

**Mayor and Council of Federalsburg
Regular Monthly Meeting
Monday, December 7, 2020 @ 6:00 PM**

**THIS MEETING IS BEING HELD BY VIDEO-CONFERENCE
CALL DUE TO COVID-19 AND OFFICE CLOSURE TO THE PUBLIC**

To join by video, please follow the directions on the Town's website,

Join Zoom Meeting

<https://us02web.zoom.us/j/83431046118?pwd=SGlpT2FIZ3A2WHRBNIVKQTNGaEN4Zz09>

Meeting ID: 834 3104 6118

Passcode: redSs5

Agenda

- I. Call to Order**
- II. Welcome**
- III. Pledge of Allegiance**
- IV. Softball league update – Chris Parks**
- V. Reliance Avenue Mobile Home Park – Discussion**
- VI. Ordinance No. 2020-08 – An Ordinance of the Mayor and Council of Federalsburg Adopting an Amended General Budget for the Fiscal Year Beginning on July 1, 2020 and ending on June 30, 2021 (available for introduction)**
- VII. Appointment of Parks & Recreation Committee Members**
- VIII. Town Hall Roof Repair Project Bid Review and Award**
- IX. Ordinance No. 2020-09 – An Ordinance of the Mayor and Council of Federalsburg Authorizing the Mayor to Execute a Franchise Agreement Between the Town of Federalsburg and Comcast of Delmarva, Inc. for the Construction, Operation, and Maintenance of a Cable System Within the Town of Federalsburg and Establishing a Franchise Fee (available for introduction)**
- X. Resolution 2020-03 – A Resolution of the Mayor and Council of Federalsburg to Adopt a Revised Fee Schedule for Residential Rental Licenses and Inspections (available for adoption)**

XI. Mayor and Council Action Items

- Councilmember Windsor
- Councilmember Sewell
- Councilmember Morean
- Councilmember Phillips
- Mayor Abner

XII. Adjournment

NOTES:

If the public is given a call-in number, the Mayor may set ground rules. Some rules might include:

- The Mayor will call the roll to establish a quorum;
- Members need to identify themselves when they are talking;
- The public may be asked to mute the call on their end to avoid interruptions;
- The public may not speak unless the Mayor asks them to.

THE MEETINGS ARE BEING RECORDED, PLEASE TURN OFF ALL CELLULAR DEVICES AND PAGERS DURING THE MEETING, PLEASE REMAIN QUIET, UNLESS ADDRESSING THE COUNCIL.

Please Note: Pursuant to the Annotated Code of Maryland, State Government Article Section 10-508(a), the Council by majority vote may retire to executive or closed session at any time during the meeting. Should the Council retire to executive or closed session; the chair will announce the reasons and a report will be issued at a future meeting disclosing the reasons for such session. Meetings are conducted in Open Session unless otherwise indicated. All or part of Mayor and Council meetings can be held in closed session under the authority of the state open meetings law by vote of the Mayor and Council.

Rules for Public Comment

The Mayor and Council invite and welcome comments at public meetings. The Mayor or presiding officer will recognize you. Please introduce yourself at the podium (spelling your last name, for recording purposes) and give the name of your street and block number (e.g., 100 block of Main Street).

Time limits for speaking are indicated on the meeting agenda. While speaking, please maintain a courteous tone and avoid personal attack.

Mayor & Council Upcoming Meetings/Events

November 16, 2020 – Mayor and Council Workshop - 6 pm

December 7, 2020 – Mayor and Council Regular Monthly Meeting – 6 pm

December 21, 2020 – Mayor and Council Workshop – 6 pm

TO: Mayor & Council Members
FR: Larry DiRe, Town Manager
DT: December 7, 2020
RE: Budget amendments for sale of industrial park land, CARES Act reimbursement, building maintenance expense, computer replacement\upgrade expense, and Critical Area Grant funding

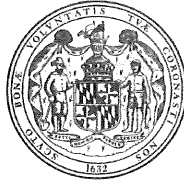
There were numerous unknowns involved in the preparation of the fiscal year 2021 budget. The reliability of projected current year to past years' certain revenue lines were among those unknowns. State-share revenues was a particular unknown. One state-share revenue line which became certain after the current fiscal year began was the Critical Area Grant funding through the Maryland Department of Natural Resources. Staff received the attached letter, dated July 15, 2020, confirming the town's allocation of \$1,000.00. The budgeted revenue line (chart of accounts #1033091) shows \$5,000.00, which needs to be changed to reflect the actual level of state support.

The sale of the lot at the Frank Adams Industrial Park was finalized on October 9, 2020. Sale price of \$98,673, needs to show in the current fiscal year budget as a revenue line. Staff proposes setting chart of accounts line item #1067500 as sale of town property under the classification of Miscellaneous Revenues. Staff proposes setting chart of accounts line item #1067510 as CARES Act reimbursement. Corresponding expenditure lines for chart of account line #1109200 Municipal Building Maintenance, and line #1109600 Computer Replace\Upgrades, both under the General Services classification, need to reflect increased budgeted sums to balance the increased revenues and be available for essential and long-standing costs. The continued leaking and extensive water damage done in town hall is well known, deficiencies in computing capabilities as less well known but still both effect staff's efficiency and create vulnerability to the darker side of the online and digital world. Enhanced network security, remote access capability, upgraded versions of financial and new work order\asset management software, and upgraded hardware are much-needed information technology capabilities. The infusion of revenue through the property sale will allow for some needed improvements. The town has been supported by CARES Act reimbursements for certain information technology expenditures which allow for greater telework capabilities and contactless interaction among staff and with the public.

Pending mayor and council discussion and direction, staff recommends amending the fiscal year 2021 budget to show revenues in the amount of the final sale price, and corresponding expenditures for town hall roof repairs and any associated costs (\$65,673) and information technology service and equipment upgrades (\$33,000).

Pending further discussion staff recommends approval of these budget amendments.

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor



Charles C. Deegan
Chairman
Katherine Charbonneau
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

July 15, 2020

Larry DiRe
Town of Federalsburg
118 N. Main St.
Federalsburg, MD 21632

RE: FY 2021 Critical Area Local Grant Program

Dear Larry DiRe:

The Critical Area Commission is now requesting the submission of your proposed Scope of Work and Budget for its FY 2021 Critical Area Grant Program. The amount available to Federalsburg for FY 2021 is \$1,000.00. We ask that you expedite processing this request for your proposed Scope of Work so that we may fiscally encumber these grant funds in a timely manner.

The attached sample Scope of Work and Funding Guide are enclosed for your use in preparing the Scope of Work. Tasks and deliverables included in your Scope of Work need to be consistent with those identified in this Guide and your annual report should be included as deliverables. Please also refer to the Funding Guide for formatting purposes. We ask that you identify all tasks in the Scope of Work and state whether there will be activity or not. Following the guidelines will enable us to review submissions efficiently.

All proposed Scope of Works and Budgets are due to the Commission via email: cacgrants.dnr@maryland.gov no later than July 31, 2020.

If you have questions please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Irene Lamb".

Irene Lamb
CAC Grant Administrator

ORDINANCE NO. 2020-08

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF
FEDERALSBURG ADOPTING AN AMENDED GENERAL BUDGET FOR
THE FISCAL YEAR BEGINNING ON JULY 1, 2020 AND ENDING ON
JUNE 30, 2021**

WHEREAS, Section C11-1 of the Federalsburg Town Charter requires the Town to establish and operate an annual budget; and

WHEREAS, on June 15, 2020, after a duly advertised public hearing, the Mayor and Council of Federalsburg adopted Ordinance 2020-02 adopting the budget for the fiscal year beginning on July 1, 2020 and ending on June 30, 2021; and

WHEREAS, due to expenditures related to the coronavirus pandemic and the sale of Town owned property in the Frank Adams Industrial Park, the Town has determined that it is necessary to revise the budget for the fiscal year beginning on July 1, 2020 and ending on June 30, 2021; and

WHEREAS, the Town has determined that it is desirable and in the public interest, and consistent with state law, to revise the General Budget, which is set forth in the attached Exhibit "A"; and

NOW, THEREFORE, be it Ordained and Enacted by the Mayor and Council of Federalsburg, Maryland as follows:

Section 1. Ordinance 2020-02, approving the general fund budget and the enterprise fund budget and the tax rate for the fiscal year beginning July 1, 2020 and ending June 30, 2021, is hereby amended to include the Revised General Budget.

Section 2. The Revised General Budget attached hereto as Exhibit A shall replace Exhibit A attached to Ordinance 2020-02.

Section 3. Except as amended herein, Ordinance 2020-02 shall remain in full force and effect as originally adopted.

Section 4. In accordance with Section C3-6, of the Federalsburg Town Charter, this Ordinance shall become effective upon passage by the Mayor and Council and recordation in the Minute Books.

Yea/Nay

Kimberly J. Abner

David A. Morean
Debra Sewell
David S. Phillips
Edward H. Windsor

I hereby certify that the above Ordinance was passed by a yea and nay vote of the Council this _____ day of _____, 202_.

Kimberly J. Abner, Mayor

Delivered by the Mayor and recorded by me in the Minute Books of the Mayor and Council of Federalsburg this _____ day of _____, 202_.

Kristy L. Marshall, Town Clerk

Approved as to form:

Lyndsey J. Ryan, Town Attorney

Date Introduced: _____

Date Amendments Introduced: _____

Date Passed: _____

TO: Mayor & Council Members
FR: Larry DiRe, Town Manager
DT: December 7, 2020
RE: Parks and Recreation Committee appointments

Chapter 132 of the Town Code provides both a broad, general approach to regulating the town's parks and open spaces, and creates an advisory committee with seven specific duties and functions. This flexible system has considerable strengths such as allowing for reasonable interpretation as practical conditions may require. Where the current ordinance falls short is in the absence of the advisory committee created in section 132-2 to fulfill the enumerated duties and function of section 132-3. As remedy staff recommends mayor and council consider reactivating this committee and taking the stated process to appoint members and charge them with the obligations of sections 132-3.B. A functional advisory committee will help promote a proactive approach to meeting the financial responsibilities of parks, facilities, and open spaces maintenance and operations and assist staff in on-going and preventive maintenance and upkeep.

The two members proposed for appointment are: Thomas Corsey; and Eric Smith.

Pending mayor and council discussion, staff recommends reappointing the members named above.

TO: Mayor & Council Members
FR: Larry DiRe, Town Manager
DT: December 7, 2020
RE: Town hall roof repair project award and fee waiver

The town hall roof has been in need of repair for some time. Repair costs were scheduled to be paid from revenues associated with sale of town-owned property in the industrial park. That sale was finalized on October 9, 2020 for the price of \$98,673. With the revenues available, staff advertised for bidders in October 2020. Closing date for the bids was November 13, 2020. While several contractors expressed interest and visited the project site, no bids were received by the deadline date. Staff then contacted several qualified firms for bids. Two firms expressed interest, but only one submitted a bid package. Repairs are necessary to limit additional damage to this critical capital asset.

The responsible bid was submitted by Mid Shore Exteriors, LLC in the sum of \$52,930, with a \$2,000 price reduction for cash or check payment. The town will pay by check which will yield the \$2,000 savings. Since this is a town-initiated project on a town-owned building there is no need for permitting fee, but a building permit will be issued and posted on the project site.

Pending mayor and council discussion, staff recommends awarding the town hall roof repair project to Mid Shore Exteriors for the price submitted, and waiving any required permitting fees.



Mid-Shore Exteriors LLC
 info@midshoreexteriors.com
 4401 Grove Rd.,
 Trappe, Maryland, 21673

Hi Town of Federalsburg!
 ROOFING (410) 673-7939
 Job Address: Federalsburg
 118 North Main Street, Federalsburg, Maryland, 21632

Accept Reject (<https://jobprogress.com/api/public/proposals/16056423865fb42892d3909/file>)

Download

MHC #886



Workmanship to be guaranteed by Mid-Shore Exteriors (15) years

We propose hereby to furnish material and labor complete in accordance with the above specifications, for the sum of: **\$52,930.00**

Discount of **-\$2,000.00** offered if paying by check or cash

Any rotten plywood that needs to be replaced will be charged @ **\$75.00** per sheet using 1/2" CDX

**Due to material shortages certain shingles and accessories may not be available at this time, if needed may have to use substituted accessories of equal kind and quality and manufacturer warranties would not be affected

Financing Available:

We now are now pleased to offer financing options; including 12 months 0% APR with No payment for 12 Months, 18 months deferred interest with minimum monthly payments, & other low payment options

Permit required by the Town of Federalsburg is not included in this proposal

Cost of renting lift is included in proposal

Workmanship to be guaranteed by Mid-Shore Exteriors (15) years for roof

Labor and material to be guaranteed for (40) fifty years. GAF Systems Plus Warranty will apply. Shingles be applied in accordance with GAF's 130 MPH high wind speed wind application and a full start 40- year COMMERCIAL non-prorated warranty will apply. This option is offered to you because our company is a GAF Certified MASTER ELITE Contractor.

All warranties & guarantees are predicated upon payment in full within our credit terms and manufacturer warranties will be registered only after the project paid in full.

Upon removing roof if any additional unforeseen layers are found the additional cost would be \$50.00 per layer per square

Any replacement of damaged framing or finishing lumber will be charged on a time & material basis. Labor will be charged at a rate of \$95.00 per man hr. plus materials.



ORDINANCE NO.2020-09

INTRODUCED BY: _____

AN ORDINANCE OF THE MAYOR AND COUNCIL OF FEDERALSBURG AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE AGREEMENT BETWEEN THE TOWN OF FEDERALSBURG AND COMCAST OF DELMARVA, INC. FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A CABLE SYSTEM WITHIN THE TOWN OF FEDERALSBURG AND ESTABLISHING A FRANCHISE FEE

WHEREAS, the Town of Federalsburg is authorized by the Maryland Code Annotated, Local Government § 5-204 to grant franchises as provided under existing public general or public local laws; to grant one or more exclusive or nonexclusive franchises for a community antenna system or other cable television system that utilizes any public right-of-way, highway, street, road, lane, alley, or bridge, to impose franchise fees, and to establish rates, rules and regulations for franchises granted; and

WHEREAS, the Mayor and Council of Federalsburg have determined that it is desirable and in the public interest to enter into a franchise agreement with Comcast of Delmarva, Inc. for the construction, operation and maintenance of a cable system for the Town of Federalsburg; and

WHEREAS, after due notice and a public hearing on _____, 202_, the Mayor and Council of Federalsburg found as a fact that it will be in the public interest to grant a franchise to Comcast of Delmarva, Inc.; and

WHEREAS, as authorized by the Franchise Agreement between the Mayor and Council of Federalsburg and Comcast of Delmarva, Inc., the Mayor and Council of Federalsburg are authorized to establish a franchise fee of five percent (5%) of gross revenues of Comcast of Delmarva, Inc. derived from within the Franchise Area;

WHEREAS, the Mayor and Council of Federalsburg have determined that it is desirable and in the public interest to charge the Franchisee a franchise fee of five percent (5%) of gross revenues.

NOW THEREFORE, the Mayor and Council of Federalsburg hereby ordains as follows:

Section 1. The Mayor and Council of Federalsburg is hereby authorized to execute the attached Franchise Agreement and any and all documents necessary to consummate the terms and conditions set forth in the attached contract.

Section 2. The Mayor and Council of Federalsburg hereby find that a franchise fee of five percent (5%) of gross revenue is hereby imposed.

Section 3. In accordance with Section C3-6, of the Federalsburg Town Charter, this Ordinance shall become effective upon passage by the Mayor and Council and recordation in the Minute Books.

	Yea/Nay
Kimberly M. Abner	_____
David A. Morean	_____
Edward H. Windsor	_____
Debra Sewell	_____
Scott Phillips	_____

I hereby certify that the above Ordinance was passed by a yea and nay vote of the Council this _____ day of _____, 202_.

Kimberly M. Abner, Mayor

Delivered by the Mayor and recorded by me in the Minute Books of the Mayor and Council of Federalsburg this ____ day of _____, 202_.

Kristy Marshall, Town Clerk

CABLE FRANCHISE AGREEMENT
BETWEEN
TOWN OF FEDERALSBURG, MARYLAND
AND
COMCAST OF DELMARVA, LLC

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FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the Town of Federalsburg, Maryland (hereinafter, "Town" or "Franchise Authority") and Comcast of Delmarva, 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 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 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 December 1, 2020.

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 Federalsburg, 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 Federalsburg, Maryland or the lawful successor, transferee, designee, or assignee thereof.

1.10. "Franchisee" shall mean Comcast of Delmarva, LLC.

1.11. "Franchise Fee" shall mean the fee that Comcast remits to the Town of Federalsburg for the use of the Town's Public Rights-of-Way pursuant to Section 622 of the Cable Act, 47 U.S.C. §542 and Section 7.1 of this Agreement.

1.12. "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, commercial leased access fees and advertising and home shopping. Gross Revenue shall not include program launch support payments, agency commission fees for unaffiliated third-party advertising sales agencies, 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.

1.13. "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.

1.14. "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.

1.14. "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, park, bridge, waterway, dock, bulkhead, wharf, pier, other public ground or water subject to the jurisdiction and control of the Franchise Authority, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchise Authority in the Franchise Area, which shall entitle the Franchisee to the use thereof for the purpose of

installing, operating, repairing, and maintaining the Cable System. 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 compatible uses, 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.

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

1.16. "Town" shall mean the Town of Federalsburg, a municipal corporation of the State of Maryland.

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

1.18. "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 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 ten (10) 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 and the Cable Act.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act [47 U.S.C. §546], as amended.

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 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.

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. Continuity of Service. Subject to Force Majeure provisions in Section 13.1, Franchisee shall use commercially reasonable efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purpose of construction, routine repairing or testing of the Cable System, Franchisee shall use commercially reasonable efforts to interrupt Cable Service only during periods of minimum use. When necessary Cable Service Interruptions of more than twenty-four (24) hours can be anticipated, Franchisee shall notify Subscribers in advance of such Service Interruption.

3.2.9. System Tests and Inspections. Franchisee shall be responsible for ensuring that its Cable System is designed, installed, and operated in a manner that fully complies with all applicable FCC technical standards as amended. Pursuant to this Section, Franchisee shall conduct and document all tests required by the FCC to show the level of compliance with applicable FCC technical standards, including, when applicable, those regarding the

Commented [A1]: Duplicative. See Section 4.3.

transmission and reception capabilities of a digital Cable System. Upon a showing of a pattern of Subscriber Complaints regarding signal quality or a determination of non-compliance related to signal quality, Franchisee, upon written request by the Town, shall perform applicable tests to show compliance with FCC standards. Franchisee shall provide a report to the Town within thirty (30) days of completion of such Town requested test that describes the results of the test. If any test under this Section indicates that the Cable System fails to meet applicable FCC requirements, Franchisee shall take such corrective measures as are necessary to correct any failure and to prevent the recurrence as far as is possible. Franchisee's failure to correct any deficiencies related to meet applicable FCC technical standards identified through this testing process shall be a material violation of this Agreement.

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) unserviceable occupied residential dwelling units per mile and is within one (1) mile as measured in strand footage from the nearest point on the Cable System trunk or feeder line from which a usable cable signal can be obtained. For purposes of this section, a home shall 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 twenty-five (125) feet of the Franchisee's distribution cable at the standard installation rate. Should, through new construction, an area within the Franchise Area meet the density requirements, Franchisee shall provide Cable Service to such area within one (1) year after it confirms that the density requirements have been met following notice from the Franchise Authority that one (1) or more residents has 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. Cable System Specifications. Franchisee has designed, constructed and shall maintain a Cable System meeting digital television standards. The Cable System shall be capable of supporting video and audio, including HD and SD video, on the Effective Date of the Agreement. Franchisee's Cable System shall provide consistent, high-quality reception to Subscribers in the Franchise Area in accordance with applicable FCC technical standards and other technical standards contained in this Agreement.

Commented [A2]: Specific bandwidth passing is less of an issue now with technology advancements.

The Cable Service provided by Franchisee shall be delivered in accordance with applicable FCC standards, as amended. The Cable System shall meet or exceed any and all applicable technical performance standards of the FCC and shall comply with all current applicable codes including the National Electrical Safety Code, the National Electrical Code and any other applicable federal laws and regulations and the laws, ordinances and construction standards of the State of Maryland and the generally applicable laws, ordinances and construction standards of the Town.

The System shall be protected against outages due to electrical power failures. Franchisee shall maintain standby power capable of powering headend equipment for at least twenty-four (24) hours. All power supplies serving the Cable System shall be stand-by ready and capable of providing power to the Cable System for no fewer than four (4) hours per occurrence measured on an annual basis according to manufacturer specifications in the event of an electrical outage. Franchisee shall employ power supply monitoring and, in accordance with industry practice, make commercially reasonable efforts to maintain a number of portable motorized generators to be deployed throughout the system where needed, prior to the system failure, in the event that the duration of a power disruption may potentially exceed four (4) hours.

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.

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. 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 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.

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.

SECTION 7 - Oversight and Regulation by Franchise Authority

7.1. Franchise Fees. Upon ninety (90) days prior written notice, the Franchising Authority may implement, and the Franchisee shall pay, a Franchise Fee in an amount up to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; 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. The actual percentage shall be specified by the Franchise Authority. The payment of Franchise Fees shall be made on a quarterly basis 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). 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.

7.2. Franchise Fees Subject to Audit.

7.2.1 Upon notice pursuant to Section 13.2 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.

7.2.2. 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.

7.2.3. 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.

7.3. 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.

7.4. 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.

7.5. Maintenance of Books, Records, and Files.

7.5.1. 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 thirty-six (36) months.

7.5.2. 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.

7.5.3. 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, 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.

SECTION 8 - Transfer 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 Comcast Corporation, 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.

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 One Million Dollars (\$1,000,000.00) per occurrence for bodily injury or property damage. The Franchisee shall provide workers’ compensation coverage in accordance with applicable law.

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 any 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 and Town Facilities. Because the Franchise Fee set forth herein is below the legal maximum, subject to applicable law, the Franchisee shall provide, at no cost to the Franchise Authority, Basic Cable Service and Standard Installation at one outlet to each Public Building and public grade school (K-12) located in the Franchise Area within one hundred twenty-five (125) feet of the Franchisee's distribution cable identified in Exhibit A. No charge shall be made for installation or service, except that Franchisee may charge for installation beyond one hundred twenty-five (125) feet distance of the cable plant and service for more than one (1) drop in each building. To the extent so provided by applicable law, the value of the services set forth herein constitute a franchise fee assessed upon the Franchisee, which the Franchisee may recover as provided by law. If the fair market value of the service provided under this Section, together with the Franchise Fees paid to the Franchise Authority exceed the maximum amount allowed by law, the fair market value of the installation and service provided under this Section, that exceed the maximum franchise fee allowed by law, shall be invoiced for payment or deducted from the Franchise Fees paid to the Town, with the fair market value of the services being disclosed to the Town in advance of the deduction. Franchisee shall notify the Franchise Authority in writing regarding the amount of the monthly service fee for each account based on fair market value. The Town shall then notify Franchisee, within thirty (30) days of receiving the Franchisee's notice, whether it desires the amount due each month to be invoiced for payment or deducted from the next Franchise Fee payment. 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."

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, it shall notify the Franchisee in writing with specific details regarding the exact nature of the alleged non-compliance or default.

Non-compliance or default shall not constitute a violation of a material term or condition if the non-compliance or default occurs without the fault of Comcast or occurs as a result of circumstances beyond its control or by reason of Force Majeure as addressed in Section 13.1. Franchisee shall not be excused from the performance of any of its obligations under this Franchise Agreement by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

Commented [A3]: Moved Town suggested language from Section 11.2.1.

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 Hearing. If the violation has not been cured within the time allowed in Section 11.1.1 or if the Town disagrees with the Franchisee's challenge of the violation, and the Town wishes to pursue enforcement, the Town 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 Town 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.

Commented [A4]: This is Comcast suggested language struck from the Town's latest draft. Comcast has reinserted. We would like to have an opportunity to discuss with the Town Council any non-compliance assertions that get to the point of possible liquidated damages. There are likely extenuating circumstances if something gets this far.

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; (ii) pursue liquidated damages in accordance with Section 11.1.4, if applicable; or (iii) in the case of a substantial default of a material provision of the Franchise, initiate revocation proceedings in accordance Section 11.2.

Commented [A5]: This is Comcast suggested language struck from the Town's latest draft. Comcast has reinserted and added language recognizing the new liquidated damages possibility.

11.1.4. Liquidated Damages. Because Franchisee's failure to comply with certain material provisions of this Agreement may result in injury to the Town and because it may be difficult to measure the extent of such injury, the parties agree to the following liquidated damages for material violations of this Agreement, the Town may assess liquidated damages against the Franchisee in the amount of one hundred dollars (\$100.00) per day for each day the material violation continues, provided Franchisee has had an opportunity to cure in accordance with Section 11.1.1 and the Town is not pursuing other penalties or remedies. Such damages shall not be a substitute for specific performance by Franchisee, but shall be in addition to such specific performance or legal action. The amount of all liquidated damages assessed per annum shall not exceed ten thousand dollars (\$10,000) in the aggregate. Nothing herein is intended to allow duplicative recovery from or payments by Franchisee or its surety(s).

Commented [A6]: See following paragraph related to legal action in lieu of or subsequent to the assessment of liquidated damages.

The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the Town. Liquidated damages may not be assessed for a time period exceeding one hundred and twenty (120) days per violation. The Town may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction after the assessment of liquidated damages or in lieu of liquidated damages.

With respect to liquidated damages assessed, all similar violations or failures from the same factual events affecting multiple Subscribers shall be assessed as a single violation, and each violation or a failure may only be assessed as a single material violation.

11.2. Revocation. In addition to the other rights, power and remedies retained by the Town under this Agreement, the Town reserves the separate and distinct right to revoke this Franchise Agreement if: (i) it is demonstrated that Franchisee practices any fraud or deceit upon the Town in the operation of its Cable System or any other activities pursuant to this Agreement; (ii) Franchisee repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC; (iii) Franchisee repeatedly violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement.

Commented [A7]: Moved town suggested language to Section 11.1.

11.2.1. A revocation shall be declared only by a written decision of the Mayor and Council of Federalsburg after an appropriate public hearing that shall afford Franchisee due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the State of Maryland. All notice requirements shall be met by providing Franchisee at least thirty (30) days prior written notice (via certified mail) of any public hearing concerning the proposed revocation of this Franchise Agreement. Such notice shall state the grounds for revocation. The Mayor and Council of Federalsburg, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by Franchisee of mitigating circumstances or good cause for the existence of such grounds. The Town shall issue such declaration and finding within thirty (30) days in a written decision which shall be sent via certified mail to Franchisee. Franchisee may appeal such written determination to an appropriate court of competent jurisdiction.

Commented [A8]: Is this a cite? Could not locate the reference.

11.3. 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:

11.3.1. 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

11.3.2. 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.

11.4. 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)].

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. New 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 new 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 new 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 - Miscellaneous Provisions

13.1. 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 non-compliance 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, public health emergencies, 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.

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

To the Franchise Authority:

Town of Federalsburg

PO Box 471
118 North Main Street
Federalsburg, MD 21632
Attention: Mayor

To the Franchisee:

Comcast Cable
1215 East Fort Avenue, Suite 103
Baltimore, MD 21230
Attention: Government Affairs Department

And to:

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

13.3. Entire Agreement. This Franchise Agreement 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.

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

13.5. Governing Law. 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.

13.6. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the 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.

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

13.8. 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.

13.9. 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.

13.10. Incorporation by Reference

13.10.1. 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. Franchisee and Town agree that, due to the nature of the delivery and sales of Franchisee's services, the solicitation provisions of the Town Code, Chapter 139, as amended, are not applicable to the Franchisee.

13.10.2. 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.

13.11. 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.

13.12. 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.

13.13. 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.

SECTION 14 – Performance Bond

14.1. Performance Bond. Within thirty (30) days of the Effective Date of this Agreement, Franchisee shall post a performance bond in the amount of twenty thousand dollars (\$20,000) as surety 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. The Franchising Authority shall give Franchisee twenty (20) business days' notice of its intent to draw any 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.

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 Federalsburg, Maryland:

By: _____

Print Name: _____

Title: _____

Date: _____

Comcast of Delmarva, LLC:

By: _____

Print Name: Mary McLaughlin

Title: Regional Senior Vice President

Date: _____

Exhibit A

Town Service Locations

Federalsburg Elementary School	302 South University Avenue, Federalsburg, MD 21632
Federalsburg Judy Hoyer Center	323 South University Avenue, Federalsburg, MD 21632
Federalsburg Public Works	125 Kerney Street, Federalsburg, MD 21632
Federalsburg Police Department	104 Morris Avenue, Federalsburg, MD 21632
Federalsburg Town Hall	118 North Main Street, Federalsburg, MD 21632
Federalsburg Volunteer Fire Department	208 North University Avenue, Federalsburg, MD 21632

RESOLUTION NO. 2020-03

**A RESOLUTION OF THE MAYOR AND COUNCIL OF FEDERALSBURG
TO ADOPT A REVISED FEE SCHEDULE FOR RESIDENTIAL RENTAL
LICENSES AND INSPECTIONS**

WHEREAS, by Ordinance 2009-09, the Mayor and Council of Federalsburg adopted a residential rental housing license and inspection program, which is set forth in Chapter 158 of the Federalsburg Town Code, the purpose of which is to protect the health, safety and welfare of the Town residents and to prevent deterioration of the housing stock in the Town; and

WHEREAS, pursuant to § 158-8 of the Federalsburg Town Code, the Mayor and Council have the authority to enact a resolution establishing a fee schedule in connection with the administration of Chapter 158 of the Federalsburg Town Code; and

WHEREAS, the Council has determined that it is desirable and in the public interest to amend and adopt a schedule of fees as provided by § 158-8 of the Federalsburg Town Code.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF FEDERALSBURG AS FOLLOWS:

Section 1. That the Residential Rental Housing License and Inspection Fee Schedule, which is attached hereto and incorporated herein, be and is hereby **ADOPTED**.

Section 2. That all previously adopted purchasing manuals are hereby **REPEALED**.

Section 3. This Resolution shall become effective immediately.

RESOLVED by the Mayor and Council of Federalsburg on this 7th day of December, 2020.

Yea/Nay

Kimberly M. Abner, Mayor
David A. Morean, Councilmember
Edward Windsor, Councilmember
Debra V. Sewell, Councilmember
D. Scott Phillips, Councilmember

**TOWN OF FEDERALSBURG
APPLICATION, PERMIT, INSPECTION AND FEE SCHEDULE**

	Permit Application	Inspection Fee
<u>RESIDENTIAL RENTAL HOUSING LICENSE AND INSPECTION</u>		
Residential Rental Unit	\$100.00 (annual license)	\$100.00*
Re-inspection Fee (for each re-inspection)		\$45.00

*Inspection fee is due upon the inspection of the particular unit that is the subject of the inspection.