Franchisee shall provide, at no cost to the Franchise Authority, Basic Cable Service and Standard Installation at one outlet to each Public Building located in the Franchise Area within one hundred fifty (150) feet of the Franchisee's distribution cable. No charge shall be made for installation or service, except that Franchisee may charge for installation beyond one hundred fifty (150) feet distance of the cable plant and service for more than one (1) drop in each building. Public Buildings are those buildings owned or leased by the Franchise Authority for government administrative purposes, and shall not include buildings owned by Franchise Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

10.4. Use of Facilities. Neither the Town or and third parties shall have the right to install and maintain upon any poles or in any conduit owned by the Franchisee any wires, pole fixtures, or other equipment.

SECTION 11 - Enforcement and Revocation Proceedings

11.1. Notice of Violation or Default and Opportunity to Cure. In the event the Franchise Authority believes that the Franchisee has not complied with the material terms of the Franchise, including the certification requirements under Section 7.4.4(a) herein, it shall notify the Franchisee in writing with specific details regarding the exact nature of the alleged non-compliance or default.

11.1.1. Franchisee's Right to Cure or Respond. The Franchisee shall have forty-five (45) days from the receipt of the Franchise Authority's written notice: (i) to respond to the Franchise Authority, contesting the assertion of non-compliance or default; or (ii) to cure such default; or (iii) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate commercially reasonable steps to diligently remedy such default and notify the Franchise Authority of the steps being taken and the projected date that the cure will be completed.

11.1.2. Public Hearings. In the event the Franchisee fails to respond to the Franchise Authority's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Franchisee, the Franchise Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchise Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchise Authority shall notify the Franchisee in advance, in writing of the time and place of such meeting and provide the Franchisee with a reasonable opportunity to be heard.

11.1.3. Enforcement. Subject to applicable federal and state law, in the event the Franchise Authority, after such public hearing, determines that the Franchisee is in default of any material provision of the Franchise, the Franchise Authority may: (i) seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or (ii) in the case of a substantial default of a material provision of the Franchise, initiate revocation proceedings in accordance with the following:

(a) The Franchise Authority shall give written notice to the Franchisee of its intent to revoke the Franchise on the basis of a pattern of non-compliance by the Franchisee, including two or more instances of substantial non-compliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the non-compliance.

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

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

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

11.2.1. in instances or for matters where a violation or a breach of the Franchise by the Franchisee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

11.2.2. where there existed circumstances reasonably beyond the control of the Franchisee and which precipitated a violation by the Franchisee of the Franchise, or which were deemed to have prevented the Franchisee from complying with a term or condition of the Franchise.

11.3. No Removal of System. Franchisee shall not be required to remove its Cable System or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Franchisee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act, or any portion thereof [47 U.S.C. §541(b)]. No portion of the Cable System, or any Franchisee’s facilities, shall be considered abandoned if the Cable System is being used to

facilitate Cable Service or any other services not governed by the Cable Act, or any portion thereof.

11.4. Liquidated Damages and Penalties. Prior to assessing any penalties under its cable ordinance, or any liquidated damages under this Agreement, the Franchise Authority shall mail to the Franchisee a written notice by certified or registered mail of the alleged violation and the proposed penalty, specifying the violation at issue. The Franchisee shall have forty-five (45) days from the date of receipt of the written notice to cure or take reasonable steps to commence to cure, as is appropriate depending on the nature of the alleged violation, or to file a written response refuting the alleged violation or explaining why additional time for cure is necessary. In the case of breaches of requirements measured on a monthly, quarterly or longer period (such as customer service standards), Franchisee's cure period shall be no less than one (1) such period.

11.4.1. The Franchise Authority may not assess any penalties or liquidated damages if the Franchisee has reasonably responded to the complaint or cured or taken reasonable steps to commence to cure, as may be appropriate, the violation following receipt of written notice from the Franchise Authority, unless some other cure period is approved by the Franchise Authority. In the event Franchisee fails to cure or to take reasonable steps to commence to cure, or fails to refute the alleged breach, the Franchise Authority may assess penalties or liquidated damages and shall inform Franchisee in writing of the assessment. Franchisee shall have thirty (30) days to pay the penalties.

11.4.2. The first day for which penalties or liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day on which the applicable cure period ends. Franchisee's obligation to pay the penalties or liquidated damages assessed shall be stayed pending resolution of any appeal. To the extent that the Franchise Authority elects to assess penalties or liquidated damages and such penalties or liquidated damages have been paid, such damages shall be the Franchise Authority's sole and exclusive remedy. Nothing in this Section is intended to preclude the Franchise Authority from exercising any other right or remedy with respect to a breach that continues past the time the Franchise Authority stops assessing penalties or liquidated damages for such breach.

11.4.2. With respect to penalties or liquidated damages assessed, all similar violations or failures from the same factual events affecting multiple Subscribers shall be assessed as a single violation, and a violation or a failure may only be assessed under any one (1) of the above-referenced penalty or liquidated damages category. The amount of all penalties and liquidated damages per annum shall not exceed fifty thousand dollars (\$50,000) in the aggregate.

11.4.3. Because it may be difficult to calculate the harm to the Franchise Authority in the event of a breach of this Agreement by Franchisee, the

Parties agree to liquidated damages as a reasonable estimation of the actual damages in the amounts set forth below, subject to annual increase in the amount of the increase in the consumer price index CPI-U from year to year.

(a) For failure to complete Cable System construction or reconstruction in accordance with this Agreement, unless the Franchise Authority approves the delay, the Franchisee shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, the delinquency continues;

(b) For failure to provide, upon written request, data, documents, reports, or information as required under this Agreement, the Franchisee shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, that each violation occurs or continues;

(c) For failure to test, analyze and report on the performance of the Cable System as required under this Agreement, the Franchisee shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, that such noncompliance continues;

(d) For failure to provide in a continuing manner the types of Cable Services set forth in this Agreement, unless the Franchise Authority specifically approves a delay or change, or has agreed to a modification of Franchisee's obligations, the Franchisee shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, that each noncompliance continues;

(e) For failure to comply with operation, maintenance or technical standards set forth in this Agreement, the Franchisee shall pay two hundred (\$200.00) dollars per violation per day for each day, or part thereof, that such noncompliance continues;

(f) For breach of any consumer service standard, as set forth in Section 6.1 or Exhibit A, the Franchisee shall pay two hundred dollars (\$200.00) per day for each day or part thereof, that such noncompliance continues;

(g) For failure to pay any Franchise Fees, taxes, liens, or other amounts due and owing to the Franchise Authority under this Agreement, the Franchisee shall pay two hundred dollars (\$200.00) per day each day or part thereof, that each violation occurs or continues;

(h) For failure to comply with one (1) or more provisions relevant to PEG channels described in Section 13 of this Agreement, the Franchisee shall pay two hundred dollars (\$200) per day each day or part thereof, that each violation occurs or continues;

SECTION 12 - Competitive Equity

12.1. Purposes. The Franchisee and the Franchise Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to residents of the Franchise Area; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to residents of the Franchise Area; promote local communications infrastructure investments and economic opportunities in the Franchise Area; and provide flexibility in the event of subsequent changes in the law, the Franchisee and the Franchise Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

12.2. Video Service Provider.

12.2.1. Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider ("VSP") (i) enters into any agreement with the Franchise Authority to provide video services to subscribers in the Franchise Area, or (ii) otherwise begins to provide video services to subscribers in the Franchise Area (with or without entering into an agreement with the Franchise Authority), the Franchise Authority, upon written request of the Franchisee, shall permit the Franchisee to construct and operate its Cable System and to provide video services to subscribers in the Franchise Area under the same agreement and/or under the same terms and conditions as apply to the VSP. The Franchisee and the Franchise Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Franchisee submits a written request to the Franchise Authority.

12.2.2. If there is no written agreement or other authorization between the VSP and the Franchise Authority, the Franchisee and the Franchise Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Franchisee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the Franchise Area.

12.3. Subsequent Change in Law. If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to

provide video services to Subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Franchise Authority may request from or impose on a VSP providing video services to subscribers in the Franchise Area, the Franchise Authority agrees that, notwithstanding any other provision of law, upon Franchisee's written request the Franchise Authority shall: (i) permit the Franchisee to provide video services to subscribers in the Franchise Area on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity and parity between the Franchisee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to Subscribers in the Franchise Area. The Franchise Authority and the Franchisee shall implement the provisions of this Section within sixty (60) business days after the Franchisee submits a written request to the Franchise Authority. Notwithstanding any provision of law that imposes a time or other limitation on the Franchisee's ability to take advantage of the changed law's provisions, the Franchisee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

12.4. Effect on This Agreement. Any agreement, authorization, right or determination to provide video services to subscribers in the Franchise Area under Sections 12.2 or 12.3 shall supersede this Agreement, and the Franchisee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchise Authority, without penalty or damages.

SECTION 13 – Public, Educational and Governmental Access

13.1 PEG Access. Use of channel capacity for Public, Educational and Governmental ("PEG") Access shall be provided in accordance with federal law, 47 U.S.C. 531, and as further set forth below. Franchisee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. A PEG Access User – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use. Franchisee shall not exercise editorial control over any public, educational, or governmental use of channel capacity, except Franchisee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity pursuant to Section 611 of the Cable Act. The Franchise Authority shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Access Channel use which shall ensure that PEG Access Channel(s) and PEG Access equipment will be available on a first-come, non-discriminatory basis.

13.1.1. PEG Access Channels. Franchisee shall make available to the Franchise Authority, within one hundred eighty (180) days of a written request, the use of one (1) dedicated Public, Educational and Governmental (“PEG”) Access Channel in accordance with Section 611 of the Cable Act. Such PEG Channel shall be used for non-commercial PEG access programming related to educational and/or governmental activities. The County must provide Grantee with written, detailed documentation evidencing the availability of and/or plan to produce such programming along with its request. The Franchise Authority shall have complete control over the content, scheduling, administration and all other programming aspects of the PEG Channel, and may delegate such functions, or a portion of such functions, to an appropriate designee. Franchisee shall not exercise any editorial control over PEG Channel programming except Franchisee may refuse to transmit any program or portion of a public access program that contains obscenity, indecency, or nudity to the extent allowed by applicable law.

13.1.2 PEG Access Support. Upon written request of the Town to activate a PEG channel under Section 13.1.1 of the Franchise Agreement, Franchisee agrees to meet with the Town to discuss the implementation of a fee to be paid to the Town as capital support for PEG access (the “PEG Fee”), provided, however, Franchisee shall not be required to pay a higher PEG Fee than any other wireline video provider in the Town. Payments of any PEG Fee agreed upon shall be made quarterly and shall be due forty-five (45) days after the close of each first, second and third calendar quarter (i.e., May 15, August 15, November 15) and sixty (60) days after the close of the calendar year (last day of February).

Any PEG Fee shall be used by the Town exclusively for capital support of the Town’s PEG Channel. The Town acknowledges that Franchisee has the right under federal law to treat the PEG Fee as an external cost, and to pass that costs through to Subscribers.

Within forty-five (45) days of the end of the fiscal year, the Town shall provide Franchisee with an annual report documenting any use of PEG Access Support during the previous year. In the event that such funds were used in contravention of the limitations herein, Franchisee’s PEG Access Support obligation going forward shall be reduced by an equivalent amount.

13.2. Non-Commercial Use. The Franchise Authority, or its designee, agrees that it will not use its designated PEG Access channel(s), equipment, or other facilities to provide for-profit commercial services which have the effect of competing with Franchisee’s business. Such PEG Channel shall be used for non-

commercial PEG access programming related to educational and/or governmental activities. The PEG Channel may not be used to cablecast programs for profit, political, or commercial fundraising. In addition, any PEG Access Programming produced under the provisions of this Article 6 shall not be commercially distributed to a competing Multichannel Video Programming Distributor without the written consent of Franchisee.

13.3. PEG Access Cablecasting.

13.3.1. Return Lines. In order that PEG Access Programming can be cablecast over Franchisee's downstream PEG Access Channel, all PEG Access Programming shall be modulated, then transmitted from an origination location at the Town of Warrenton Council Chambers, at 18 Court Street, Warrenton, VA 20186, to Franchisee-owned headend or hub-site on a Franchisee-owned upstream channel made available to the Franchise Authority for its use. Upon a written request to activate a PEG channel under Section 13.1.1, Franchisee shall construct a direct fiber link, including equipment capable of transmitting video and audio between one (1) PEG access video origination location and the Franchisee headend such that live programming can originate from this selected location and be distributed via the Cable System to Subscribers in the Town. This fiber link and equipment shall be collectively known as the "Return Line."

13.3.2 Any expenditure made in connection with the construction, relocation, and/or maintenance of the Return Line shall be borne by the Town. The Town and Franchisee further agree that all costs incurred by Franchisee for supporting such PEG Channel may be designated as "costs of franchise requirements" or "external costs" as defined by the FCC and Franchisee reserves its right to pass these costs through to the Subscribers pursuant to federal law.

13.3.3 Franchisee shall be responsible for maintaining the Return Line to the video origination point of the PEG Channel so long as the Town provides Franchisee with access to such location and access to the PEG Channel equipment within such location. Franchisee shall provide, install and maintain in good working order the equipment and the cable necessary for the transmission of PEG signals from a PEG access video origination location to the Franchisee headend for further processing and distribution to Subscribers. Franchisee shall maintain the PEG Channel in accordance with the same FCC technical specifications that are comparable to the specifications used to maintain commercial channels transmitted to Subscribers on the Cable system, except that it shall not be responsible for the technical signal quality of programming produced by any PEG channel programmer.

13.4 The Town or its designee shall be responsible for providing any necessary production or playback equipment, any studio or production facilities, and shall be responsible for securing and supervising any trained/qualified personnel who conduct the operation of any PEG Access production facilities and the PEG channel.

13.5 Fallow Time. In the event the Franchise Authority or other PEG Access User elects not to fully program its Channel(s) with original PEG Access Programming, Franchisee may reclaim any unused time on those channels. Because blank PEG Channels are not in the public interest, in the event the Town elects not to program its PEG Channel for a period of at least seven (7) days, Franchisee may program that Channel thirty (30) days after providing the Town with written notice of its intent to program the Channel, subject to reclamation by the Town upon no less than sixty (60) days' written notice. Franchisee shall relinquish such use no later than sixty (60) days after receipt of written notification from the Town that it requires such channel for educational and/or governmental use.

13.8 Indemnification. The Town shall require all local producers of public access programming to agree in writing to defend and hold harmless Franchisee from and against 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, state or local laws, rules, and/or regulations; 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 results from the use of an PEG access facility or Channel.

SECTION 14 – Performance

14.1. Performance Bond. In compliance with the surety requirements of the Town Code, within sixty (60) days of the Effective Date of this Agreement, Franchisee shall post a performance bond in the amount of fifty thousand dollars (\$50,000) for the faithful performance and discharge by Franchisee of all obligations imposed by this Franchise Agreement. The performance bond shall remain in force and effect throughout the Term of this Franchise Agreement. If Franchisee fails to timely pay an assessment of liquidated damages, the

Franchising Authority shall give Franchisee twenty (20) business days' notice of its intent to draw the amount owed from the performance bond. The Franchising Authority may not draw from the performance bond while any action, appeal or other process has been instituted by Franchisee to challenge the amount owed.

SECTION 15 – Miscellaneous Provisions

15.1. Force Majeure. The Franchisee shall not be held in default under, or in non-compliance 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 non-compliance or alleged defaults occurred or were caused by lightning strike, earthquake, flood, tidal wave, unusually severe rain, ice or snow storm, hurricane, tornado, or other catastrophic act of nature; riot, war, labor disputes, environmental restrictions, failure of utility service or the failure of equipment or facilities not belonging to Franchisee, denial of access to facilities or rights-of-way essential to serving the Franchise Area necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Franchisee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Franchisee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

15.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by electronic or 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 Franchise Authority:

Town of Warrenton, Virginia
P.O Box 341
Warrenton, VA 20188-341
Attention: Town Manager

To the Franchisee:

SHENANDOAH CABLE TELEVISION, LLC, D/B/A GLO FIBER

15.3. Entire Agreement. This Franchise Agreement and any exhibits or addendums hereto constitute the entire agreement between the Franchise Authority and the Franchisee and supersedes all prior or contemporaneous agreements, ordinances, representations, or understandings, whether written or oral, of the parties regarding the subject matter hereof. Any agreements, ordinances, representations, promises or understandings or parts of such measures that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

15.4. 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.

15.5. Governing Law and Venue. This Franchise Agreement shall be deemed to be executed in the State where the Franchise Area is located, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of such State, as applicable to contracts entered into and performed entirely within the State. Venue for any litigation arising from this Franchise Agreement shall be in the state courts in and for the County of Fauquier, Virginia, and shall not be removed to the Federal court system.

15.6. 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 Franchise Authority and the Franchisee, which amendment shall be authorized on behalf of the Franchise Authority through the adoption of an appropriate resolution or order by the Franchise Authority, as required by applicable law.

15.7. 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.

15.8. Captions. Captions to sections throughout this Franchise Agreement are solely to facilitate the reading and reference to the sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

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

15.10. Incorporation by Reference

15.10.1. All presently and hereafter applicable conditions and requirements of federal, State and generally applicable local laws, including but not limited to the rules and regulations of the FCC and the State where the Franchise Area is located, as they may be amended from time to time, are incorporated herein by reference to the extent not enumerated herein. However, no such general laws, rules, regulations and codes, as amended, may alter the obligations, interpretation and performance of this Renewal Franchise to the extent that any provision of this Renewal Franchise conflicts with or is inconsistent with such laws, rules or regulations.

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

15.11. Calculation of Time. Where the performance or doing of any act, duty, matter, payment, or operation is required hereunder and the period of time or duration for the performance or doing thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first day and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

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

15.13. Authority to Execute. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

REMAINDER OF PAGE LEFT BLANK UNTIL SIGNATURE PAGE.

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

Town of Warrenton, VA:

By: _____

Print Name: _____

Title: _____

Date: _____

SHENANDOAH CABLE TELEVISION, LLC, D/B/A GLO FIBER

By: _____

Print Name: _____

Title: _____

Date: _____

Exhibit A
Customer Service Standards

These standards shall apply to the Franchisee to the extent it is providing Cable Service over the Cable System in the Franchise Area. The Franchisee shall comply in all respects with the customer service requirements established by the FCC.

(1) Cable System Telephone Availability.

(i) The Franchisee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

(A) Trained Franchisee representatives will be available to respond to Subscriber telephone inquiries during Normal Business Hours.

(B) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Franchisee representative on the next business day.

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

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

(2) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following four (4) standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed, or at a time later at the request of a customer. "Standard" installations are those that are located up to one hundred twenty five (125) feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the Franchisee, the Franchisee will begin working on "service interruptions" or outages promptly and in no event later than twenty four (24) hours after the interruption

becomes known. The Franchisee must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. The Franchisee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of the Subscriber.

(iv) Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

(v) If a Franchisee representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

(3) Refunds, Credits, and Rebates:

(i) Refunds: Refund checks will be issued promptly, but no later than either:

(A) The Subscriber's next available billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the Franchisee if service is terminated.

(ii) Credits and Rebates:

(A) Credit and rebates for service will be issued no later than the Subscriber's next available billing cycle following the determination that a credit or rebate is warranted.

(B) Under Normal Operating Conditions, upon request, a Subscribers shall receive a pro rata credit or rebate, on a daily basis, of their Cable Service bill, if they experience a Service Interruption lasting twenty four (24) consecutive hours or longer. In order to qualify for a credit or rebate, the Subscriber must report the problem in a timely fashion and allow the Franchisee to verify the problem. If Subscriber availability is required for repair, a credit or rebate will not be provided for such time, if any, that the Subscriber is not reasonably available.

(C) Franchisee shall provide rebates or credits to Subscribers for missed appointments according to Franchisee policy.

(4) Temporary Drops: Under Normal Operating Conditions, drop wires in underground service areas that are temporarily placed above ground shall be buried within sixty (60) days of the date of any temporary installation.

(5) Planned Interruptions: Franchisee may intentionally interrupt service on the Cable System only for good cause and for the shortest time possible and, except in emergency situations or to the extent necessary to correct Subscribers' Service problems, only after a minimum of forty-eight (48) hours prior notice to Subscribers and the Town of the anticipated service interruption; provided, however, that planned maintenance that does not require more than two (2) hours' interruption of Service shall not require notice and planned maintenance that occurs between the hours of 12:00 midnight and 6:00 a.m. shall not require notice.

(6) Communication with Subscribers: Consistent with § 76.309 of the Rules and Regulations of the FCC, Franchisee shall provide an informational package to all of its Subscribers at the time of installation, at least annually to all Subscribers, and at any time upon request. This information shall include:

- (i) Products and services offered;
- (ii) Prices and options for programming services and conditions of subscription to programming and other services;
- (iii) Installation and service maintenance policies;
- (iv) Instructions on how to use the cable service;
- (v) Channel positions of programming carried on the system; and
- (vi) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.



Office of the Town Manager

Tommy Cureton

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor

Heather Sutphin, Ward 1

William Semple, Ward 2

Brett Hamby, Ward 3

James Hartman, Ward 4 Vice Mayor

Jay Heroux, Ward 5

Paul Mooney, At Large

David McGuire, At Large

Item B.

Council Meeting Date:	March 14, 2023
Agenda Title:	Roadway Maintenance
Requested Action:	Public Hearing for DISH Agreement
Department / Agency Lead:	Public Works and Utilities and Town Attorney
Staff Lead:	Frank Cassidy

EXECUTIVE SUMMARY

The Town has provided carriers use of the water tower on Fourth St. via an agreement. DISH is requesting approval of their agreement for space on the Town's water tower. This equipment will be replacing the Sprint equipment which is being removed.

Additionally, the water tower requires some structural upgrades. Part of this agreement requires DISH to provide a portion of funds to pay for these upgrades. The amount in the DISH agreement is in line with the other agreements currently in place for use of the tower.

This is in line with the Plan 2040 as follows:

CF-6: Identify telecommunications facility locations to ensure a broad range of communications services that also represent character and viewsheds of the Town.

BACKGROUND

The Town water tower on Fourth St. has been used for equipment of utility carriers for years. Spring is in the process of removing their equipment which will provide space for a new carrier. DISH has requested the Town enter into an agreement for their installation and use of the water tower. The process is required in State and Town Code:

Per [Va. Code § 15.2-2101](#):

§ 15.2-2101. Ordinance proposing grant of franchise, etc., to be advertised.

A. Before granting any franchise, privilege, lease or right of any kind to use any public property described in § 15.2-2100 or easement of any description, for a term in excess of five years, except in the case of and for a trunk railway, the city or town proposing to make the grant shall advertise a descriptive notice of the ordinance proposing to make the grant once a week for two successive weeks in a newspaper having general circulation in the city or town. The descriptive notice of the ordinance may also be advertised as many times in such other newspaper or newspapers, published

outside the city, town or Commonwealth, as the council may determine. The advertisement shall include a statement that a copy of the full text of the ordinance is on file in the office of the clerk of the city or town council.

B. The advertisement shall invite bids for the franchise, privilege, lease or right proposed to be granted in the ordinance. The bids shall be in writing and delivered upon the day and hour named in the advertisement and shall be opened in public session and marked for identification by the person designated in the advertisement to receive such bids. The cost of the required advertisement shall be paid by the city or town which shall be reimbursed by the person to whom the grant is made. The city or town shall have the right to reject any and all bids and shall reserve this right in the advertisement.

DISH has been working with staff and the Town Attorney to provide an agreement. The agreement is in line with other existing agreements in place for use of the water tower. A copy is attached.

Per Ordinance, a public hearing must be held to discuss and authorize the agreement.

STAFF RECOMMENDATION

Staff recommends holding the public hearing and receiving bids. If no other bids are received, the Council should award the franchise. If other bids are received, Staff recommends that Council refer them to the Town Manager for evaluation.

Service Level/Policy Impact

This agreement is in line with Plan 2040: staff will monitor the conditions of the agreement.

Fiscal Impact

As per the terms of the agreement.

Legal Impact

The attached agreement has been reviewed and is presented; the process for advertising and conducting the Public Hearing is in line with Town Attorney’s recommendations and requirements in Town and State Code.

ATTACHMENTS

- 1. Copy of the proposed agreement.

LEASE

THIS DEED OF LEASE ("**Lease**") is made and effective as of the date the last Party executes this Lease (the "**Effective Date**"), by and between THE TOWN OF WARRENTON, VIRGINIA, a municipal corporation, PO Drawer 341, 21 Main Street, Warrenton, VA 20188-0341 ("**Lessor**" or "**Town**") and DISH WIRELESS L.L.C., a Colorado limited liability company, with a principal office at 5701 South Santa Fe Dr., Littleton, CO 80120 ("**Lessee**") and together with Town, the "**Parties,**" each a Party).

WITNESSETH:

WHEREAS, town is the owner of the property located at North Fourth Street, Town of Warrenton, Virginia, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter "Property").

WHEREAS, the Property is improved by, among other things, that certain water tower (the "Water Tower") depicted on Exhibit A-1 to this Lease.

WHEREAS, Town desires to lease to Lessee, and Lessee desires to lease from Town that certain space within the Property and upon the Water Tower, said space being more particularly described and shown on Exhibit "B" attached hereto and made a part hereof (hereinafter "Premises").

NOW, THEREFORE, for the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Commencement Term.

- a. Town hereby leases to Lessee, and Lessee leases and takes from Lessor, the Premises for a term of five (5) years commencing on the Commencement Date (defined below) and expiring on the last day of the calendar month in which the fifth (5th) anniversary of the

Commencement Date occurs (the “**Expiration Date**”). The “**Commencement Date**” shall be the earlier to occur of (a) the first day of the calendar month in which the six (6) month anniversary of the Effective Date occurs; or (b) the first day of the calendar month following Lessee’s commencement of construction pursuant to this Lease, whichever first occurs. As used in this paragraph “commencement of construction” shall mean the date on which all permits and approvals to install the Equipment are obtained by Lessee.

- b. Upon the Expiration Date, this Lease shall automatically renew for three (3) successive five (5) year periods each on the same terms and conditions as set forth herein, unless earlier terminated in accordance with the terms and conditions of this Lease.
- c. Lessee Right to Terminate. Lessee shall have the right to terminate this Lease on the fifth anniversary of the Commencement Date and on each five year anniversary thereafter by providing the Town written notice, delivered at least ninety (90) days prior to such anniversary date of its intention to terminate. Lessee’s termination under this Section 1(b) shall not relieve Lessee of the obligation to remove its equipment and to restore the Premises to their original condition, except reasonable wear and tear and loss due to casualty.
- d. Town’s Right to Terminate. Commencing on the first (1st) day of the month following the month in which the twentieth (20th) anniversary of the Commencement Date occurs, the Town, upon not less than twelve (12) months prior written notice, shall have the right to terminate this Lease for any reason.

2. Rent.

- a. Lessee covenants to pay to the Town without prior notice or demand thereof, and without any deductions or set-offs whatsoever, rent for the Premises (the “Rent”) in the initial annual sum of THIRTY FOUR THOUSAND SEVEN HUNDRED FORTY AND 00/100 DOLLARS

(\$34,740.00) per year, which shall be payable in equal monthly installment of TWO THOUSAND EIGHT HUNDRED NINETY-FIVE AND 00/100 DOLLARS (\$2,895.00) . The first Rent payment shall be made within sixty (60) days of the Commencement Date and shall include all Rent due through the date of payment. On each anniversary of the Commencement Date, the Rent shall be automatically increased by three percent (3%) of the then current Rent. In addition to all other remedies provided in this Lease, if Lessee fails to pay within twenty (20) days of the due date, to Lessor any Rent, additional fees or other payments as hereinafter provided, Lessee shall pay to Lessor, as an additional fee, a late payment fee equal to five percent (5%) of such delinquent payment for each and every month or part thereof that such payment remains unpaid or not paid in full.

- b. Town and Lessee agree that the first monthly installment of Rent shall be paid upon the execution of this Lease by Lessee. Subsequent payments of monthly installments of Rent shall be paid to the Town at Town's address established in Section 17 hereof or to such other person, firm or place as the Town may from time to time designate in writing on or before the fifth (5th) day of each month. Lessee shall require receipt of a validly completed IRS approved W-9 form (or its equivalent) prior to paying any Rent or any other amount(s) due under this Lease.
- c. Lessee, in participation with other lessees of space on the Water Tower, agrees to pay a portion of the costs of structural upgrades to the Water Tower as outlined in the proposal from Tower Engineering Professionals, attached hereto as Exhibit C. It is anticipated that the portion payable by Lessee shall total] which shall be due no later than sixty (60) days after receipt by Lessee of Town's invoice for the same.

3. **Use of and Access to the Premises.**

- a. Lessee agrees to use the Premises for the purposes of installing, operating, maintaining, and removing, communications equipment, described in Exhibit B and listed in Section 5 and made a part hereof (hereinafter referred to as "Equipment"), which will form a part of a communications system licensed by the Federal Communications Commission ("FCC"), and for no other purpose ("**Lessee's Permitted Use**"). In furtherance of the foregoing, Lessee shall have the right, subject to Section 3c and Section 5 below, to access the Premises to replace, repair, add, or otherwise modify Equipment, or any portion thereof and the frequencies over which Equipment operates. Lessee shall operate and maintain the Premises during the Term in compliance with all present and future applicable laws, statutes and regulations imposed by any local, state, or Federal authority having jurisdiction with respect thereto. Town reserves the right to utilize the remaining area of the Property as it so desires unless such use materially interferes with Lessee's Equipment or Lessee's Permitted Use.
- b. Town agrees to cooperate with Lessee, at Lessee's expense, in making, application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.
- c. Lessee shall have the right to access the Premises as is reasonably necessary as determined by the Town, for the installation and maintenance of requisite wires, cables, conduits and pipes for the installation, operation, and maintenance of the Equipment. The installation shall be performed in a workmanlike manner with minimal disruption to Town and its tenants. Lessor shall furnish Lessee with necessary means of access to the Property for the purposes of ingress and egress to the site and the Water Tower location. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Lessee or persons under their direct supervision will be permitted to enter

said Premises. Access shall be conditioned in accordance with any Town policies requiring proper identification of any person gaining access to the Property. No prior notice shall be required for access sought as provided in a maintenance schedule approved in writing and in advance by Lessor, if any; otherwise, access shall be granted only after 24 hours' notice for non-emergency and as much notice as is reasonably practicable in light of the circumstances for emergency maintenance or repair purposes and only under the supervision by Lessor's employee or agent.

4. **Interference.** In the event the Premises need repainting or other maintenance which requires the temporary removal (not to exceed 60 days) of Lessee's antennas, then Lessee agrees to relocate its antennas at its expense upon one hundred twenty (120) days' notice from Town; provided, however, that during such temporary relocation of Lessee's antennas, Town shall provide other ground space on the Premises for Lessee to place a Cell on Wheels (COW) or other support structure for the installation of Lessee's antennas during such temporary relocation. Lessee's obligations to pay rent hereunder shall abate during such temporary relocation and until Lessee's antennas are reinstalled on the original Premises.

- a. Lessee shall comply with all federal, state, and local regulations governing the installation and operation of its Equipment and shall install and operate its Equipment in a manner which does not cause material interference to pre-existing equipment of Town or other pre-existing tenants of the Property. Lessee shall perform, at Lessee's sole cost and expense, an intermodulation study of Lessee's transmission of signals at the Premises, the results of which shall be given to Town (i) prior to the installation of Lessee's Equipment and (ii) subsequent to said installation, in the event that Lessee changes the frequency at which it operates its Equipment or adds equipment on the Water Tower. Lessee and Town will consult on the location of any future additions to Lessee's Equipment. In the event

that Lessee causes material interference to any pre-existing equipment or Lessee's changes in frequency or additional equipment cause material interference to then existing equipment of Town or other tenants of the Property, Lessee agrees to take all action necessary to eliminate such interference (including, without limitation, reducing the power sufficiently to cease the interference , except for intermittent testing, which testing, shall be coordinated with Town) within seventy two (72) hours of written notice of the same. Should the interference described in this Section 4(a) continue for more than seventy-two (72) hours after notice thereof, Town shall have the right to demand that Lessee turn off power to the interfering equipment until such time as the interference is eliminated.

- b. As of the date of execution of the Lease, Town will use best efforts (which duty shall be met by providing Lessee with details pertaining to installation of equipment by any Future Tenants and affording Lessee reasonable time to respond to same and taking any actions necessary to ensure that any issues raised in Lessee's response are addressed/resolved prior to Future Tenant's installation) to see that the Town, existing tenants and/or other tenants of the Property who in the future take possession of the Town's Property and/or add new equipment thereto (collectively, "Future Tenants") will be permitted to install only such equipment on the Property that is of the type and frequency which will not cause material interference to Lessee's pre-existing Equipment and Town agrees to include and enforce a provision substantially similar to Section 4(a) (including expressly and without limitation Town's right to turn off power to interfering equipment if interference is not eliminated within seventy two (72) hour cure period) in all future agreements for use of the Property. Town shall require Future Tenant(s) to (i) perform an intermodulation study and (ii) provide the results of such study to Lessee for Lessee's

review no less than thirty (30) days prior to the projected installation date of any equipment by Future Tenant. Lessee shall have thirty (30) days from its receipt of such study to review the same and notify Town of any likely interference, Town shall immediately notify the Future Tenant of the same, and Lessee, the Town and the Future Tenant shall thereafter consult on the location and operation of any such Future Tenant's equipment. Town shall not permit any Future Tenant to install equipment, unless Future Tenant has performed an intermodulation study, provided Lessee with the results and Lessee has either confirmed that the proposed installation will not cause interference to Lessee's pre-existing Equipment or has failed to respond to Town within thirty (30) days after Lessee's receipt of the results of the intermodulation study. Should the interference described in this Section 4(b) occur, the Town agrees to use best efforts to cause the interfering party to cease operation of the interfering equipment, except for intermittent testing coordinated with Lessee) within seventy two (72) hours after written notice from Lessee. Should such interference continue for more than seventy two (72) hours despite Town's attempts to eliminate the interference, the Town agrees to turn off power to the interfering equipment (except for intermittent testing coordinated with Lessee) until such time as the interference is cured.

- c. In the event that, despite Town's compliance with the provisions of Section 4(b), there is continuing interference to Lessee by Future Tenant(s) on the Property, the parties agree that, Lessee may terminate this Lease immediately upon notice to Town without further liability to Town and without further liability of Town to Lessee.

5. **Construction by Lessee.**

After obtaining the necessary Government Approvals, as defined hereafter, therefor, Lessee at its sole cost and expense, shall construct and install the following improvements upon the Premises:

- a. An equipment building or pad, to house Lessee's communications equipment.
- b. Up to twelve (12) antennas and related equipment (including but not limited to remote radio reads, overvoltage protectors, etc.), transmission lines, which shall be connected to the equipment building as provided herein. The exact mounting elevations on the Water Tower for Lessee's antennas shall be determined by the parties in conjunction with their respective engineers.
- c. A conduit attached to the Water Tower and one of its legs for enclosure of all cables necessary to connect the antenna with the equipment building. The size, location, color and method of attachment of such conduit shall be reasonably acceptable to the Town and be determined by the parties in conjunction with their respective engineers.
- d. All appurtenant improvements to the foregoing necessary to the operation of the Equipment as shown in Exhibit "B".
- e. The Parties shall work together to ensure that no materials are used in the installation of Lessee's equipment or transmission lines that will cause corrosion or rust or deterioration of the Water Tower structure or its appurtenances. All antennas on the Water Tower must be identified by a marking fastened securely to the bracket(s) therefore on the Water Tower and all transmission lines are to be tagged.

6. **Permits and Approvals.**

- a. The Parties acknowledge and agree that Lessee's ability to lawfully use the Premises is contingent upon Lessee obtaining each of the following: (a) a satisfactory structural analysis showing that the Water Tower is suitable for Lessee's Permitted Use ("Structural Analysis"); and (b) all certificates, permits, approvals and other authorizations that may be required by any Governmental Authority in accordance with Applicable Law, as defined below (collectively, the "Governmental Approvals"). Lessee will endeavor to obtain all

Governmental Approvals promptly following the Effective Date. Town hereby authorizes Lessee to file and submit for Governmental Approvals, at Lessee's sole cost and expense. Town shall: (x) reasonably cooperate with Lessee in Lessee's efforts to obtain such Governmental Approvals; and (y) promptly execute and deliver any and all documents reasonably necessary to obtain and maintain Government Approvals. Prior to the Commencement Date, if: (i) a structural analysis shows that the Water Tower is not suitable for Lessee's Permitted Use; (ii) any application for Governmental Approvals is rejected, conditioned, materially delayed or otherwise not approved for any or no reason; or (iii) Lessee determines, in Lessee's sole and absolute discretion, that such Governmental Approvals cannot be obtained in a timely and commercially reasonable manner, then, following the occurrence of any of the events set forth in clauses (i) through (iii) (collectively, the "Contingencies"), Lessee shall have the right to terminate this Lease immediately upon Notice to Town and without penalty or further obligation to Town, its employees, officers, agents or lenders. If this Lease is terminated in accordance with this Section 6a, this Lease shall be of no further force or effect (except as set forth to the contrary herein). If, following the Commencement Date, and through no fault of Lessee, any Governmental Approval issued to Lessee is canceled, expires, lapses or is otherwise withdrawn or terminated by the applicable Governmental Authority, then Lessee shall have the right to terminate this Lease upon ninety (90) days' written Notice to Town without penalty or further obligation to Town, its employees, officers, agents, or lenders. "Applicable Law" means any applicable federal, state, or local act, law, statute, ordinance, building code, rule, regulation or permit, or any order, judgment, consent or approval of any Governmental Authority having jurisdiction over the Parties or this Lease.

7. **Survey Period.**

After the execution date of this Lease and prior to the Commencement Date, Lessee shall have access to the Premises during, business hours (and at other times, if prearranged with Town) for the purpose of making, necessary engineering surveys, inspections and other reasonably necessary tests relating to Lessee's Permitted Use of the Premises. Lessee shall fully restore to its prior condition any portion of the Premises disturbed by Lessee, reasonable wear and tear and loss due to casualty excepted.

8. Facilities, Utilities, Access.

- a. At Lessee's cost and expense and with minimal disruption to Town and its tenants, Lessee has the right to install, erect, maintain and operate the Equipment and supporting structures thereto on the Premises. In connection therewith, Lessee has the right to complete all work necessary to prepare, maintain and alter the Premises for operation of the Equipment; including, but not limited to, installation of transmission lines. Upon ten (10) days' notice, Lessee agrees to reasonably cooperate with Town and other tenants to facilitate routine maintenance and repair. Title to the Equipment and all associated structures, transmission lines, cables, wires, and conduits shall remain with Lessee. All of Lessee's Equipment shall remain Lessee's personal property and are not fixtures.
- b. Lessee shall remove all of the Equipment at its expense within ninety (90) days after the expiration or earlier termination of the Lease and shall make any and all necessary repairs to the Premises and Property, and shall return the Premises to their original condition, reasonable wear and tear and loss due to casualty expected.
- c. At Lessee's expense, Lessee may upgrade the present fiber and electrical service or install new fiber and electrical service on the Premises, including, but not limited to, a portable standby power generator or battery unit, reasonably acceptable to the Town, for Lessee's

exclusive use during times of public emergency when normal electrical service is not available. Lessee may also bring underground fiber and underground electrical lines across the Property in order to service the Premises at locations shown on Exhibit "B". Any enhancements, upgrades, underground lines and alterations are subject to reasonable review and approval by the Town.

- d. Lessee shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Lessee shall have the right to extract electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that will provide service to the Property (including a standby power generator for Lessee's exclusive use).
- e. Subject to the terms and conditions of Section 3 and Section 5, Town shall provide to Lessee, Lessee's employees, agents, independent contractors, and subcontractors access over the Property to the Premises 24 hours a day, 7 days a week, at no charge to Lessee.
- f. Lessee shall be subject to operating restrictions and limitations as set forth in the Town of Warrenton Town Code and Zoning Ordinance and any additional rules and regulations pertaining to access and use of the Water Tower which the Town may promulgate on the basis of health, safety, security and/or welfare, and other state and Federal laws where applicable.

9. **Loss and Damage.**

Town shall not be liable for any damage to property of Lessee located on the Premises or Property, nor for the loss of or damage to any property of Lessee or of others by theft or otherwise unless caused by the negligence or willful misconduct of the Town or its employees, agents, contractors, subcontractors and/or tenants. Town shall not be liable for any injury, death or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow

or leaks from any part of the Premises or Property, or from the pipes, appliances or plumbing works, or from the roof, street or subsurface, or from any other place, or by dampness, or by any other cause unless caused by the negligence of willful misconduct of the Town or its employees, agents, contractors, subcontractors and/or tenants. Town shall not be liable for any such damage, injury or death caused by persons in public, or caused by operations in construction of any private, public or quasi-public work. Town shall not be liable for any patent defect in the Premises or Property or in the building of which they form a part. All property of Lessee kept or stored on the Premises or Property shall be so kept or stored at the risk of Lessee and Lessee shall hold Town, its officers or employees, harmless from any claims arising out of damage to the same, including subrogation claims by Lessee's insurance carrier, unless such damage shall be caused by the negligent act or omission of Town, its officers or employees.

10. Waiver of Town's Lien.

- a. Town waives any lien rights it may have concerning Lessee's Equipment which is deemed Lessee's personal property. Lessee reserves the right to remove it at any time without Town's consent.
- b. The Town acknowledges that Lessee may have entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Lessee's facilities ("the Collateral") with a third party financing entity. In connection therewith, Town (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise, and (ii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment or distress for any rent due or to become due, and that such Collateral may be removed at any time without recourse to legal proceeding.

11. Notification of Hazard.

Lessee and Town shall give immediate notice to the other in case of fire, accident or defect in the Premises or in any property comprising the Premises.

12. Termination.

This Lease may be terminated as follows:

- a. by either party, providing thirty (30) days' prior written notice upon default of any covenant or term of this Lease by the other party, which default is not cured within sixty (60) days of receipt of written notice, provided that the grace period for any monetary default is twenty (20) days from receipt of written notice. Upon default, the nondefaulting party may terminate this Lease and exercise any other remedies it may have under this Lease or at law or equity;
- b. by Lessee, upon providing sixty (60) days prior notice to Town, as follows:
 - i. if after the commencement of the Lease an application by Lessee for a permit, license or approval is rejected or upon cancellation, expiration or lapse of a permit, license or approval necessary for use of the Premises and operation of the Equipment, or
 - ii. if Lessee, in its sole discretion determines, determines that Lessee's Permitted Use of the Premises is obsolete or unnecessary; or
 - iii. by Lessee, if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies.
 - iv. By Lessee, upon providing thirty (30) days' prior notice if the Premises or Equipment are destroyed or damaged. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction.

- v. By Lessee if Town or a third party installs any structure, equipment, or other item on the Water Tower, Property or an adjacent property, which blocks, hinders, limits, or prevents Lessee from being able to use the Equipment for Lessee's Permitted Use.
- c. by Town, upon providing sixty (60) days prior notice to Lessee, as follows:
 - i. By Town upon Lessee's failure to perform any terms of this Lease for more than sixty (60) days after written notice of such failure, shall have been given to Lessee. Upon Lessee's default and after notice and opportunity to cure as provided in the prior sentence, Town shall have the following rights which shall be cumulative, in addition to any rights allowed by general law:
 - 1. Town may with or without entry or other action, terminate this Lease, and recover possession of the Premises and such damages as Town may then have as a result of the default and termination, and
 - 2. Lessee shall pay all of the Town's costs, charges and expenses, including reasonable attorneys' fees and the fees of other agents retained by Town, incurred in enforcing Lessee's obligations under this Lease, and
 - 3. Town shall have all of the rights and remedies accorded by law and equity, including specifically the right to injunctive relief for the enforcement of all of the terms of this Lease.
 - ii. By Town if regulatory requirements for structural integrity of Water Tower no longer supports additional weight of Lessee's equipment and (i) reasonable remedy is not available to bring Water Tower into compliance or (ii) other reasons interfering with the Town's ability to maintain Water Tower for the provision of water to its Citizens.

13. Insurance.

- a. Lessee shall procure, maintain and pay for a public liability policy, with limits of \$1,000,000.00 for bodily injury, \$1,000,000.00 for property damage, \$2,000,000.00 aggregate, with certificate of insurance to be furnished to the Town prior to the Commencement Date and at any other time (but no more frequently than annually) within thirty (30) days of written request therefore. The policy shall provide that termination or cancellation will not occur without at least thirty (30) days prior written notice to the Town and shall name the Town as additional insured. The insurance required to be maintained by Lessee or any agent, contractor, agent or designee of Lessee, shall be primary to any insurance or self-insurance maintained by the Town which policy or policies shall be excess only, and not be required to contribute with it. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for Lessee, or failure of any such insurance company to pay claims accruing, shall not be held to waive any of the provisions of this Lease or relieve Lessee from any obligations under this Lease.
- b. Throughout the Term, Town shall maintain, at Town's sole cost and expense, the following insurance coverage: (i) Commercial General Liability of not less than \$1,000,000 per occurrence; All such policies shall be endorsed to include Lessee as an additional insured. Subject to the policy minimums set forth above in this Section 13(a), the insurance required of Town hereunder may be maintained by a blanket or master policy that includes properties other than the Property.

14. Condemnation/Casualty.

- (a) In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Lessee's right of access to the Premises is damaged by fire or other casualty so that such damage may reasonably

be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, then Lessee may at any time following such fire or other casualty, provided Lessor has not completed the restoration or alternative means of access required to permit Lessee to resume its operation at the Premises, terminate this Lease upon fifteen (15) days written notice to Lessor. Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Lease. Notwithstanding the foregoing, provided that the casualty was not caused by the acts or omissions of Lessee, all Rent shall abate during the period following such fire or other casualty in proportion to the degree to which Lessee's use of the Premises is impaired, until the time repairs are complete and Lessee is able to use the Premises in accordance with its intended purposes.

(b) If any governmental, public body or other condemning authority takes, or if Lessor transfers in lieu of such taking, all or part of the Premises, then Lessee may elect to (i) terminate this Lease, effective on the date that title vests in the condemning authority, or (ii) relocate the Equipment to an alternative location on the Property, reasonably acceptable to Lessor. Lessee shall provide written notice of its election within thirty (30) days after receiving actual notice of a taking.

15. Title and Quiet Enjoyment.

Town warrants that (i) the Town owns the Property and (ii) it holds good and marketable title to the Property and that, provided Lessee has made rental payments as required hereunder, Lessee shall have quiet enjoyment of the Premises.

16. Marking and Lighting Requirements.

Town accepts sole responsibility for the Property's compliance with all tower or building marking and lighting regulations promulgated by the Federal Aviation Administration ("FAA") or the FCC, as applicable. Lessee shall be responsible for compliance with such regulations if marking and lighting is required solely due to the addition of Lessee's Equipment. Each party shall hold the other harmless if in the event that the responsible party's failure to comply with applicable regulations results in legal action or administrative proceedings against the other party by the government agency responsible for enforcement of the applicable regulations. Town shall notify Lessee of (i) the location of any new items on the Water Tower, (ii) any change in the location of any items on the Water Tower, and (iii) any changes to the overall height of the Water Tower (including any attachments thereto).

17. Notices.

All notices under this Lease shall be in writing and shall be deemed validly given if personally delivered, sent via overnight courier providing proof of service, or sent by certified or registered mail, return receipt requested, as follows (or any other address that the part to be notified may designate by like notice to the sender):

If to Town:

Town Manager
Town of Warrenton
P.O Drawer 341
21 Main Street
Warrenton, VA 20188

If to Lessee:

DISH Wireless L.L.C.
Attn: Lease Administration
5701 South Santa Fe Dr.
Littleton, CO 80120

Copy To:

Town Attorney
Town of Warrenton
P.O Drawer 341
Warrenton, VA 20188

17.1 DEFAULT

(a) An event of default by Lessee ("Lessee Default") shall be defined as (i) the failure to pay Rent, additional fees or other payments set forth herein for a period of more than twenty (20) calendar days immediately succeeding written notice from Lessor.; (ii) failure to perform any material term, condition or covenant contained herein for a period of more than thirty (30) days immediately succeeding written notice thereof from Lessor; provided, however, it shall be a Lessee Default under this Lease if Lessee fails, within five (5) days after receipt of written notice of breach, to perform an obligation required to be performed by Lessee if the failure to perform such obligation interferes with Lessor's ability to conduct its business at the Property, but provided further that if the nature of Lessee's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Lease if performance is commenced within such five (5) day period and thereafter diligently pursued to completion. Lessee shall be afforded such additional time to cure any non-monetary Lessee default that cannot reasonably be cured within such five (5) day period or such thirty (30) day period provided, however, that Lessee commences to cure such default within the applicable notice period and diligently pursues such cure.

(b) In the event of a Lessee Default without cure hereunder, then in addition to its remedies for default at law and in equity, Lessor shall be entitled to terminate this Lease upon thirty (30) days written notice to Lessee.

(c) An event of default by Lessor ("Lessor Default") shall be defined as the failure by Lessor to perform any material term, condition or covenant contained herein for a period of more than thirty (30) days immediately succeeding written notice thereof from Lessee; provided, however, it shall be a Lessor Default under this Lease if Lessor fails, within seven (7) days after receipt of written notice of breach, to perform an obligation required to be performed by Lessor if the failure to perform such obligation interferes with Lessee's ability to conduct its business at the Property, but provided further that if the nature of Lessor's obligation is such that more than seven (7) days after such notice is reasonably required

for its performance, then it shall not be a default under this Lease if performance is commenced within such seven (7) day period and thereafter diligently pursued to completion. In the event of a Lessor Default without cure hereunder, then in addition to its remedies for default at law and in equity, Lessee shall be entitled to terminate this Lease upon thirty (30) days written notice thereof to Lessor.

(d) Other Remedies. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due immediately and payable by the defaulting Party upon invoice therefor. In the event of a default by either Party with respect to a material provision of this Lease, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Lease and/or pursue any remedy now or hereafter available to the non-defaulting Party under the laws or judicial decisions of the state in which the Premises are located; provided, however, each party shall use reasonable efforts to mitigate its damages in connection with a default by the other party. If either Party so performs any of the defaulting Party's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by the non-defaulting Party shall immediately be owing by the defaulting Party, and the defaulting Party shall pay to the non-defaulting Party upon demand the full undisputed amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if Lessor is the defaulting Party and does not pay Lessee the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from Lessor, Lessee may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to Lessor until the full undisputed amount, including all accrued interest, is fully reimbursed to Lessee.

18. Assignment and Subletting.

- a. **Rights of Lessee.** Lessee may not sell, assign or transfer this Lease or any interest herein or sublet the premises or any part thereof without the prior written consent of Town, which consent shall not be unreasonably withheld but may be conditioned or delayed based upon the Town's determination that any proposed assignee is capable of meeting Lessee's obligations under the Lease in accordance with the terms and conditions of Section 18(c) below.
- b. **Intercompany Transfer.** Notwithstanding the foregoing paragraph, Lessee upon prior written notice to Town, but without any approval or consent by Town, may assign its rights under this Lease to its parent company or any subsidiary or Affiliate of Lessee or its parent company, or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets. Affiliate(s) shall mean, with respect to a Party, any person or entity, directly or indirectly, controlling, controlled by, or under common control with such Party, in each case for so long as such control continues. For purposes of this definition, "control" shall mean (i) the ownership, directly or indirectly, or at least fifty percent (50%) of either: (a) the voting rights attached to issued voting shares; or (b) the power to elect fifty percent (50%) of the directors of such entity, or (ii) the ability to direct the actions of the entity.
- c. **Financing.** Notwithstanding anything to the contrary contained in this Lease, Lessee may assign, mortgage, pledge, hypothecate or otherwise transfer without the Town's consent, its interest in this Lease to any financing entity or agent on behalf of any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities in respect of guarantees thereof.

- d. **Sublet.** Except for assignments contemplated pursuant to Section 18(a) above., if Lessee should desire to assign this Lease or sublet the Premises, or any part thereof, and provided that Lessee is not then in default hereunder, Lessee shall give Town written notice at least forty-five (45) days in advance of the date on which Lessee desires to make such assignment or sublease. Town shall then have a period of thirty (30) days following receipt of such notice within which to notify Lessee in writing that Town elects:
- i. to permit Lessee to assign or sublet such space, subject, however, to the subsequent written approval by Town of the instrument of assignment or sublease as to form and substance and of the proposed assignee or subtenant; or
 - ii. to refuse, in Town's reasonable discretion, to consent to Lessee's assignment or subleasing of such space and to continue this Lease in full force and effect as to the entire Premises. If Town should fail to notify Lessee in writing of such election within such thirty (30) day period, Town shall be deemed to have elected option (1) above.
 - iii. **Effect.** Except as may be otherwise expressly set forth to the contrary, no assignment or subletting by Lessee shall relieve Lessee of Lessee's obligations under this Lease. Any attempted assignment or sublease by Lessee in violation of the terms and provisions of this Section 18 shall be void.

Lessor reserves the right to assign, transfer, mortgage or otherwise encumber the Property and its interest in this Lease (collectively, "Lessor Transfer"). In the event of any such Lessor Transfer, Lessor agrees to cause the transferee to accept an assignment and assumption of this Lease and to recognize Lessee and Lessee's rights hereunder, and Lessee shall recognize such transferee provided that the prospective transferee executes and delivers to Lessee a Subordination and Non-Disturbance and Attornment instrument ("SNDA") agreeing to recognize Lessee and to not disturb Lessee's tenancy. If the Lessor Transfer is to a lender to Lessor, Lessee agrees to execute and deliver to such lender an SNDA subordinating this Lease and Lessee's rights hereunder, as may be required by Lessor and such Lender provided the same is reasonably acceptable to Lessee and such lender agrees to recognize Lessee's rights under this Lease so long as there is no default by Lessee, in connection with Lessor's

contemplated transaction. If Lessor, at any time during the Term, decides (i) to sell or transfer all or any part of the Property or the Water Tower or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Water Tower or Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Lease and any such purchaser or transferee shall recognize Lessee's rights hereunder under the terms of this Lease. To the extent that Lessor grants to a third party by easement or other legal instrument an interest in and to that portion of the Water Tower and/or Property occupied by Lessee for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith assigns this Lease to said third party, Lessor shall not be released from its obligations to Lessee under this Lease, and Lessee shall have the right to look to Lessor and the third party for the full performance of this Lease.

19. Liability and Indemnity.

Lessee shall indemnify and hold harmless the Town from any and all claims, suits and/or causes of action, judgment or awards, damages, injuries or loss sustained by any party, person or their property, including any and all claims, demands, suits, and/or causes of action, judgments or awards as a result of the negligence, misfeasance, malfeasance, misconduct of Lessee, its agents, servants or employees occurring at any time after execution of this Lease. This indemnity shall include and not be limited to the acts, commissions and omissions of Lessee, its agents, servants or employees within the demised premises, or the environs surrounding same, incidental to or arising from Lessee's occupancy. Furthermore, Lessee shall defend the Town, at its own expense, and/or be obligated to pay the costs of the defense of the Town, all of which costs, judgements, claims and demands shall be due and payable to Town upon written demand. It is understood and agreed that all property kept and stored or maintained in the demised premises shall be so kept and stored or maintained at the sole risk of Lessee no matter what the cause of the loss, damage or destruction of the Property with the exception of any negligence by Town. The duties described in this Section 19 shall survive any termination of this Lease.

Each party shall be entitled to recover from the other party its actual, direct damages for any breach of this Lease or other act or omission of such party (subject to any applicable sovereign

immunity), but neither party shall be entitled to recover from the other party any special, incidental, indirect or consequential or punitive damages, or to recover for any lost revenue, lost profits, loss of technology, rights or services, loss of data or interruption or loss of use of service, in any case or controversy however arising, even if such party has been advised of the possibility of such damages, and whether arising under theory of contract, tort (including negligence), strict liability or otherwise.

20. Hazardous Substances.

Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under about or within the Property in violation of any law or regulation. Town represents, warrants and agrees (1) that neither Town nor, to Town's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Property in violation of any law or regulation, and (2) that Town will not, and will not knowingly permit, any third party to use, generate, store, or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation Lessee agrees to defend, indemnify and hold harmless the Town and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Lease.

21. Severability.

If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Lease or

the application of such term, covenant and condition of this Lease shall be valid and enforced to the fullest extent permitted by law

22. Entire Agreement.

This instrument embodies the entire agreement between the parties hereto with respect to the subject matter hereof, and there are no agreements, warranties or representations between the parties other than those set forth on provided for herein. No amendment or modification of this Lease shall be valid unless made in writing and signed by the parties hereto.

23. Successor or Assigns.

This Lease and each provision hereof (whether so expressed or not) shall be binding upon and inure to the benefit of the Lessee and Town, and their respective successors, heirs, legatees, executors, personal representatives and assigns.

24. Waiver of Subrogation.

To the fullest extent permitted by law, Town and Lessee for themselves and any and all parties claiming under or through them, including, without limitation, their respective insurers, hereby mutually release and discharge each other and the other's Affiliates, and their respective officers, directors, shareholders, agents, employees, contractors, and/or any other person or entity for whom a Party is legally responsible from any claims for damage to any person or to the Premises or any other real or personal property that are or are claimed to have been caused by or result from risks insured against under any insurance policies carried by the waiving party and in force at the time of such damage and hereby waive any right of subrogation that might otherwise exist in or accrue to any person on account thereof. All policies required to be carried by either Party herein shall contain an endorsement in favor of the other Party waiving the insurance company's right of subrogation against such other Party. THIS RELEASE SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED BY THE FAULT OR NEGLIGENCE OF A PARTY HERETO OR BY

ANY PERSON FOR WHICH SUCH PARTY IS RESPONSIBLE. EACH PARTY AGREES TO NOTIFY ITS INSURANCE CARRIER(S) OF THIS PROVISION.

25. Effect of Waiver.

No waiver of any breach of any term contained in this Lease shall waive any succeeding breach of such term.

26. Choice of Law & Forum.

- a. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia, and any case or controversy related thereto shall be adjudicated in the state courts of Fauquier County, and shall not be removed to federal court.
- b. Any dispute or controversy arising out of or relating to this Lease, its construction or its actual or alleged breach shall be governed by the Commonwealth of Virginia.

27. Memorandum of Lease.

Town acknowledges that a Memorandum of Lease in the form annexed hereto as Exhibit D will be recorded by Lessee in the official records of the county where the Property is located.

28. Estoppel Letter. Either Lessor or Lessee shall, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges, if any, are paid in advance, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party, or specifying such defaults if any are claimed. Any such statement may be

conclusively relied upon by any prospective purchaser or encumbrancer of the Premises or the Equipment.

28. Sovereign Immunity/Dillon's Rule

Virginia is a Dillon Rule state, and any attempt to require the Town to indemnify as set forth in the terms and conditions of this Lease is invalid unless authorized by state statute.

[Remainder of the page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Lease as of the Effective Date.

[Insert Signature Block]

Exhibit A
Legal Description of Property

Exhibit B

Premises

[Attached]

Exhibit C

Date: February 21, 2022

W. Marshall Knight, II
 Kimley-Horn
 Marshall.Knight@kimley-horn.com
 (443) 938-9930



Tower Engineering Professionals
 326 Tryon Road
 Raleigh, NC 27603
 (919) 661-6351
www.tepgroup.net

Subject: Proposal – Water Tank Modification Construction Proposal - Dish

Site Data: Warrenton, VA 4th Tank Water Tank
 34 North 4th Street
 Warrenton, VA 20186
 139 Foot –8 Column Elevated Water Tank

Mr. Knight,

TEP can perform the below tasks for the following fee: (Proposals are valid for 30 days from the date issued)

Item of Work	Fee (\$)	Notes
New Corral	\$36,680.00	Materials and Labor for new corral
Existing Corral Extension/Modification	\$16,650	Materials and Labor for existing corral modification
New Cable Trays + Catwalk Penetration	\$8,470.00	
Demo Mounts on Tank Bowl	\$9,000.00	Dish (Sprint takeover)
Tank Mods (Materials and Labor)	\$77,443.30	
Interior Paint Touchups	\$5,000.00	Interior Paint Touchups per SSPC
PMI,CWI,PM, PCI	\$5,000	
Total Fee	\$158,243.30	

Notes:

- All material will be shop blasted and coated with a 3 coat system to match tank and meet SSPC Standards. All exterior surfaces that are compromised from the welding will be touched up per SSPC Standards
- Includes tank bowl interior paint touchups per SSPC Specification as well as disinfection.

35% of payment due upon commencement of contract for materials
 35% of payment due upon tank modification construction completion
 Balance due upon completion of Post-Modification Inspection
 Payment terms – Net 30 days upon receipt of invoice

Please feel free to call with any questions or concerns and thank you for the opportunity.

Respectfully Submitted,

Bradley K. Little, P.E., G.C., C.W.I.
 Vice President - Construction

Exhibit D

Form of Memorandum of Lease

This Memorandum made this _____ day of _____, 2022, between the TOWN OF WARRENTON, a municipal corporation with its principal mailing address of _____, hereinafter designated "Lessor" and _____, a _____ with its principal offices at _____, hereinafter designated "Lessee".

1. Lessor and Lessee entered into that certain lease (the "Lease") dated as of the ____ day of _____ 2022 leasing the Premises (as hereinafter defined) to Lessee for a term often (10) years with the right to renew for four (4) additional five (5) year terms.
2. The Lease concerns space on Lessor's certain water tower and that certain parcel of land containing _____ square feet (together with the rights-of way described in the Lease, the "Premises") located on that certain property known as [INSERT ADDRESS] (the "Property") (INSERT GPIN, TAX MAP NUMBER, OR OTHER IDENTIFIER), as more thoroughly described on Exhibit "A" attached hereto and incorporated herein by reference.
3. The term of the Lease shall commence upon full execution of the same by both parties and a copy of the Lease is on file in the offices of Lessor and Lessee. [MODIFY AS NECESSARY]
4. The terms, covenants, and provisions of the Lease of which this is a Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors, and assigns of Lessor and Lessee.

IN WITNESS WHEREOF

[INSERT SIGNATURE BLOCKS AND EXHIBIT]



Office of the Town Manager

Tommy Cureton

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor

Heather Sutphin, Ward 1

William Semple, Ward 2

Brett Hamby, Ward 3

James Hartman, Ward 4 Vice Mayor

Jay Heroux, Ward 5

David McGuire, At Large

Paul Mooney, At Large

Item C.

Council Meeting Date:	March 14, 2023
Agenda Title:	Recorder Appointment
Requested Action:	Adopt an Ordinance change for the appointment of the Town Recorder
Department / Agency Lead:	Acting Town Manager
Staff Lead:	Tommy Cureton

EXECUTIVE SUMMARY

Since the resignation of Elizabeth Gillie in March of 2021, the Town Manager has been Appointed as the Town Recorder. The Town Council attempted to hire a full-time municipal Clerk to replace Ms. Gillie but were unsuccessful in the search. Mr. Clough was hired as a part time Clerk in January of 2022. Mr. Clough was made full time in July of 2022 and has been pursuing his Certified Municipal Clerk Designation. To streamline the hiring process and create a clear chain of command, the appointment of the Town Recorder stayed with the Acting and Interim Town Managers through 2022. Tommy Cureton, Acting Town Manager, delegated the duties of the Town Recorder to Mr. Clough. Council has expressed a desire to retain the current delegation of duties and as such this Ordinance changes the duty of appointment of the Town Recorder from the Town Council to the Town Manager to better align with the current operation standards of the Town.

BACKGROUND

Section 15.2-1536 of the Code of Virginia requires the appointment or designation of a clerk for every governing body of a locality.

The Town Charter § 3-8 authorizes the Council to appoint a Recorder whose term of appointment, duties, and compensation shall be prescribed by the Council.

Town Charter Article VI creates the office of Town Manager as Chief Executive Officer of the Town with the responsibility for proper administration of the Town government and the power to appoint all officers and employees of the Town and to remove all officers so appointed, as well as such other duties as may be required by the Council.

STAFF RECOMMENDATION

Adopt the Ordinance granting the Town Manager the power to Appoint the Town Recorder.

Fiscal Impact

None.

Legal Impact

The Town Recorder is tasked with creation of the minutes, records officer of the Town, they are required to be at all meetings of the Town Council and perform other such duties as required by the Town Manager.

ATTACHMENTS

Ordinance 2023-01

March 14, 2023
Town Council
Regular Meeting

ORDINANCE 2023-01

AN ORDINANCE TO AMEND SECTION 2-96 OF THE TOWN CODE TO PROVIDE FOR APPOINTMENT OF THE TOWN CLERK/RECORDER BY THE TOWN MANAGER

WHEREAS, Warrenton, VA (Hereinafter "the Town") is a municipal corporation located within the County of Fauquier; and

WHEREAS, Section 15.2-1536 of the Code of Virginia requires the appointment or designation of a clerk for every governing body of a locality; and

WHEREAS, Town Charter § 3-8 authorizes the Council to appoint a Recorder whose term of appointment, duties, and compensation shall be prescribed by the Council; and

WHEREAS, Town Charter Article VI creates the office of Town Manager as chief executive officer of the Town with the responsibility for proper administration of the Town government and the power to appoint all officers and employees of the Town and to remove all officers so appointed, as well as such other duties as may be required by the Council; and

WHEREAS, the Town Council has determined that it is appropriate and in the public interest to delegate the authority to appoint the Town Clerk and Recorder to the Town Manager;

NOW, THEREFORE, BE IT ORDAINED by the Warrenton Town Council this ____ day of _____, 2023, that Section 2-96 of the Warrenton Town Code be, and is hereby, amended as follows:

Sec. 2-96. - Town recorder.

The town ~~council~~ manager shall appoint a recorder and may appoint deputy or assistant recorders. The recorder shall attend all meetings of the town council, ~~and~~ keep a record of the council proceedings, and perform such other duties as the Town Code imposes on the recorder. ~~He~~ The recorder shall have such other functions, powers and duties as state law assigns to a clerk of a governing body or as the Town Manager may assign. may be provided by the town council. A deputy recorder shall have all the authority of the recorder in the recorder's absence, and an assistant recorder shall have such authority of the recorder as is delegated by the town manager or recorder.

ATTACHMENT:

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

For Information:

Town Manager
Town Attorney

ATTEST: _____
Town Recorder



Office of the Town Manager

Tommy Cureton

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor

Heather Sutphin, Ward 1

William Semple, Ward 2

Brett Hamby, Ward 3

James Hartman, Ward 4 Vice Mayor

Jay Heroux, Ward 5

David McGuire, At Large

Paul Mooney, At Large

Item C.

Council Meeting Date:	March 14, 2023
Agenda Title:	Indemnification of Town Employees
Requested Action:	Adopt an Ordinance to the Town Code for the indemnification of Town Employees
Department / Agency Lead:	Acting Town Manager
Staff Lead:	Tommy Cureton

EXECUTIVE SUMMARY

The Town of Warrenton is reliant on the Town Staff to function. In the course of the actions of the day-to-day operation of the Government some instances may arise that put the Town employees into a situation where they may be subject to litigation or liability during the course of their duties for the Town. Town employees are not protected against legal liability for one's actions in the course of work necessary for the Governance and operation of the Town.

Providing indemnification for elected officials, officers and employees of the Town encourages them to perform their duties under the law without undue fear or intimidation by threats or legal actions seeking to hold them liable for acts performed within the scope of their duties.

Staff recommends the Town Council adopt an ordinance to codify the identification of Town employees.

BACKGROUND

The City of Manassas has the following provisions that have been considered in the draft of the Ordinance.

Sec. 2-135. - Defense and indemnification generally.

- (a) Upon compliance by town officers and employees with the provisions of subsection (d) of this section, the town council may employ the town attorney or other counsel to provide for the defense of the town, the council, or any member thereof, or any officer or employee of the town, or of any trustee or member of any board or commission appointed by the town council, in any legal proceeding to which the council, or any member thereof, the town or any of such persons may be a defendant, when such proceeding is initiated against it, or them, by virtue of any actions in the furtherance of their duties in serving the town as its governing body or as members thereof or the duties or service of any officer or employee of the town or any trustee or any member of any board or commission appointed by the town council.
- (b) The town shall indemnify and save harmless its officers and employees in the amount of any judgment obtained against such officers and employees in any state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which judgment or settlement arose occurred while the officer or employee was acting within the scope of his public employment or duties. The duty to indemnify and save harmless prescribed by this subsection shall not arise where the injury or damage resulted from deliberate wrongdoing or recklessness on the part of the officer or employee.

- (c) All costs and expenses of such proceedings so defended shall be charged against the treasury of the town and shall be paid out of funds provided by the town council. Further, if any settlement is agreed upon or judgment is rendered against any of such named persons or the council, the town council shall pay such settlement or judgment from public funds or other funds or in connection therewith may expend public or other funds for insurance or to establish and maintain a self-insurance program to cover such risk or liability.
- (d) The duty to defend or indemnify and save harmless provided by this section shall be conditioned upon: (1) Delivery, to the town attorney or his assistant, at his office, by the officer or employee, the original or a copy of any summons, complaint, process, notice, demand or pleading within three calendar days after he is served with such document; and (2)The full cooperation of the officer or employee in the defense of such action or proceeding and in defense of any action or proceeding against the town based upon the same act or omission, and in the prosecution of any appeal thereof.

Sec. 2-136. - Reimbursement of legal fees and expenses for criminal investigation and prosecution.
If any officer or employee of the town shall be investigated, arrested or indicted or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of their official duties, and no charges are brought, or the charge is subsequently dismissed, or upon trial they are found not guilty, the town council may reimburse the officer or employee for reasonable legal fees and expenses incurred by them in the defense of the investigation or charge. The reimbursement shall be paid from the treasury of the town.

Sec. 2-137. - Limitations on defense and indemnification.
The benefits of sections 2-135 and 2-136 shall inure only to officers and employees as defined in section 2-134 and shall not enlarge or diminish the rights of any other party. The provisions of sections 2-135 and 2-136 shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance. The provisions of sections 2-135 and 2-136 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the town, the town or the town council or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of any other provision of Commonwealth or federal statutory or common law

STAFF RECOMMENDATION

Fiscal Impact

Legal Impact

ATTACHMENTS

March 14, 2023
Town Council
Regular Meeting

ORDINANCE 2023-02

**AN ORDINANCE TO ADD SECTIONS NUMBERED 2-97, 2-98, AND 2-99 TO THE TOWN CODE TO
PROVIDE FOR INDEMNIFICATION OF TOWN STAFF**

WHEREAS, Section 15.2-1520 of the Code of Virginia allows the locality to authorize the Employment of counsel to defend localities and political subdivisions, governing bodies, officers or employees in certain proceedings; costs and expenses of such proceeding; and

WHEREAS, the Town Council has determined that it is appropriate and in the public interest to provide for the indemnification of Town Elected Officials, Officers and Employees; and

NOW, THEREFORE, BE IT ORDAINED by the Warrenton Town Council this ____ day of _____, 2023, that the Warrenton Town Code be, and is hereby, amended to add sections numbered 2-97, 2-98, and 2-99 as follows:

Sec. 2-97. - Defense and indemnification generally.

(a) Upon compliance by town officers and employees with the provisions of subsection (d) of this section, the town council may employ the town attorney or other counsel to provide for the defense of the town, the council, or any member thereof, or any officer or employee of the town, or of any trustee or member of any board or commission appointed by the town council, in any legal proceeding to which the council, or any member thereof, the town or any of such persons may be a defendant, when such proceeding is initiated against it, or them, by virtue of any actions in the furtherance of their duties in serving the town as its governing body or as members thereof or the duties or service of any officer or employee of the town or any trustee or any member of any board or commission appointed by the town council.

(b) To the extent that such liability is not covered by insurance, the town shall indemnify and save harmless its officers and employees in the amount of any judgment obtained against such officers and employees in any state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which judgment or settlement arose occurred while the officer or employee was acting within the scope of his or her public employment or duties. The duty to indemnify and save harmless prescribed by this subsection shall not arise where the injury or damage resulted from deliberate wrongdoing or recklessness on the part of the officer or employee.

(c) To the extent that such costs and expenses are not covered by insurance, all costs and expenses of such proceedings so defended shall be charged against the treasury of the town and shall be paid out of funds provided by the town council. Further, if any settlement is agreed upon or judgment is rendered against any of such named persons or the council, the town council shall pay such settlement or judgment from public funds or other funds or in connection therewith may expend public or other funds for insurance or to establish and maintain a self-insurance program to cover such risk or liability.

(d) The duty to defend or indemnify and save harmless provided by this section shall be conditioned upon:

(1) Delivery, to the town attorney or an assistant town attorney, at the attorney's office, by the officer or employee, the original or a copy of any summons, complaint, process, notice, demand or pleading within three calendar days after service with such document; and

(2) The full cooperation of the officer or employee in the defense of such action or proceeding and in defense of any action or proceeding against the town based upon the same act or omission, and in the prosecution of any appeal thereof.

Sec. 2-98. - Reimbursement of legal fees and expenses for criminal investigation and prosecution.

If any elected official, officer or employee of the town shall be investigated, arrested or indicted or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of official duties, and no charges are brought, or the charge is subsequently dismissed, or upon trial the elected official, officer or employee is found not guilty, the town council may reimburse the elected official, officer or employee for reasonable legal fees and expenses incurred in the defense of the investigation or charge. The reimbursement shall be paid from the treasury of the town.

Sec. 2-99. - Limitations on defense and indemnification.

The benefits of sections 2-97 and 2-98 shall inure only to elected officials, officers and employees and shall not enlarge or diminish the rights of any other party. The provisions of sections 2-97 and 2-98 shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance. The provisions of sections 2-97 and 2-98 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the town, the town or the town council or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of any other provision of Commonwealth or federal statutory or common law.

ATTACHMENT:

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

For Information:

Town Manager

Town Attorney

ATTEST: _____
Town Recorder



Office of the Town Manager

Tommy Cureton

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor

Heather Sutphin, Ward 1

William Semple, Ward 2

Brett Hamby, Ward 3

James Hartman, Ward 4 Vice Mayor

Jay Heroux, Ward 5

David McGuire, At Large

Paul Mooney, At Large

Item D.

Council Meeting Date:	March 14, 2023
Agenda Title:	Town / County Liaison Update
Requested Action:	Receive the Update from Councilmember Brett Hamby
Department / Agency Lead:	Town Council
Staff Lead:	Tommy Cureton

EXECUTIVE SUMMARY

Mr. Brett Hamby will be providing an update from the Town / County Liaison meeting held on February 22nd, 2023.

BACKGROUND

Purpose

The purpose of the Town/County Liaison Committee is to provide a forum for representatives of local Towns and Fauquier County to discuss matters of mutual interest and concern, including but not limited to governmental services, transportation, and land use planning.

Term

Members are appointed annually.

Meetings

Committee meetings are generally held quarterly. For details on the next meeting call (540) 422-8001 or subscribe to the Town/County Liaison Committee e-Notification service.

STAFF RECOMMENDATION

Fiscal Impact

None

Legal Impact

None

ATTACHMENTS

Agenda for 02/22/23 TCLC Meeting

TOWNS / COUNTY LIAISON COMMITTEE MEETING

Wednesday, February 22, 2023

8:30 A.M.

Town Hall

21 Main Street

3rd Floor, Willow Room

Warrenton, Virginia

AGENDA

- 1. Call to Order**
- 2. Adoption of Agenda**
- 3. Approval of the Minutes for November 30, 2022**
- 4. Electrical Power Lines for Amazon Update**
- 5. Relocation of Town Utility Department to Corral Farm Update**
- 6. Town Water Filling Station Project Update**
- 7. Crosswalk Protection – Lee and Ashby Streets Intersection**
- 8. Transportation General Discussion**
- 9. Housing General Discussion**
- 10. Roundtable**
- 11. Next Meeting**
- 12. Adjourn**



Office of the Town Manager

Tommy Cureton

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor

Heather Sutphin, Ward 1

William Semple, Ward 2

Brett Hamby, Ward 3

James Hartman, Ward 4 Vice Mayor

Jay Heroux, Ward 5

Paul Mooney, At Large

David McGuire, At Large

Item E.

Council Meeting Date:	March 14, 2023
Agenda Title:	Town Council Handbook
Requested Action:	Provide Feedback to Staff on the Town Council Handbook Draft
Department / Agency Lead:	Town Clerk
Staff Lead:	Stephen Clough

BACKGROUND

The Town Council Handbook is a guiding document for the Town Council and Staff that outlines various points of information and processes for the Council.

Key items include:

1. Rules of Procedure
2. Ethics Statement
See Separate Staff Report
3. Boards, Committees, Commissions
See Separate Staff Report
4. Work Session Meeting Dates
See Separate Staff Report

STAFF RECOMMENDATION

Staff recommends a review of the Town Council Handbook for feedback and adoption at a future Town Council meeting.

Fiscal Impact

There is no additional fiscal impact from the Town Council Handbook

Legal Impact

There is no additional legal impact from the Town Council Handbook

ATTACHMENTS



WARRENTON TOWN COUNCIL HANDBOOK

Town Council 2022-2024

H. E. Carter Nevill, Mayor
Heather D. Sutphin, Ward 1
William T. Semple II, Ward 2
Brett A. Hamby, Ward 3
James N. Hartman III, Ward 4,
Vice Mayor
John B. "Jay" Heroux III, Ward 5
David A. McGuire, At Large
Paul W. Mooney, At Large

**V3 01.25.23 Highlighted areas still need to
be addressed.**

Updated as of February 2023

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INTRODUCTION

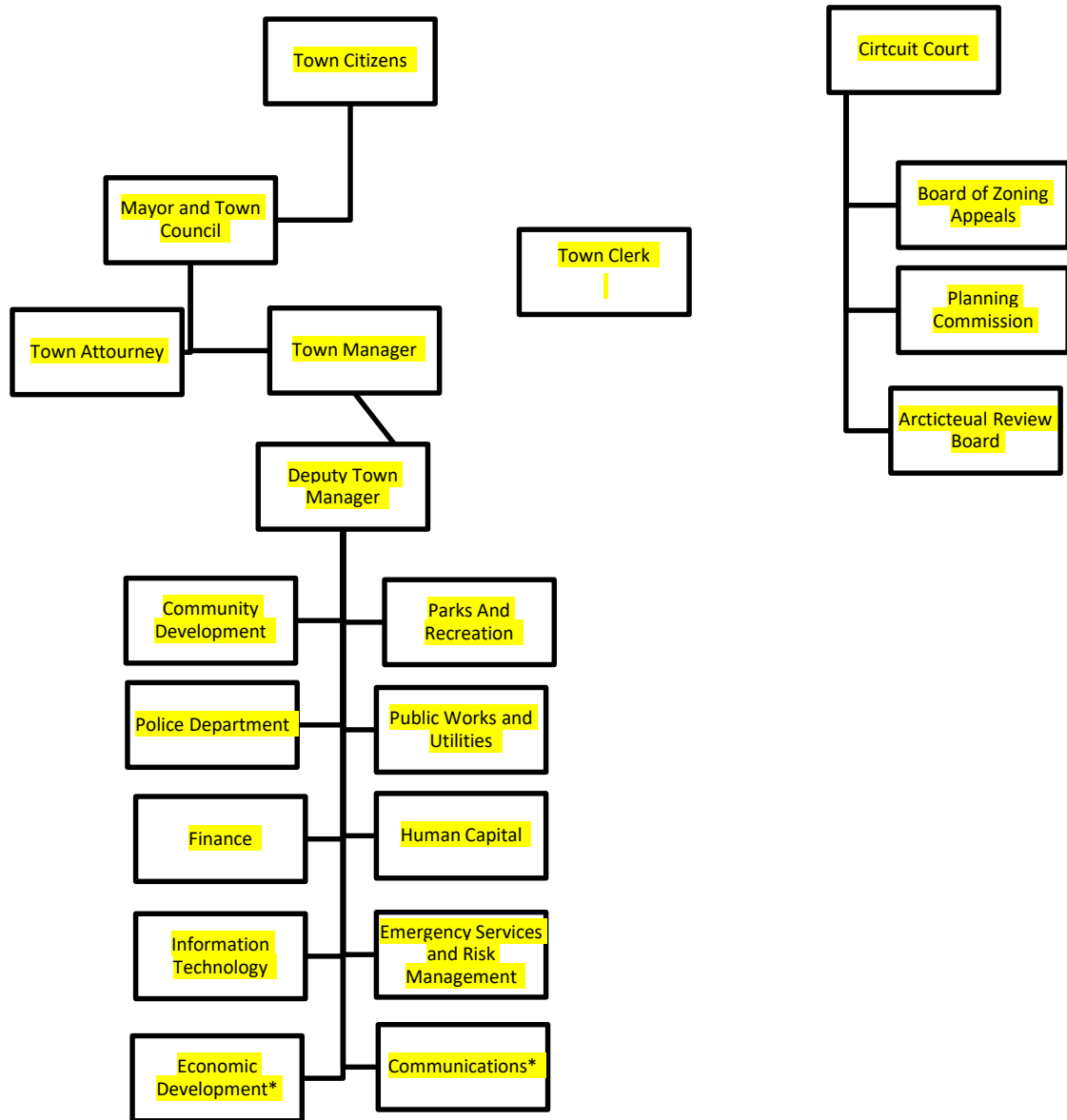
This Handbook was prepared for you and is intended to describe the laws, rules, and practices by which the Warrenton Town Council operates. The Handbook includes excerpts from the Warrenton Town Charter and Code of the Town of Warrenton as well as the Code of the Commonwealth of Virginia, plus excerpts from the Handbook for Virginia Mayors & Council Members. Unless otherwise noted, the text of the Handbook is assumed to be Council established practices and procedures in addition to those established in law. The Handbook serves as a quick reference.

Sources are indicated as follows:

- Charter = Town Charter
- Code = Town Code
- RR = Robert's Rules of Order
- VML = Virginia Municipal League's Handbook for Mayors and Council Members
- VA Code = Code of Virginia

WARRENTON TOWN COUNCIL OATH OF OFFICE

"I do solemnly swear I will support the Constitution of the United States and the Constitution of the Commonwealth of Virginia and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a member of the Warrenton Town Council, for a term of four (4) years, according to the best of my ability, so help me God."



PART ONE

TOWN COUNCIL STRUCTURE AND FUNCTIONS

I. POWERS OF TOWN COUNCIL

Local Government powers are conferred on the elected Mayor and Town Council by the Commonwealth of Virginia and the people of Warrenton, Virginia. Powers are defined by the Charter of the Town of Warrenton, the Code of Virginia, and the Virginia Constitution. As interpreted by the Dillon Rule, localities are “tenants at will” of the state legislature and depend on the Virginia General Assembly for their operating authority.

TOWN CHARTER

Charter Sec. 2.1. - General grant of powers.

The Town of Warrenton shall have and may exercise all powers which are now or hereafter may be conferred upon or delegated to towns under the Constitution and laws of the Commonwealth of Virginia, as fully and completely as though such powers were specifically enumerated herein, and no enumeration of particular powers by this Charter shall be held to be exclusive, and shall have, exercise and enjoy all the rights, immunities, powers and privileges, and be subject to all the duties and obligations now appertaining to and incumbent on the town as a municipal corporation.

In addition to the general rights and powers conferred on “towns” by the Code of Virginia, the Council has several powers specifically enumerated in its Charter, including the ability to:

- Fill vacant Council seats. Charter Sec.3.5
- Appoint/remove the Town Manager, Town Attorney and Town Clerk*. Charter Sec. 6.1, 3.7 and 3.8
- Possess the power of Eminent Domain pursuant to Title 15.2 of the Code of Virginia. Charter 2.5
- Enact a Conflict of Interest Act. Charter 4.6

**The role of Town Recorder is currently appointed to the Town Manager for delegation of duties to the Town Clerk.*

II. MAYOR AND VICE MAYOR DUTIES The Mayor

The Mayor is elected every four years by the people of Warrenton. The Mayor shall preside over the meetings of the Council and shall have the same right to speak therein as Councilmembers, however he/she shall not have the right to vote except in the case of a tie, in which event he / she shall be entitled to cast one vote. The Mayor shall be recognized as the head of the Town for all ceremonial purposes, the purposes of military law and the service of civil process. The Mayor serves as the presiding officer at Town Council meetings and performs other duties consistent with the office. The Mayor is recognized as the official head of the Town for:

- Participation in public ceremonies.
- Recognition by the courts for serving civil process.
- Recognition for ceremonial and military purposes.
- Signing and delivering of required or authorized documents and instruments.

Charter Sec.5.2

The Vice Mayor

The Vice Mayor is chosen by a majority of Councilmembers present at the first meeting of the Council, every two years, to possess the powers of and perform the duties of the Mayor in the absence or disability of the Mayor.

III. FILLING MAYOR AND COUNCIL VACANCIES

The Charter addresses the filling of a Mayor or Council vacancy however in certain circumstances sections of the Code of Virginia may also apply. Legal counsel from the Town Attorney should be sought regarding this subject. Charter Sec. 3.5.

Charter Sec. 3.5. Vacancies on council.

Vacancies on the Council shall be filled for the unexpired portion of the term by a majority vote of the remaining members of the Council, if such vacancy shall occur two years or less before the date of expiration of such term. If the vacancy shall occur more than two years before the expiration of the term, the vacancy shall be filled by a majority vote of the remaining members of Council only until the next councilman election, at which election the qualified voters shall elect a person to serve as councilman for the remaining two years of the term. (1964, c. 47)

IV. COUNCIL-MANAGER GOVERNMENT

Originating in 1908 with Staunton, Virginia's provision by ordinance for the appointment of a

general manager, the Council-Manager plan has become the most widely accepted system of local government in the United States.

The plan is modeled after the American corporation, as opposed to the Mayor-Council plan which is modeled after the elected branches of government found in the U.S. Constitution.

In the Council-Manager plan, the governing body is composed of public-spirited citizens serving on a part-time basis to decide major policy issues, much in the same manner as the Board of Directors of a private corporation. The Mayor's role is to preside over Council meetings much like a Chairman of the Board. The Mayor and Councilmembers serve the interests of the citizens who elected them to office -- the stockholders of the corporation.

V. THE TOWN MANAGER'S ROLE IN TOWN GOVERNMENT

The Town Manager, who is a professionally trained public administrator charged with implementing the policies and directives of Town Council, is the Town's Chief Administrative Officer. The Town Manager has broad administrative authority with strict rules prohibiting political interference in administrative matters. Likewise, the Town Manager refrains from participating in partisan political activities which would impair professional administration.

Town Council delegates broad administrative power to the Town Manager subject to its continuing review. Qualifications, powers, and duties of the Town Manager are provided for in Article VI of the Charter. Delegated duties include the ability to:

- (a) To see that all laws and ordinances are enforced.;
- (b) To exercise supervision and control over all administrative departments and divisions.;
- (c) To attend all regular meetings of the Council, with the right to take part in the discussion, but having no vote.;
- (d) To recommend to the Council for adoption such measures as they may deem necessary or desirable.;
- (e) To execute all contracts on behalf of the Town.;
- (f) To prepare and submit to the Council the annual budget.;
- (g) To keep the Council advised as to the present and future needs of the Town and as to all operations of its government.;
- (h) To perform all such other duties as may be prescribed by the Charter or be required of him by the Council. (1964, c. 47).

staff are employees of the Town Manager. Thus, neither the Council nor any of its members should direct or request the appointment or removal of officers and employees in the administrative service of the Town.

Charter Article VI. The Manager

6-1. Appointment.

There shall be a Town Manager who shall be the chief executive officer of the Town and shall be responsible to the Council for the proper administration of the Town government. He shall be chosen by the Council without regard to his political beliefs and solely on the basis of his executive and administrative qualifications. He shall be appointed for an indefinite period and shall hold office during the pleasure of the Council. (1964, c. 47)

§ 6-2. Employees.

The Town Manager shall appoint for an indefinite term the heads of all departments and all other officers and employees of the Town. The Manager shall have the power to remove any officer or employee appointed by him. (1964, c. 47)

VI. COUNCIL/STAFF RELATIONSHIPS AND COMMUNICATIONS

Except for the purposes of inquiry and timely communication, the Council and its members should deal with that portion of administrative service for which the Manager is responsible through the Manager, and neither the Council nor any individual member should give orders or direction to any subordinate of the Manager, either publicly or privately. Any violation by a member of the Council should be brought to the immediate attention of the Council as a whole.

Information that would be difficult or time consuming to produce, however, or that relates to a current or future agenda item should be formally requested of the Town Manager, preferably during a Town Council meeting, rather than requested of an individual staff member. Work assignment and policy directions should come from the elected body as a whole and not from individual members. To avoid confusion and conflicting priorities, certain guidelines for Council/staff relationships must be followed. Councilmembers' initiatives generally fall into one of four categories:

CATEGORIES OF STAFF INITIATIVES FROM COUNCIL (Department Heads)

1. Requests for information readily available.
2. Follow-up for a constituent relative to a municipal problem or question.
3. Requests for information not readily available and requiring considerable staff time and research effort.
4. Initiation of a new priority or program.

Normally, Items 1 and 2 can be handled directly between the Town Councilmember and the department head. Items 3 and 4 should be channeled through the Town Manager. In the past, understanding and common sense have guided Council/staff relationships and difficulties have seldom developed.

If a Councilmember is less than satisfied with the channels of communication, he or she should approach the Town Manager who will work to improve the flow of information to and from key staff members.

VII. IMPLEMENTING THE WILL OF THE MAJORITY

Perhaps the most challenging aspect of Town Council/staff relationships arises when an issue lacks Council consensus. Once a vote is taken and the issue decided, however, Town Council speaks to the staff with a single voice. It is sometimes tempting for Councilmembers holding the minority view to pursue their viewpoint, first through staff and later with Council. Nevertheless, the Town staff must respond to the majority view, regardless of whether an individual Councilmember agrees, and regardless of whether or not the staff may agree. While staff may like to be responsive to each individual Councilmember, an impossible situation develops when staff is requested to accommodate a Councilmember apart from the Council-to-Manager-to-staff line of authority.

VIII. ROLE OF THE TOWN ATTORNEY

The Code of Virginia and the Town's Charter require that a Town Attorney be appointed.

Sec. 2-112. - Powers and duties generally.

The town attorney shall have the management, charge and control of all legal affairs of the town and shall be the legal adviser of the town council or any committee thereof, town officers and the several departments of the town government. When required by the mayor or town manager, he shall furnish written or verbal opinions upon any legal affairs of the town.
(Code 1981, § 2-23)

IX. ELECTRONIC COMMUNICATIONS

The widespread use of the electronic mail system (E-Mail) raises concerns over the appropriate communications among Councilmembers and between Council staff. All E-Mail communications among Councilmembers should be considered open to Freedom of Information Act inquiries. All E-Mail communications to and from staff members should be in accordance with established guidelines for staff inquiries.

As the custodian of record, the Town Clerk should be copied on all communications relating to town business. **DO WE NEED THIS?**

There are occasions when Councilmembers communicate among themselves electronically. These communications constitute public records under FOIA and are subject to release under FOIA. Communications marked “confidential” are not shared with the general public or any individual not privy to the confidential information. Merely marking a document “confidential,” however, does not guarantee exclusion from FOIA and the document may be considered a public record subject to release under FOIA.

At the start of a Town Councilmember’s term and at the request of the Town Councilmember, the Information Technology Department will provide an iPad for the member to use at home for the purpose of conducting business. In addition to the iPad, the Town will also establish an e-mail address at the Town and Internet access, if necessary.

X. COUNCIL REPRESENTATIVES ON VARIOUS COMMITTEES

The Town Council is represented on a number of committees and groups. These include ad hoc Town committees, VML policy committees, intergovernmental bodies, and various organizations in the community. Such representation is distinct from formal appointments to Boards and Commissions as provided in Part Four of this Handbook.

Representation originates in two main ways. Outside groups often invite the Council to participate in their activities. Alternatively, the Council as a whole, deeming its participation to be important, decides to send a representative to the committee or group.

See Part Four of this document for a current listing of Council representatives on committees.

XI. CONFLICT OF INTEREST RULES

To ensure citizens that the judgment of public officers and employees is not compromised or affected by inappropriate conflicts, the General Assembly adopted the Virginia State and Local Government Conflict of Interest Act. Violation is a criminal offense. To keep standards of conduct uniform throughout the Commonwealth, no local government may regulate conflict of interest more strictly than the Virginia Code. The law requires all Councilmembers to:

- Disclose financial interests when appropriate.
- Refrain from contracting for business with the local government.
- Abstain from voting on items of personal interest that apply solely to the Councilmember or that prevent impartial voting.
- Not engage in unethical conduct, such as accepting anything of value or disclosing confidential information.

The Town Attorney and the local Commonwealth's Attorney are the proper persons to turn to for competent legal advice concerning conflict of interest questions. As a member of a local governing body, Councilmembers are entitled by statute to obtain a formal opinion from the local Commonwealth's Attorney. A Councilmember cannot be prosecuted for violating the Act if he acts based on a written opinion of the Commonwealth's Attorney (assuming full disclosure of all the relevant facts). VML. Provisions of Virginia's Conflict of Interest Act concerning financial disclosure apply to councilmembers of all cities and towns with populations greater than 3,500.

XII. STATEMENTS OF ECONOMIC INTERESTS AND DISCLOSURE OF REAL ESTATE HOLDINGS

Generally, in January of each year, the Town Clerk will supply a Statement of Economic Interests to members of Council. A Disclosure of Real Estate Holdings is provided to the Town Manager and members of boards and commissions as required by State Code. The required forms must be filed by February 1, respectively.

XIII. CAMPAIGN FINANCIAL DISCLOSURE ACT

The Warrenton Town Council adopted the provisions of Chapter 9.3, Campaign Disclosure Act of 2006, Title 24.2, Elections, of the Code of Virginia, making the act apply with necessary changes to all elections for Town offices in the Town and to participants therein. (Warrenton Town Code, Chapter 2 (Administration), Section 2.23 (Campaign Financial Disclosure Act))

Code Sec. 2-23 - Campaign Finance Disclosure Act.

Code of Virginia, Chapter 9.3, Campaign Finance Disclosure Act of 2006, of title 24.2, Elections, as amended, shall be applicable to elections for town offices in the town pursuant to Code of Virginia, § 24.2-945, as amended.

(Ord. No. 2014-04, 12-9-14)

XIV. CODE OF ETHICS

The Town Council has adopted for itself the Code of Ethics. To the extent the Town's Code of Ethics conflicts with Virginia Law (e.g. Virginia State and Local Government Conflict of Interest Act, Virginia Freedom of Information Act), State Law shall prevail. The Town of Warrenton Code of Ethics follows:

TOWN OF WARRENTON CODE OF ETHICS

The Town Council adopted the attached Code of Ethics at its meeting on August 9, 2016. The Code addresses how members will conduct themselves in an ethical manner to earn and maintain the public's full confidence for integrity.

The Code of Ethics is adopted for execution by each elected or appointed member of a Town public body, including the Mayor and Town Council Members, the Planning Commission, Board of Zoning Appeals and Architectural Review Board.

Preamble

The citizens and businesses of Town of Warrenton, Virginia, are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity. In keeping with the Town of Warrenton's Commitment to Excellence, the effective functioning of democratic government therefore requires that public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government; that public officials be independent, impartial and fair in their judgment and actions; that public office be used for the public good, not for personal gain; and that public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Town of Warrenton Town Council has adopted this Code of Ethics for members of the Council and of the Town's boards, commissions and committees to assure public confidence in the integrity of local government and its effective and fair operation.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of the Town of Warrenton and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims, and transactions coming before the Town of Warrenton Town Council, boards, commissions, and committees.

2. Conduct of Members

The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the Town Council, boards, commissions, and committees, the staff or public.

3. Respect for Process

Members shall perform their duties in accordance with the processes and rules of order established by the Town Council and boards, committees, and commissions governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the Town Council by Town staff.

4. Conduct of Public Meetings

Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

5. Decisions Based on Merit

Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

6. Communication

Members shall publicly share substantive information that is relevant to a matter under consideration by the Town Council or boards, committees and commissions, which they may have received from sources outside of the public decision-making process.

7. Conflict of Interest

In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest, or where they have an organizational responsibility or personal relationship that may give the appearance of a conflict of interest.

In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and they shall abstain from participating in deliberations and decision-making where conflicts may exist.

8. Gifts and Favors

Members shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action or give the appearance of being compromised.

9. Confidential Information

Members shall respect the confidentiality of information concerning the property, personnel, or affairs of the Town. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial, or other private interests.

10. Use of Public Resources

Members shall not use public resources that are not available to the public in general, such as Town staff time, equipment, supplies or facilities, for private gain or personal purposes.

11. Representation of Private Interests

In keeping with their role as stewards of the public interest, members of the Council shall not appear on behalf of the private interests of third parties before the Town Council or any board, committee, commission or proceeding of the Town, nor shall members of boards, committees or commissions appear before their own bodies or before the Town Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.

12. Advocacy

Members shall represent the official policies or positions of the Town Council, boards, commissions or committees to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the Town of Warrenton, nor will they allow the inference that they do.

13. Policy Role of Members

The Town Council determines the policies of the Town with the advice, information and analysis provided by the public, boards, commissions, and committees, and Town staff. The Town Council delegates authority for the administration of the Town to the Town Manager.

Members therefore shall not interfere with the administrative functions of the Town or the professional duties of Town staff; nor shall they impair the ability of staff to implement Council policy decisions.

In order to prioritize staff time, members shall not cause Town staff to spend more than one hour of time on any project without the specific approval of all Councilmembers in a majority vote in an open meeting, unless such time is the result of a closed session discussion involving duly authorized projects such as work on litigation, the sale or purchase of real property, etc. Any project requiring more than one hour by staff shall be brought to the attention of the Town Manager and Mayor who shall place the project for discussion upon the next Town Council meeting's agenda.

14. Independence of Board and Commissions

Because of the value of the independent advice of boards, committees and commissions to the public decision-making process, members of the Town Council shall refrain from using their positions to unduly influence the deliberations or outcomes of board, committee or commission proceedings.

15. Positive Work Place Environment

Members shall support the maintenance of a positive and constructive work place environment for Town employees and for citizens and businesses dealing with the Town. Members shall recognize their special role in dealings with Town employees and in no way create the perception of inappropriate direction to staff.

16. Implementation

As an expression of the standards of conduct for members expected by the Town, the Town of Warrenton Code of Ethics is intended to be self-enforcing. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, ethical standards shall be included in the regular orientations for candidates for the Town Council, applicants to boards, committees and commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming they have read and understood the Town of Warrenton Code of Ethics. In addition, the Town Council, boards, committees and commissions, shall annually review the Code of Ethics and the Town Council shall consider recommendations from boards, committees and commissions to update it as necessary.

17. Compliance and Enforcement

The Town of Warrenton Code of Ethics expresses standards of ethical conduct expected of members of the Town Council, boards, committees and commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

The chairs of boards, committees and commissions and the Mayor have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics are brought to their attention.

The Town Council may impose sanctions on members whose conduct does not comply with the Town's ethical standards, such as reprimand, formal censure, loss of seniority or committee assignment, or budget restriction. Where allowed by law, the Town Council also may remove members of Town-appointed boards, committees and commissions from office.

A violation of this Code of Ethics shall not be considered a basis for challenging the validity of a Town Council, board, and committee or commission decision.

PART TWO

I. TOWN COUNCIL MEETINGS

The Warrenton Town Council meets for regular meetings in the Council Chambers at 21 Main Street, Warrenton, Virginia at 6:30 p.m. on the second Tuesday of each month. The Town Council may by resolution prescribe any public place or prescribe a day or time other than those established in this section, for a regular meeting of the Town Council.

Special meetings may be called at any time by the Mayor, the Town Manager, or any four members of the Council, and shall prescribe the method of giving notice thereof, provided such notice shall contain a statement of the specific item or items of business to be transacted, and no other business shall be transacted at such meetings except by the unanimous consent of all the members of Council; provided, however, that a special meeting may be held at any time without notice if all members of the Council attend said meeting or waive notice thereof. (1964, c. 47)

If the day established for a regular meeting falls on a legal holiday, that meeting shall be held on the next duty day at 6:30 p.m. in the Council Chambers Building.

- Public Hearings as required by law or Council policy. Public hearings may cover subjects such as proposed budgets, proposed Comprehensive Plan amendments, rezoning and special exceptions.
- Reports and Recommendations from Town Manager, Town Attorney and departments.
- Ordinances and Resolutions which are legal instruments whereby Council establishes public policy either in the form of local laws (ordinances) or formal statements of fact and intent (resolutions).

II. OPEN MEETING LAW

The Virginia Freedom of Information Act (FOIA), generally requires that all meetings of the Council as well as most other public bodies, such as Planning Commissions, Boards of Zoning Appeals, School Boards, Redevelopment and Housing Authorities, be open to the public. It is important to note that committees appointed by Council or any other public body subject to the FOIA must also be open to the public. Therefore, all committees appointed by Council, whether composed of selected members of Council or of non-council persons or a mixture, and regardless of number are subject to the FOIA's public meeting requirement. Section 2.2-3702. of the Act states that public officials shall read and familiarize themselves with the provisions of the Virginia Freedom of Information Act.

The FOIA provides that in order to constitute a "meeting" a quorum must be present. Therefore, FOIA applies to regular meetings as well as gatherings of three or more Councilmembers where Town business is discussed. Likewise, FOIA also applies to regular meetings as well as gatherings of members of any committee or subcommittee appointed by or from Council where the business of such committee or subcommittee is discussed and

where a quorum of such committee or subcommittee is present. Except in the case of a committee or subcommittee consisting of at least four members (where a quorum would be three members), a meeting or gathering of two or more committee or subcommittee members at which the business of such committee or subcommittee is discussed constitutes a meeting covered by FOIA.

FOIA requires that Council and committees and subcommittees appointed by Council give advance written notice of every meeting to every citizen, including news media, who has requested to receive such notice. Council may require that the requests for notice be renewed annually. In addition, copies of agendas and materials distributed to Council must be simultaneously made available for public inspection. Unless exempted by the FOIA, all materials must be made available to the public. The Town Clerk typically handles the notice requirement to media for Council.

Information packets are posted electronically one week before the council meeting to Councilmembers and are made available to the public and press. Minutes must be kept of all meetings of Council, including work sessions and informal meetings at which no official action is taken. Votes are recorded in the minutes of the meeting. Secret ballots are prohibited by the Code of Virginia.

III. CLOSED MEETINGS

Meetings of the Council shall be open to the public except when the public welfare requires Closed Meetings. A Town Council or committee may go into Closed Meeting and exclude the public for certain stated reasons. More than 20 items are exempted from the Freedom of Information Act and may be discussed in a closed meeting. Closed Meeting issues typically involve:

- Personnel VA Code § 2.2-3711.1
- Property VA Code § 2.2-3711.3
- Legal briefings VA Code § 2.2-3711.7

The procedure for convening a Closed Meeting is as follows:

- (1) While in public session, a majority of Councilmembers must approve a motion to go into Closed Meeting. The motion must include the reason and a citation of the specific code section containing the FOIA exemption allowing the Closed Meeting. Exclusions are located in Section 2.2-3705.1 of the Virginia Code.
- (2) While in the Closed Meeting, Councilmembers may discuss only the subject mentioned in the motion.
- (3) Certify by recorded vote, after Council completes the Closed Meeting and returns to public session, that all the discussion in closed meeting was appropriate under the law. (See Code of Virginia text below.)

Code of Virginia Section 2.2-3712

“Now, therefore, be it resolved that the Town Council of Warrenton hereby certifies that, to the best of each member’s knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia Law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the Town Council of Warrenton.”

IV. SETTING THE MEETING AGENDA

All meeting agenda items which require formal Council action are placed on the agenda for consideration. The agendas for meetings are finalized and taken public approximately one week prior to the meeting. If an item involves a legal matter, it should be submitted in sufficient time to allow a review by the Town Attorney.

Councilmembers should forward requests for agenda items to the Town Manager and the Mayor at least three weeks prior to a work session. Department directors submit agenda items to the Town Manager to be included at the Manager’s discretion on the agenda depending on the topic and its importance. The Town Clerk is responsible for preparing and distributing the agenda. (See samples of information and guidelines sheet and agendas.)

WELCOME TO THE TOWN COUNCIL MEETING INFORMATION & GUIDELINES FOR PARTICIPATION

Thank you for taking the time to participate in your Town Council meeting. The Mayor and Council encourage participation whenever possible to make your voice heard.

Types of Agenda Items

Citizen's Time: Individuals may address the Council on any matter not listed on the agenda as a public hearing. This is your time to address your Council and share what's important to you. Each speaker has up to three minutes to address Council. When called to the podium, speakers should state their name and address for the record. Copies of written statements and supporting materials should be given to the Town Clerk for the record. The Mayor will establish the order of speakers and will maintain decorum. Citizen's Time is not designed as a question and answer session or a debate.

Work Sessions: Informal, informational meetings at which Council may discuss specific topics or receive an in-depth presentation from staff or an outside party on a particular topic. Generally, a Work Session aims to inform Council on a topic and for Councilmembers to give staff or others general direction.

Public Hearings: Formal proceedings held to hear from the public on a specific topic. All public hearings are advertised prior to the scheduled hearings, and the notices indicate where citizens can obtain information pertinent to matters scheduled for public hearings. Applicants, or representatives of the applicant, will be allowed to introduce information regarding the matter advertised for public hearing. Public hearings are intended to enable citizens to influence the public decision process based on prior research and discussions with appropriate public officials and to address only those issues pertinent to the matters advertised for public hearing. Public hearings are not question and answer sessions or debates, and all statements should be addressed to the Town Council.

Closed Sessions: In certain instances, the Virginia Freedom of Information Act permits the Town Council to hold a meeting where the public is excluded. Any action taken during a closed meeting must be ratified by a vote in a public session of Council.

Special Meetings: The Mayor or any four members of the Council may call a meeting or change the time of a meeting at any time once notice is given to all Councilmembers and the press. No business other than that for which the meeting is called may be transacted unless all members are present, in which case a majority vote of the Council may change this provision.

Consent Agenda: The consent agenda is used for eligible items and may include routine appropriations, grant applications, reports, contracts, resolutions, ordinances, second readings, and the minutes.

Rules of Decorum: Signs, placards, posters, or like material are not permitted in the Town Council Chamber, adjoining areas, or offices. Remain seated during the meeting unless called upon to stand for recognition as a speaker, official duties, physical necessity, or to enter or leave the meeting. The use of profane, vulgar, obscene, or threatening speech is not permitted and can result in removal from the meeting. Turn off or deactivate the sound from all cell phones or other electronic devices.

Persons with disabilities may request reasonable accommodations by contacting

(540)-347-1101. Persons are encouraged to make requests in advance.



TOWN COUNCIL REGULAR MEETING

21 Main Street

Wednesday, March 15, 2023 at 9:00 AM

AGENDA

Possible additions to the agenda and related materials are not set forth herein.

Times set forth are approximate and may be adjusted as necessary.

I. WORKSESSION - 9:00 AM

- A. **Work Sessions:** Informal, informational meetings at which Council may discuss specific topics or receive an in-depth presentation from staff or an outside party on a particular topic. Generally, a Work Session aims to inform Council on a topic and for Councilmembers to give staff or others general direction.
- B. **Closed Sessions:** In certain instances, the Virginia Freedom of Information Act permits the Town Council to hold a meeting where the public is excluded. Any action taken during a closed meeting must be ratified by a vote in a public session of Council.
- C. **New Business:** New topics being brought to Council that require action and further discussion. Items may be brought forth from the work session or from previous discussions with Council.

II. REGULAR MEETING - 6:30 PM

A. INVOCATION.

B. PLEDGE OF ALLEGIANCE.

C. CITIZEN'S TIME.

- 1. **Citizen's Time:** Individuals may address the Council on any matter not listed on the agenda as a public hearing. This is Their time to address the Council and share what's important to them. Each speaker has up to three minutes to address Council. When called to the podium, speakers should state their name and address for the record. Copies of written statements and supporting materials should be given to the Town Clerk for the record. The Mayor will establish the order of speakers and will maintain decorum. Citizen's Time is not designed as a question and answer session or a debate.

D. PROCLAMATIONS AND RECOGNITIONS.

E. APPROVAL OF THE AGENDA.

F. PUBLIC HEARINGS.

- 2. **Public Hearings:** Formal proceedings held to hear from the public on a specific topic.

All public hearings are advertised prior to the scheduled hearings, and the notices indicate where citizens can obtain information pertinent to matters scheduled for public hearings. Applicants, or representatives of the applicant, will be allowed to introduce information regarding the matter advertised for public hearing. Public hearings are intended to enable citizens to influence the public decision process based on prior research and discussions with appropriate public officials and to address only those issues pertinent to the matters advertised for public hearing. Public hearings are not question and answer sessions or debates, and all statements should be addressed to the Town Council.

G. CONSENT AGENDA.

1. **Consent Agenda:** The consent agenda is used for eligible items and may include routine appropriations, grant applications, reports, contracts, resolutions, ordinances, second readings, and the minutes. The consent agenda is designed for non contentious topics that do not require discussion for approval. If an item is on the Consent Agenda that Council wishes to discuss, a motion may be made to amend the agenda to move it to a more appropriate area for discussion.
1. APPROVAL OF COUNCIL MINUTES.
 2. **Minutes:** Minutes are the written record of the proceedings of the Town Council. They are provided for review in the Town Council packet. Once voted on, they act as the official record of business for the Town Council.
3. QUARTERLY DEPARTMENT REPORTS.
 - a. Quarterly Finance Department Report
 - b. Quarterly Parks and Recreation Department Report
 - c. Quarterly Police Department Report.
 - d. Quarterly Community Development Report
 - e. Quarterly Public Works and Utilities Department Report

D. NEW BUSINESS.

E. UNFINISHED BUSINESS.

1. **Unfinished Business:** Topics that the Council has been briefed on that require action or update and are open again for discussion at the meeting.

F. TOWN ATTORNEY'S REPORT.

1. **Town Attorney's Report:** A report given by the Town Attorney updating the Council on legal matters, court proceedings, and general topics of work that the Town Attorney is currently engaged with.

G. TOWN MANAGER'S REPORT.

1. **Town Managers Report:** An opportunity to provide an update to the Town Council from the Town manager. Updates may include upcoming topics for meetings, upcoming events, employee highlights, or challenges that may be faced by Council in the future.

H. COUNCILMEMBERS TIME.

1. **Council Members time:** This is the Council Member's opportunity to speak and address those gathered at the meeting. This is not designed as a response to Citizen's time and the comments made then. This is a chance to update the Citizens on your views, happenings in your Ward or around Town, and tell the Citizens what is important to each Council Member.

I. ADJOURNMENT.

V. MAYOR AS PRESIDING OFFICER

The Mayor presides at every meeting of the Council and at the hour appointed, calls the Council to order, provided a quorum is present. The Mayor signs various ordinances and resolutions on behalf of the Council. All legislative actions are certified by the Town Recorder.

The Mayor preserves order and, with the assistance of the Town Attorney and Town Clerk, speaks to and decides all points of order. The Mayor has control of the Council Chamber and the connecting halls and corridors. In case of a disturbance or disorderly conduct, the Mayor may order the same to be cleared.

The Vice Mayor presides in the Mayor's absence. Warrenton Town Code Section 2.36.

VI. ORDER OF BUSINESS

1. Call to Order
2. Invocation
3. Pledge of Allegiance to the United States of America
4. Citizen Comments
5. Proclamations and Recognitions
6. Approval of the Agenda
7. Public Hearings
8. Consent Agenda
9. New Business
10. Unfinished Business
11. Town Attorney's report
12. Town Manager's report
13. Council Member's time
14. Adjournment

VII. PUBLIC PARTICIPATION IN COUNCIL MEETINGS

The public is invited to speak on all public hearing items. The public is also permitted to speak on any topic not listed as a public hearing item during the "Citizens Time" portion of the meeting. The Chair will recognize all speakers, who shall state their name and address for the record; have up to three minutes to address council; and may only address Council once on each topic unless called back by the Chair at the request of Council.

Citizen's Time: Individuals may address the Council on any matter not listed on the agenda as a public hearing. This is Their time to address the Council and share what's important to them. Each speaker has up to three minutes to address Council. When called to the podium, speakers should state their name and address for the record. Copies of written statements and supporting materials should be given to the Town Clerk for the record. The Mayor will establish the order of speakers and will maintain decorum. Citizen's Time is not designed as a question and answer session or a debate.

Public Hearings: Formal proceedings held to hear from the public on a specific topic. All public hearings are advertised prior to the scheduled hearings, and the notices indicate where citizens can obtain information pertinent to matters scheduled for public hearings. Applicants, or representatives of the applicant, will be allowed to introduce information regarding the matter advertised for public hearing. Public hearings are intended to enable citizens to influence the public decision process based on prior research and discussions with appropriate public officials and to address only those issues pertinent to the matters advertised for public hearing. Public hearings are not question and answer sessions or debates, and all statements should be addressed to the Town Council.

VIII. ORDINANCES AND RESOLUTIONS

A copy of each ordinance or resolution is included in the Warrenton Town Council agendas.

No ordinance can be passed, or resolution adopted that appropriates money, levies taxes and licenses without a two- thirds vote of Council Members. Virginia State Code § 15.2-1427.

NEED CITATION

IX. ELECTRONIC PARTICIPATION

Electronic participation in meetings is governed by Virginia State Code § 2.2-3708.3. A Resolution was passed at a special meeting on November 7th, 2022 updating the policy.

Town Policy – Remote electronic participation in meetings.

It is the policy of the Town Council of the Town of Warrenton that individual Town Council Members may participate in meetings of the Town Council by electronic means as permitted by Virginia State Code § 2.2-3708.3. This policy shall apply to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

Whenever an individual member wishes to participate from a remote location, the law requires a quorum of the Town Council to be physically assembled at the primary or central meeting location, and there must be arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location. The reason that the member is unable to attend the meeting and the remote location from which the member participates must be recorded in the meeting minutes.

Automatic Approval with Vote if Challenged

Individual participation from a remote location shall be approved unless such participation would violate this policy or the provisions of the Virginia Freedom of Information Act. IF a member's participation from a remote location is challenged, the Town Council of the Town of Warrenton shall vote whether to allow such participation. If the Town Council of the Town of Warrenton votes to disapprove of the member's participation because such participation.

X. ORGANIZATIONAL MEETINGS

The biennial organizational meeting of the Council is traditionally at the first regular meeting in January every other year. The first order of business is for Council to consider a resolution adopting the schedule of meetings for the Town Council and to consider a resolution electing a vice mayor for the electing term.

XI. RULES OF CONDUCT DURING COUNCIL MEETINGS

Robert's Rules of Order is the classic statement of present-day parliamentary procedure. Familiarity with and use of Robert's Rules provides the means whereby the affairs of the Council can be controlled by the general will of the members. Council meetings can proceed in a controlled and predictable manner, allowing the business of the citizens of Warrenton to be handled in a direct, constructive and democratic manner. The following rules of conduct are adapted from the pages of Henry M. Robert's time-honored book and merit the Council's special attention.

PROCEDURES FOR SMALL BOARDS

Since the Town Council is relatively small compared with other organizations using Robert's Rules, some of the procedural formality can be dispensed with. The following Procedures for Small Boards from Robert's Rules is modified for use by the Warrenton Town Council. Modifications to Robert's Rules for Small Boards are noted in italics.

- While members are required to obtain the floor before making motions or speaking, they may do so while seated. (Text normally reads that members are not required to obtain the floor beforehand.)
- Motions must be seconded. (Text normally reads, "Motions need not be seconded.")
- No limit is placed on the number of times a member may speak to a question. However, motions to close or limit debate may be entertained. (Text normally reads that such motions "should not be entertained.")
- Informal discussion of a subject is permitted while no motion is pending. It is normally expected, however, that discussion will follow a motion on the floor.
- Sometimes when a proposal is perfectly clear to all present, a vote can be taken without a motion having been introduced. Unless agreed to by general consent, however, all proposed actions of a board must be approved by vote under the same rules as other assemblies, except that a vote can be taken initially by a show of hands. Normally, the ayes and nays on any question must be recorded. Code Sec. 2-29.
- The chairman can speak in discussion without rising or leaving the chair, can make motions, and votes on all questions.

MEMBER CONDUCT

Every member who wishes to speak must first respectfully address the Mayor / Chair, and not proceed until recognized by the Mayor / Chair. They will confine themselves to the immediately pending question and avoid mentioning all personalities. No member shall address the Chair out of his place, nor interrupt another without the consent of the member who has the floor, except when making a point of order.

The member upon whose motion is subject to debate is first entitled to the floor and is entitled to close debate after each member who wishes to speak has been allowed to do so.

COUNCIL VOTING

In most instances, the affirmative vote of a majority of the members elected to Council present at a regular or special meeting at which a quorum is present and voting shall be necessary to adopt any ordinance, resolution, or pass other matters presented to the Council. Four members constitute a quorum. However, some ordinances and resolutions appropriating money, imposing taxes or authorizing the borrowing of money shall only pass by a recorded affirmative vote of a majority of all Councilmembers. In some cases, as prescribed by Code, a super majority of all Councilmembers may be required. Every member present at a Council meeting when a question is put shall give his vote, unless excused by the Chair. All votes are recorded in the minutes of the meeting. Secret ballots are prohibited.

After a vote is announced, no member shall change his vote without the consent of the Council. The right to change a vote shall be limited to the current meeting and not continue for any subsequent.

KEY PASSAGES FROM ROBERTS RULES

Several key passages are included to help familiarize Councilmembers with Robert's Rules. The Town Clerk and Town Attorney serve as the parliamentarian of the Council, and should be consulted on the proper application of Robert's Rules and applicable laws.

Obtaining the Floor (RR § 3). Before a member can make a motion, or address the Council in debate, it is necessary that he/she should obtain the floor -- that is, he/she must address the presiding officer by official title, thus, "Madame Mayor, Mayor or Mayor Smith." If the member is entitled to the floor, the chair recognizes them by name.

Main Motions (RR § 4). A motion is made by a member obtaining the floor and saying, "I move that," and then stating the proposed action. Typically, no member can make two motions at a time except by general consent. Main motions, which introduce business, take precedent over nothing. That is, they cannot be made when another question is before the assembly. Privileged, incidental, and subsidiary motions may be made while a main motion is pending.

That the motion be stated by the chair for the benefit of the Council and audience. The fact that a motion has been made does not put it before the Council. The chair alone can put a motion before the Council. The chair must either rule the motion out of order or state the question so that all may know the immediately pending question.

Debate (RR § 7). After a question has been stated, it is before the Council for consideration and action. All but a few motions are subject to debate. Debate must be limited to the merits of the immediately pending question -- that is the last question stated by the Chair. Speakers must address their remarks to the Chair, be courteous in their language, avoid all personalities, and never allude to the motives of members.

Amendments (RR § 33). Amendments may be made on all motions except those listed by Robert's Rules.

The motion to amend is made in a form similar to this: "I move to amend the resolution by inserting (or striking or substituting) the word 'very' before the word 'good';" or simply "I move to insert (or strike or substitute) 'very' before 'good'."

An amendment can be amended itself, but this "amendment to an amendment" cannot be amended. In other words, an amendment of the third degree would be too complicated and is not in order.

An amendment of a pending question requires only a majority vote for its adoption, even though the question to be amended requires higher threshold (ex., two-thirds or unanimous vote).

Robert's Rules lists a number of improper amendments in Section 33, including ones that are not germane to the question being amended, or are identical to questions previously decided.

Reconsideration of a motion (RR § 36). A motion to reconsider a previous vote must be made by one who voted with the prevailing side. Normally, a reconsideration motion can only be made on the day that the original vote was taken, or on the day of the next succeeding Council meeting. The motion to reconsider cannot interrupt pending business. However, as soon as the pending item is disposed of, it can be called up with preference over other main motions and general orders.

Rescind, Repeal, or Annul (RR § 37). Any vote taken by the Council, except those listed by Robert's Rules, may be rescinded by a majority vote, provided notice has been given at the previous meeting or in the call for this meeting. When no notice is given, a two-thirds vote or majority vote of the elected Council is required.

The motion to rescind can be applied to votes on all main motions. It is itself a main motion without any privilege, and therefore can only be introduced when there is nothing else before the assembly. It may be made by any member, and is debatable.

Among the votes that Robert's Rules specifies cannot be rescinded are ones that occur:

- After something has been done as a result of that vote that the Council cannot undo; or,
- Where it is in the nature of a contract and the other party is informed of the fact; or,
- Where a resignation has been acted upon.

Quick Reference

	Must Be Seconded	Open for Discussion	Can be Amended	Vote Count Required to Pass	May Be Reconsidered or Rescinded
Main Motion	✓	✓	✓	Majority	✓
Amend Motion	✓	✓		Majority	✓
Limit Debate	✓		✓	2/3rds	✓
Close Discussion	✓			2/3rds	✓
Recess	✓		✓	Majority	
Adjourn (End meeting)	✓			Majority	
Refer to Committee	✓	✓	✓	Majority	✓
Postpone to a later time	✓	✓	✓	Majority	✓
Table	✓			Majority	
Postpone Indefinitely	✓	✓	✓	Majority	✓

PART THREE

TOWN COUNCIL POLICY MAKING PROCESS

I. BIENNIAL GOAL SETTINGS POLICY AND PROCEDURES

The Town recognizes the importance of setting specific goals. Goals provide both a means of sorting out priorities, and a standard against which to measure effectiveness. More than any other determinant, stated goals drive the budget. Goal setting is an integral part of the budget process.

The chart included in this section outlining the two-year election cycle fits well with a biennial goal setting cycle.

WARRENTON TOWN COUNCIL

2035 VISION STRATEGIC

PLAN

In the year 2035, Warrenton is an innovative town where history and heritage are respected and where people and their involvement matter. Warrenton's inclusiveness and sense of community foster empowerment in each resident. Its unique character and charm attract and nurture a wide variety of people and businesses. Warrenton is the heart of an expanded community where arts and entertainment enrich the quality of life and bring people together. Our environmental stewardship assures Warrenton's future as a healthy and sustainable town.

*Warrenton thrives in 2035
by:*

Honoring People

Celebrating Community Spirit

Enriching Lives through Arts and Entertainment

Championing Business and Technology

Cultivating a Sustainable Environment

PART FOUR

I. APPOINTMENTS

Current as of January 2023

Board or Committee	Name	Residency	Term Expiration
Architectural Review Board			
Four Year Term			
* may or May not be a Town resident			
	Steve Wojcik	Town resident	12/31/2025
	Laura Bartee	Architect*	12/31/2025
	Virginia Gerrish	Town resident	12/31/2025
	Karen		
	Lavarnway	Town resident	12/31/2025
	John Thorsen	Town resident	
 BOARD OF ZONING APPEALS			
Five Year Term			
	Amos Crosgrove	Town resident	12/31/2026
	Larry Kovalik	Town resident	12/31/2026
	Melea Maybach	Town resident	12/31/2026
	Betsy Sullivan	Town resident	12/31/2026
	Vacant		
 Planning Commission			
Four Year Term			
	Terry Lasher	Town Resident	
	Diane Barbour		
	James Lawrence		
	Ryan Stewart		
	Steve Ainsworth		
	Vacant		
	Vacant		



Office of the Town Manager

Tommy Cureton

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor
Heather Sutphin, Ward 1
William Semple, Ward 2
Brett Hamby, Ward 3
James Hartman, Ward 4 Vice Mayor
Jay Heroux, Ward 5
Paul Mooney, At Large
David McGuire, At Large

Item E.

Council Meeting Date:	March 14, 2023
Agenda Title:	Town Council Handbook- Ethics Statement
Requested Action:	Provide Feedback to Staff on the Town Council Handbook Draft
Department / Agency Lead:	Town Clerk
Staff Lead:	Stephen Clough

BACKGROUND

At the Town Council Meeting on August 9th, 2016 The Town Council adopted the included Code of Ethics. This adoption was to address how the Town Council would conduct themselves in an ethical manner to earn and maintain the public's full confidence for integrity. The Code of Ethics is adopted for execution by each elected or appointed member of a Town public body, including the Mayor and Town Council Members, the Planning Commission, Board of Zoning Appeals and Architectural Review Board and citizen Committee Members. It includes a statement of affirmation by individual members of each body to sign and date.

Christophe E. Martino, former Interim Town Manager, suggested looking at the State of Virginia's Ethics Statement for a potential replacement of the current Ethics Statement. [The Virginia Department of Professional and Occupational Regulation Code of Ethics is as follows.](#)

1. Act with integrity in all relationships.
2. Dedicate our efforts toward earning the respect, trust and confidence of elected and appointed officials, those with whom we work and the public.
3. Promote the well-being of the public and our employees.
4. Perform our jobs in an effective and efficient manner and commit to the highest ideals in the stewardship of public resources.
5. Exercise prudence and integrity in managing the Commonwealth's finances.
6. Provide all reports and information in conformance with applicable laws, regulations and professional standards.
7. Strive for professional excellence by maintaining and enhancing professional knowledge, skills and abilities for our colleagues and ourselves.
8. Strive to provide performance and counsel of the highest quality.
9. Treat all persons in an evenhanded, respectful and courteous manner.
10. Abide by the employee Standards of Conduct issued by the Department of Human Resource Management and related regulations.
11. Hold ourselves accountable for adhering to this Code of Ethics.
12. Not allow conflicts of interest between our professional roles and ourselves.
13. Not use public resources for political purposes or personal gain.
14. Not knowingly sign, subscribe to or permit issuance of any information that contains a misstatement or omits a material fact.
15. Not knowingly conduct or condone any illegal or improper activity by others.

STAFF RECOMMENDATION

Staff recommends a review of the Town Council Ethics Statement for feedback and adoption at a future Town Council meeting.

Fiscal Impact

There is no additional fiscal impact from the Town Council Handbook

Legal Impact

ATTACHMENTS

TOWN MISSION AND VALUES STATEMENTS

Mission: In Cooperation With and For Our Citizens ... The Mayor, Town Council and the Staff of Warrenton are dedicated to providing public safety, economic opportunity, and quality public services in an attractive, well-planned community with historic character for the benefit, enjoyment and accessibility of all.

Values: To Achieve Our Mission, We Strive To. . . Provide high level services in a cost-effective manner; display honesty, respectfulness, and fairness in all relationships; support the health and economic well-being of our citizens and businesses; preserve our historic small-town character; encourage opportunities, services and infrastructure that allow people of all means to live, work and visit here; and address public concerns and opportunities promptly and effectively.

We recognize our Mission can be achieved only by the exchange of information and that through team work we can maintain an environment in which we can maximize our potential.

TOWN OF WARRENTON CODE OF ETHICS

The Town Council adopted the attached Code of Ethics at its meeting on August 9, 2016. The Code addresses how members will conduct themselves in an ethical manner to earn and maintain the public's full confidence for integrity.

The Code of Ethics is adopted for execution by each elected or appointed member of a Town public body, including the Mayor and Town Council Members, the Planning Commission, Board of Zoning Appeals and Architectural Review Board.

Preamble

The citizens and businesses of Town of Warrenton, Virginia, are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity. In keeping with the Town of Warrenton's Commitment to Excellence, the effective functioning of democratic government therefore requires that public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government; that public officials be independent, impartial and fair in their judgment and actions; that public office be used for the public good, not for personal gain; and that public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Town of Warrenton Town Council has adopted this Code of Ethics for members of the Council and of the Town's boards, commissions and committees to assure public confidence in the integrity of local government and its effective and fair operation.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of the Town of Warrenton and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims, and transactions coming before the Town of Warrenton Town Council, boards, commissions, and committees.

2. Conduct of Members

The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the Town Council, boards, commissions, and committees, the staff or public.

3. Respect for Process

Members shall perform their duties in accordance with the processes and rules of order established by the Town Council and boards, committees, and commissions governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the Town Council by Town staff.

4. Conduct of Public Meetings

Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

5. Decisions Based on Merit

Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

6. Communication

Members shall publicly share substantive information that is relevant to a matter under consideration by the Town Council or boards, committees and commissions, which they may have received from sources outside of the public decision-making process.

7. Conflict of Interest

In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest, or where they have an organizational responsibility or personal relationship that may give the appearance of a conflict of interest.

In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and they shall abstain from participating in deliberations and decision-making where conflicts may exist.

8. Gifts and Favors

Members shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action or give the appearance of being compromised.

9. Confidential Information

Members shall respect the confidentiality of information concerning the property, personnel or affairs of the Town. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

10. Use of Public Resources

Members shall not use public resources that are not available to the public in general, such as Town staff time, equipment, supplies or facilities, for private gain or personal purposes.

11. Representation of Private Interests

In keeping with their role as stewards of the public interest, members of the Council shall not appear on behalf of the private interests of third parties before the Town Council or any board, committee, commission or proceeding of the Town, nor shall members of boards, committees or commissions appear before their own bodies or before the Town Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.

12. Advocacy

Members shall represent the official policies or positions of the Town Council, boards, commissions or committees to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the Town of Warrenton, nor will they allow the inference that they do.

13. Policy Role of Members

The Town Council determines the policies of the Town with the advice, information and analysis provided by the public, boards, commissions, and committees, and Town staff. The Town Council delegates authority for the administration of the Town to the Town Manager.

Members therefore shall not interfere with the administrative functions of the Town or the professional duties of Town staff; nor shall they impair the ability of staff to implement Council policy decisions.

In order to prioritize staff time, Members shall not cause Town staff to spend more than one hour of time on any project without the specific approval of all Council Members in a majority vote in an open meeting, unless such time is the result of a closed session discussion involving duly authorized projects such as work on litigation, the sale or purchase of real property, etc. Any project requiring more than one hour by staff shall be brought to the attention of the Town Manager and Mayor who shall place the project for discussion upon the next Town Council meeting's agenda.

14. Independence of Board and Commissions

Because of the value of the independent advice of boards, committees and commissions to the public decision-making process, members of the Town Council shall refrain from using their positions to unduly influence the deliberations or outcomes of board, committee or commission proceedings.

15. Positive Work Place Environment

Members shall support the maintenance of a positive and constructive work place environment for Town employees and for citizens and businesses dealing with the Town. Members shall recognize their special role in dealings with Town employees and in no way create the perception of inappropriate direction to staff.

16. Implementation

As an expression of the standards of conduct for members expected by the Town, the Town of Warrenton Code of Ethics is intended to be self-enforcing. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, ethical standards shall be included in the regular orientations for candidates for the Town Council, applicants to boards, committees and commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming they have read and understood the Town of Warrenton Code of Ethics. In addition, the Town Council, boards, committees and commissions, shall annually review the Code of Ethics and the Town Council shall consider recommendations from boards, committees and commissions to update it as necessary.

17. Compliance and Enforcement

The Town of Warrenton Code of Ethics expresses standards of ethical conduct expected of members of the Town Council, boards, committees and commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

The chairs of boards, committees and commissions and the Mayor have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics are brought to their attention.

The Town Council may impose sanctions on members whose conduct does not comply with the Town's ethical standards, such as reprimand, formal censure, loss of seniority or committee assignment, or budget restriction. Where allowed by law, the Town Council also may remove members of Town-appointed boards, committees and commissions from office.

A violation of this Code of Ethics shall not be considered a basis for challenging the validity of a Town Council, board, and committee or commission decision.

**A RESOLUTION TO ADOPT UPDATED MISSION AND VALUES
STATEMENTS AND CODE OF ETHICS FOR THE MEMBERS OF THE
WARRENTON TOWN COUNCIL AND FOR THE MEMBERS OF ALL BOARDS,
COMMITTEES AND COMMISSIONS APPOINTED BY THE TOWN COUNCIL**

WHEREAS, the Town Council has determined that the adoption of a Mission and Values Statements and Code of Ethics for its members and the members of all Council-appointed boards, committees and commissions will assist in achieving these ends; and

WHEREAS, the citizens and businesses of the Town of Warrenton are entitled to have fair, ethical and accountable local government which has earned the public's full confidence; and

WHEREAS, in keeping with Town Council's commitment to excellence, all public officials, both elected and appointed, must comply with both the letter and spirit of the laws and policies affecting the operation of government; and

WHEREAS, all public officials, both elected and appointed, are required to be impartial and fair in their judgment and actions and ensure that public office is used for the public good; and; now therefore, be it

RESOLVED by the Town Council 14th day of July, 2022 that the following Mission and Value Statements and Code of Ethics is hereby adopted.

Model of Excellence
Town of Warrenton Town Council, Boards, Committees and Commissions

MEMBER STATEMENT

As a member of the Town Council, or of a Town of Warrenton board, committee or commission, I agree to uphold the Code of Ethics for elected and appointed officials adopted by the Town and conduct myself by the following model of excellence. I will:

- Recognize the worth of individual members and appreciate their individual talents, perspectives and contributions;
- Help create an atmosphere of respect and civility where individual members, Town staff and the public are free to express their ideas and work to their full potential;
- Conduct my personal and public affairs with honesty, integrity, fairness and respect for others;
- Respect the dignity and privacy of individuals and organizations;
- Keep the common good as my highest purpose and focus on achieving constructive solutions for the public benefit;
- Avoid and discourage conduct which is divisive or harmful to the best interests of the Town of Warrenton;
- Treat all people with whom I interact in the manner I wish to be treated;

I affirm that I have read and understand the Town of Warrenton Code of Ethics.

Name (printed): _____

Signature: _____

Date: _____

E X P E R I E N C E



Brandie Schaeffer
TOWN MANAGER
T(540) 347-1101
bschaeffer@warrentonva.gov

TOWN COUNCIL
H.E. Carter Nevill, Mayor
Renard J. Carlos
Sean M. Polster
Heather D. Sutphin
William T. Semple II
Brett A. Hamby
James N. Hartman III
Kevin T. Carter

TO: Town of Warrenton Town Council Members

FROM: Brandie Schaeffer, Town Manager

DATE: June 30, 2020

RE: Code of Ethics Statements

The Town Council adopted the attached Code of Ethics at its meeting on August 9, 2016. The Code addresses how members will conduct themselves in an ethical manner to earn and maintain the public's full confidence for integrity.

The Code of Ethics is adopted for execution by each elected or appointed member of a Town public body, including the Mayor and Town Council Members, the Planning Commission, Board of Zoning Appeals and Architectural Review Board and citizen Committee Members. It includes a statement of affirmation by individual members of each body to sign and date.

Please read the Code of Ethics sign the Member Statement and return it to Town Clerk, Elizabeth Gillie at your earliest convenience. Let me know if you have any questions.

Thank you,

Brandie M. Schaeffer
Town Manager



Office of the Town Manager

Tommy Cureton

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor

Heather Sutphin, Ward 1

William Semple, Ward 2

Brett Hamby, Ward 3

James Hartman, Ward 4 Vice Mayor

Jay Heroux, Ward 5

Paul Mooney, At Large

David McGuire, At Large

Item E.

Council Meeting Date:	February 14, 2023
Agenda Title:	Town Council Committees
Requested Action:	Information Report, no action required at this time
Department / Agency Lead:	Town Manager
Staff Lead:	Tommy Cureton, Acting Town Manager

EXECUTIVE SUMMARY

The Town Council has created several committees over time which are detailed in Attachment 1. The committees have typically consisted of three Councilmembers, while certain committees have also included citizen members. The appropriate town staff were identified to support the various committees.

The Charter and Code focus on the authority of the council, the mayor, and the manager. The Charter and Code do not establish any committees. They allow only for special committees. Section 2-38 of the Town Code provides in its entirety: "The Mayor shall have authority, when he (she) deems it necessary, to appoint special committees of council. Such appointments shall be subject to the approval of the town council."

During the Town Council work session on January 10, 2023, Town Council directed staff to provide an analysis of reinstating Town Council committees. Attachment 1 is a listing of the Town Council committees that have existed in the past.

The staff recommendation to the Town Council is to continue to act as if a *committee of the whole*.

BACKGROUND

The Town Council has created several committees over time. These Committees (see attachment 1) were scheduled to meet on a bi-monthly basis with the support staff for each committee responsible for advertising each committee meeting, creating the agenda, preparing the agenda item documents and materials, and keeping the committee meeting minutes. Committee meetings were held at 18 Court St. in the Town Council room and were open to the public. The Chair of each committee would provide an update to the Town Council at the next regular Town Council legislating meeting.

The purpose of these committees was to review items before they were brought to the Town Council. The committee would give its recommendation on the item when brought forth at a Town Council meeting.

The following committees have not met since early in 2020, to include the Health, Parks and Recreation Committee, the Public Safety and Transportation Committee, the Finance Committee, and the Public Works and Utilities Committee.

The Septic Remediation Committee is currently inactive pending an answer on grant’s submitted to the State.

The Ad Hoc Special Events Committee is disbanded as the special events ordinance was passed in 2022.

The Town and County Liaison Committee is an interjurisdictional committee that includes representation from Fauquier County, and the Towns of Warrenton, Remington, and Marshall.

CURRENT SITUATION

The Town Council has acted as if a committee of the whole over the past three years and in particular over the past six months. Per Robert Rules of Order, a committee of the whole is a device that enables the full Council to give detailed consideration to a matter under conditions like those of a committee, thereby allowing a more open exchange of views without the urgency of a final vote.

This description mirrors how the Town Council has been operating within existing resource constraints, as items are brought forward for discussion and debate during Town Council work sessions, and prior to the Town Council taking action at a regular Town Council Legislative meeting.

STAFF RECOMMENDATION

The staff's recommendation to the Town Council is to continue to act as if a *committee of the whole* and to have items brought forward for Town Council consideration during Town Council work sessions prior to the Town Council taking action. The items and issues being brought forward by staff should continue to align with the Plan Warrenton 2040 goals and the Town Council's strategic biennial goals.

Service Level/Policy Impact

The recommended action will continue the current level of support for the Town's Plan Warrenton 2040 Goals and Town Council's Strategic Biennial Goals within existing resource constraints.

Fiscal Impact

The recommended action does not present any additional fiscal implications.

Legal Impact

The recommended action does not present any legal impact. The Planning Commission is the only board that is required by Virginia State Code.

The Town Charter and Code do not establish any committees. They allow only for special committees created by the Mayor subject to approval of the Town Council.

ALTERNATIVE OPTIONS

Option 2: Reinstate the committees that have been inactive since early 2020 and add the additional staff resources necessary to properly support these committees.

Options 3: If the Town Council resolves to reinstate committees, and additional resources are provided to support the committees, then staff would recommend the committees be aligned with the Plan Warrenton 2040 goals and the Town Council's biennial goals. That is,

- Community Facilities Committee, to include the Open Space, Parks & Environment goals
- Transportation & Circulation Committee
- Economic & Fiscal Resilience Committee, to include the Historic Resource goals
- Land Use & Character District Committee, to include the Housing goals.
(The Planning Commission could possibly serve as this committee)

Service Level/Policy Impact

The creation of committees along with the additional staff resources to properly support the committees could improve the level of service to the Council and community.

The staffing needed to reinstate committees would be additional to the Town Clerk’s Office, Community Development, Information Technology, Public Works and Utilities, and Economic Development.

If Council were to reinstate committees, staff also recommends the following:

- Hold committee meetings during the regular workday.
- Adopt a charter for each committee consistent with Town Council biennial goals.
- Initiate committee meetings at the start of the new fiscal year, July 2023.

Fiscal Impact

The fiscal impact includes the cost of additional staff, audio/visual services if Council would like these meetings to be recorded and live streamed, advertising, and potentially legal services if legal counsel is required or needed at committee meetings. Depending on the number of committees created and the staff resources required, the fiscal impact could be as high as \$564,627. For example, the advertising costs alone for four committees, meeting bi-monthly, is estimated at \$17,826. Cost estimates are included in attachment 2.

Legal Impact

All committees of the Town of Warrenton are subject to the provisions of the Virginia Open Meetings Law (VA Code 2.2-3707), and the Virginia Conflict of Interests Act (VA Code 2.2-3100).

ATTACHMENTS

1. List of boards, committees, and commissions
2. Cost estimates for committee support services



TOWN COUNCIL

Item E.

H.E. Carter Nevill, Mayor
Paul W. Mooney
David A. McGuire
Heather D. Sutphin
William T. Semple II
Brett A. Hamby
James N. Hartman III, Vice Mayor
John B. Heroux III

Town Council Boards and Commissions

Architectural Review Board

- Meeting: 4th Thursday at 7pm
- Staff Support/Liaison:
 - Community Development
 - AV/IT Staff
 - Facilities Staff

Board of Zoning Appeals

- Meeting: 1st Tuesday at 5pm
- Staff Support/Liaison:
 - Community Development
 - AV/IT Staff
 - Facilities Staff

Planning Commission

- Required by Virginia State Code Section 15.2-2210
- Regular Meeting: 3rd Tuesday at 7pm
- Work Session: 4th Tuesday at 7pm
- Staff Support/Liaison:
 - Community Development
 - AV/IT Staff
 - Facilities Staff

Rappahannock Rapidan Regional Commission (PD9)

- Meeting: bi-monthly
- Council representative: Councilman Semple
 - Appointed at March 2022 Town Council Meeting
- Town Manager (not currently appointed)

Town Council Committees

Health, Parks, and Recreation Committee

- Meetings: 2nd Tuesday at 6pm bi-monthly
- Last meeting: 12-10-19
- 3 Councilmembers
- Staff Support/Liaison:
 - Parks and Recreation
 - Public Works and Utilities
- 2 Citizen Members

Public Safety and Transportation Committee

- Meetings: 2nd Tuesday at 6pm bi-monthly
- Last meeting: 1-9-20
- 3 Councilmembers
- Staff Support/Liaison:
 - Police Chief
 - Public Works & Utilities
 - Community Development
- 2 Citizen Members

Finance Committee

- Meetings: 1st Thursday at 6pm bi-monthly
- Last meeting: 2-6-20
- 3 Councilmembers
- Staff Support/Liaison:
 - Finance Director

Public Work and Utilities Committee

- Meetings: 2nd Tuesday at 6pm bi-monthly
- Last meeting: 2-11-20
- 3 Councilmembers
- Staff Support/Liaison:
 - Director of Public Works
 - Assistant Director of Public Works
 - Community Development

Septic Remediation Committee

- Meetings: when necessary
- Formed at July 2021 Town Council Meeting
- Council representatives: Hamby and Hartman
- Staff Support/Liaison:
 - Community Development
 - Public Works and Utilities

Ad Hoc Special Events Committee

- Last Meeting: 1-26-22
- Council Representatives: Mayor and Councilman Carlos
- 11 Staff (Police Department, Town Manager's Office, Parks and Recreation, Public Works and Utilities, Community Development, Emergency Services & Risk Management, Finance)
- 7 Citizen Members

Town/County Liaison Committee

- Council representatives: Mayor and Vice Mayor
 - Mayor appointed at August 2018 Town Council Meeting
 - Vice-Mayor appointed at February 2022 Town Council Meeting when he was elected as Vice-Mayor

BLA Committee

- Formed at October 2022 Town Council Meeting
- Council representatives: Councilmen Hamby and Heroux
- Staff Support/Liaison:
 - Town Manager
 - Community Development
 - Public Works and Utilities

Four Committees Meeting Bi-Monthly	
Audio Visual and Administrative Costs	
AV Costs	\$9,167/year
Advertising	\$17,826/year
Full build out of Willow Room to match capabilities of the dais	\$50,000
Additional Staff (mid-range salary + benefits)	
Senior Administrative Assistant to Town Clerk	\$61,849
Planning Manager	\$122,456
Help Desk Administrator	\$82,884
Traffic/Signs Maintenance Mechanic	\$71,598
Economic Development Manager	\$148,847
TOTAL	\$564,627



Office of the Town Manager

Tommy Cureton

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor

Heather Sutphin, Ward 1

William Semple, Ward 2

Brett Hamby, Ward 3

James Hartman, Ward 4 Vice Mayor

Jay Heroux, Ward 5

Paul Mooney, At Large

David McGuire, At Large

Item E.

Council Meeting Date:	February 14, 2023
Agenda Title:	Town Council Work Sessions
Requested Action:	Receive the report for action at a future Town Council Meeting
Department / Agency Lead:	Town Manager
Staff Lead:	Tommy Cureton, Acting Town Manager

EXECUTIVE SUMMARY

Prior to September 2020 the Town Council scheduled and held its work sessions at 7:00 PM on the Thursday before the regular Town Council legislative meetings, which are scheduled for the second Tuesday of each month. Work sessions were held at 18 Court Street until August 2020 when the transition was made to 21 Main Street.

Beginning in September 2020 the Town Council work sessions are scheduled and held at 9:00 AM on the morning of the regular Town Council legislative meetings at 21 Main Street.

During the Town Council work session on January 10, 2023, Town Council directed staff to provide an analysis of returning to the schedule of holding Town Council work sessions at 7:00 PM on the Thursday before the regular Town Council legislative meeting.

The staff recommendation to Town Council is to continue to schedule and hold its work sessions at 9:00 AM on the same day as regular Town Council legislative meetings. It is further recommended that if a work session item will require Town Council action on major policy items, then ~~that~~ Town Council action will be scheduled for a subsequent month's regular Town Council legislative meeting.

BACKGROUND

Per the Town of Warrenton’s Town Council Handbook, work sessions are informal, informational meetings where Council may discuss specific topics or receive an in-depth presentation from staff or an outside party on a particular topic. Generally, a work session aims to inform the Council on a topic and for Councilmembers to give staff or others general direction.

Very importantly, work sessions present an opportunity for the Council to receive information on major policy items and to consider and discuss the policy issues and alternatives amongst and between Councilmembers prior to giving direction or taking action.

Prior to September 2020 the Town Council scheduled and held its work sessions at 7:00 PM on the Thursday before the regular Town Council legislative meetings, which are scheduled for the second Tuesday of each month. Work sessions were held at 18 Court Street until August 2020 when the transition was made to 21 Main Street.

Minutes indicate that in 2017 there were four Town Council work sessions, in 2018 there were four, in 2019 there were thirteen, and in 2020 there were twelve work sessions before the combining of meeting to one day in September 2020. When work sessions were held, they were not recorded nor live streamed, therefore, did not require Audio Visual / Information Technology staff and vendor support. In addition, the Council room at 18 Court Street did not require Public Works staff to set up and break down the Council room before and after each meeting.

CURRENT SITUATION

Town Council work sessions continue to be held at 9:00 AM on the same day as regular Town Council legislative meetings. This meeting schedule is a challenge to support as Audio Visual, Information Technology, Public Works, Town Clerk resources, and Police resources are drawn away from other service areas which compromises services in those areas and requires payment of overtime for certain employees. Moving the work session to another day, and to a night meeting would compound this situation and heighten the need to consider additional resources to properly support the Town Council.

Town Council meetings on the same day require the following resources:

- Town Clerk to help set up and take down the meeting, as well as run the meeting, and provide updated documentation between the morning and evening meetings.
- AV specialist to set up and take down the meeting, as well as to run, live stream, and record the meeting.
- IT staff to set up and take down the meeting, support the AV specialist, and handle any IT issues that arise during the meeting.
- Public Work staff to set up and take down, as well as to help with crowd control.
- Police Officers to help with security and crowd control.

STAFF RECOMMENDATION

Staff recommends that the Town Council continue to schedule and holds its work session at 9:00 AM on the same day as regular Town Council legislative meetings. It is further recommended that if a work session item will require Town Council action on major policy items, then ~~that~~ Town Council action should be scheduled for a subsequent ~~months~~ regular Town Council legislative meeting.

Service Level/Policy Impact

The recommended action will not have any additional impact on the current levels of service. Staff resources in IT, Public Works, Town Mangers office, and Police will continue to draw away from other service areas or will incur overtime to support Town Council.

Town Council work sessions will continue to be live streamed and recorded. The recorded video is available for citizen viewing prior to Town Council action being taken on major policy items.

Major policy items will be presented at a work session a month prior to any required Town Council action on that item.

Fiscal Impact

The recommended actions do not present any additional fiscal implications.

Legal Impact

The recommended actions do not present any immediate or long-term legal impact.

The Town Council has the legal authority to continue to schedule its work sessions as recommended.

Alternative Option

Schedule future work session to begin at 6:30 or 7:00 PM for the Thursday before the Regular Town Council meetings.

Service Level

The alternative option will impact the current levels of service. Staff resources in IT, Public Works, Town Manager’s Office, and Police will continue to draw away from other service areas or will incur overtime to support Town Council.

Information Technology will see a reduction in staffing availability for the help desk, will see increased demands on the AV specialist and an increased reliance on outside vendor support to facilitate the meetings.

Public works and facilities will face a greater strain with additional setups of the dais chambers for the meetings.

The Police Department will continue to staff the meetings with officers that have been pulled from other service areas with additional demands on the time and less access to resources for the community.

The Town Clerk will need to double the advertisements, minutes, and agenda creation for the meeting with impacts to the FOIA request responses and other legal deadlines. An additional evening meeting will pull the Clerk away from their daily work further impacting the deadlines of that department.

Town Council work sessions will continue to be live streamed and recorded. The recorded video is available for citizen viewing prior to Town Council action being taken on major policy items. Additional attendance is made possible with the scheduling of the work session after the standard workday.

Major policy items will be presented at a work session prior to any required Town Council action on that item. It will be a difficult challenge to prepare action items within the Two Working Days between the meetings. Items brought forward would still require action to be taken in the following month.

Fiscal Impact

The alternative option presents fiscal implications. The Public Works staff will need to set up and break down the dais for the meeting twice a month. It is not practical to leave the dais set up with the farmers market on the weekends or other routine community use of the space.

There will be additional cost for overtime for the IT department for overtime and the technology to support the setup and streaming of the meeting. Additional charges will be present for the streaming of additional meetings.

The advertisement cost will increase as meetings are increased.

Legal Impact

The alternative option does not present any immediate or long-term legal impact.

The Town Council has the legal authority to continue schedule its work sessions under this alternative.

ATTACHMENTS

- 1.
- 2.
- 3.



Office of the Town Manager

Tommy Cureton

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor
Heather Sutphin, Ward 1
William Semple, Ward 2
Brett Hamby, Ward 3
James Hartman, Ward 4 Vice Mayor
Jay Heroux, Ward 5
Paul Mooney, At Large
David McGuire, At Large

Item 2.

Council Meeting Date:	March 14, 2023
Agenda Title:	Roadway Maintenance
Requested Action:	Public Hearing for Glo Fiber Agreement
Department / Agency Lead:	Public Works and Utilities and Town Attorney
Staff Lead:	Frank Cassidy

EXECUTIVE SUMMARY

The Town has received a request from Glo Fiber to install fiber lines within our right of ways. This is standard procedure for utility providers to access and conduct work within Town right of ways.

This is in line with the Plan 2040 as follows:

CF-6: Identify telecommunications facility locations to ensure a broad range of communications services that also represent character and viewsheds of the Town.

BACKGROUND

The Town received a request and a proposed agreement from Glo Fiber to install fiber within the Town right of ways. The process is outlined in State Code as Well as Town Code:

Per [Va. Code § 15.2-2101](#):

§ 15.2-2101. Ordinance proposing grant of franchise, etc., to be advertised.

A. Before granting any franchise, privilege, lease or right of any kind to use any public property described in § 15.2-2100 or easement of any description, for a term in excess of five years, except in the case of and for a trunk railway, the city or town proposing to make the grant shall advertise a descriptive notice of the ordinance proposing to make the grant once a week for two successive weeks in a newspaper having general circulation in the city or town. The descriptive notice of the ordinance may also be advertised as many times in such other newspaper or newspapers, published outside the city, town or Commonwealth, as the council may determine. The advertisement shall include a statement that a copy of the full text of the ordinance is on file in the office of the clerk of the city or town council.

B. The advertisement shall invite bids for the franchise, privilege, lease or right proposed to be granted in the ordinance. The bids shall be in writing and delivered upon the day and hour named in the advertisement and shall be opened in public session and marked for identification by the person

designated in the advertisement to receive such bids. The cost of the required advertisement shall be paid by the city or town which shall be reimbursed by the person to whom the grant is made. The city or town shall have the right to reject any and all bids and shall reserve this right in the advertisement.

The agreement has been reviewed by staff and Town Attorney. As per Town and State Code, a Public Hearing with a bid opening must be held prior to authorizing the implementing the agreement.

STAFF RECOMMENDATION

Staff recommends holding the public hearing and receiving bids. If no other bids are received, the Council should award the franchise. If other bids are received, Staff recommends that Council refer them to the Town Manager for evaluation.

Service Level/Policy Impact

This agreement is in line with Plan 2040. Staff will monitor as per the agreement.

Fiscal Impact

As per the terms of the Agreement

Legal Impact

The attached agreement has been reviewed and is presented; the process for advertising and conducting the Public Hearing is in line with Town Attorney’s recommendations and requirements in Town and State Code.

ATTACHMENTS

1. Copy of the proposed agreement.

CABLE FRANCHISE AGREEMENT
BETWEEN
TOWN OF WARRENTON
AND
SHENANDOAH CABLE TELEVISION, LLC, D/B/A GLO FIBER

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Exhibit A: Customer Service Standards

FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the Town of Warrenton, a political subdivision of the Commonwealth of Virginia (hereinafter, “Town” or “Franchise Authority”) and Shenandoah Cable Television, LLC (hereinafter, “Franchisee”).

The Town having determined that the financial, legal, and technical ability of the Franchisee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Franchisee 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, Title 15.2, Chapter 21, 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 - 631 (the “Cable Act”), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words used to refer to the masculine include the feminine, words in the plural number include the singular number, and likewise, words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined in the Code of Virginia, Title 15.2, Chapter 21, Article 1.2, §15.2-2108.19, the Cable Act, or herein shall be given their common and ordinary meaning.

1.1. “Cable Service” or “Service” shall mean the one-way transmission to Subscribers of Video Programming or other Programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other Programming service.

1.2. “Cable System” shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, and as further defined under Section 602 (7) of the Cable Act.

1.3. “Customer” or “Subscriber” shall mean a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Franchisee’s express permission.

1.4. “Effective Date” shall mean _____ 2023.

1.5. "FCC" shall mean the Federal Communications Commission, or successor governmental entity thereto.

1.6. "Franchise" shall mean the initial authorization, or renewal thereof, issued by the Franchise Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

1.7. "Franchise Agreement" or "Agreement" shall mean this Agreement and any amendments or modifications hereto.

1.8. "Franchise Area" shall mean the present legal boundaries of the Town of Warrenton as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means during the term of the Franchise, as per the requirements set forth herein.

1.9. "Franchise Authority" shall mean the Town of Warrenton or the lawful successor, transferee, designee, or assignee thereof.

1.10. "Franchisee" shall mean Shenandoah Cable Television, LLC.

1.11. "Gross Revenue" shall mean revenue derived by the Franchisee from the operation of the Cable System in the Franchise Area to provide Cable Service, calculated in accordance with generally accepted accounting principles ("GAAP"). Gross Revenue includes monthly basic cable, premium and pay-per-view video fees, installation fees and subscriber equipment rental fees, and commercial leased access fees. Gross Revenue shall not include program launch support payments, revenue from advertising and home shopping, refundable deposits, late fees, investment income, nor any taxes, franchise fees, or other fees or assessments imposed or assessed by any governmental authority. Gross Annual Revenues shall not include actual bad debt that is written off, consistent with generally accepted accounting principles, provided however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in the Gross Annual Revenues in the period so collected.

1.12. "Normal Business Hours" shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one (1) night per week and/or some weekend hours.

1.13. "Normal Operating Conditions" shall mean 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 conditions or other Force Majeure events. 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.

1.14. "Outage" shall mean the loss of picture or sound on one or more cable channels.

1.15. "Person" shall mean 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 Franchise Authority.

1.16. "Public Buildings" shall mean those buildings owned or leased by the Franchise Authority for government administrative purposes, and shall not include buildings owned by Franchise Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

1.17. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for cable TV access. Public Way shall also mean any easement now or hereafter held by the Franchise Authority within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for cable TV access, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchisee to the use thereof for the purposes of installing, operating, and maintaining the Franchisee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and appurtenant to the Cable System.

1.18. "Service Interruption" shall mean the loss of picture or sound on one or more cable channels.

1.19. "Standard Installation" shall mean the standard one hundred twenty-five foot (125') aerial Drop connection to the existing distribution system.

1.20. "Town" shall mean the Town of Warrenton, Virginia.

1.21. "Video Programming" or "Programming" shall mean the programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

1.22. "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple Video Programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multi-channel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

SECTION 2 - Grant of Authority

2.1. Franchise Grant. The Franchise Authority hereby grants to the Franchisee under the Code of Virginia and the Cable Act a non-exclusive Franchise authorizing the Franchisee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to use, erect, install, construct, repair, alter, add to, inspect, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, underground conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and, including but not limited to, above ground enclosures, markers, and concrete pads, or other related property, equipment, or fixtures as may be necessary, useful, or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be twelve (12) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement, the Code of Virginia, and the Cable Act.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Title 15.2, Chapter 21, Article 1.2 of the Code of Virginia and Section 626 of the Cable Act [47 U.S.C. §546], as amended. The Town's costs related to renewal shall be borne by the Town or recovered out of payments made by Franchisee via the Communications Tax or Franchise Fees under Section 7.1 herein.

2.4 Subject to federal and state preemption, the provisions of this Franchise constitute a valid and enforceable contract between the parties. The material terms and conditions contained in this Franchise may not be unilaterally altered by the Franchising Authority through subsequent amendment to any ordinance, rule, regulation, or other enactment of the Franchising Authority, except in the lawful exercise of the Franchising Authority's police power. If the Town's lawful exercise of its police powers materially alters the rights, benefits, obligations, or duties of this Agreement, Franchisee and the Town shall modify the provisions

of this Agreement to minimize the negative effects on Franchisee of the material alteration.

SECTION 3 - Construction and Maintenance of the Cable System

3.1. Permits and General Obligations. The Franchisee shall be responsible for obtaining all generally applicable permits, licenses, or other forms of approval or authorization prior to the commencement of any activity that materially disturbs the surface of any street, curb, sidewalk or other public improvement in the Public Way, or impedes vehicular traffic. The permit requirements herein shall satisfy all notice and approval requirements to the Town in connection with work completed in relation to the Cable System in the Franchise Area. The issuance of such permits shall not be unreasonably withheld, conditioned, or delayed. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All work shall be done by the Franchisee in accordance with FCC regulations. Notwithstanding the requirements herein, Franchisee shall not be required to obtain a permit for individual drop connections to Subscribers, servicing or installing pedestals or other similar facilities, or other instances of routine maintenance or repair to its Cable System. All transmission and distribution structures, poles, other lines, and equipment installed by the Franchisee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

3.2. Conditions of Street Occupancy.

3.2.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Franchisee shall, upon reasonable advance written notice from the Franchise Authority (which shall not be less than thirty (30) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchise Authority shall notify Franchisee of such funding and make available such funds to the Franchisee within a reasonable timeframe. In the event that funds are not available, Franchisee reserves the right to pass its costs through to its Subscribers in accordance with applicable law.

3.2.2. Relocation at Request of Third Party. The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchise Authority to move any structure, temporarily move its wires to permit the

moving of such structure; provided (i) the Franchisee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Franchisee is given not less than thirty (30) business days advance written notice to arrange for such temporary relocation.

3.2.3. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Way, the Franchisee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance as is practical within twenty (20) business days of completion of the work causing the disturbance. Upon failure of Franchisee to comply within the time specified and the Town having notified Franchisee in writing of the restoration and repairs required, the Town may cause proper restoration and repairs to be made and the expense of such work shall be paid by Franchisee upon demand by the Town.

3.2.4. Safety Requirements. The Franchisee shall undertake all necessary and appropriate commercial 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. 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 Franchisee shall have the authority to trim trees or other natural vegetative growth encroaching or overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Franchisee's sole cost and expense. The Franchisee shall be responsible for any collateral, direct real property damage caused by such trimming.

3.2.6. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable System transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Agreement shall be construed to require the Franchisee to

construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.2.7. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Franchisee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Franchisee's relocation costs shall be included in any computation of necessary project funding by the Franchise Authority or private parties. Franchisee shall be given reasonable notice and access to the public utilities' facilities at the time that such are placed underground and shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way. In the event that public and/or private funds are not available or do not cover the entire direct and actual cost of the relocation, Franchisee reserves the right to pass its costs, or in the case of partial reimbursement from public and/or private funds its incremental cost, through to its Subscribers in accordance with applicable law.

3.2.8. Emergency Removal. The Town reserves the right to remove any portion of a Franchisee's equipment and facilities as may be required in any emergency as determined by the Town. The Town shall use reasonable efforts to minimize the impact on Franchisee's facilities related to any emergency removal. Franchisee shall not be liable for interruption of Cable Service related to any such removal. Franchisee shall be entitled to compensation for expenses incurred for replacement or repair related to any emergency removal by the Town to the extent that other users of the Public Way are so compensated.

3.2.9. Joint Trenching. Franchisee shall cooperate in the planning, locating and construction of its Cable System in utility joint trenches or common duct banks with other telecommunications providers. The Franchise Authority will provide advance notice to Franchisee when it plans to open a trench and Franchisee shall provide notice to the Town, in the form of any required permit under Section 3.1 herein, when it plans to open a trench.

SECTION 4 - Service Obligations

4.1. General Service Obligation. The Franchisee shall make Cable Service available to every occupied residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) occupied residential dwelling units per mile with aerial cable or sixty (60) residential occupied dwelling units per mile with underground cable 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 only be counted as a "dwelling unit" if such home is within two hundred seventy-

five (275) feet of the public right of way. Subject to the density requirement, Franchisee shall offer Cable Service to all new homes or previously unserved homes located within one hundred and fifty (150) feet of the Franchisee's distribution cable at the standard installation rate. Should, through new construction, an area within the Franchise Area meets 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 Franchise Authority that one (1) or more residents have requested Service.

The Franchisee may elect to extend Cable Service to areas that do not otherwise qualify to receive Cable Service under this section if any resident or group of residents agree in writing to pay to Franchisee the cost of construction, including materials, labor, and the total cost of any easement(s) necessary to accomplish the proposed line extension. One half of the cost of construction shall be paid to the Franchisee prior to engineering and the balance shall be paid prior to commencement of construction.

4.2. Programming. The Franchisee shall offer to all Customers a diversity of Video Programming services in accordance with federal law.

4.3. No Unfair Discrimination. Neither the Franchisee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area; provided, however, Franchisee reserves the right to deny service for good cause, including but not limited to non-payment or theft of service, vandalism of equipment, or documented or founded harassment or abuse of Franchisee's employees or agents. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Franchisee are satisfied. Nothing contained herein shall prohibit the Franchisee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its customary business practice.

4.4. New Developments. The Franchise Authority shall provide the Franchisee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchise Authority agrees to require the developer, as a condition of issuing the permit, to give the Franchisee access to open trenches for deployment of cable facilities and at least fifteen (15) business days written notice of the date of availability of open trenches.

4.5. Prohibition Against Reselling Service. No Person shall sell, offer for sale, or resell, without the express prior written consent of the Franchisee, any Cable Service, program or signal transmitted over the Cable System by the Franchisee.

4.6. Local Office. Franchisee's business office or service center shall be conveniently located and open during Normal Business Hours to (i) accept payments and resolve billing difficulties; (ii) give out and exchange or accept returned converters; (iii) schedule service or technician calls; (iv) answer Subscriber inquiries; (v) and resolve complaints. Franchisee may also provide additional bill payment locations through cooperative arrangements with banks, shopping centers and/or similar facilities. Subscribers shall be notified of any change of address of such business office in accordance with FCC regulations.

SECTION 5 - Fees and Charges to Customers

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Franchisee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC rate regulations. Franchisee shall provide thirty (30) days' notice before any new or modified rate, fee, or charge is imposed. The Franchisee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable federal or state law.

SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection

6.1. Customer Service Standards. The Franchise Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Franchisee shall comply in all respects with the customer service requirements established by the FCC and those included in Exhibit A herein.

6.2. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (i) is not misleading and (ii) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Franchisee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622 (c) of the Cable Act [47 U.S.C. §542 (c)].

6.3. Privacy Protection. The Franchisee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto, including the sale or use of Subscriber lists and the monitoring of Subscriber use of the Cable Service.

SECTION 7 - Oversight and Regulation by Franchise Authority

7.1. Communications Tax. In satisfaction of any franchise fee or other Public Way use fee, Franchisee 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.

7.1.1 Franchise Fee. In the event that the Communications Tax is repealed and no successor state or local tax is enacted that would constitute a franchise fee for purposes of 47 U.S.C. § 542, Franchisee shall pay to the Town a Franchise Fee of five percent (5%) of annual Gross Revenue received from the operation of the Cable System to provide Cable Service in the Franchise Area, beginning sixty (60) days from the effective date of the repeal of such tax (the "Repeal Date"); provided, however, that Franchisee shall not be compelled to pay any higher percentage of franchise fees than any other cable operator providing service in the Franchise Area. Beginning on the Repeal Date, the terms of Section 7.1.1 and 7.1.2 of this Agreement shall take effect. In accordance with Title VI of the 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 forty-five (45) days following the end of each calendar quarter. Should Franchisee submit an incorrect amount, Franchisee shall be allowed to add or subtract that amount in a subsequent quarter, but no later than ninety (90) days following the close of the calendar year for which such amounts were applicable. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Franchisee showing the basis for the computation of the Franchise Fees paid during that period. In the event that any Franchise Fee payment is not made on or before the date by which it is due, and following notice by the Town to Franchisee, interest shall be calculated at the then-current prime rate, as published by the Wall Street Journal, and shall be added to the amount of Franchise Fee revenue due to the Town.

7.1.2. Franchise Fees Subject to Audit.

7.1.2.1. Upon notice pursuant to Section 15.2 herein, during Normal Business Hours at Franchisee's principal business office, the Franchising Authority shall have the right to inspect the Franchisee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

7.1.2.2. Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Franchisee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Franchisee shall have thirty (30) days from

the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a “Final Settlement Amount.” For purposes of this Section, the term “Final Settlement Amount(s)” shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Franchisee as a result of any such audit. If the parties cannot agree on a “Final Settlement Amount,” the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

7.1.2.3. Any “Final Settlement Amount(s)” due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Franchisee within thirty (30) days from the date the parties agree upon the “Final Settlement Amount.” Once the parties agree upon a Final Settlement Amount and such amount is paid by the Franchisee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Franchisee’s books and records.

7.2. Oversight of Franchise. In accordance with applicable law, the Franchise Authority shall have the right to, at its sole cost and expense and upon reasonable prior written notice and in the presence of Franchisee’s employee, periodically inspect the construction and maintenance of the Cable System in the Franchise Area as necessary to monitor Franchisee’s compliance with the provisions of this Franchise Agreement.

7.3. Technical Standards. The Franchisee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76.601 et seq. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Franchisee shall comply with such altered, modified or amended standards within a commercially reasonable period after such standards become effective. The Franchise Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC rules. The Town may request that tests and analyses be supervised by a qualified engineer selected by the Town. The cost of any such engineer shall be the responsibility of the Town.

7.4. Maintenance of Books, Records, and Files.

7.4.1. Books and Records. Throughout the term of this Franchise Agreement, the Franchisee agrees that the Franchise Authority may review the Franchisee’s books and records in the Franchise Area as are reasonably necessary to monitor Franchisee’s compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Franchisee pursuant to this

Agreement, at the Franchisee's business office, during Normal Business Hours, and without unreasonably interfering with Franchisee's business operations. All such documents that may be the subject of an inspection by the Franchise Authority shall be retained by the Franchisee for a minimum period of twenty-four (24) months.

7.4.2. File for Public Inspection. Throughout the term of this Franchise Agreement, the Franchisee 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.

7.4.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Franchisee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchise Authority agrees to treat any information disclosed by the Franchisee as confidential and only to disclose it to those employees, representatives, and agents of the Franchise Authority that have a need to know in order to enforce this Franchise Agreement and who agree, through the execution of a non-disclosure agreement, to maintain the confidentiality of all such information. The Franchisee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, maps, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Franchisee to be competitively sensitive. Franchisee may make proprietary or confidential information available for inspection, but not copying or removal of information by the Franchise Authority's representative. In the event that the Franchise Authority has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the Franchisee has designated as confidential, trade secret or proprietary, the Franchise Authority shall notify Franchisee of such request and cooperate with Franchisee in opposing such request.

7.4.4. Reports. Upon written request no later than thirty (30) days following the end of a calendar year, Franchisee shall provide the Franchise Authority, on or before June 30th, an annual report related to the customer service metrics and standards contained in this Agreement, and the outages that occurred, for the previous year. The Franchise authority recognizes that Franchisee complies 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, and therefore shall not report an annual statement of gross revenues. Upon written request, such reports shall be signed by a representative of the Franchisee certifying compliance with the customer service metrics and standards contained in this Agreement. Any reports provided under this Franchise shall be considered confidential and proprietary information and shall not be made publicly available by the Town

except in accordance with this Agreement. Franchisee shall have no obligation to submit quarterly reports.

(a) If the annual report certification indicates areas of non-compliance, upon written request, Franchisee shall file with the Franchise Authority a statement indicating areas of non-compliance along with a remedial plan to correct those areas of non-compliance.

7.4.5. Maps. Upon written request no later than thirty (30) days following the end of a calendar year, Franchisee shall provide the Franchise Authority, on or before March 31st, updated strand maps showing the Cable System equipment installed and in place. The maps shall be provide to the Franchise Authority in electronic format if available. The requirements herein shall satisfy all requirements related to the provision of maps to the Town in connection with work completed in relation to the Cable System in the Franchise Area.

7.5. Performance Evaluation Sessions. A performance evaluation session may be held a maximum of once every three (3) years by the Town during the term of this Franchise.

7.5.1. All evaluation sessions shall be open to the public. Franchisee shall receive ninety (90) days prior written notice of an evaluation session. The purpose of said evaluation session shall be to review the Franchisee's compliance with the terms and conditions of the Franchise.

7.5.2. During review and evaluation by the Town, the Franchisee shall fully cooperate with the Town and/or its designee(s), and subject to the confidentiality provisions of this Franchise, produce such documents or other materials relevant to such evaluation as are reasonably requested by the Town. Topics which may be discussed at any evaluation session may include, but are not limited to, compliance with technical standards, construction standards, consumer protection standards, customer service standards and financial reporting.

7.5.3. Within sixty (60) days after the conclusion of such session(s), the Town shall issue a written report with respect to the Franchisee's compliance. If noncompliance is found which could result in a violation of any of the material provisions of the Franchise, in accordance with §11.1, the Franchisee shall respond and propose a plan for implementing any changes or improvements necessary.

7.5.2. All evaluation sessions shall be announced in accordance with the legal notice requirements of similar public meetings in the Town. The Franchisee shall not be required to notice Subscribers on evaluation sessions.

7.6. Rate Regulation. The Town reserves its right to regulate rates to the extent permitted by applicable law.

SECTION 8 - Transfer or Change of Control of Cable System or Franchise

8.1. Neither the Franchisee nor any other Person may transfer the Cable System or the Franchise without prior written notice to the Franchise Authority. No prior notice shall be required, however, for: (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or in the Cable System in order to secure indebtedness, (ii) a transfer to an entity directly or indirectly owned or controlled by The Franchisee, or (iii) the sale, conveyance, transfer, exchange or release of fifty percent (50%) or less of its equitable ownership. Within thirty (30) days of receiving a notice of transfer, the Franchise Authority may, in accordance with FCC rules and regulations, notify the Franchisee in writing of the additional information, if any, it requires regarding the legal, financial, and technical qualifications of the transferee or new controlling party. The Town shall have no right of first refusal related to any sale of the Cable System.

SECTION 9 - Insurance and Indemnity

9.1. Insurance. Throughout the term of this Franchise Agreement, the Franchisee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the Franchise Authority certificates of insurance designating the Franchise Authority and its officers, boards, commissions, councils, elected officials, and employees as additional insureds and demonstrating that the Franchisee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of Three Million Dollars (\$3,000,000.00) per occurrence for bodily injury or property damage. The Franchisee shall provide workers' compensation coverage in accordance with applicable law. All policies of insurance required by this Section shall be placed with companies which are qualified to write insurance in the Commonwealth of Virginia and which maintain throughout the policy term a Rating of "A-VII" as determined by Best Insurance Rating Services. Franchisee shall provide thirty (30) days' notice to the Town in the event of a material change to any policy required under this Section or in the event of cancellation or non-renewal of any such policy, unless a replacement policy is obtained in conformance with this Section. The notice requirement herein shall replace any similar endorsement requirement in such policies.

9.2. Indemnification. The Franchisee shall indemnify, defend and hold harmless the Franchise Authority, its officers and employees acting in their official capacities from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that directly arise out of the Franchisee's construction, operation, maintenance, or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs,

provided that the Franchise Authority shall give the Franchisee timely written notice of its obligation to indemnify and defend the Franchise Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. The Franchise Authority agrees that it will take all necessary action to avoid a default judgment and not prejudice the Franchisee's ability to defend the claim or action. If the Franchise Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchise Authority.

9.2.1 Franchisee shall not be required to indemnify the Franchise Authority for negligence or misconduct on the part of the Franchise Authority or its officials, boards, commissions, agents, or employees, including and loss or claims related to PEG access Channels in which the Franchise Authority or its designee participates, subject to applicable law.

SECTION 10 - System Description and Service

10.1. System Capacity. During the term of this Agreement, the Franchisee's Cable System shall be capable of providing Video Programming with reception available to its customers in the Franchise Area in accordance with the Cable Act.

10.2. Cable Service to School Buildings. Upon request, the Franchisee shall provide, at no cost to the Franchise Authority, Basic Cable Service and Standard Installation at one (1) outlet to each public grade school (K-12) building, not including "home schools," located in the Franchise Area within one hundred fifty (150) feet of the Franchisee's distribution cable. No charge shall be made for installation or service, except that Franchisee may charge for installation beyond one hundred fifty (150) feet distance of the cable plant and service for more than one (1) drop in each building. For the purposes of this section, the term "school" means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended, and does not include "home schools."

10.3. Cable Service to Governmental and Institutional Facilities. Upon request, the Franchisee shall provide, at no cost to the Franchise Authority, Basic Cable Service and Standard Installation at one outlet to each Public Building located in the Franchise Area within one hundred fifty (150) feet of the Franchisee's distribution cable. No charge shall be made for installation or service, except that Franchisee may charge for installation beyond one hundred fifty (150) feet distance of the cable plant and service for more than one (1) drop in each building. Public Buildings are those buildings owned or leased by the Franchise Authority for government administrative purposes, and shall not include buildings owned by Franchise Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

10.4. Use of Facilities. Neither the Town or and third parties shall have the right to install and maintain upon any poles or in any conduit owned by the Franchisee any wires, pole fixtures, or other equipment.

SECTION 11 - Enforcement and Revocation Proceedings

11.1. Notice of Violation or Default and Opportunity to Cure. In the event the Franchise Authority believes that the Franchisee has not complied with the material terms of the Franchise, including the certification requirements under Section 7.4.4(a) herein, it shall notify the Franchisee in writing with specific details regarding the exact nature of the alleged non-compliance or default.

11.1.1. Franchisee's Right to Cure or Respond. The Franchisee shall have forty-five (45) days from the receipt of the Franchise Authority's written notice: (i) to respond to the Franchise Authority, contesting the assertion of non-compliance or default; or (ii) to cure such default; or (iii) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate commercially reasonable steps to diligently remedy such default and notify the Franchise Authority of the steps being taken and the projected date that the cure will be completed.

11.1.2. Public Hearings. In the event the Franchisee fails to respond to the Franchise Authority's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Franchisee, the Franchise Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchise Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchise Authority shall notify the Franchisee in advance, in writing of the time and place of such meeting and provide the Franchisee with a reasonable opportunity to be heard.

11.1.3. Enforcement. Subject to applicable federal and state law, in the event the Franchise Authority, after such public hearing, determines that the Franchisee is in default of any material provision of the Franchise, the Franchise Authority may: (i) seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or (ii) in the case of a substantial default of a material provision of the Franchise, initiate revocation proceedings in accordance with the following:

(a) The Franchise Authority shall give written notice to the Franchisee of its intent to revoke the Franchise on the basis of a pattern of non-compliance by the Franchisee, including two or more instances of substantial non-compliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the non-compliance.

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

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

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

11.2.1. in instances or for matters where a violation or a breach of the Franchise by the Franchisee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

11.2.2. where there existed circumstances reasonably beyond the control of the Franchisee and which precipitated a violation by the Franchisee of the Franchise, or which were deemed to have prevented the Franchisee from complying with a term or condition of the Franchise.

11.3. No Removal of System. Franchisee shall not be required to remove its Cable System or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Franchisee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act, or any portion thereof [47 U.S.C. §541(b)]. No portion of the Cable System, or any Franchisee’s facilities, shall be considered abandoned if the Cable System is being used to

facilitate Cable Service or any other services not governed by the Cable Act, or any portion thereof.

11.4. Liquidated Damages and Penalties. Prior to assessing any penalties under its cable ordinance, or any liquidated damages under this Agreement, the Franchise Authority shall mail to the Franchisee a written notice by certified or registered mail of the alleged violation and the proposed penalty, specifying the violation at issue. The Franchisee shall have forty-five (45) days from the date of receipt of the written notice to cure or take reasonable steps to commence to cure, as is appropriate depending on the nature of the alleged violation, or to file a written response refuting the alleged violation or explaining why additional time for cure is necessary. In the case of breaches of requirements measured on a monthly, quarterly or longer period (such as customer service standards), Franchisee's cure period shall be no less than one (1) such period.

11.4.1. The Franchise Authority may not assess any penalties or liquidated damages if the Franchisee has reasonably responded to the complaint or cured or taken reasonable steps to commence to cure, as may be appropriate, the violation following receipt of written notice from the Franchise Authority, unless some other cure period is approved by the Franchise Authority. In the event Franchisee fails to cure or to take reasonable steps to commence to cure, or fails to refute the alleged breach, the Franchise Authority may assess penalties or liquidated damages and shall inform Franchisee in writing of the assessment. Franchisee shall have thirty (30) days to pay the penalties.

11.4.2. The first day for which penalties or liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day on which the applicable cure period ends. Franchisee's obligation to pay the penalties or liquidated damages assessed shall be stayed pending resolution of any appeal. To the extent that the Franchise Authority elects to assess penalties or liquidated damages and such penalties or liquidated damages have been paid, such damages shall be the Franchise Authority's sole and exclusive remedy. Nothing in this Section is intended to preclude the Franchise Authority from exercising any other right or remedy with respect to a breach that continues past the time the Franchise Authority stops assessing penalties or liquidated damages for such breach.

11.4.2. With respect to penalties or liquidated damages assessed, all similar violations or failures from the same factual events affecting multiple Subscribers shall be assessed as a single violation, and a violation or a failure may only be assessed under any one (1) of the above-referenced penalty or liquidated damages category. The amount of all penalties and liquidated damages per annum shall not exceed fifty thousand dollars (\$50,000) in the aggregate.

11.4.3. Because it may be difficult to calculate the harm to the Franchise Authority in the event of a breach of this Agreement by Franchisee, the

Parties agree to liquidated damages as a reasonable estimation of the actual damages in the amounts set forth below, subject to annual increase in the amount of the increase in the consumer price index CPI-U from year to year.

(a) For failure to complete Cable System construction or reconstruction in accordance with this Agreement, unless the Franchise Authority approves the delay, the Franchisee shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, the delinquency continues;

(b) For failure to provide, upon written request, data, documents, reports, or information as required under this Agreement, the Franchisee shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, that each violation occurs or continues;

(c) For failure to test, analyze and report on the performance of the Cable System as required under this Agreement, the Franchisee shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, that such noncompliance continues;

(d) For failure to provide in a continuing manner the types of Cable Services set forth in this Agreement, unless the Franchise Authority specifically approves a delay or change, or has agreed to a modification of Franchisee's obligations, the Franchisee shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, that each noncompliance continues;

(e) For failure to comply with operation, maintenance or technical standards set forth in this Agreement, the Franchisee shall pay two hundred (\$200.00) dollars per violation per day for each day, or part thereof, that such noncompliance continues;

(f) For breach of any consumer service standard, as set forth in Section 6.1 or Exhibit A, the Franchisee shall pay two hundred dollars (\$200.00) per day for each day or part thereof, that such noncompliance continues;

(g) For failure to pay any Franchise Fees, taxes, liens, or other amounts due and owing to the Franchise Authority under this Agreement, the Franchisee shall pay two hundred dollars (\$200.00) per day each day or part thereof, that each violation occurs or continues;

(h) For failure to comply with one (1) or more provisions relevant to PEG channels described in Section 13 of this Agreement, the Franchisee shall pay two hundred dollars (\$200) per day each day or part thereof, that each violation occurs or continues;

SECTION 12 - Competitive Equity

12.1. Purposes. The Franchisee and the Franchise Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to residents of the Franchise Area; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to residents of the Franchise Area; promote local communications infrastructure investments and economic opportunities in the Franchise Area; and provide flexibility in the event of subsequent changes in the law, the Franchisee and the Franchise Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

12.2. Video Service Provider.

12.2.1. Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider ("VSP") (i) enters into any agreement with the Franchise Authority to provide video services to subscribers in the Franchise Area, or (ii) otherwise begins to provide video services to subscribers in the Franchise Area (with or without entering into an agreement with the Franchise Authority), the Franchise Authority, upon written request of the Franchisee, shall permit the Franchisee to construct and operate its Cable System and to provide video services to subscribers in the Franchise Area under the same agreement and/or under the same terms and conditions as apply to the VSP. The Franchisee and the Franchise Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Franchisee submits a written request to the Franchise Authority.

12.2.2. If there is no written agreement or other authorization between the VSP and the Franchise Authority, the Franchisee and the Franchise Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Franchisee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the Franchise Area.

12.3. Subsequent Change in Law. If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to

provide video services to Subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Franchise Authority may request from or impose on a VSP providing video services to subscribers in the Franchise Area, the Franchise Authority agrees that, notwithstanding any other provision of law, upon Franchisee's written request the Franchise Authority shall: (i) permit the Franchisee to provide video services to subscribers in the Franchise Area on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity and parity between the Franchisee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to Subscribers in the Franchise Area. The Franchise Authority and the Franchisee shall implement the provisions of this Section within sixty (60) business days after the Franchisee submits a written request to the Franchise Authority. Notwithstanding any provision of law that imposes a time or other limitation on the Franchisee's ability to take advantage of the changed law's provisions, the Franchisee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

12.4. Effect on This Agreement. Any agreement, authorization, right or determination to provide video services to subscribers in the Franchise Area under Sections 12.2 or 12.3 shall supersede this Agreement, and the Franchisee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchise Authority, without penalty or damages.

SECTION 13 – Public, Educational and Governmental Access

13.1 PEG Access. Use of channel capacity for Public, Educational and Governmental ("PEG") Access shall be provided in accordance with federal law, 47 U.S.C. 531, and as further set forth below. Franchisee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. A PEG Access User – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use. Franchisee shall not exercise editorial control over any public, educational, or governmental use of channel capacity, except Franchisee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity pursuant to Section 611 of the Cable Act. The Franchise Authority shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Access Channel use which shall ensure that PEG Access Channel(s) and PEG Access equipment will be available on a first-come, non-discriminatory basis.

13.1.1. PEG Access Channels. Franchisee shall make available to the Franchise Authority, within one hundred eighty (180) days of a written request, the use of one (1) dedicated Public, Educational and Governmental (“PEG”) Access Channel in accordance with Section 611 of the Cable Act. Such PEG Channel shall be used for non-commercial PEG access programming related to educational and/or governmental activities. The County must provide Grantee with written, detailed documentation evidencing the availability of and/or plan to produce such programming along with its request. The Franchise Authority shall have complete control over the content, scheduling, administration and all other programming aspects of the PEG Channel, and may delegate such functions, or a portion of such functions, to an appropriate designee. Franchisee shall not exercise any editorial control over PEG Channel programming except Franchisee may refuse to transmit any program or portion of a public access program that contains obscenity, indecency, or nudity to the extent allowed by applicable law.

13.1.2 PEG Access Support. Upon written request of the Town to activate a PEG channel under Section 13.1.1 of the Franchise Agreement, Franchisee agrees to meet with the Town to discuss the implementation of a fee to be paid to the Town as capital support for PEG access (the “PEG Fee”), provided, however, Franchisee shall not be required to pay a higher PEG Fee than any other wireline video provider in the Town. Payments of any PEG Fee agreed upon shall be made quarterly and shall be due forty-five (45) days after the close of each first, second and third calendar quarter (i.e., May 15, August 15, November 15) and sixty (60) days after the close of the calendar year (last day of February).

Any PEG Fee shall be used by the Town exclusively for capital support of the Town’s PEG Channel. The Town acknowledges that Franchisee has the right under federal law to treat the PEG Fee as an external cost, and to pass that costs through to Subscribers.

Within forty-five (45) days of the end of the fiscal year, the Town shall provide Franchisee with an annual report documenting any use of PEG Access Support during the previous year. In the event that such funds were used in contravention of the limitations herein, Franchisee’s PEG Access Support obligation going forward shall be reduced by an equivalent amount.

13.2. Non-Commercial Use. The Franchise Authority, or its designee, agrees that it will not use its designated PEG Access channel(s), equipment, or other facilities to provide for-profit commercial services which have the effect of competing with Franchisee’s business. Such PEG Channel shall be used for non-

commercial PEG access programming related to educational and/or governmental activities. The PEG Channel may not be used to cablecast programs for profit, political, or commercial fundraising. In addition, any PEG Access Programming produced under the provisions of this Article 6 shall not be commercially distributed to a competing Multichannel Video Programming Distributor without the written consent of Franchisee.

13.3. PEG Access Cablecasting.

13.3.1. Return Lines. In order that PEG Access Programming can be cablecast over Franchisee's downstream PEG Access Channel, all PEG Access Programming shall be modulated, then transmitted from an origination location at the Town of Warrenton Council Chambers, at 18 Court Street, Warrenton, VA 20186, to Franchisee-owned headend or hub-site on a Franchisee-owned upstream channel made available to the Franchise Authority for its use. Upon a written request to activate a PEG channel under Section 13.1.1, Franchisee shall construct a direct fiber link, including equipment capable of transmitting video and audio between one (1) PEG access video origination location and the Franchisee headend such that live programming can originate from this selected location and be distributed via the Cable System to Subscribers in the Town. This fiber link and equipment shall be collectively known as the "Return Line."

13.3.2 Any expenditure made in connection with the construction, relocation, and/or maintenance of the Return Line shall be borne by the Town. The Town and Franchisee further agree that all costs incurred by Franchisee for supporting such PEG Channel may be designated as "costs of franchise requirements" or "external costs" as defined by the FCC and Franchisee reserves its right to pass these costs through to the Subscribers pursuant to federal law.

13.3.3 Franchisee shall be responsible for maintaining the Return Line to the video origination point of the PEG Channel so long as the Town provides Franchisee with access to such location and access to the PEG Channel equipment within such location. Franchisee shall provide, install and maintain in good working order the equipment and the cable necessary for the transmission of PEG signals from a PEG access video origination location to the Franchisee headend for further processing and distribution to Subscribers. Franchisee shall maintain the PEG Channel in accordance with the same FCC technical specifications that are comparable to the specifications used to maintain commercial channels transmitted to Subscribers on the Cable system, except that it shall not be responsible for the technical signal quality of programming produced by any PEG channel programmer.

13.4 The Town or its designee shall be responsible for providing any necessary production or playback equipment, any studio or production facilities, and shall be responsible for securing and supervising any trained/qualified personnel who conduct the operation of any PEG Access production facilities and the PEG channel.

13.5 Fallow Time. In the event the Franchise Authority or other PEG Access User elects not to fully program its Channel(s) with original PEG Access Programming, Franchisee may reclaim any unused time on those channels. Because blank PEG Channels are not in the public interest, in the event the Town elects not to program its PEG Channel for a period of at least seven (7) days, Franchisee may program that Channel thirty (30) days after providing the Town with written notice of its intent to program the Channel, subject to reclamation by the Town upon no less than sixty (60) days' written notice. Franchisee shall relinquish such use no later than sixty (60) days after receipt of written notification from the Town that it requires such channel for educational and/or governmental use.

13.8 Indemnification. The Town shall require all local producers of public access programming to agree in writing to defend and hold harmless Franchisee from and against 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, state or local laws, rules, and/or regulations; 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 results from the use of an PEG access facility or Channel.

SECTION 14 – Performance

14.1. Performance Bond. In compliance with the surety requirements of the Town Code, within sixty (60) days of the Effective Date of this Agreement, Franchisee shall post a performance bond in the amount of fifty thousand dollars (\$50,000) for the faithful performance and discharge by Franchisee of all obligations imposed by this Franchise Agreement. The performance bond shall remain in force and effect throughout the Term of this Franchise Agreement. If Franchisee fails to timely pay an assessment of liquidated damages, the

Franchising Authority shall give Franchisee twenty (20) business days' notice of its intent to draw the amount owed from the performance bond. The Franchising Authority may not draw from the performance bond while any action, appeal or other process has been instituted by Franchisee to challenge the amount owed.

SECTION 15 – Miscellaneous Provisions

15.1. Force Majeure. The Franchisee shall not be held in default under, or in non-compliance 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 non-compliance or alleged defaults occurred or were caused by lightning strike, earthquake, flood, tidal wave, unusually severe rain, ice or snow storm, hurricane, tornado, or other catastrophic act of nature; riot, war, labor disputes, environmental restrictions, failure of utility service or the failure of equipment or facilities not belonging to Franchisee, denial of access to facilities or rights-of-way essential to serving the Franchise Area necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Franchisee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Franchisee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

15.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by electronic or 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 Franchise Authority:

Town of Warrenton, Virginia
P.O Box 341
Warrenton, VA 20188-341
Attention: Town Manager

To the Franchisee:

SHENANDOAH CABLE TELEVISION, LLC, D/B/A GLO FIBER

15.3. Entire Agreement. This Franchise Agreement and any exhibits or addendums hereto constitute the entire agreement between the Franchise Authority and the Franchisee and supersedes all prior or contemporaneous agreements, ordinances, representations, or understandings, whether written or oral, of the parties regarding the subject matter hereof. Any agreements, ordinances, representations, promises or understandings or parts of such measures that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

15.4. 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.

15.5. Governing Law and Venue. This Franchise Agreement shall be deemed to be executed in the State where the Franchise Area is located, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of such State, as applicable to contracts entered into and performed entirely within the State. Venue for any litigation arising from this Franchise Agreement shall be in the state courts in and for the County of Fauquier, Virginia, and shall not be removed to the Federal court system.

15.6. 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 Franchise Authority and the Franchisee, which amendment shall be authorized on behalf of the Franchise Authority through the adoption of an appropriate resolution or order by the Franchise Authority, as required by applicable law.

15.7. 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.

15.8. Captions. Captions to sections throughout this Franchise Agreement are solely to facilitate the reading and reference to the sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

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

15.10. Incorporation by Reference

15.10.1. All presently and hereafter applicable conditions and requirements of federal, State and generally applicable local laws, including but not limited to the rules and regulations of the FCC and the State where the Franchise Area is located, as they may be amended from time to time, are incorporated herein by reference to the extent not enumerated herein. However, no such general laws, rules, regulations and codes, as amended, may alter the obligations, interpretation and performance of this Renewal Franchise to the extent that any provision of this Renewal Franchise conflicts with or is inconsistent with such laws, rules or regulations.

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

15.11. Calculation of Time. Where the performance or doing of any act, duty, matter, payment, or operation is required hereunder and the period of time or duration for the performance or doing thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first day and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

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

15.13. Authority to Execute. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

REMAINDER OF PAGE LEFT BLANK UNTIL SIGNATURE PAGE.

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

Town of Warrenton, VA:

By: _____

Print Name: _____

Title: _____

Date: _____

SHENANDOAH CABLE TELEVISION, LLC, D/B/A GLO FIBER

By: _____

Print Name: _____

Title: _____

Date: _____

Exhibit A
Customer Service Standards

These standards shall apply to the Franchisee to the extent it is providing Cable Service over the Cable System in the Franchise Area. The Franchisee shall comply in all respects with the customer service requirements established by the FCC.

(1) Cable System Telephone Availability.

(i) The Franchisee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

(A) Trained Franchisee representatives will be available to respond to Subscriber telephone inquiries during Normal Business Hours.

(B) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Franchisee representative on the next business day.

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

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

(2) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following four (4) standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed, or at a time later at the request of a customer. "Standard" installations are those that are located up to one hundred twenty five (125) feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the Franchisee, the Franchisee will begin working on "service interruptions" or outages promptly and in no event later than twenty four (24) hours after the interruption

becomes known. The Franchisee must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. The Franchisee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of the Subscriber.

(iv) Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

(v) If a Franchisee representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

(3) Refunds, Credits, and Rebates:

(i) Refunds: Refund checks will be issued promptly, but no later than either:

(A) The Subscriber's next available billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the Franchisee if service is terminated.

(ii) Credits and Rebates:

(A) Credit and rebates for service will be issued no later than the Subscriber's next available billing cycle following the determination that a credit or rebate is warranted.

(B) Under Normal Operating Conditions, upon request, a Subscribers shall receive a pro rata credit or rebate, on a daily basis, of their Cable Service bill, if they experience a Service Interruption lasting twenty four (24) consecutive hours or longer. In order to qualify for a credit or rebate, the Subscriber must report the problem in a timely fashion and allow the Franchisee to verify the problem. If Subscriber availability is required for repair, a credit or rebate will not be provided for such time, if any, that the Subscriber is not reasonably available.

(C) Franchisee shall provide rebates or credits to Subscribers for missed appointments according to Franchisee policy.

(4) Temporary Drops: Under Normal Operating Conditions, drop wires in underground service areas that are temporarily placed above ground shall be buried within sixty (60) days of the date of any temporary installation.

(5) Planned Interruptions: Franchisee may intentionally interrupt service on the Cable System only for good cause and for the shortest time possible and, except in emergency situations or to the extent necessary to correct Subscribers' Service problems, only after a minimum of forty-eight (48) hours prior notice to Subscribers and the Town of the anticipated service interruption; provided, however, that planned maintenance that does not require more than two (2) hours' interruption of Service shall not require notice and planned maintenance that occurs between the hours of 12:00 midnight and 6:00 a.m. shall not require notice.

(6) Communication with Subscribers: Consistent with § 76.309 of the Rules and Regulations of the FCC, Franchisee shall provide an informational package to all of its Subscribers at the time of installation, at least annually to all Subscribers, and at any time upon request. This information shall include:

- (i) Products and services offered;
- (ii) Prices and options for programming services and conditions of subscription to programming and other services;
- (iii) Installation and service maintenance policies;
- (iv) Instructions on how to use the cable service;
- (v) Channel positions of programming carried on the system; and
- (vi) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.



Office of the Town Manager

Tommy Cureton

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor

Heather Sutphin, Ward 1

William Semple, Ward 2

Brett Hamby, Ward 3

James Hartman, Ward 4 Vice Mayor

Jay Heroux, Ward 5

Paul Mooney, At Large

David McGuire, At Large

Item 3.

Council Meeting Date:	March 14, 2023
Agenda Title:	Roadway Maintenance
Requested Action:	Public Hearing for DISH Agreement
Department / Agency Lead:	Public Works and Utilities and Town Attorney
Staff Lead:	Frank Cassidy

EXECUTIVE SUMMARY

The Town has provided carriers use of the water tower on Fourth St. via an agreement. DISH is requesting approval of their agreement for space on the Town's water tower. This equipment will be replacing the Sprint equipment which is being removed.

Additionally, the water tower requires some structural upgrades. Part of this agreement requires DISH to provide a portion of funds to pay for these upgrades. The amount in the DISH agreement is in line with the other agreements currently in place for use of the tower.

This is in line with the Plan 2040 as follows:

CF-6: Identify telecommunications facility locations to ensure a broad range of communications services that also represent character and viewsheds of the Town.

BACKGROUND

The Town water tower on Fourth St. has been used for equipment of utility carriers for years. Spring is in the process of removing their equipment which will provide space for a new carrier. DISH has requested the Town enter into an agreement for their installation and use of the water tower. The process is required in State and Town Code:

Per [Va. Code § 15.2-2101](#):

§ 15.2-2101. Ordinance proposing grant of franchise, etc., to be advertised.

A. Before granting any franchise, privilege, lease or right of any kind to use any public property described in § 15.2-2100 or easement of any description, for a term in excess of five years, except in the case of and for a trunk railway, the city or town proposing to make the grant shall advertise a descriptive notice of the ordinance proposing to make the grant once a week for two successive weeks in a newspaper having general circulation in the city or town. The descriptive notice of the ordinance may also be advertised as many times in such other newspaper or newspapers, published

outside the city, town or Commonwealth, as the council may determine. The advertisement shall include a statement that a copy of the full text of the ordinance is on file in the office of the clerk of the city or town council.

B. The advertisement shall invite bids for the franchise, privilege, lease or right proposed to be granted in the ordinance. The bids shall be in writing and delivered upon the day and hour named in the advertisement and shall be opened in public session and marked for identification by the person designated in the advertisement to receive such bids. The cost of the required advertisement shall be paid by the city or town which shall be reimbursed by the person to whom the grant is made. The city or town shall have the right to reject any and all bids and shall reserve this right in the advertisement.

DISH has been working with staff and the Town Attorney to provide an agreement. The agreement is in line with other existing agreements in place for use of the water tower. A copy is attached.

Per Ordinance, a public hearing must be held to discuss and authorize the agreement.

STAFF RECOMMENDATION

Staff recommends holding the public hearing and receiving bids. If no other bids are received, the Council should award the franchise. If other bids are received, Staff recommends that Council refer them to the Town Manager for evaluation.

Service Level/Policy Impact

This agreement is in line with Plan 2040: staff will monitor the conditions of the agreement.

Fiscal Impact

As per the terms of the agreement.

Legal Impact

The attached agreement has been reviewed and is presented; the process for advertising and conducting the Public Hearing is in line with Town Attorney’s recommendations and requirements in Town and State Code.

ATTACHMENTS

- 1. Copy of the proposed agreement.

LEASE

THIS DEED OF LEASE ("**Lease**") is made and effective as of the date the last Party executes this Lease (the "**Effective Date**"), by and between THE TOWN OF WARRENTON, VIRGINIA, a municipal corporation, PO Drawer 341, 21 Main Street, Warrenton, VA 20188-0341 ("**Lessor**" or "**Town**") and DISH WIRELESS L.L.C., a Colorado limited liability company, with a principal office at 5701 South Santa Fe Dr., Littleton, CO 80120 ("**Lessee**") and together with Town, the "**Parties**," each a Party).

WITNESSETH:

WHEREAS, town is the owner of the property located at North Fourth Street, Town of Warrenton, Virginia, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter "Property").

WHEREAS, the Property is improved by, among other things, that certain water tower (the "Water Tower") depicted on Exhibit A-1 to this Lease.

WHEREAS, Town desires to lease to Lessee, and Lessee desires to lease from Town that certain space within the Property and upon the Water Tower, said space being more particularly described and shown on Exhibit "B" attached hereto and made a part hereof (hereinafter "Premises").

NOW, THEREFORE, for the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Commencement Term.

- a. Town hereby leases to Lessee, and Lessee leases and takes from Lessor, the Premises for a term of five (5) years commencing on the Commencement Date (defined below) and expiring on the last day of the calendar month in which the fifth (5th) anniversary of the

Commencement Date occurs (the “**Expiration Date**”). The “**Commencement Date**” shall be the earlier to occur of (a) the first day of the calendar month in which the six (6) month anniversary of the Effective Date occurs; or (b) the first day of the calendar month following Lessee’s commencement of construction pursuant to this Lease, whichever first occurs. As used in this paragraph “commencement of construction” shall mean the date on which all permits and approvals to install the Equipment are obtained by Lessee.

- b. Upon the Expiration Date, this Lease shall automatically renew for three (3) successive five (5) year periods each on the same terms and conditions as set forth herein, unless earlier terminated in accordance with the terms and conditions of this Lease.
- c. Lessee Right to Terminate. Lessee shall have the right to terminate this Lease on the fifth anniversary of the Commencement Date and on each five year anniversary thereafter by providing the Town written notice, delivered at least ninety (90) days prior to such anniversary date of its intention to terminate. Lessee’s termination under this Section 1(b) shall not relieve Lessee of the obligation to remove its equipment and to restore the Premises to their original condition, except reasonable wear and tear and loss due to casualty.
- d. Town’s Right to Terminate. Commencing on the first (1st) day of the month following the month in which the twentieth (20th) anniversary of the Commencement Date occurs, the Town, upon not less than twelve (12) months prior written notice, shall have the right to terminate this Lease for any reason.

2. **Rent.**

- a. Lessee covenants to pay to the Town without prior notice or demand thereof, and without any deductions or set-offs whatsoever, rent for the Premises (the “Rent”) in the initial annual sum of THIRTY FOUR THOUSAND SEVEN HUNDRED FORTY AND 00/100 DOLLARS

(\$34,740.00) per year, which shall be payable in equal monthly installment of TWO THOUSAND EIGHT HUNDRED NINETY-FIVE AND 00/100 DOLLARS (\$2,895.00) . The first Rent payment shall be made within sixty (60) days of the Commencement Date and shall include all Rent due through the date of payment. On each anniversary of the Commencement Date, the Rent shall be automatically increased by three percent (3%) of the then current Rent. In addition to all other remedies provided in this Lease, if Lessee fails to pay within twenty (20) days of the due date, to Lessor any Rent, additional fees or other payments as hereinafter provided, Lessee shall pay to Lessor, as an additional fee, a late payment fee equal to five percent (5%) of such delinquent payment for each and every month or part thereof that such payment remains unpaid or not paid in full.

- b. Town and Lessee agree that the first monthly installment of Rent shall be paid upon the execution of this Lease by Lessee. Subsequent payments of monthly installments of Rent shall be paid to the Town at Town's address established in Section 17 hereof or to such other person, firm or place as the Town may from time to time designate in writing on or before the fifth (5th) day of each month. Lessee shall require receipt of a validly completed IRS approved W-9 form (or its equivalent) prior to paying any Rent or any other amount(s) due under this Lease.
- c. Lessee, in participation with other lessees of space on the Water Tower, agrees to pay a portion of the costs of structural upgrades to the Water Tower as outlined in the proposal from Tower Engineering Professionals, attached hereto as Exhibit C. It is anticipated that the portion payable by Lessee shall total] which shall be due no later than sixty (60) days after receipt by Lessee of Town's invoice for the same.

3. **Use of and Access to the Premises.**

- a. Lessee agrees to use the Premises for the purposes of installing, operating, maintaining, and removing, communications equipment, described in Exhibit B and listed in Section 5 and made a part hereof (hereinafter referred to as "Equipment"), which will form a part of a communications system licensed by the Federal Communications Commission ("FCC"), and for no other purpose ("**Lessee's Permitted Use**"). In furtherance of the foregoing, Lessee shall have the right, subject to Section 3c and Section 5 below, to access the Premises to replace, repair, add, or otherwise modify Equipment, or any portion thereof and the frequencies over which Equipment operates. Lessee shall operate and maintain the Premises during the Term in compliance with all present and future applicable laws, statutes and regulations imposed by any local, state, or Federal authority having jurisdiction with respect thereto. Town reserves the right to utilize the remaining area of the Property as it so desires unless such use materially interferes with Lessee's Equipment or Lessee's Permitted Use.
- b. Town agrees to cooperate with Lessee, at Lessee's expense, in making, application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.
- c. Lessee shall have the right to access the Premises as is reasonably necessary as determined by the Town, for the installation and maintenance of requisite wires, cables, conduits and pipes for the installation, operation, and maintenance of the Equipment. The installation shall be performed in a workmanlike manner with minimal disruption to Town and its tenants. Lessor shall furnish Lessee with necessary means of access to the Property for the purposes of ingress and egress to the site and the Water Tower location. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Lessee or persons under their direct supervision will be permitted to enter

said Premises. Access shall be conditioned in accordance with any Town policies requiring proper identification of any person gaining access to the Property. No prior notice shall be required for access sought as provided in a maintenance schedule approved in writing and in advance by Lessor, if any; otherwise, access shall be granted only after 24 hours' notice for non-emergency and as much notice as is reasonably practicable in light of the circumstances for emergency maintenance or repair purposes and only under the supervision by Lessor's employee or agent.

4. **Interference.** In the event the Premises need repainting or other maintenance which requires the temporary removal (not to exceed 60 days) of Lessee's antennas, then Lessee agrees to relocate its antennas at its expense upon one hundred twenty (120) days' notice from Town; provided, however, that during such temporary relocation of Lessee's antennas, Town shall provide other ground space on the Premises for Lessee to place a Cell on Wheels (COW) or other support structure for the installation of Lessee's antennas during such temporary relocation. Lessee's obligations to pay rent hereunder shall abate during such temporary relocation and until Lessee's antennas are reinstalled on the original Premises.

- a. Lessee shall comply with all federal, state, and local regulations governing the installation and operation of its Equipment and shall install and operate its Equipment in a manner which does not cause material interference to pre-existing equipment of Town or other pre-existing tenants of the Property. Lessee shall perform, at Lessee's sole cost and expense, an intermodulation study of Lessee's transmission of signals at the Premises, the results of which shall be given to Town (i) prior to the installation of Lessee's Equipment and (ii) subsequent to said installation, in the event that Lessee changes the frequency at which it operates its Equipment or adds equipment on the Water Tower. Lessee and Town will consult on the location of any future additions to Lessee's Equipment. In the event

that Lessee causes material interference to any pre-existing equipment or Lessee's changes in frequency or additional equipment cause material interference to then existing equipment of Town or other tenants of the Property, Lessee agrees to take all action necessary to eliminate such interference (including, without limitation, reducing the power sufficiently to cease the interference , except for intermittent testing, which testing, shall be coordinated with Town) within seventy two (72) hours of written notice of the same. Should the interference described in this Section 4(a) continue for more than seventy-two (72) hours after notice thereof, Town shall have the right to demand that Lessee turn off power to the interfering equipment until such time as the interference is eliminated.

- b. As of the date of execution of the Lease, Town will use best efforts (which duty shall be met by providing Lessee with details pertaining to installation of equipment by any Future Tenants and affording Lessee reasonable time to respond to same and taking any actions necessary to ensure that any issues raised in Lessee's response are addressed/resolved prior to Future Tenant's installation) to see that the Town, existing tenants and/or other tenants of the Property who in the future take possession of the Town's Property and/or add new equipment thereto (collectively, "Future Tenants") will be permitted to install only such equipment on the Property that is of the type and frequency which will not cause material interference to Lessee's pre-existing Equipment and Town agrees to include and enforce a provision substantially similar to Section 4(a) (including expressly and without limitation Town's right to turn off power to interfering equipment if interference is not eliminated within seventy two (72) hour cure period) in all future agreements for use of the Property. Town shall require Future Tenant(s) to (i) perform an intermodulation study and (ii) provide the results of such study to Lessee for Lessee's

review no less than thirty (30) days prior to the projected installation date of any equipment by Future Tenant. Lessee shall have thirty (30) days from its receipt of such study to review the same and notify Town of any likely interference, Town shall immediately notify the Future Tenant of the same, and Lessee, the Town and the Future Tenant shall thereafter consult on the location and operation of any such Future Tenant's equipment. Town shall not permit any Future Tenant to install equipment, unless Future Tenant has performed an intermodulation study, provided Lessee with the results and Lessee has either confirmed that the proposed installation will not cause interference to Lessee's pre-existing Equipment or has failed to respond to Town within thirty (30) days after Lessee's receipt of the results of the intermodulation study. Should the interference described in this Section 4(b) occur, the Town agrees to use best efforts to cause the interfering party to cease operation of the interfering equipment, except for intermittent testing coordinated with Lessee) within seventy two (72) hours after written notice from Lessee. Should such interference continue for more than seventy two (72) hours despite Town's attempts to eliminate the interference, the Town agrees to turn off power to the interfering equipment (except for intermittent testing coordinated with Lessee) until such time as the interference is cured.

- c. In the event that, despite Town's compliance with the provisions of Section 4(b), there is continuing interference to Lessee by Future Tenant(s) on the Property, the parties agree that, Lessee may terminate this Lease immediately upon notice to Town without further liability to Town and without further liability of Town to Lessee.

5. **Construction by Lessee.**

After obtaining the necessary Government Approvals, as defined hereafter, therefor, Lessee at its sole cost and expense, shall construct and install the following improvements upon the Premises:

- a. An equipment building or pad, to house Lessee's communications equipment.
- b. Up to twelve (12) antennas and related equipment (including but not limited to remote radio reads, overvoltage protectors, etc.), transmission lines, which shall be connected to the equipment building as provided herein. The exact mounting elevations on the Water Tower for Lessee's antennas shall be determined by the parties in conjunction with their respective engineers.
- c. A conduit attached to the Water Tower and one of its legs for enclosure of all cables necessary to connect the antenna with the equipment building. The size, location, color and method of attachment of such conduit shall be reasonably acceptable to the Town and be determined by the parties in conjunction with their respective engineers.
- d. All appurtenant improvements to the foregoing necessary to the operation of the Equipment as shown in Exhibit "B".
- e. The Parties shall work together to ensure that no materials are used in the installation of Lessee's equipment or transmission lines that will cause corrosion or rust or deterioration of the Water Tower structure or its appurtenances. All antennas on the Water Tower must be identified by a marking fastened securely to the bracket(s) therefore on the Water Tower and all transmission lines are to be tagged.

6. **Permits and Approvals.**

- a. The Parties acknowledge and agree that Lessee's ability to lawfully use the Premises is contingent upon Lessee obtaining each of the following: (a) a satisfactory structural analysis showing that the Water Tower is suitable for Lessee's Permitted Use ("Structural Analysis"); and (b) all certificates, permits, approvals and other authorizations that may be required by any Governmental Authority in accordance with Applicable Law, as defined below (collectively, the "Governmental Approvals"). Lessee will endeavor to obtain all

Governmental Approvals promptly following the Effective Date. Town hereby authorizes Lessee to file and submit for Governmental Approvals, at Lessee's sole cost and expense. Town shall: (x) reasonably cooperate with Lessee in Lessee's efforts to obtain such Governmental Approvals; and (y) promptly execute and deliver any and all documents reasonably necessary to obtain and maintain Government Approvals. Prior to the Commencement Date, if: (i) a structural analysis shows that the Water Tower is not suitable for Lessee's Permitted Use; (ii) any application for Governmental Approvals is rejected, conditioned, materially delayed or otherwise not approved for any or no reason; or (iii) Lessee determines, in Lessee's sole and absolute discretion, that such Governmental Approvals cannot be obtained in a timely and commercially reasonable manner, then, following the occurrence of any of the events set forth in clauses (i) through (iii) (collectively, the "Contingencies"), Lessee shall have the right to terminate this Lease immediately upon Notice to Town and without penalty or further obligation to Town, its employees, officers, agents or lenders. If this Lease is terminated in accordance with this Section 6a, this Lease shall be of no further force or effect (except as set forth to the contrary herein). If, following the Commencement Date, and through no fault of Lessee, any Governmental Approval issued to Lessee is canceled, expires, lapses or is otherwise withdrawn or terminated by the applicable Governmental Authority, then Lessee shall have the right to terminate this Lease upon ninety (90) days' written Notice to Town without penalty or further obligation to Town, its employees, officers, agents, or lenders. "Applicable Law" means any applicable federal, state, or local act, law, statute, ordinance, building code, rule, regulation or permit, or any order, judgment, consent or approval of any Governmental Authority having jurisdiction over the Parties or this Lease.

7. **Survey Period.**

After the execution date of this Lease and prior to the Commencement Date, Lessee shall have access to the Premises during, business hours (and at other times, if prearranged with Town) for the purpose of making, necessary engineering surveys, inspections and other reasonably necessary tests relating to Lessee's Permitted Use of the Premises. Lessee shall fully restore to its prior condition any portion of the Premises disturbed by Lessee, reasonable wear and tear and loss due to casualty excepted.

8. **Facilities, Utilities, Access.**

- a. At Lessee's cost and expense and with minimal disruption to Town and its tenants, Lessee has the right to install, erect, maintain and operate the Equipment and supporting structures thereto on the Premises. In connection therewith, Lessee has the right to complete all work necessary to prepare, maintain and alter the Premises for operation of the Equipment; including, but not limited to, installation of transmission lines. Upon ten (10) days' notice, Lessee agrees to reasonably cooperate with Town and other tenants to facilitate routine maintenance and repair. Title to the Equipment and all associated structures, transmission lines, cables, wires, and conduits shall remain with Lessee. All of Lessee's Equipment shall remain Lessee's personal property and are not fixtures.
- b. Lessee shall remove all of the Equipment at its expense within ninety (90) days after the expiration or earlier termination of the Lease and shall make any and all necessary repairs to the Premises and Property, and shall return the Premises to their original condition, reasonable wear and tear and loss due to casualty expected.
- c. At Lessee's expense, Lessee may upgrade the present fiber and electrical service or install new fiber and electrical service on the Premises, including, but not limited to, a portable standby power generator or battery unit, reasonably acceptable to the Town, for Lessee's

exclusive use during times of public emergency when normal electrical service is not available. Lessee may also bring underground fiber and underground electrical lines across the Property in order to service the Premises at locations shown on Exhibit "B". Any enhancements, upgrades, underground lines and alterations are subject to reasonable review and approval by the Town.

- d. Lessee shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Lessee shall have the right to extract electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that will provide service to the Property (including a standby power generator for Lessee's exclusive use).
- e. Subject to the terms and conditions of Section 3 and Section 5, Town shall provide to Lessee, Lessee's employees, agents, independent contractors, and subcontractors access over the Property to the Premises 24 hours a day, 7 days a week, at no charge to Lessee.
- f. Lessee shall be subject to operating restrictions and limitations as set forth in the Town of Warrenton Town Code and Zoning Ordinance and any additional rules and regulations pertaining to access and use of the Water Tower which the Town may promulgate on the basis of health, safety, security and/or welfare, and other state and Federal laws where applicable.

9. **Loss and Damage.**

Town shall not be liable for any damage to property of Lessee located on the Premises or Property, nor for the loss of or damage to any property of Lessee or of others by theft or otherwise unless caused by the negligence or willful misconduct of the Town or its employees, agents, contractors, subcontractors and/or tenants. Town shall not be liable for any injury, death or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow

or leaks from any part of the Premises or Property, or from the pipes, appliances or plumbing works, or from the roof, street or subsurface, or from any other place, or by dampness, or by any other cause unless caused by the negligence of willful misconduct of the Town or its employees, agents, contractors, subcontractors and/or tenants. Town shall not be liable for any such damage, injury or death caused by persons in public, or caused by operations in construction of any private, public or quasi-public work. Town shall not be liable for any patent defect in the Premises or Property or in the building of which they form a part. All property of Lessee kept or stored on the Premises or Property shall be so kept or stored at the risk of Lessee and Lessee shall hold Town, its officers or employees, harmless from any claims arising out of damage to the same, including subrogation claims by Lessee's insurance carrier, unless such damage shall be caused by the negligent act or omission of Town, its officers or employees.

10. Waiver of Town's Lien.

- a. Town waives any lien rights it may have concerning Lessee's Equipment which is deemed Lessee's personal property. Lessee reserves the right to remove it at any time without Town's consent.
- b. The Town acknowledges that Lessee may have entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Lessee's facilities ("the Collateral") with a third party financing entity. In connection therewith, Town (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise, and (ii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment or distress for any rent due or to become due, and that such Collateral may be removed at any time without recourse to legal proceeding.

11. Notification of Hazard.

Lessee and Town shall give immediate notice to the other in case of fire, accident or defect in the Premises or in any property comprising the Premises.

12. Termination.

This Lease may be terminated as follows:

- a. by either party, providing thirty (30) days' prior written notice upon default of any covenant or term of this Lease by the other party, which default is not cured within sixty (60) days of receipt of written notice, provided that the grace period for any monetary default is twenty (20) days from receipt of written notice. Upon default, the nondefaulting party may terminate this Lease and exercise any other remedies it may have under this Lease or at law or equity;
- b. by Lessee, upon providing sixty (60) days prior notice to Town, as follows:
 - i. if after the commencement of the Lease an application by Lessee for a permit, license or approval is rejected or upon cancellation, expiration or lapse of a permit, license or approval necessary for use of the Premises and operation of the Equipment, or
 - ii. if Lessee, in its sole discretion determines, determines that Lessee's Permitted Use of the Premises is obsolete or unnecessary; or
 - iii. by Lessee, if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies.
 - iv. By Lessee, upon providing thirty (30) days' prior notice if the Premises or Equipment are destroyed or damaged. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction.

- v. By Lessee if Town or a third party installs any structure, equipment, or other item on the Water Tower, Property or an adjacent property, which blocks, hinders, limits, or prevents Lessee from being able to use the Equipment for Lessee's Permitted Use.
- c. by Town, upon providing sixty (60) days prior notice to Lessee, as follows:
 - i. By Town upon Lessee's failure to perform any terms of this Lease for more than sixty (60) days after written notice of such failure, shall have been given to Lessee. Upon Lessee's default and after notice and opportunity to cure as provided in the prior sentence, Town shall have the following rights which shall be cumulative, in addition to any rights allowed by general law:
 - 1. Town may with or without entry or other action, terminate this Lease, and recover possession of the Premises and such damages as Town may then have as a result of the default and termination, and
 - 2. Lessee shall pay all of the Town's costs, charges and expenses, including reasonable attorneys' fees and the fees of other agents retained by Town, incurred in enforcing Lessee's obligations under this Lease, and
 - 3. Town shall have all of the rights and remedies accorded by law and equity, including specifically the right to injunctive relief for the enforcement of all of the terms of this Lease.
 - ii. By Town if regulatory requirements for structural integrity of Water Tower no longer supports additional weight of Lessee's equipment and (i) reasonable remedy is not available to bring Water Tower into compliance or (ii) other reasons interfering with the Town's ability to maintain Water Tower for the provision of water to its Citizens.

13. Insurance.

- a. Lessee shall procure, maintain and pay for a public liability policy, with limits of \$1,000,000.00 for bodily injury, \$1,000,000.00 for property damage, \$2,000,000.00 aggregate, with certificate of insurance to be furnished to the Town prior to the Commencement Date and at any other time (but no more frequently than annually) within thirty (30) days of written request therefore. The policy shall provide that termination or cancellation will not occur without at least thirty (30) days prior written notice to the Town and shall name the Town as additional insured. The insurance required to be maintained by Lessee or any agent, contractor, agent or designee of Lessee, shall be primary to any insurance or self-insurance maintained by the Town which policy or policies shall be excess only, and not be required to contribute with it. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for Lessee, or failure of any such insurance company to pay claims accruing, shall not be held to waive any of the provisions of this Lease or relieve Lessee from any obligations under this Lease.
- b. Throughout the Term, Town shall maintain, at Town's sole cost and expense, the following insurance coverage: (i) Commercial General Liability of not less than \$1,000,000 per occurrence; All such policies shall be endorsed to include Lessee as an additional insured. Subject to the policy minimums set forth above in this Section 13(a), the insurance required of Town hereunder may be maintained by a blanket or master policy that includes properties other than the Property.

14. Condemnation/Casualty.

- (a) In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Lessee's right of access to the Premises is damaged by fire or other casualty so that such damage may reasonably

be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, then Lessee may at any time following such fire or other casualty, provided Lessor has not completed the restoration or alternative means of access required to permit Lessee to resume its operation at the Premises, terminate this Lease upon fifteen (15) days written notice to Lessor. Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Lease. Notwithstanding the foregoing, provided that the casualty was not caused by the acts or omissions of Lessee, all Rent shall abate during the period following such fire or other casualty in proportion to the degree to which Lessee's use of the Premises is impaired, until the time repairs are complete and Lessee is able to use the Premises in accordance with its intended purposes.

(b) If any governmental, public body or other condemning authority takes, or if Lessor transfers in lieu of such taking, all or part of the Premises, then Lessee may elect to (i) terminate this Lease, effective on the date that title vests in the condemning authority, or (ii) relocate the Equipment to an alternative location on the Property, reasonably acceptable to Lessor. Lessee shall provide written notice of its election within thirty (30) days after receiving actual notice of a taking.

15. Title and Quiet Enjoyment.

Town warrants that (i) the Town owns the Property and (ii) it holds good and marketable title to the Property and that, provided Lessee has made rental payments as required hereunder, Lessee shall have quiet enjoyment of the Premises.

16. Marking and Lighting Requirements.

Town accepts sole responsibility for the Property's compliance with all tower or building marking and lighting regulations promulgated by the Federal Aviation Administration ("FAA") or the FCC, as applicable. Lessee shall be responsible for compliance with such regulations if marking and lighting is required solely due to the addition of Lessee's Equipment. Each party shall hold the other harmless if in the event that the responsible party's failure to comply with applicable regulations results in legal action or administrative proceedings against the other party by the government agency responsible for enforcement of the applicable regulations. Town shall notify Lessee of (i) the location of any new items on the Water Tower, (ii) any change in the location of any items on the Water Tower, and (iii) any changes to the overall height of the Water Tower (including any attachments thereto).

17. Notices.

All notices under this Lease shall be in writing and shall be deemed validly given if personally delivered, sent via overnight courier providing proof of service, or sent by certified or registered mail, return receipt requested, as follows (or any other address that the part to be notified may designate by like notice to the sender):

If to Town:

Town Manager
Town of Warrenton
P.O Drawer 341
21 Main Street
Warrenton, VA 20188

If to Lessee:

DISH Wireless L.L.C.
Attn: Lease Administration
5701 South Santa Fe Dr.
Littleton, CO 80120

Copy To:

Town Attorney
Town of Warrenton
P.O Drawer 341
Warrenton, VA 20188

17.1 DEFAULT

(a) An event of default by Lessee ("Lessee Default") shall be defined as (i) the failure to pay Rent, additional fees or other payments set forth herein for a period of more than twenty (20) calendar days immediately succeeding written notice from Lessor.; (ii) failure to perform any material term, condition or covenant contained herein for a period of more than thirty (30) days immediately succeeding written notice thereof from Lessor; provided, however, it shall be a Lessee Default under this Lease if Lessee fails, within five (5) days after receipt of written notice of breach, to perform an obligation required to be performed by Lessee if the failure to perform such obligation interferes with Lessor's ability to conduct its business at the Property, but provided further that if the nature of Lessee's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Lease if performance is commenced within such five (5) day period and thereafter diligently pursued to completion. Lessee shall be afforded such additional time to cure any non-monetary Lessee default that cannot reasonably be cured within such five (5) day period or such thirty (30) day period provided, however, that Lessee commences to cure such default within the applicable notice period and diligently pursues such cure.

(b) In the event of a Lessee Default without cure hereunder, then in addition to its remedies for default at law and in equity, Lessor shall be entitled to terminate this Lease upon thirty (30) days written notice to Lessee.

(c) An event of default by Lessor ("Lessor Default") shall be defined as the failure by Lessor to perform any material term, condition or covenant contained herein for a period of more than thirty (30) days immediately succeeding written notice thereof from Lessee; provided, however, it shall be a Lessor Default under this Lease if Lessor fails, within seven (7) days after receipt of written notice of breach, to perform an obligation required to be performed by Lessor if the failure to perform such obligation interferes with Lessee's ability to conduct its business at the Property, but provided further that if the nature of Lessor's obligation is such that more than seven (7) days after such notice is reasonably required

for its performance, then it shall not be a default under this Lease if performance is commenced within such seven (7) day period and thereafter diligently pursued to completion. In the event of a Lessor Default without cure hereunder, then in addition to its remedies for default at law and in equity, Lessee shall be entitled to terminate this Lease upon thirty (30) days written notice thereof to Lessor.

(d) Other Remedies. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due immediately and payable by the defaulting Party upon invoice therefor. In the event of a default by either Party with respect to a material provision of this Lease, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Lease and/or pursue any remedy now or hereafter available to the non-defaulting Party under the laws or judicial decisions of the state in which the Premises are located; provided, however, each party shall use reasonable efforts to mitigate its damages in connection with a default by the other party. If either Party so performs any of the defaulting Party's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by the non-defaulting Party shall immediately be owing by the defaulting Party, and the defaulting Party shall pay to the non-defaulting Party upon demand the full undisputed amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if Lessor is the defaulting Party and does not pay Lessee the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from Lessor, Lessee may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to Lessor until the full undisputed amount, including all accrued interest, is fully reimbursed to Lessee.

18. Assignment and Subletting.

- a. **Rights of Lessee.** Lessee may not sell, assign or transfer this Lease or any interest herein or sublet the premises or any part thereof without the prior written consent of Town, which consent shall not be unreasonably withheld but may be conditioned or delayed based upon the Town's determination that any proposed assignee is capable of meeting Lessee's obligations under the Lease in accordance with the terms and conditions of Section 18(c) below.
- b. **Intercompany Transfer.** Notwithstanding the foregoing paragraph, Lessee upon prior written notice to Town, but without any approval or consent by Town, may assign its rights under this Lease to its parent company or any subsidiary or Affiliate of Lessee or its parent company, or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets. Affiliate(s) shall mean, with respect to a Party, any person or entity, directly or indirectly, controlling, controlled by, or under common control with such Party, in each case for so long as such control continues. For purposes of this definition, "control" shall mean (i) the ownership, directly or indirectly, or at least fifty percent (50%) of either: (a) the voting rights attached to issued voting shares; or (b) the power to elect fifty percent (50%) of the directors of such entity, or (ii) the ability to direct the actions of the entity.
- c. **Financing.** Notwithstanding anything to the contrary contained in this Lease, Lessee may assign, mortgage, pledge, hypothecate or otherwise transfer without the Town's consent, its interest in this Lease to any financing entity or agent on behalf of any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities in respect of guarantees thereof.

- d. **Sublet.** Except for assignments contemplated pursuant to Section 18(a) above., if Lessee should desire to assign this Lease or sublet the Premises, or any part thereof, and provided that Lessee is not then in default hereunder, Lessee shall give Town written notice at least forty-five (45) days in advance of the date on which Lessee desires to make such assignment or sublease. Town shall then have a period of thirty (30) days following receipt of such notice within which to notify Lessee in writing that Town elects:
- i. to permit Lessee to assign or sublet such space, subject, however, to the subsequent written approval by Town of the instrument of assignment or sublease as to form and substance and of the proposed assignee or subtenant; or
 - ii. to refuse, in Town's reasonable discretion, to consent to Lessee's assignment or subleasing of such space and to continue this Lease in full force and effect as to the entire Premises. If Town should fail to notify Lessee in writing of such election within such thirty (30) day period, Town shall be deemed to have elected option (1) above.
 - iii. **Effect.** Except as may be otherwise expressly set forth to the contrary, no assignment or subletting by Lessee shall relieve Lessee of Lessee's obligations under this Lease. Any attempted assignment or sublease by Lessee in violation of the terms and provisions of this Section 18 shall be void.

Lessor reserves the right to assign, transfer, mortgage or otherwise encumber the Property and its interest in this Lease (collectively, "Lessor Transfer"). In the event of any such Lessor Transfer, Lessor agrees to cause the transferee to accept an assignment and assumption of this Lease and to recognize Lessee and Lessee's rights hereunder, and Lessee shall recognize such transferee provided that the prospective transferee executes and delivers to Lessee a Subordination and Non-Disturbance and Attornment instrument ("SNDA") agreeing to recognize Lessee and to not disturb Lessee's tenancy. If the Lessor Transfer is to a lender to Lessor, Lessee agrees to execute and deliver to such lender an SNDA subordinating this Lease and Lessee's rights hereunder, as may be required by Lessor and such Lender provided the same is reasonably acceptable to Lessee and such lender agrees to recognize Lessee's rights under this Lease so long as there is no default by Lessee, in connection with Lessor's

contemplated transaction. If Lessor, at any time during the Term, decides (i) to sell or transfer all or any part of the Property or the Water Tower or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Water Tower or Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Lease and any such purchaser or transferee shall recognize Lessee's rights hereunder under the terms of this Lease. To the extent that Lessor grants to a third party by easement or other legal instrument an interest in and to that portion of the Water Tower and/or Property occupied by Lessee for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith assigns this Lease to said third party, Lessor shall not be released from its obligations to Lessee under this Lease, and Lessee shall have the right to look to Lessor and the third party for the full performance of this Lease.

19. Liability and Indemnity.

Lessee shall indemnify and hold harmless the Town from any and all claims, suits and/or causes of action, judgment or awards, damages, injuries or loss sustained by any party, person or their property, including any and all claims, demands, suits, and/or causes of action, judgments or awards as a result of the negligence, misfeasance, malfeasance, misconduct of Lessee, its agents, servants or employees occurring at any time after execution of this Lease. This indemnity shall include and not be limited to the acts, commissions and omissions of Lessee, its agents, servants or employees within the demised premises, or the environs surrounding same, incidental to or arising from Lessee's occupancy. Furthermore, Lessee shall defend the Town, at its own expense, and/or be obligated to pay the costs of the defense of the Town, all of which costs, judgements, claims and demands shall be due and payable to Town upon written demand. It is understood and agreed that all property kept and stored or maintained in the demised premises shall be so kept and stored or maintained at the sole risk of Lessee no matter what the cause of the loss, damage or destruction of the Property with the exception of any negligence by Town. The duties described in this Section 19 shall survive any termination of this Lease.

Each party shall be entitled to recover from the other party its actual, direct damages for any breach of this Lease or other act or omission of such party (subject to any applicable sovereign

immunity), but neither party shall be entitled to recover from the other party any special, incidental, indirect or consequential or punitive damages, or to recover for any lost revenue, lost profits, loss of technology, rights or services, loss of data or interruption or loss of use of service, in any case or controversy however arising, even if such party has been advised of the possibility of such damages, and whether arising under theory of contract, tort (including negligence), strict liability or otherwise.

20. Hazardous Substances.

Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under about or within the Property in violation of any law or regulation. Town represents, warrants and agrees (1) that neither Town nor, to Town's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Property in violation of any law or regulation, and (2) that Town will not, and will not knowingly permit, any third party to use, generate, store, or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation Lessee agrees to defend, indemnify and hold harmless the Town and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Lease.

21. Severability.

If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Lease or

the application of such term, covenant and condition of this Lease shall be valid and enforced to the fullest extent permitted by law

22. Entire Agreement.

This instrument embodies the entire agreement between the parties hereto with respect to the subject matter hereof, and there are no agreements, warranties or representations between the parties other than those set forth on provided for herein. No amendment or modification of this Lease shall be valid unless made in writing and signed by the parties hereto.

23. Successor or Assigns.

This Lease and each provision hereof (whether so expressed or not) shall be binding upon and inure to the benefit of the Lessee and Town, and their respective successors, heirs, legatees, executors, personal representatives and assigns.

24. Waiver of Subrogation.

To the fullest extent permitted by law, Town and Lessee for themselves and any and all parties claiming under or through them, including, without limitation, their respective insurers, hereby mutually release and discharge each other and the other's Affiliates, and their respective officers, directors, shareholders, agents, employees, contractors, and/or any other person or entity for whom a Party is legally responsible from any claims for damage to any person or to the Premises or any other real or personal property that are or are claimed to have been caused by or result from risks insured against under any insurance policies carried by the waiving party and in force at the time of such damage and hereby waive any right of subrogation that might otherwise exist in or accrue to any person on account thereof. All policies required to be carried by either Party herein shall contain an endorsement in favor of the other Party waiving the insurance company's right of subrogation against such other Party. THIS RELEASE SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED BY THE FAULT OR NEGLIGENCE OF A PARTY HERETO OR BY

ANY PERSON FOR WHICH SUCH PARTY IS RESPONSIBLE. EACH PARTY AGREES TO NOTIFY ITS INSURANCE CARRIER(S) OF THIS PROVISION.

25. Effect of Waiver.

No waiver of any breach of any term contained in this Lease shall waive any succeeding breach of such term.

26. Choice of Law & Forum.

- a. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia, and any case or controversy related thereto shall be adjudicated in the state courts of Fauquier County, and shall not be removed to federal court.
- b. Any dispute or controversy arising out of or relating to this Lease, its construction or its actual or alleged breach shall be governed by the Commonwealth of Virginia.

27. Memorandum of Lease.

Town acknowledges that a Memorandum of Lease in the form annexed hereto as Exhibit D will be recorded by Lessee in the official records of the county where the Property is located.

28. Estoppel Letter. Either Lessor or Lessee shall, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges, if any, are paid in advance, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party, or specifying such defaults if any are claimed. Any such statement may be

conclusively relied upon by any prospective purchaser or encumbrancer of the Premises or the Equipment.

28. Sovereign Immunity/Dillon's Rule

Virginia is a Dillon Rule state, and any attempt to require the Town to indemnify as set forth in the terms and conditions of this Lease is invalid unless authorized by state statute.

[Remainder of the page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Lease as of the Effective Date.

[Insert Signature Block]

Exhibit A
Legal Description of Property

Exhibit B
Premises

[Attached]

Exhibit C

Date: **February 21, 2022**

W. Marshall Knight, II
 Kimley-Horn
 Marshall.Knight@kimley-horn.com
 (443) 938-9930



Tower Engineering Professionals
 326 Tryon Road
 Raleigh, NC 27603
 (919) 661-6351
www.tepgroup.net

Subject: Proposal – Water Tank Modification Construction Proposal - Dish

Site Data: Warrenton, VA 4th Tank Water Tank
 34 North 4th Street
 Warrenton, VA 20186
 139 Foot –8 Column Elevated Water Tank

Mr. Knight,

TEP can perform the below tasks for the following fee: (Proposals are valid for 30 days from the date issued)

Item of Work	Fee (\$)	Notes
New Corral	\$36,680.00	Materials and Labor for new corral
Existing Corral Extension/Modification	\$16,650	Materials and Labor for existing corral modification
New Cable Trays + Catwalk Penetration	\$8,470.00	
Demo Mounts on Tank Bowl	\$9,000.00	Dish (Sprint takeover)
Tank Mods (Materials and Labor)	\$77,443.30	
Interior Paint Touchups	\$5,000.00	Interior Paint Touchups per SSPC
PMI, CWI, PM, PCI	\$5,000	
Total Fee	\$158,243.30	

Notes:

- All material will be shop blasted and coated with a 3 coat system to match tank and meet SSPC Standards. All exterior surfaces that are compromised from the welding will be touched up per SSPC Standards
- Includes tank bowl interior paint touchups per SSPC Specification as well as disinfection.

35% of payment due upon commencement of contract for materials
 35% of payment due upon tank modification construction completion
 Balance due upon completion of Post-Modification Inspection
 Payment terms – Net 30 days upon receipt of invoice

Please feel free to call with any questions or concerns and thank you for the opportunity.

Respectfully Submitted,

Bradley K. Little, P.E., G.C., C.W.I.
 Vice President - Construction

Exhibit D

Form of Memorandum of Lease

This Memorandum made this _____ day of _____, 2022 , between the TOWN OF WARRENTON, a municipal corporation with its principal mailing address of _____, hereinafter designated "Lessor" and _____, a _____ with its principal offices at _____, hereinafter designated "Lessee".

1. Lessor and Lessee entered into that certain lease (the "Lease") dated as of the ____ day of _____ 2022 leasing the Premises (as hereinafter defined) to Lessee for a term often (10) years with the right to renew for four (4) additional five (5) year terms.
2. The Lease concerns space on Lessor's certain water tower and that certain parcel of land containing _____ square feet (together with the rights-of way described in the Lease, the "Premises") located on that certain property known as [INSERT ADDRESS] (the "Property") (INSERT GPIN, TAX MAP NUMBER, OR OTHER IDENTIFIER), as more thoroughly described on Exhibit "A" attached hereto and incorporated herein by reference.
3. The term of the Lease shall commence upon full execution of the same by both parties and a copy of the Lease is on file in the offices of Lessor and Lessee. [MODIFY AS NECESSARY]
4. The terms, covenants, and provisions of the Lease of which this is a Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors, and assigns of Lessor and Lessee.

IN WITNESS WHEREOF

[INSERT SIGNATURE BLOCKS AND EXHIBIT]



Office of the Town Manager

Tommy Cureton

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor

Heather Sutphin, Ward 1

William Semple, Ward 2

Brett Hamby, Ward 3

James Hartman, Ward 4 Vice Mayor

Jay Heroux, Ward 5

David McGuire, At Large

Paul Mooney, At Large

Item 4.

Council Meeting Date:	March 14, 2023
Agenda Title:	Indemnification of Town Employees
Requested Action:	Adopt an Ordinance to the Town Code for the indemnification of Town Employees
Department / Agency Lead:	Acting Town Manager
Staff Lead:	Tommy Cureton

EXECUTIVE SUMMARY

The Town of Warrenton is reliant on the Town Staff to function. In the course of the actions of the day-to-day operation of the Government some instances may arise that put the Town employees into a situation where they may be subject to litigation or liability during the course of their duties for the Town. Town employees are not protected against legal liability for one's actions in the course of work necessary for the Governance and operation of the Town.

Staff recommends the Town Council adopt an ordinance to codify the identification of Town employees.

BACKGROUND

The City of Manassas has the following provisions that have been considered in the draft of the Ordinance.

Sec. 2-135. - Defense and indemnification generally.

- (a) Upon compliance by town officers and employees with the provisions of subsection (d) of this section, the town council may employ the town attorney or other counsel to provide for the defense of the town, the council, or any member thereof, or any officer or employee of the town, or of any trustee or member of any board or commission appointed by the town council, in any legal proceeding to which the council, or any member thereof, the town or any of such persons may be a defendant, when such proceeding is initiated against it, or them, by virtue of any actions in the furtherance of their duties in serving the town as its governing body or as members thereof or the duties or service of any officer or employee of the town or any trustee or any member of any board or commission appointed by the town council.
- (b) The town shall indemnify and save harmless its officers and employees in the amount of any judgment obtained against such officers and employees in any state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which judgment or settlement arose occurred while the officer or employee was acting within the scope of his public employment or duties. The duty to indemnify and save harmless prescribed by this subsection shall not arise where the injury or damage resulted from deliberate wrongdoing or recklessness on the part of the officer or employee.
- (c) All costs and expenses of such proceedings so defended shall be charged against the treasury of the town and shall be paid out of funds provided by the town council. Further, if any settlement is agreed upon or judgment is rendered against any of such named persons or the council, the town council shall pay such settlement or judgment from public funds or other funds or in connection

therewith may expend public or other funds for insurance or to establish and maintain a self-insurance program to cover such risk or liability.

- (d) The duty to defend or indemnify and save harmless provided by this section shall be conditioned upon: (1) Delivery, to the town attorney or his assistant, at his office, by the officer or employee, the original or a copy of any summons, complaint, process, notice, demand or pleading within three calendar days after he is served with such document; and (2)The full cooperation of the officer or employee in the defense of such action or proceeding and in defense of any action or proceeding against the town based upon the same act or omission, and in the prosecution of any appeal thereof.
-

Sec. 2-136. - Reimbursement of legal fees and expenses for criminal investigation and prosecution.

If any officer or employee of the town shall be investigated, arrested or indicted or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of their official duties, and no charges are brought, or the charge is subsequently dismissed, or upon trial they are found not guilty, the town council may reimburse the officer or employee for reasonable legal fees and expenses incurred by them in the defense of the investigation or charge. The reimbursement shall be paid from the treasury of the town.

Sec. 2-137. - Limitations on defense and indemnification.

The benefits of sections 2-135 and 2-136 shall inure only to officers and employees as defined in section 2-134 and shall not enlarge or diminish the rights of any other party. The provisions of sections 2-135 and 2-136 shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance. The provisions of sections 2-135 and 2-136 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the town, the town or the town council or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of any other provision of Commonwealth or federal statutory or common law

STAFF RECOMMENDATION

Fiscal Impact

Legal Impact

ATTACHMENTS

March 14, 2023
Town Council
Regular Meeting

ORDINANCE 2023-02

**AN ORDINANCE TO ADD SECTIONS NUMBERED 2-97, 2-98, AND 2-99 TO THE TOWN CODE TO
PROVIDE FOR INDEMNIFICATION OF TOWN STAFF**

WHEREAS, Section 15.2-1520 of the Code of Virginia allows the locality to authorize the Employment of counsel to defend localities and political subdivisions, governing bodies, officers or employees in certain proceedings; costs and expenses of such proceeding; and

WHEREAS, the Town Council has determined that it is appropriate and in the public interest to provide for the indemnification of Town Elected Officials, Officers and Employees; and

NOW, THEREFORE, BE IT ORDAINED by the Warrenton Town Council this ____ day of _____, 2023, that the Warrenton Town Code be, and is hereby, amended to add sections numbered 2-97, 2-98, and 2-99 as follows:

Sec. 2-97. - Defense and indemnification generally.

(a) Upon compliance by town officers and employees with the provisions of subsection (d) of this section, the town council may employ the town attorney or other counsel to provide for the defense of the town, the council, or any member thereof, or any officer or employee of the town, or of any trustee or member of any board or commission appointed by the town council, in any legal proceeding to which the council, or any member thereof, the town or any of such persons may be a defendant, when such proceeding is initiated against it, or them, by virtue of any actions in the furtherance of their duties in serving the town as its governing body or as members thereof or the duties or service of any officer or employee of the town or any trustee or any member of any board or commission appointed by the town council.

(b) To the extent that such liability is not covered by insurance, the town shall indemnify and save harmless its officers and employees in the amount of any judgment obtained against such officers and employees in any state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which judgment or settlement arose occurred while the officer or employee was acting within the scope of his or her public employment or duties. The duty to indemnify and save harmless prescribed by this subsection shall not arise where the injury or damage resulted from deliberate wrongdoing, willful or wanton conduct, gross negligence or recklessness on the part of the officer or employee.

(c) To the extent that such costs and expenses are not covered by insurance, all costs and expenses of such proceedings so defended shall be charged against the treasury of the town and shall be paid out of funds provided by the town council. Further, if any settlement is agreed upon with the concurrence of Town Council or judgment is rendered against any of such named persons or the council, the town council shall pay such settlement or judgment from public funds or other funds or in connection therewith may expend public or other funds for insurance or to establish and maintain a self-insurance program to cover such risk or liability.

(d) The duty to defend or indemnify and save harmless provided by this section shall be conditioned upon:

(1) Delivery, to the town attorney or an assistant town attorney, at the attorney's office, by the officer or employee, the original or a copy of any summons, complaint, process, notice, demand or pleading within three calendar days after service with such document; and

(2) The full cooperation of the officer or employee in the defense of such action or proceeding and in defense of any action or proceeding against the town based upon the same act or omission, and in the prosecution of any appeal thereof.

Sec. 2-98. - Reimbursement of legal fees and expenses for criminal investigation and prosecution.

If any elected official, officer or employee of the town shall be investigated, arrested or indicted or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of official duties, and no charges are brought, or the charge is subsequently dismissed, or upon trial the elected official, officer or employee is found not guilty, the town council may reimburse the elected official, officer or employee for reasonable legal fees and expenses incurred in the defense of the investigation or charge. The reimbursement shall be paid from the treasury of the town.

Sec. 2-99. - Limitations on defense and indemnification.

The benefits of sections 2-97 and 2-98 shall inure only to elected officials, officers and employees and shall not enlarge or diminish the rights of any other party. The provisions of sections 2-97 and 2-98 shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance. The provisions of sections 2-97 and 2-98 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the town, the town or the town council or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of any other provision of Commonwealth or federal statutory or common law.

ATTACHMENT:

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

For Information:

Town Manager

Town Attorney

ATTEST: _____
Town Recorder



Office of the Town Manager

Tommy Cureton

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor

Heather Sutphin, Ward 1

William Semple, Ward 2

Brett Hamby, Ward 3

James Hartman, Ward 4 Vice Mayor

Jay Heroux, Ward 5

David McGuire, At Large

Paul Mooney, At Large

Item 5.

Council Meeting Date:	March 14, 2023
Agenda Title:	Recorder Appointment
Requested Action:	Adopt an Ordinance change for the appointment of the Town Recorder
Department / Agency Lead:	Acting Town Manager
Staff Lead:	Tommy Cureton

EXECUTIVE SUMMARY

Since the resignation of Elizabeth Gillie in March of 2021, the Town Manager has been Appointed as the Town Recorder. The Town Council attempted to hire a full-time municipal Clerk to replace Ms. Gillie but were unsuccessful in the search. Mr. Clough was hired as a part time Clerk in January of 2022. Mr. Clough was made full time in July of 2022 and has been pursuing his Certified Municipal Clerk Designation. To streamline the hiring process and create a clear chain of command, the appointment of the Town Recorder stayed with the Acting and Interim Town Managers through 2022. Tommy Cureton, Acting Town Manager, delegated the duties of the Town Recorder to Mr. Clough. Council has expressed a desire to retain the current delegation of duties and as such this Ordinance changes the duty of appointment of the Town Recorder from the Town Council to the Town Manager to better align with the current operation standards of the Town.

BACKGROUND

Section 15.2-1536 of the Code of Virginia requires the appointment or designation of a clerk for every governing body of a locality.

The Town Charter § 3-8 authorizes the Council to appoint a Recorder whose term of appointment, duties, and compensation shall be prescribed by the Council.

Town Charter Article VI creates the office of Town Manager as Chief Executive Officer of the Town with the responsibility for proper administration of the Town government and the power to appoint all officers and employees of the Town and to remove all officers so appointed, as well as such other duties as may be required by the Council.

STAFF RECOMMENDATION

Adopt the Ordinance granting the Town Manager the power to Appoint the Town Recorder.

Fiscal Impact

None.

Legal Impact

The Town Recorder is tasked with creation of the minutes, records officer of the Town, they are required to be at all meetings of the Town Council and perform other such duties as required by the Town Manager.

ATTACHMENTS

Ordinance 2023-01

ORDINANCE _____

AN ORDINANCE TO AMEND SECTION 2-96 OF THE TOWN CODE TO PROVIDE FOR APPOINTMENT OF THE TOWN CLERK/RECORDER BY THE TOWN MANAGER

WHEREAS, Section 15.2-1536 of the Code of Virginia requires the appointment or designation of a clerk for every governing body of a locality; and

WHEREAS, Town Charter § 3-8 authorizes the Council to appoint a Recorder whose term of appointment, duties, and compensation shall be prescribed by the Council; and

WHEREAS, Town Charter Article VI creates the office of Town Manager as chief executive officer of the Town with the responsibility for proper administration of the Town government and the power to appoint all officers and employees of the Town and to remove all officers so appointed, as well as such other duties as may be required by the Council; and

WHEREAS, the Town Council has determined that it is appropriate and in the public interest to delegate the authority to appoint the Town Clerk and Recorder to the Town Manager; now, therefore, be it

ORDAINED by the Warrenton Town Council this ____ day of _____, 2023, that Section 2-96 of the Warrenton Town Code be, and is hereby, amended as follows:

Sec. 2-96. - Town recorder.

The town council shall hire and the town manager shall appoint a recorder and may appoint deputy or assistant recorders. The recorder shall attend all meetings of the town council, ~~and~~ keep a record of the council proceedings, and perform such other duties as the Town Code imposes on the recorder. ~~He~~ The recorder shall have such other functions, powers and duties as state law assigns to a clerk of a governing body or as the Town Manager may assign. may be provided by the town council. A deputy recorder shall have all the authority of the recorder in the recorder's absence, and an assistant recorder shall have such authority of the recorder as is delegated by the town manager or recorder.

Town Clerk/Recorder



Office of the Town Manager

Tommy Cureton

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor

Heather Sutphin, Ward 1

William Semple, Ward 2

Brett Hamby, Ward 3

James Hartman, Ward 4 Vice Mayor

Jay Heroux, Ward 5

David McGuire, At Large

Paul Mooney, At Large

Item 1.

Council Meeting Date:	March 14, 2023
Agenda Title:	Opioid Settlement
Requested Action:	Adopt a resolution directing the Town Manager, Attorney, and Staff to participate in the proposed settlement of opioid-related claims against Teva, Allergan, Walmart, Walgreens, CVS, and their related corporate entities
Department / Agency Lead:	Town Attorney
Staff Lead:	Martin Crim

EXECUTIVE SUMMARY

This resolution will direct staff and the Town Attorney to participate in the proposed settlement of opioid-related claims against Teva, Allergan, Walmart, Walgreens, CVS, and their related corporate entities.

BACKGROUND

The opioid epidemic that has cost thousands of human lives across the country also impacts the Commonwealth of Virginia and its counties, cities, and towns, including the Town of Warrenton, by adversely impacting the delivery of emergency medical, law enforcement, criminal justice, mental health and substance abuse services, and other services by Warrenton's various departments and agencies. The Commonwealth of Virginia and its counties, cities, and towns, including Warrenton, have been required and will continue to be required to allocate substantial taxpayer dollars, resources, staff energy and time to address the damage the opioid epidemic has caused and continues to cause the citizens of the Commonwealth and Warrenton. Settlement proposals have been negotiated that will cause Teva, Allergan, Walmart, Walgreens, and CVS to pay billions of dollars nationwide to resolve opioid-related claims against them. The Town Attorney has reviewed the available information about the proposed settlements and has recommended that the Town participate in the settlements.

STAFF RECOMMENDATION

Adopt a resolution directing the Town Manager, Attorney, and Staff to participate in the proposed settlement of opioid-related claims against Teva, Allergan, Walmart, Walgreens, CVS, and their related corporate entities.

Fiscal Impact

Legal Impact

ATTACHMENTS

Resolution

March 14th, 2023
Town Council
Regular Meeting

A RESOLUTION OF THE WARRENTON TOWN COUNCIL APPROVING OF THE TOWN'S PARTICIPATION IN THE PROPOSED SETTLEMENT OF OPIOID-RELATED CLAIMS AGAINST TEVA, ALLERGAN, WALMART, WALGREENS, CVS, AND THEIR RELATED CORPORATE ENTITIES, AND DIRECTING THE TOWN ATTORNEY AND/OR TOWN MANAGER TO EXECUTE THE DOCUMENTS NECESSARY TO EFFECTUATE THE TOWN'S PARTICIPATION IN THE SETTLEMENTS

WHEREAS, Warrenton, VA (Hereinafter "the Town") is a municipal corporation located within the County of Fauquier; and

WHEREAS, the opioid epidemic that has cost thousands of human lives across the country also impacts the Commonwealth of Virginia and its counties, cities, and towns, including the Town of Warrenton, by adversely impacting the delivery of emergency medical, law enforcement, criminal justice, mental health and substance abuse services, and other services by Warrenton's various departments and agencies; and

WHEREAS, the Commonwealth of Virginia and its counties, cities, and towns, including Warrenton, have been required and will continue to be required to allocate substantial taxpayer dollars, resources, staff energy and time to address the damage the opioid epidemic has caused and continues to cause the citizens of the Commonwealth and Warrenton; and

WHEREAS, settlement proposals have been negotiated that will cause Teva, Allergan, Walmart, Walgreens, and CVS to pay billions of dollars nationwide to resolve opioid-related claims against them and

WHEREAS, the Town Attorney has reviewed the available information about the proposed settlements and has recommended that the Town participate in the settlements; and

NOW, THEREFORE, BE IT RESOLVED that the Warrenton Town Council, this 14th day of March, 2023, approves of the Town's participation in the proposed settlement of opioid-related claims against Teva, Allergan, Walmart, Walgreens, CVS, and their related corporate entities, and directs the Town Attorney and/or Town Manager to execute the documents necessary to effectuate the Town's participation in the settlements, including the required release of claims against settling entities.

ATTACHMENT: Staff Report

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

For Information:

Town Attorney

ATTEST: _____
Town Recorder

March 14th, 2023
Town Council
Regular Meeting

A RESOLUTION APOINTING THOMAS CURETON AS THE ACTING TOWN MANAGER

WHEREAS, Warrenton, VA (Hereinafter "the Town") is a municipal corporation located within the County of Fauquier; and

WHEREAS, pursuant to Town Charter Section 6-1 the Town of Warrenton is required to appoint a Town Manager; and

WHEREAS, Tommy Cureton was appointed as the Acting Town Manager on February 26th, 2023, 2022, for a forty-five day term; and

WHEREAS, the Acting Town Manager's term expires on April 8th, 2023, thus creating a vacancy; and

WHEREAS, an Acting Town Manager is needed to fulfill the position until a new Town Manager is selected; and

NOW, THEREFORE, BE IT RESOLVED that the Warrenton Town Council is hereby appointing Thomas Cureton as the Acting Town Manager for a period of no more than 3 days through April 11th, 2023.

ATTACHMENT: None

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

For Information:

Town Clerk

Town Attorney

ATTEST: _____
Town Recorder

March 14th, 2023
Town Council
Regular Meeting

**A RESOLUTION APOINTING _____ AS THE TOWN
RECORDER FOR THE TOWN OF WARRENTON, VIRGINIA**

WHEREAS, Warrenton, VA (Hereinafter "the Town") is a municipal corporation located within the County of Fauquier; and

WHEREAS, pursuant to Town Code Section 2-96 the Town of Warrenton is required to appoint a Town Recorder; and

WHEREAS, Tommy Cureton was appointed as the Town Recorder on February 23rd, 2023, for an indefinite term; and

WHEREAS, the Warrenton Town Council Voted on Ordinance 2023-01 updating the code for appointment of the Town Recorder / Town Clerk; and

WHEREAS, The Town Council wishes to appoint a Town Recorder for the position; and

NOW, THEREFORE, BE IT RESOLVED that the Warrenton Town Council is hereby appointing _____
_____ as the Town Recorder for a period of _____

ATTACHMENT: None

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

For Information:

Town Clerk

Town Attorney

ATTEST: _____
Town Recorder