A REGULAR MEETING OF THE FAUQUIER COUNTY BOARD OF SUPERVISORS WAS HELD JUNE 18, 2001 AT 1:00 P.M. IN WARRENTON, VIRGINIA

P R E S E N T Mr. Raymond Graham, Chairman; Mr. Joe Winkelmann, Vice Chairman; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks; Mr. G. Robert Lee, County Administrator; Mr. Paul S. McCulla, County Attorney

AGENDA REVIEW

The Board of Supervisors reviewed the agenda.

LEGACY OF FLIGHT

Bob Ellis, founder of the Kalamazoo Air Zoo, and Michael Starn, Aviation Curator with the Marine Corps Air-Ground Museum, gave a presentation to the Board of Supervisors regarding a proposal to construct a state-of-the-art flight museum in Fauquier County.

PUBLIC SAFETY RADIO SYSTEM

A work session was held to receive additional information regarding the proposed public safety radio system.

CLOSED SESSION

Mr. Winkelmann moved to go into closed session pursuant to Virginia Code Sections 2.1-340.1 and 11-52 to discuss certain aspects of proposals regarding the public safety radio system. Mr. Atherton seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

Upon reconvening from closed session, Mr. Winkelmann moved to adopt the following certification. Mr. Atherton seconded, and the vote for the motion was unanimous as follows:

CERTIFICATION OF CLOSED MEETING

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

WHEREAS, Section 2.1-344.1 of the Code of Virginia requires a certification by this Board of Supervisors that such closed meeting was conducted in conformity with Virginia Law; now, therefore, be it

RESOLVED this 18th day of June 2001, That the Fauquier County Board of Supervisors 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 meeting were heard, discussed or considered by the Fauquier County Board of Supervisors.

VOTE:

Ayes: Mr. Larry L. Weeks; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Raymond Graham

Nays: None

Absent During Vote: None

Absent During Meeting: None

REDISTRICTING – PROPOSED PLANS TO MODIFY MAGISTERIAL DISTRICTS, PRECINCTS AND POLLING PLACES

A work session was held to review and discuss the proposed amendments to magisterial districts, precincts and polling places.

JOINT WORK SESSION WITH THE SCHOOL BOARD

A joint work session was held with the Fauquier County School Board to discuss the proposed Capital Improvements Program for FY 2002-2006.

The meeting was reconvened in Regular Session at 6:30 p.m. in the Multi-purpose Room at C. Hunter Ritchie Elementary School.

ADOPTION OF THE AGENDA

Mr. Winkelmann moved to adopt the agenda subject to the following changes. Mr. Weeks seconded, and the vote for the motion was unanimous as follows:

- Move Preliminary Subdivision Application for Reynard's Crossing

from the Consent Agenda to the Regular Agenda for discussion.

- Accept a substitute resolution for Special Exception – Kenneth E. Peltzer and Associates, Inc.

- Add to the Regular Agenda A Resolution Authorizing the County Administrator to Sign a Bond Purchase Agreement Subject to Board of Supervisors' Ratification to Refund the 1993 General Obligation Bonds.

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

PROCLAMATIONS AND RECOGNITIONS

- On behalf of the Board of Supervisors, Mr. Graham presented a proclamation to the Dairy Princesses to recognize the month of June 2001 as June Dairy Month.

- Ms. McCamy accepted a proclamation to recognize the Fortieth (40th) Anniversary of the Sumerduck Ruritan Club. She will present the proclamation at a future Club meeting.

- Mr. Graham and Mr. Weeks presented a Certificate of Recognition to Keith Severin for his service to the Capital Improvements Program Committee.

CITIZENS TIME

- Chuck Medvitz spoke regarding the need for the Vint Hill Economic Development Authority to have a public session for citizens to speak regarding the Vint Hill Preliminary Subdivision Plan. Mr. Medvitz also spoke regarding the need for the Water and Sanitation Authority to have continuing dialogue with the community regarding the test wells being dug in the New Baltimore area. He also said that he felt the emergency radio system needed to be improved and that the County should pursue this in the most prudent manner possible.

CONSENT AGENDA

Mr. Winkelmann moved to adopt the following Consent Agenda items. Ms. McCamy seconded, and the vote for the motion was

unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

Approval of the Minutes of the Board of Supervisors April 16, 2001 Regular Meeting

A Resolution to Adopt the Board of Supervisors Legislative Proposals for the 2002 General Assembly

RESOLUTION

A RESOLUTION TO ADOPT THE BOARD OF SUPERVISORS'

LEGISLATIVE PROPOSALS FOR THE 2002 GENERAL ASSEMBLY

WHEREAS, the County of Fauquier has a variety of issues and interests which require legislative action by the Virginia General Assembly; and

WHEREAS, the Virginia Association of Counties (VACo) has requested submission of such legislative proposals for consideration in the 2002 VACo Legislative Program; and

WHEREAS, the County's interests can be proposed with the united support of other localities if contained in the VACo Legislative Program; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the following items be, and are hereby, adopted as the County's legislative issues for consideration by the 2002 General Assembly.

LEGISLATIVE PRIORITIES:

- **Adequate Public Facilities** - Fauquier County supports Adequate Public Facilities legislation which would permit high growth localities, as part of their subdivision or zoning ordinance, to determine whether public facilities are adequate to support the services which will be required by the proposed subdivision or rezoning.

- **Impact Fees** - Fauquier County continues to support legislation that

would allow localities the option to assess impact fees for school construction and other essential government services in lieu of voluntary cash proffers.

- **School Construction Funding** - Fauquier County supports increased funding for school construction.

- **School Operational Funding -** Fauquier County supports the full funding of the State's share of the Standards of Quality, full funding of any categorical educational mandate, including pay raises, and full funding of the State's portion of the Standards of Learning relating to instructional technology.

- **Cost of Competing** - Fauquier County respectfully requests that those State legislators representing Fauquier County introduce legislation to incorporate Fauquier County into the Cost of Competing School Funding Formula.

- **Local Revenue Authority**: Fauquier County opposes any measure that would eliminate or reduce any local government revenue authority.

- **Local Government Zoning and Land Use Authority -** Fauquier County opposes any further dilution of the zoning and land use regulatory authority of local governments.

- **Revenue Sharing** - Fauquier County strongly supports any legislative proposal that results in the State sharing a portion of its income tax revenues with localities (provided the legislation requires more than the replacement of existing local revenue sources) and provides local flexibility in determining how it should be used.

- **Increased Local Authority** - Fauquier County supports legislation to provide for increased local authority in planning, zoning and revenue matters through a statutory relaxation of the Dillon Rule. The relaxation of the Dillon Rule should not, however, be accompanied by a shift of responsibility for various programs from the state government to local government.

- **Purchase of Development Rights:** Fauquier County supports increased state funding for the purchase of conservation easements and other land conservation needs.

A Resolution to Approve Budget Transfers and Supplemental Appropriations in the Amount of $539,612

RESOLUTION

A RESOLUTION TO APPROVE FY 2001 BUDGET TRANSFERS AND

SUPPLEMENTAL APPROPRIATIONS IN THE AMOUNT OF $539,612

WHEREAS, the Board of Supervisors is charged by the Code of Virginia with the operation of an annual budget for Fauquier County; and

WHEREAS, this annual budget is a plan of how funds received by the County will be used to meet the needs of the citizens of the County; and

WHEREAS, during the course of the fiscal year certain events occur which necessitate changing the budget plan by increasing a department's total budget or approving expenditure plans; and

WHEREAS, funds needed to increase a department's budget must come from internal adjustments or from an outside source such as State, Federal, grant or other local sources such as the County's Reserve for Contingency; and

WHEREAS, Information Resources requested appropriation of $10,000 from the Town of Warrenton for its share of Geographic Information System equipment upgrades; and

WHEREAS, the Sheriff's Office requested appropriation of $149 in Federal funding for Share of Forfeiture Proceeds – DEA Group 33; and

WHEREAS, Joint Communications requested appropriation of $3,678 for two Virginia Criminal Information Network (VCIN) computers, $14,000 for radio tower work and lease agreement costs incurred for the radio repair and upgrade from Joint Communications Fund Balance, and $4,000 for installation and service fees for FY 2001 from unappropriated State wireless revenue; and

WHEREAS, Parks and Recreation requested appropriation of $3,820 from the Heritage Preservation Grant for participation in the Conservation Assessment Program; and

WHEREAS, Juvenile Court Services requested appropriation of $5,786 for the Juvenile Accountability Incentive Block Grant from State funding; and

WHEREAS, the Airport requested appropriation of $4,336 in personal property tax collected for the Airport; and

WHEREAS, Social Services requested appropriation of $57,000 in State funding for the One Stop operational program; and

WHEREAS, Fire and Rescue Services requested appropriation of the $192,000 FY 2001 impact of the one cent increase in the Fire and Rescue Levy for construction and repair to their facilities; and

WHEREAS, the School Division requested appropriation of $14,000 for the Master's Degree Program from teacher refunds, $21,093 for the Regional Alternative Education Project from State funding, and $127,661 in Federal funding for Class-Size Reduction; and

WHEREAS, the School Division requested transfer of $82,089 from completed School Capital Improvement Projects to other Capital Improvement Project requirements, $14,243 for water connections at P.B Smith Elementary School, $50,000 for trailer relocations at Fauquier High School and $17,846 for design work on a greenhouse at Liberty High School; and

WHEREAS, the Community Policy and Management Team recommended $31,786 in contributions to community organizations from funds previously appropriated for this purpose in the form of a mini grant program to provide expanded care to Community Service Act (CSA) related families and children; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the requested use of $31,786 in current appropriations as recommended by the Community Policy and Management Team is approved; and, be it

RESOLVED FINALLY, That the sum of $539,612 in additional budget related actions be carried over, transferred or appropriated as follows:

	FROM			TO	
Source	**Code**	**Amount**	**Department**	**Code**	**Amount**
CIP Funds	3-302-192000-0010	$10,000	Information Resources	4-302-080106-8200	$10,000
Federal Funds	3-100-331000-0040	$149	Sheriff's Office	4-100-031230-8201	$149
WFJCC Fund Balance	3-220-419000-0010	$3,678	Joint Communications	4-220-031410-6047	$3,678

WFJCC Fund Balance	3-220-419000-0010	$14,000	Joint Communications	4-220-031410-8203	$14,000
State Funds	3-220-023100-0001	$4,000	Joint Communications	4-220-031411-5230	$4,000
Federal Funds	3-150-761111-0023	$3,820	Parks and Recreation	4-150-761111-3160	$1,150
				4-150-761111-3161	$2,600
				4-150-761111-5510	$35
				4-150-761111-5530	$35
State Funds	3-100-244100-0181	$5,786	Juvenile Court Services	4-100-033410-3160	$5,786
State Funds	3-100-241000-0040	$57,000	Social Services	4-100-053165-13161	$57,000
Local Funds	3-270-111001-0001	$192,000	Fire & Rescue CIP	4-270-093100-9302	$192,000
	3-302-415000-0270			4-302-094340-8215	
Local Funds	3-504-415000-0100	$4,336	Airport	4-100-093100-9504	$4,336
	3-100-113001-0001			4-504-081722-3316	
Local Funds	3-205-191000-0001	$14,000	School Division	4-205-061310-1650-200-001-000	$7,500
				4-205-061310-	$1,500
					$5,000

				1628-200-001-000	
				4-205-061310-5504-200-001-000	
State Funds	3-205-242000-0072	$21,093	School Division	4-205-061100-5801-300-009-000	$67
				4-205-061100-6013-300-009-000	$16,457
				4-205-061100-8200-300-009-000	$4,569
Federal Funds	3-205-332000-0039	$127,661	School Division	4-205-061100-1121-200-005-445	$97,781
				4-205-061100-2100-200-005-445	$7,481
				4-205-061100-2210-200-005-445	$12,262
				4-205-061100-2212-200-005-445	$137
				4-205-061100-2310-200-005-445	$8,928
				4-205-061100-2400-200-005-445	$783
				4-205-061100-2720-200-005-445	$289

School Division CIP	4-302-94601-3140	$4,229	School Division CIP	4-302-85605-8210	$14,243
	4-302-94601-6055	$2,450			
	4-302-94601-8201	$5,989			
	4-302-94601-9301	$1,575			
School Division CIP	4-302-94605-3140	$9,775	School Division CIP	4-302-85601-8215	$50,000
	4-302-94605-9301	$841		4-302-94615-8215	$17,846
	4-302-94605-9409	$57,230			
TOTAL		**$539,612**			**$539,612**

A Resolution to Establish a Debt Referendum Policy for Fauquier County

RESOLUTION

A RESOLUTION TO ESTABLISH A DEBT REFERENDUM

POLICY FOR FAUQUIER COUNTY

WHEREAS, the Board of Supervisors, through its Capital Improvements Plan process, has recognized the need for and wishes to encourage enhanced public participation in the decision making process relating to major new construction projects due to potential effects of these projects on the County's credit rating, debt availability, tax rates and annual operating budget; and

WHEREAS, the Board of Supervisors held a work session on April 2, 2000 to discuss the need for and specific elements of a debt referendum policy and met again on May 21, 2001 to further refine the proposed policy; and

WHEREAS, the Board of Supervisors has determined that it is desirable and necessary to establish a debt referendum policy relating to major new facility construction projects and establish referendum requirement thresholds and other policies relating thereto; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the Fauquier County Board of Supervisors does hereby adopt the following debt referendum policy:

1. All new facility construction projects or acquisitions that exceed $10,000,000 shall be subject to voter referendum regardless of financing mechanism.

2. The referendum threshold for new facility construction projects shall be lowered to $2,000,000 in the event that the County has, or through the issuance of the contemplated debt will, exceed 100% of the County's debt capacity. (Debt capacity shall be defined as 10% of General Fund revenues committed to debt service).

3. This policy shall take effect on July 1, 2002, in conjunction with the FY 2003 Budget.

4. Voter referendums shall coincide with the general election.

5. The Board of Supervisors may waive the referendum requirement, to the extent allowed by law, to meet a critical health and/or public safety need or in conjunction with a court order, by a majority vote of the Board of Supervisors at a regularly scheduled meeting.

A Resolution to Adopt the Warrenton-Fauquier Airport Disadvantaged Business Enterprise Plan

RESOLUTION

A RESOLUTION TO ADOPT THE WARRENTON-FAUQUIER AIRPORT

DISADVANTAGED BUSINESS ENTERPRISE PLAN

WHEREAS, Federal requirements to formulate, adopt, and implement a Disadvantaged Business Enterprise Plan must be met in order to receive funding for significant airport improvements planned in 2002; and

WHEREAS, the Airport Committee has reviewed and approved the FY 2002 Warrenton-Fauquier Airport Disadvantaged Business Enterprise Plan; and

WHEREAS, provisions are included in the engineering services contract for assistance in developing, implementing, and monitoring the Plan; and

WHEREAS, a goal of five percent (5%) represents the percentage of disadvantaged firms, as defined by Federal regulation, in

the area that provide typical services that will be needed for airport improvements; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the County Administrator is hereby authorized to provide public notice of the approved Fauquier Airport Disadvantaged Business Enterprise Plan and goals, and to submit the Plan and comments to the Federal Aviation Agency.

A Resolution to Continue the Frytown Water Project

RESOLUTION

A RESOLUTION TO CONTINUE THE FRYTOWN WATER PROJECT

WHEREAS, the Board of Supervisors has previously provided funding in the amount of $100,000 to continue monitoring wells and providing either bottled water or a filtration system to a number of homes in the Frytown area; and

WHEREAS, the Board of Supervisors remains committed to working with the Health Department to ensure that safe drinking water is available to the residents of Frytown and to continue the ground water monitoring program; and

WHEREAS, a group working through the Public Safety Committee is exploring options to provide a long-term solution to the problem of contaminated water; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the Board of Supervisors does hereby authorize the continuation, at County expense, of the testing and bottled water/carbon filtration program through June 30, 2002 utilizing existing funding previously approved for this program.

A Resolution Authorizing the Chairman of the Board of Supervisors to Accept the Dedication of the Bealeton Station Library Site

RESOLUTION

A RESOLUTION AUTHORIZING THE CHAIRMAN
OF THE BOARD OF SUPERVISORS TO
ACCEPT THE DEDICATION OF THE BEALETON
STATION LIBRARY SITE

WHEREAS, the Board of Supervisors, in Special Exception #SEA 00-L-03, approved an amendment to the Bealeton Station Special Exception; and

WHEREAS, the amended Special Exception conditions require the dedication of a designated library/public use site to the County; and

WHEREAS, Bealeton Landmarks, LLC has requested that the County accept the dedication of the designated site; and

WHEREAS, the Board of Supervisors has resolved to accept the designation of the library site, pending receipt of a satisfactory environmental audit and compliance with the requirements of the conditions of the Special Exception; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the Chairman of the Board of Supervisors be, and is hereby, authorized to accept the dedication of the designated site upon receipt of a satisfactory environmental audit and compliance with the requirements of amended Special Exception #SEA 00-L-03.

A Resolution to Authorize the Donation of a Surplus Vehicle to the Town of Remington, Virginia

RESOLUTION

A RESOLUTION TO AUTHORIZE THE DONATION OF A

SURPLUS VEHICLE TO THE TOWN OF REMINGTON, VIRGINIA

WHEREAS, on May 3, 2001, the Mayor of the Town of Remington, the Honorable Gerald A. Billingsley, forwarded a request to Fauquier County Sheriff Joseph Higgs, Jr. for the donation of a used law enforcement vehicle to the Town of Remington, if available; and

WHEREAS, Sheriff Higgs has identified a surplus law enforcement vehicle, a 1996 four-door Ford Crown Victoria, VIN# 2FALP71WOTX203292, that would meet the law enforcement needs of the Town of Remington; and

WHEREAS, the donation or transfer of a County-owned vehicle to an outside entity requires the approval of the Board of Supervisors; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the Fauquier County Board of Supervisors does hereby authorize the County Administrator to take all actions necessary to donate the aforementioned surplus law enforcement vehicle to the Town of Remington, Virginia.

A Resolution Concerning Proposed State Regulations Regarding Emergency Medical Services

RESOLUTION

A RESOLUTION OF THE FAUQUIER COUNTY BOARD OF SUPERVISORS

REQUESTING A DELAY IN THE EFFECTIVE DATE OF PROPOSED

NEW EMERGENCY MEDICAL SERVICE STANDARDS

WHEREAS, the Virginia Department of Health, Office of Emergency Medical Services (EMS) is in the process of revising the Virginia EMS Regulations; and

WHEREAS, version two of the draft regulations consists of six parts and nearly 300 pages of text, and there is expected a version three to be released; and

WHEREAS, it has been expressed by the Virginia Office of EMS that the new regulations shall be effective as of January 1, 2002; and

WHEREAS, Fauquier County staff and volunteer rescue squads work together to provide emergency medical services to citizens; and

WHEREAS, it is believed that many jurisdictions may be unaware of the changes proposed in the newest version of the nearly 300 pages of draft regulations and do not have sufficient time to address many required changes and any budgetary adjustments by January 1, 2002; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the Board of Supervisors does hereby request the Commonwealth to consider delaying the effective date of the regulations at least one year until January 1, 2003; and, be it

RESOLVED FURTHER, That the Fauquier County Board of Supervisors acknowledges the efforts of the Virginia Office of EMS to keep our emergency medical services systems modern, effective and efficient; however it must also be recognized that emergency medical services are largely funded by local communities and sufficient time is needed to review and understand the proposed new regulations.

A Resolution to Revise Fauquier County General Government Leave Policies

RESOLUTION

A RESOLUTION TO REVISE THE FAUQUIER COUNTY

GENERAL GOVERNMENT LEAVE POLICIES

WHEREAS, the Fauquier County Board of Supervisors recognizes the need and the importance of maintaining up-to-date personnel policies; and

WHEREAS, the Fauquier County General Government Personnel Policies Manual is being reviewed for necessary additions and revisions; and

WHEREAS, a review has been conducted with respect to Leave policies; and

WHEREAS, the recommended changes are contained in the following policies dated June 18, 2001:

Section 2-A	Administrative Leave
Section 2-B	Annual Leave
Section 2-C	Bereavement Leave
Section 2-D	Civil Leave
Section 2-E	Compensatory Leave
Section 2-F	Educational Leave
Section 2-G	Family and Medical Leave
Section 2-H	Holidays
Section 2-I	Inclement Weather
Section 2-J	Leave Donation
Section 2-K	Leave Without Pay
Section 2-L	Military Leave
Section 2-M	Sick Leave

;now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the revisions made to Personnel Policy Section #2, Leave, be approved effective June 18, 2001.

(A copy of the revised Personnel Policies is filed with the June 18, 2001 agenda package.)

A Resolution to Authorize Creation of Personnel Policy Section #1, Equal Employment Opportunity

RESOLUTION

A RESOLUTION TO AUTHORIZE CREATION OF PERSONNEL

POLICY SECTION #1, EQUAL EMPLOYMENT OPPORTUNITY

WHEREAS, the Fauquier County General Government Personnel Policies Manual is being reviewed for necessary additions and revisions; and

WHEREAS, the Fauquier County Board of Supervisors adheres to a policy of equal employment opportunity for all employees and applicants for employment; and

WHEREAS, Personnel Policy Section #1, Equal Employment Opportunity, was drafted to provide guidance with respect to equal employment opportunity in personnel management and employment practices; and

WHEREAS, the recommended Equal Employment Opportunity Policy is attached hereto and dated June 18, 2001; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That Personnel Policy Section #1, Equal Employment Opportunity, be approved effective June 18, 2001.

(A copy of the revised Personnel Policy is filed with the June 18, 2001 agenda package.)

A Resolution to Increase Funding for the Fauquier County Veterans Memorial in the Amount of $1,500

RESOLUTION

A RESOLUTION TO INCREASE FUNDING FOR THE FAUQUIER COUNTY VETERANS MEMORIAL IN THE AMOUNT OF $1,500

WHEREAS, the Board of Supervisors is charged by the Code of Virginia with the operation of an annual budget for Fauquier County; and

WHEREAS, this annual budget is a plan of how funds received by the County will be used to meet the needs of the citizens of the

County; and

WHEREAS, during the course of the fiscal year certain events occur which necessitate changing the budget plan by increasing a department's total budget; and

WHEREAS, the Fauquier County Veterans Memorial Committee has requested a County contribution to match the Town of Warrenton's FY 2002 appropriation of $2,000 to maintain the Veterans Memorial on Hospital Hill; and

WHEREAS, the County's FY 2002 budget support for the Memorial is $500; and

WHEREAS, members of the Board of Supervisors have indicated their interest in providing additional support to this worthwhile project; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That an additional $1,500 be provided to the Fauquier County Veterans Memorial Committee for maintaining the memorial on Hospital Hill; and, be it

RESOLVED FURTHER, That the sum of $1,500 be appropriated as follows, effective July 1, 2001:

FROM			TO		
Source	Code	Amount	Department	Code	Amount
Contingency Reserve	4-100-91400-9618	$1,500	Non-Departmental	4-100-81600-5688 Contributions	$1,500
TOTAL		$1,500			$1,500

A Resolution to Authorize a Public Hearing to Consider Amending Chapter 7 of the Fauquier County Code Pertaining to Elections

RESOLUTION

A RESOLUTION AUTHORIZING A PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 7 OF THE FAUQUIER COUNTY CODE PERTAINING TO ELECTIONS

WHEREAS, the United States Department of Commerce, Census Bureau, has completed its 2000 Decennial Census; and

WHEREAS, in conformance with the Constitutional and statutory requirements of the United States and the Commonwealth of Virginia,

the Board of Supervisors of Fauquier County is required to amend certain of its magisterial districts and precincts; and

WHEREAS, the Board of Supervisors has a proposed ordinance amending Chapter 7 of the Code of Fauquier County related to elections implementing the amendments to its magisterial districts, precincts and polling places; and

WHEREAS, the Board of Supervisors wishes to obtain citizen comment on the proposed ordinance amendment; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the County Administrator be, and is hereby, directed to schedule a public hearing on the proposed ordinance amending Chapter 7 of the Code of Fauquier County related to elections.

A Resolution to Authorize Reclassification of the General Services Position of Building and Grounds Coordinator to Supervisor, Building and Grounds

RESOLUTION

A RESOLUTION TO AUTHORIZE RECLASSIFICATION OF THE

GENERAL SERVICES POSITION OF BUILDING AND GROUNDS

COORDINATOR TO SUPERVISOR, BUILDINGS AND GROUNDS

WHEREAS, the Fair Labor Standards Act (FLSA) status of the Building and Grounds Coordinator position is inconsistent with the job responsibilities; and

WHEREAS, the Board of Supervisors has approved and adopted a Position Classification and Pay Plan prepared and maintained by DMG-MAXIMUS, Incorporated; and

WHEREAS, upon review of the Building and Grounds Coordinator position, grade 27, DMG-MAXIMUS recommends reclassification to Supervisor, Building and Grounds, grade 29; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the position of Building and Grounds Coordinator, grade 27, be reclassified to Supervisor, Buildings and Grounds, grade 29, effective July 1, 2001.

A Resolution to Authorize Reclassification of a Position Within the

Department of Information Resources as a Network Administrator

RESOLUTION

A RESOLUTION TO AUTHORIZE RECLASSIFICATION OF A POSITION WITHIN THE DEPARTMENT OF INFORMATION RESOURCES AS A NETWORK ADMINISTRATOR

WHEREAS, the FY 2002 budget provides funding for an additional position within the Department of Information Resources; and

WHEREAS, the Board of Supervisors has approved and adopted a Position Classification and Pay Plan prepared and maintained by DMG – Maximus, Incorporated; and

WHEREAS, the budgeted position was forwarded to DMG – Maximus for evaluation and was analyzed to align it equitably within the current Classification and Compensation Plan structure; and

WHEREAS, upon review, DMG – Maximus recommended classification of the position as a Network Administrator, grade 34; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the position of Network Administrator, grade 34, be classified as a part of the Fauquier County Classification and Compensation Plan, effective July 1, 2001.

A Resolution Authorizing Work Order Approval for the Completion of the Brookfield Paving Project for Avenel Drive and Amy Court

RESOLUTION

A RESOLUTION AUTHORIZING WORK ORDER APPROVAL FOR THE COMPLETION OF THE BROOKFIELD PAVING PROJECT FOR AVENEL DRIVE AND AMY COURT, LEE DISTRICT

WHEREAS, the Board of Supervisors has reserved $65,000 for the re-paving and required improvements for Avenel Drive and Amy Court necessary to transfer these public streets to the Virginia Department of Transportation for state maintenance; and

WHEREAS, the additional improvements resulted from significant street deterioration and VDOT recommended changes; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the Procurement Officer's Work Order

identified herein for $15,500 for Mt. Vernon Asphalt and Paving, Inc. be, and is hereby, authorized to assure completion of the Brookfield Subdivision streets per VDOT standards.

Fauquier County Code Amendment – Chapter 6 – Franchising and Regulating Cable Television Systems

ORDINANCE
AN ORDINANCE OF FAUQUIER COUNTY, VIRGINIA REVISING AND UPDATING A PROCEDURE FOR THE FRANCHISING OF CABLE TELEVISION SYSTEMS, AND SETTING FORTH RULES AND REGULATIONS GOVERNING THE OPERATION OF SUCH SYSTEMS

WHEREAS, the Fauquier County Board of Supervisors, has determined it is in the best interest and consistent with the convenience and necessity of the County to grant Franchises to one or more companies desiring to provide Cable Services within the confines of the County and on the terms and conditions hereinafter set forth, and as may later be amended, and as may be further described in each Franchise Agreement; and

WHEREAS, the Fauquier County Board of Supervisors has identified the purpose of this Ordinance to repeal Chapter 6 of the Fauquier Code of Ordinances entitled "Cable Television Ordinance" and replace Chapter 6 with an updated procedure consistent with Federal and State rules and regulations entitled "Franchising and Regulating Cable Television Systems; and

WHEREAS, the Fauquier County Board of Supervisors has further identified the purpose of this Ordinance to be as follows:

1. To provide a procedure for the granting, renewal and transfer, by Fauquier County, of nonexclusive Franchises for providing Cable Services in the County;
2. To regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of Cable Systems in, upon, along, across, above, over or under or in any manner connected with the streets, public ways or public places within the jurisdiction of Fauquier County as now or in the future may exist;
3. To provide for the payment of certain Franchise Fees and other valuable considerations to the County.
4. To provide conditions under which such Franchised system or systems will serve present and future needs of government, public institutions, commercial enterprises, public and private organizations, and the citizens and general public of the County; and
5. To provide remedies and prescribe penalties for any violation of this Ordinance for the violation of the terms and conditions of Franchises granted pursuant

thereto; now, therefore, be it

ORDAINED by the Fauquier County Board of Supervisors this 18th day of June 2001, That in order to establish a procedure for the granting of cable television Franchises, transfers and renewals thereof and to establish rules and regulations governing the operation of such systems, Chapter 6 of the Code of Fauquier County entitled "Franchising and Regulating Cable Television Systems" as hereinafter set forth be, and is hereby, adopted to be effective upon adoption; and, be it

ORDAINED FURTHER, That all ordinances of general and permanent nature relating to Chapter 6 of the Code of Fauquier County adopted prior to the effective date of this Ordinance are hereby repealed, except as hereinafter provided; and, be it

ORDAINED FURTHER, That the repeal provided in the preceding section of this Ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or acquiring before the effective date of this Ordinance; nor shall it affect any prosecution, suit, or proceeding pending or any judgement rendered prior to the effective date of this Ordinance; nor shall it affect any right or franchise conferred by ordinance or resolution of the County or any person or corporation; and, be it

ORDAINED FINALLY, That it is hereby declared to be the intention of the Fauquier County Board of Supervisors that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance and Chapter 6 hereby adopted are severable and if any phrase, clause, sentence, or paragraph or section of this ordinance or Chapter 6, hereby adopted shall be declared unconstitutional or otherwise invalid by the valid judgement or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance or Chapter 6 hereby adopted.

FRANCHISING AND REGULATING

CABLE TELEVISION SYSTEMS

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CHAPTER 6
FRANCHISING AND REGULATING CABLE TELEVISION SYSTEMS

SECTION 6-1: DEFINITIONS

The definitions contained in this Ordinance rely on those contained in the Communications Act of 1934 (47 U.S.C. Section 521 et seq.), as it is from time to time amended and interpreted. Any ambiguity shall be resolved by reference to the federal statutes, regulations and the decisions interpreting the same. As used in this article, the following words and terms have the following meanings. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

1. "***Applicable Law***" means all lawfully enacted and applicable Federal, State, and County laws, ordinances, codes, rules, regulations, and orders as the same may be amended or adopted from time to time.

2. "***Basic Service Tier***" A Basic Service Tier shall, at a minimum, consist of the following: All signals carried in fulfillment of the requirements of Sections 614 [47 U.S.C.534] and 615 [47 U.S.C.535] of the Communications Act of 1934, as amended. Each such tier shall also include any public, educational and governmental access programming required by the Franchise of the Cable System to be provided to Subscribers; and any signal of any television broadcast station that is provided by the cable operator to any Subscribers, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station plus any additional video programming signals the cable operator desires to be added to the basic tier.

3. "***Board***". Wherever the words "Board" or "Board of Supervisors" are used, they shall be construed to mean the Board of Supervisors of Fauquier County, VA.

4. "***Cable Service***" means (A) the one-way transmission to Subscribers of video programming, or cable, and (B) Subscriber interaction, if any, which is required for the selection of such video programming.

5. "***Cable System***" means 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 County. Such term shall not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act of 1934, except that such facility shall be considered a Cable System (other than for purposes of Section 621 (c)) to the extent such facility is used in the transmission of video programming directly to Subscribers; (D) any facilities of any electric utility used solely for operating its electric utility systems; (E) an open video system that complies with the requirements of the Cable Act; or (F) the facilities of any other Person that is required to obtain a Franchise or

permit for the use of the Public Rights-of Way to provide Cable Service under Applicable Law. A reference to a Cable System refers to any part thereof, including, without limitation, converters. The foregoing definition of "Cable System" shall not be deemed to circumscribe or limit the valid authority of the County to regulate or franchise the activities of any other telecommunications system or provider of telecommunications services to the full extent permitted by law. Any Franchise Agreement shall define the services any Franchisee is authorized to provide.

6. "***Cable System Operator***" means any person, group of persons, firm or corporation (A) who provides Cable Service over a cable television system and directly or through one or more affiliates owns a significant interest in such Cable System, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such Cable System.

7. "***Communications Act of 1934***" means the legislation passed by Congress in 1934 that established a national telecommunications goal of high quality, universally available telephone service at reasonable cost. The Act also established the Federal Communications Commission (FCC). The Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 have all amended the Communications Act of 1934 as newer telecommunications technologies and national policies have evolved.

8. "***Construction***." The terms as they appear in any Franchise Agreement such as "completion of construction," "complete system construction," "satisfactorily complete and fully activate" shall mean that a cable system, as designed by a Grantee and approved by the County Administrator, has been installed and is ready to deliver cable service to subscribers. Proof of performance tests shall have been conducted on each otherwise completed segment of the cable system before direct marketing of that segment begins. However, the prohibition against direct marketing prior to the completion of construction does not include promotional activities directed towards all potential subscribers in general or institutional advertising that promotes the existence of a Grantee or its cable services. It is expected that segment of less than the entire system will be activated and subjected to proof of performance tests when completed. Construction of any segment or of the entire system will not be considered complete until proof of performance tests have been conducted on such segment (or in the case of the entire system, on all segments of the cable system) and any problems found during testing have been corrected. The term "completion of construction" does not include marketing and installation of subscriber service.

9. "***Federal Communications Commission" or "FCC***" That federal agency as presently constituted by the Communications Act of 1934, as amended, or any successor agency.

10. "***Franchise***" means a non-exclusive authorization granted in accordance with this Ordinance and exercised in accordance with a Franchise Agreement to install cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the construction, operation, and maintenance of a Cable System along the Public Rights-of Way within all or a portion of the County to provide Cable Service. Any such authorization, in whatever form granted, shall not mean or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the County required by the ordinances and laws of the County; (ii) any permit, agreement, franchise for non-cable services, or authorization required in connection with operations on public streets or property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the County or a private entity, or for excavating or performing other work in or along Public Rights- of- Way; or (iii) express or implicit authorization to provide Cable Service to, or install a Cable System on, private property without owner consent except for use of compatible easements pursuant to Section 621 (a) (2) of the Cable Act, 47 U.S.C. Section 541 (a) (2).

11. "***Franchise Area***" means the area of the County that a Grantee is authorized to serve by its Franchise Agreement.

12. "***Franchise Agreement***" means a contract entered into in accordance with the provisions of this Ordinance between the County and a Grantee that sets forth, subject to this Ordinance, the terms and conditions under which a Franchise will be exercised.

13. "***Grantee" or "Cable System Operator***" means a natural person, partnership, domestic and or foreign corporation or entity, association, joint venture or organization of any kind granted a Franchise by the Board of Supervisors under this Ordinance including its lawful successor, transferee or assignee.

14. "***Gross Revenues***" means all amounts, which are charged and/or received, directly or indirectly, by a Grantee from or in connection with the provision of Cable Service over the cable system including, without limitation:

(a) Any revenue received from Subscribers, including but not limited to revenue for basic service, expanded basic service, other tier services, additional outlets, FM service, commercial service, premium channel service, pay-per-view service and related per-event services;

(b) Revenue received from Subscribers for installation, change in service and reconnection charges and similar fees;

(c) Revenue received from Subscribers for converters, remote controls or other equipment leased or rented to Subscribers in connection with the delivery of Cable Services to such Subscribers;

(d) Revenue received from Subscribers for service charges and late fees attributable to delinquent accounts. Revenue received from third parties, including advertising revenue, home shopping commissions, guide commissions, leased access payments, and studio and other facilities or equipment rentals;

(e) Revenue shall include any payment or consideration (including copyright and franchise fees, but excluding any utility users tax or new sales tax imposed by County or the state or federal government) collected for direct payment to a third party. Franchise Fees paid to the County are not deemed to be taxes and are not to be deducted from the total gross revenue figure on which Franchise Fees are paid;

(f) Revenue received by a Grantee from the delivery of other communications services over its Cable System, including without limitation telephony, data transmission, interactive services and other broadband information services, to the extent that such services are defined by applicable law or by an applet court of competent jurisdiction governing Virginia (as a cable service);

(g) Gross Revenue shall also include the gross revenue of any other person which is derived directly or indirectly from or in connection with the operation of a system to the extent that said revenue is derived, through a means which has the effect of avoiding the payment of Franchise Fees to the County that would otherwise be paid herein;

(h) There shall be deducted from Gross Revenue:

(1) Bad debts written off by Grantee in the normal course of its business, provided, however, that bad debt recoveries shall be included in gross revenue; and

(2) Refunds made to Subscribers or other third parties.

(i) In computing Gross Revenue from sources other than a

Grantee's subscribers, including without limitation, revenue derived from the sale of advertising, home shopping services, guide sales, the lease of channel capacity on its Cable System, or any other such revenues derived from the operation of the Cable System, the amount of such revenues attributable or allocated to Grantee in accordance with generally accepted accounting principles, for the purpose of determining Gross Revenues, shall be the aggregate revenue received by Grantee from such other sources during the period in question multiplied by a fraction, the numerator of which shall be the number of Grantee's subscribers in the County as of the last day of such period and the denominator of which shall be the number of subscribers within all areas served by Grantee's regional Cable System (if any) as of the last day of such period.

15. ***"Initial activation of service" or initially providing cable service*"** shall mean with respect to a particular segment, group of segments or the entire cable system, as the case may be, that all proposed services and system capabilities as stated in the design of the cable system proposed by a Grantee are available and/or in place, construction has been completed (see definition of construction) and the completed segment or segments in question or the entire cable system, as the case may be, has been activated.

16. ***"Person"*** An individual, partnership, association, joint stock organization, corporation, or any lawful successor thereto or transferee thereof, but such term excludes the County.

17. ***"Primary Service Area"*** (PSA) means the total area of Fauquier that is to be served by a Grantee.

18. ***"Public Rights-of-Way"*** means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, waterway, easement, or similar property in which the County or the State now or hereafter holds any property interest, which consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining, a Cable System. No reference herein, or in any Franchise Agreement, to a "Public Rights-of-Way" shall be deemed to be a representation or guarantee by the County or State that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a Franchisee shall be deemed to gain only those rights to use as are properly in the County or State and as the County or State may have the undisputed right and power to give.

19. ***"State of the Art"*** A Cable System with production facilities, technical performance, capacity, equipment, components and service

equal to that which has been developed and demonstrated to be more modern than generally accepted in the United Sates and used in the cable television industry for comparable areas of equivalent population.

20. ***"Subscriber"*** Any person who legally receives any service delivered over a Cable System.

21. ***"Term of Franchise"*** shall be for the number of years negotiated in the Franchise Agreement with the County unless terminated earlier in accordance with this Ordinance.

22. ***"Total Number of Subscribers"*** means the number of Subscribers determined as follows: In the event a single fee is paid for service to a multiple dwelling unit the number of equivalent Subscribers shall be determined by dividing such fee by then prevailing Basic Service Tier Rate and rounding the resulting quotient to the nearest whole number. To this number shall be added the number of all other Subscribers.

23. ***"Town"*** means the Town of Warrenton, unless otherwise defined herein.

24. ***"County"*** means Fauquier County a political subdivision of the Commonwealth of Virginia and existing under the laws of the State of Virginia in its present form or in any later reorganized, form including the area within its territorial limits.

25. ***"County Administrator"*** shall mean the Board of Supervisor's appointed Chief Administrative Officer and/or his or her designee.

26. The ***terms*** "will be available", "will be equipped", "will use", "will be designed", "will perform", "will be utilized", "will permit", "will allow", "will be activated", "will be initially connected", "will be capable", "will provide", "will employ", "will be established", "will be able", "will be implemented", "will be delivered", "will utilize", and other similar uses of terms denoting the activation of cable service or the delivery of equipment, facilities, or services, shall be interpreted to mean delivery or accomplishment at a date no later than the initial activation of service (see definition) unless otherwise and expressly and clearly stated or qualified to mean a more specific or different time.

SECTION 6-2: GENERAL PROVISIONS

A. Scope of County's Authority

The County may grant one or more Cable Television Franchises, and each such Franchise shall be awarded in accordance with and subject to the provisions of this Ordinance.

B. Franchise Required

A Franchise is required of any person desiring to construct, operate and maintain a Cable System within all or any portion of the County. A Franchise may be granted by the Board of Supervisors to any Person, whether operating under an existing Franchise or not, who or which offers to furnish and provide such Cable System under and pursuant to the terms and provisions of this Ordinance and a Franchise Agreement acceptable to the Board of Supervisors. The grant of a cable franchise is not an authorization to provide other services nor is it a bar to the imposition of other compensation requirements. The operative content of each Franchise at any given time consists of all the Franchise documents (this Ordinance, a Franchise Agreement and any side letters or similar agreements) and includes any later changes thereto, including amendments to the County Code, amendments to this Ordinance, and to the individual Franchise Ordinance granting a Franchise to a Cable Company to operate a Cable System.

C. Rights Reserved to County

The County hereby expressly reserves the following rights:
To exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the County.
To adopt and promulgate ordinances as it shall find reasonably necessary in the exercise of its lawful police power. Such power shall include all rights the County may have under 47 U.S.C. § 552 and the absolute right of the County and State to manage the Public Rights-of Way and to adopt such regulations relating to the management of the Public Rights-of-Way as the County and/or its departments or the State shall provide. Nothing in a Franchise Agreement shall be deemed to waive the requirements of the various codes and ordinances of the County regarding permits, fees to be paid, or manner of construction.
The powers of the County may be exercised through amendment of this Ordinance as well as through enactment of separate ordinances and regulations. Subsequent amendments to this Ordinance may be adopted by the Board of Supervisors and compliance required of franchised cable companies in so far as the amendments are designed to protect the health, safety and welfare of the public through the lawful use of its police powers.

D. Unlawful Acts; Penalties

It shall be unlawful for any Person to establish, operate or carry on the business of distributing to any persons in the County any television signals or radio signals by means of a Cable System unless a Franchise therefore has first been obtained pursuant to the provisions of this Ordinance, and unless such Franchise is in full force and effect.
It shall be unlawful for any Person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a Franchised Cable System within the County for the purpose of enabling himself or herself or others to receive any television signal, radio signal, picture, program or sound, without payment to the

owner of the Cable System.
It shall be unlawful for any Person without the consent of a Grantee, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound.
Any Person violating any subsection of this section shall be punished by a fine or by imprisonment or by both fine and imprisonment in accordance with Federal, State or Section 1-7 of the Code of Fauquier County, as it shall be amended from time to time.

E. Failure of County to Enforce Compliance

A Grantee shall not be excused from complying with any of the provisions of this Ordinance or the terms and conditions of a Franchise Agreement by any failure of the County, upon any one or more occasions, to insist upon a Grantee's performance or to seek Grantee's compliance with any of the provisions of the Ordinance or terms or conditions of a Franchise Agreement.

SECTION 6-3: REQUIREMENTS FOR ISSUING NEW CABLE TELEVISION FRANCHISES

A. Application-Non Refundable Fee

An application for a new cable television Franchise (not a Franchise renewal) shall be submitted to the Board, or its designee, in accordance with the procedures established by the Board. The application will contain facts and information the Board deems appropriate. Applications shall be accompanied by a nonrefundable application fee of ten thousand dollars ($10,000.00) payable to the order of the “Treasurer of Fauquier County” which amount shall be used by the County to offset direct expenses incurred in the franchising and evaluation procedures, including, but not limited to staff time and consulting assistance.

B. Grantee to Pay Costs of Granting Franchise

An applicant to whom the Board grants a nonexclusive Franchise, in addition to the nonrefundable fee specified herein above, shall pay to the County, within thirty (30) days of receipt of notice of the amount, an amount set by the Board, or its designee, which shall represent the remaining out-of-pocket costs incurred by the County, in granting the Franchise and not defrayed by fees forthcoming from the provisions of subsection "a" of this section.

C. Procedure Required by County to Process an Application and/or Require a Request for Proposals

1. Upon receipt of an Application, the County may either: (i) evaluate the Application pursuant to Section 3 c [5] below conducting such investigations as it deems necessary; or (ii) issue a request for proposals after conducting, if necessary, a

proceeding to identify the future cable related needs and interests of the community. Any such request for proposals shall be provided to the Person applying for an initial Franchise and made available to any other interested party. The request for proposals may contain a proposed Franchise Agreement.

2. An applicant shall respond to a request for proposals by filing an application within the time directed by the County that contains the information and material set forth below in Section 3d, Application Requirements. The procedures, instructions, and requirements set forth in the request for proposals shall be followed by each applicant. Any applicant that has already filed an application need not re-file the same materials with its response to the request for proposals, but must supplement its application to include any additional or different information or material required of the request for proposals. The County or its designee may seek additional information from any applicant and establish deadlines for the submission of such information.

3. Notwithstanding the provisions of Section 3 [a and b], a Person may apply for an initial Franchise by submitting an unsolicited Application containing the information required in Section 3d, [Application Requirements] and requesting an evaluation of that application pursuant to Section 3c [5]. Prior to evaluating such an application, the County may conduct such investigations as are necessary to determine whether the application satisfies the standards set forth in Section 3c [5]. The County may seek additional applications.

4. If the Applicant proposes to provide Cable Service to an area already served by an existing Franchisee, the identification of the area where the overbuild would occur and the ability of the Public Rights-of-Way and other property that would be used by the Applicant to accommodate an additional Cable System;

5. In evaluating an application for a Franchise, the County shall consider, but not be limited to the following factors:

   (a) Whether the Applicant has the financial, technical, and legal qualifications to provide Cable Service;

   (b) Whether the application satisfies any minimum requirements established by the County and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests;

   (c) Whether the Applicant will provide adequate community, educational, and governmental access channel capacity, facilities, or financial support;

(d) Whether issuance of a Franchise is in the public interest considering the immediate and future effect on the Public Rights-of-Way and private property that would be affected by the Cable System, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the Public Rights-of-Way; the effect of granting a Franchise on the ability of the existing Franchise, if any, to meet the cable related needs and interests of the community; and the comparative superiority or inferiority of competing applications; and

(e) What effects a grant of a Franchise may have on competition in the delivery of Cable Service in the County.

If the County finds that it is in the public interest to issue a Franchise after considering the factors set forth above, and subject to the applicant's entry into a Franchise Agreement, it may issue a Franchise. If the County denies an application for an initial Franchise, it will issue a written decision setting forth its reasons for denial. Prior to deciding whether or not to issue a Franchise, the County will hold one or more public hearings or implement other procedures under which comments from the public on an application may be received. The County may reject any application that is incomplete or fails to adequately and clearly respond to the information requested in a Request for Proposals. This Ordinance is not intended and shall not be interpreted to grant any applicant standing to challenge the denial of its application or the issuance of a Franchise to another.

D. Application Requirements

Ten copies of the application shall be filed with the County Administrator and shall contain such information as the County may require, including, but not be limited to:

1. The names, residence and business addresses of all officers, directors and associates of the applicant;

2. The names, residence and business addresses of all officers, persons and entities having, controlling, or being entitled to have or control of one (1%) percent or more of the ownership of the applicant and the share of each person or entity.

3. The names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling the applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to cable

communications systems owned or controlled by the applicant, its parent and subsidiary business entities and the areas served thereby.

4. A detailed and complete financial statement of the applicant prepared by a certified public accountant or other person satisfactory to the County Administrator. If applicant is a corporation, audited financial statements are required for the five (5) previous fiscal years. If applicant is a partnership, copies of the "U.S. Partnership Return of Income" (IRS Form 1065) for the five (5) previous fiscal years. If applicant is a sole proprietorship, copies of personal financial statements for the five (5) previous fiscal years;
5. A statement identifying, by place and date, any and all cable communication system Franchises awarded the applicant, or its parent or subsidiary business entities; the status of those Franchises; the total cost of constructing such systems; and the amount of applicant's and its parent's or subsidiary's resources committed to their completion, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant;
6. A general description of the applicant's proposed operation;
7. A written commitment to timely service and restoration of property;
8. A schedule of proposed charges;
9. A statement setting forth the channels to be allocated for community, educational, and governmental use as contemplated by 47 U.S.C.§ 531, and for leased access as required by 47 U.S.C. §532; a description of the production facilities, equipment and financing to be made available by the applicant for public, educational and government access; and a statement establishing any additional revenues to be designated for programming or programming assistance for the access channels;
10. An estimated five (5) year operations proforma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of Subscriber penetration. The proforma shall also state the average return on investment anticipated by the applicant for the five (5) year operations period and shall state the method of computation thereof. Costs anticipated for voluntary services or contributions shall, if presented, be incorporated in the proforma as required in this article, but shall be separately identified in the proforma;
11. A statement detailing the applicant's prior operational experience in cable television systems and/or microwave service, including that of its officers, management and any

staff to be associated with the proposed operation;

12. A general statement of the applicant's ability and intent to incorporate technological improvements and advancements in the cable television system as such improvements or advancements are generally available in the industry;
13. A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System in accordance with FCC Regulations, including identification of key personnel and their qualifications;
14. Identification of the area of the County to be served by the proposed Cable System, including a description and detailed map of the proposed Franchise Area's boundaries;
15. If the Applicant proposes to provide Cable Service to an area already served by an existing Franchisee, the identification of the area where the overbuild would occur and the ability of the Public Rights-of-Way and other property that would be used by the Applicant to accommodate an additional Cable System; and
16. A demonstration of the applicant's legal qualifications to construct and/or operate the proposed Cable System, including but not limited to a demonstration that the Applicant meets the following criteria:

(a) The Applicant must not have had an Application for an initial or renewal franchise in the County lawfully denied within the three (3) years preceding the date that its current Application was submitted;

(b) The Applicant must not have had any cable television franchise lawfully revoked by any franchising authority within five (5) years preceding the submission of the Application;

(c) The Applicant must have the necessary authority under Virginia Law to operate a Cable System;

(d) The Applicant must have the necessary authority under Federal Law to hold the Franchise and operate a Cable System. An Applicant must have, or show that it is qualified to obtain any necessary federal licenses or waivers required to operate the System proposed;

(e) The Applicant shall not have been convicted, at any time during the ten (10) years preceding the submission of the Application, of any act or omission of such character that the Applicant cannot be relied upon to deal truthfully with the County and the Subscribers, or to substantially comply with its lawful obligations

under Applicable Law, including obligations under consumer protection laws and laws prohibiting anti-competitive acts, fraud, racketeering, or other similar conduct;

(f) The Applicant shall not have filed materially misleading information in its Application or have intentionally withheld information that the Applicant lawfully is required to provide; and

(g) An elected official or County staff member shall not hold a financial interest in the Applicant or an affiliate of the Applicant.

Notwithstanding the foregoing, the County shall provide an opportunity to an Applicant to show that it would be inappropriate to deny it a Franchise by virtue of the particular circumstances surrounding the matter and the steps taken by the Applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the Applicant's principals, or the remoteness of the matter from the operation of its Cable Systems.

17. Any other reasonable and applicable information which the County Administrator or Board of Supervisors may request.
18. An affidavit or declaration of an authorized officer of the Applicant certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and state and County requirements.

E. Request for Proposals, Public Comment Periods, Evaluating Applications, Public Hearing

Upon determination by the County Administrator that an application is complete, the County Administrator shall cause to be prepared for the Board of Supervisors a report and recommendations on the application within one hundred twenty (120) days.

Upon filing, any Franchise application and related documents are public records open to inspection by the public during reasonable hours, including specifically the regular business hours of the County Administrator.

Following reasonable notice to the public, any Franchise application shall be available for inspection for a period of at least twenty days prior to the Board of Supervisors taking action on the same. Any citizen of the County shall have the right to comment in writing, filed in advance, or orally at any meeting at which the Franchise applications are to be considered.

Upon receipt of the report and recommendations of the County Administrator, if the Board wishes to consider granting a Franchise, it

shall pass a resolution declaring its intent and setting the date and time for a public hearing. The hearing date shall be not less than twenty (20) days nor more than forty (40) days after the date of the resolution.

The County Administrator shall publish a notice of the public hearing in the official newspaper of the County at least once ten (10) days prior to the hearing. The notice shall state the name of the applicant, the proposed terms of the Franchise, any amounts or percentages to be paid to the County during the life of the Franchise, any limitations as to time, place or type of service proposed, together with a general statement of the other major provisions of the proposed franchise, and that copies of the proposed franchise may be obtained at the office of the County Administrator.

At the time set for the hearing, the Board shall proceed to consider the application and all persons shall be given an opportunity to present their arguments, the Board may adjourn the hearing from time-to-time.

F. Granting or Denying a Franchise

In determining whether to grant a Franchise, the Board shall consider the degree to which the applicant has been responsive to the County's requirements, the character and quality of proposed services, proposed rates, the experience, character and financial capability of the applicant, proposed management system, quality of proposed equipment, ability to meet construction requirements and any other factors deemed important to safeguard the interests of the public and the County.

After examining all applications submitted pursuant to procedures specified in this Section (3) the Board is authorized, after a full hearing affording due process, to grant one or more nonexclusive Franchises conveying the right to construct and operate Cable Systems within the public ways of the County. A Franchise may be awarded to applicants which in the Board's judgment will best serve the public interest and whose construction and financial plans and arrangements are both feasible and adequate to fulfill the conditions set forth in this Ordinance and incorporated into any Franchise granted.

No provision in this Ordinance shall be deemed or construed to require the Board to grant a Franchise following receipt of any Franchise application.

The Board of Supervisors may extend the hearing, as needed, to obtain additional information. Within thirty (30) days following the conclusion of the hearing the Board may by resolution deny or by ordinance grant an application for a Franchise. The Board's action shall be final and conclusive.

No Franchise shall become effective unless and until the ordinance granting same has become effective and in addition, unless and until all things required by this Section and Sections that specify requirements for a construction bond, Letter of Credit or Cash Surety, insurance and indemnity are done and completed, all of such things being hereby declared to be conditions precedent to the effectiveness of

any Franchise. In the event any of these things are not done or completed in the time and manner required, the Board may declare the Franchise null and void.

Prior to the effective date of an ordinance granting a Franchise, the Grantee shall file with the County Clerk a written acceptance of the Franchise together with the construction bond, Letter of Credit or Cash Surety, and insurance policies required by this Ordinance. The written acceptance shall include an agreement to be bound by and to comply with and to do all things required by the provisions of this ordinance and the Franchise. The written acceptance shall be acknowledged by the Grantee before a notary public, and shall in form and content be satisfactory to and approved by the County Attorney.

G. Franchise Term

The term of a Franchise shall be for the number of years negotiated in the Franchise Agreement with the County unless terminated earlier in accordance with this Ordinance.

H. Grantee to be Bound by Terms and Conditions of Cable Ordinance and Franchise Agreement. Procedure if Conflict

No Franchise shall be valid until Grantee enters into a Franchise Agreement having terms and conditions acceptable to the County. In the event of a conflict between the Franchise Agreement and the provisions of this Ordinance the provisions of this Ordinance shall prevail. Failure to provide services as promised in Grantee's Franchise may be deemed a breach of this Ordinance to which the provisions of Section 16 and Section 17 of this Ordinance shall apply.

SECTION 6-4: FRANCHISE FEES

For the reason that the streets and public ways to be used by a Grantee in the operation of its cable system within the boundaries of the County are valuable public properties acquired and maintained by the County at great expense to its taxpayers, and that the grant to a Grantee of the use of the said streets and the right to operate a cable system in the County are valuable property rights without which a Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, and because the County will incur costs in regulating and administering the franchise, a Grantee shall pay to the County, an amount equal to five percent (5%) of Grantee’s gross revenue.

The Franchise Fee shall be payable quarterly to the County. A Grantee shall file a complete and accurate sworn statement, verified by a responsible, qualified financial representative authorized to represent the Company, listing each and every type of revenue included in Gross Revenues collected as a result of its doing business within the County during the period for which said quarterly payment is made. Such payment shall be made to the County Administrator not later than sixty (60) days after the end of each calendar quarter.

The County may examine all applicable records of a Grantee to determine accuracy of amounts payable to County.
The County shall have right to audit and to re-compute any amounts determined to be payable under this Ordinance; provided, however, that (i) such audit shall take place within thirty-six (36) months following the close of each of a Grantee's fiscal years and (ii) if Grantee has underpaid the Franchise Fee for the audit period by five percent (5%) or more, a Grantee shall pay the cost of the audit. Any additional amount due to the County as a result of the audit shall be paid within thirty (30) days following written notice to a Grantee by the County, said notice shall include a copy of the audit report.
In the event that any Franchise fee payment or re-computed amount is not made on or before the applicable dates heretofore specified, and following notice by the County to a Grantee, interest shall be charged daily from such date at the annual rate equivalent to the then existing prime rate of the largest bank in the County plus two percent (2%).
Should Grantee be required under Federal, State or Local law to pay refunds to subscribers, the County shall return to a Grantee for direct reimbursement to subscribers, an amount equal to that portion of the franchise fee that was paid on the total amount of the refund to subscribers. The franchise fee refund may be paid in a lump sum, partial payments or any other method chosen by the County. Refunds received by a Grantee from the County shall be distributed directly to subscribers by cash or credit to their cable billing and shall be calculated by a Grantee to reflect the actual usage of each subscribers cable services.

SECTION 6-5: TRANSFERS AND ASSIGNMENTS

A. Grantee Shall Offer County Prior Opportunity to Purchase System

In the event of a bonafide offer to purchase the cable system, the County shall have sixty (60) days from the date of receipt by the County of written notice of the pending sale (including a copy of the offer itself and all relevant details thereto) in which to match said bonafide offer of purchase on the same terms and conditions as contained in the original offer. Any offer of purchase must be in writing to be considered bonafide.

B. Prior Written Consent of County required Before any Sale, Assignment, or Transfer of a Franchise

A Franchise and any rights or obligations of a Grantee under the Franchise shall not be sold, assigned, or transferred, either in whole or in part, or leased, or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or tangible or intangible property therein (tangible property being defined as more than forty-nine percent (49%) of the tangible property of a Grantee located in the County either cumulatively or at any one time), pass to or vest in any person without prior written consent of the County. Such consent shall not be required

for a trust, mortgage, or other hypothecation in whole or in part to secure an indebtedness, and such consent shall not be required for purchase money security interests incurred in the ordinary course of business.

C. Prior Written Consent of the County Required Before any Transfer of Ownership or Control of Grantee

Ownership or control of Grantee shall not be transferred without the prior written consent of the County.

D. Grantee to Submit Application Documenting Information Required by the County

A Grantee shall promptly notify the County of any action or proposed action requiring consent of the County pursuant to Sections 5b through 5n of this Ordinance.

A Grantee shall submit to the County an original application and four copies, unless otherwise directed, which application shall fully describe the terms and conditions of the action or proposed action subject to this Section and clearly state the basis on which the application should be approved. The application shall also contain all documentation to support the showings required under Sections 5e and 5f.

At any time during the review process, the County reserves the right to require additional supporting documentation from a Grantee or any other person involved in the action or proposed action to support the showing required of Grantee under Sections 5e and 5f. A Grantee shall provide all requested assistance to the County in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all other persons involved in such action.

The County shall respond to any application requiring the County's consent under this Section (5b through 5n) within one hundred twenty (120) days after such application, and all information required by the County under this Ordinance, a Grantee's Franchise Agreement, and Applicable Law in connection with the application, has been received by the County. Such an application shall be deemed approved if the County should fail to render a final decision within one hundred twenty (120) days following a Grantee's filing with the County of the FCC application form, including all information reasonably required by this Ordinance, Grantee's Franchise Agreement and Applicable Law, unless a Grantee and the County agree to an extension of time; provided, however, that the County may deny such an application among other grounds, for a Grantee's failure to submit the information required by this Ordinance, Grantee's Franchise Agreement and Applicable Law.

E. Showings Required of Proposed Assignee. Assignee Must Agree to Conditions Prescribed by County

A proposed assignee or transferee must demonstrate that it possesses the legal, financial and technical qualifications necessary to perform all the terms, conditions and obligations under a Grantee's Franchise Agreement for the remaining term thereof, and such reasonable additional obligations required of the assignee or transferee by the County for the specific and limited purpose of assuring the performance by the assignee or transferee of all the terms, conditions and obligations of the Franchise Agreement, and, in connection with this purpose, a proposed assignee or transferee must provide the following information:

1. **Legal Qualifications**. The application shall identify the proposed assignee or transferee and, if the proposed assignee or transferee is not a natural person, each of its officers, directors or shareholders owning or beneficially holding five percent (5%) or more of its outstanding voting shares, general partners and limited partners holding an equity interest in the proposed assignee or transferee of five percent (5%) or more, and the respective percentage share of each such identified officer, director, shareholder or general or limited partner. The proposed assignee or transferee shall disclose any pending administrative, legal, equitable or dispute resolution proceeding before, or adverse final action taken during the past three (3) years by, any court, administrative body or arbitrator with respect to the proposed assignee, transferee or its officers, directors, or other persons having an equitable interest in five percent (5%) or more of the voting stock of such transferee or assignee in a civil, criminal, administrative or equitable proceeding brought under the provisions of any law or regulation related to the following: any felony; revocation, suspension or involuntary transfer of any authorization (including cable franchises) to provide video programming or other communication services; antitrust or unfair competition; fraudulent statements to a governmental unit; material breach of a cable Franchise Agreement, including but not limited to a material failure to provide PEG access channels, facilities or equipment; or final rate regulation proceeding in which the proposed rate was not sustained.

2. **Financial Qualifications**. The proposed assignee or transferee must demonstrate that it has sufficient net liquid assets on hand or available from committed resources to consummate the transaction and operate a Grantee's Cable System for six (6) months. The application for transfer shall include recent financial statements, including audited financial statements if available, of the proposed assignee or transferee prepared in accordance with generally accepted accounting principles, including balance sheets, income and expense statements, capital expenditure statements and accounting notes for the past three (3) years. Such statements, if not otherwise publicly available, may be designated as confidential and shall be maintained as such by the County to the extent permissible under state and local law.

3. **Technical Qualifications**. The application shall set forth a narrative account of the proposed assignee's or transferee's technical qualifications, experience and expertise regarding Cable Systems. The

narrative account shall include, but not be limited to, a list of the Cable Systems currently and formerly owned or operated by assignee or transferee within the past three (3) years; summary information concerning appropriate management personnel that will be involved in the management and operation of the assignee's or transferee's Cable System; a list of any material violations of the technical rules of the FCC or of federal, state or local governments, including but not limited to violations of rules and regulations regarding signal quality, safety and construction cited during the past three (3) years by a franchising authority or by Local, State or Federal governments involving currently or formally owned or operated Cable Systems.

4. **Customer Service**. The assignee or transferee must submit to the County (i) a reasonably detailed narrative describing, or a representative manual (if such a manual exists) containing, assignee's or transferee's customer service procedures, (ii) copies of at least two representative annual customer notices provided by other systems owned or operated by assignee or transferee, (iii) a summary of assignee's or transferee's proposed billing procedures, (iv) a sample customer service bill which assignee or transferee proposes to use in Grantee's system, and (v) a copy of a sample customer service complaint log or form, printed out from an electronic or computerized complaint recording system, which assignee or transferee proposes to use in Grantee's system.

5. **Compliance with Franchise Agreement and Cable Ordinance.** The proposed assignee or transferee must agree to comply with all provisions of a Grantee's Franchise Agreement and the Cable Ordinance, as well as such reasonable additional terms and conditions as the County may require for the specific and limited purpose of assuring the proposed assignee's or transferee's compliance with such provisions, including without limitation such additional terms and conditions as the County may require to remedy or avoid the recurrence of any past violations of the terms of a Franchise or of federal, state or local laws in the operation of Grantee's, assignee's or transferee's Cable System or service.

F. Grantee and Assignee or Transferee to Assist County in its Inquiry of Prospective Controlling Party. Grantee Promptly to Notify County of any Actual or Prospective Change in Control of Franchise

1. **Grantee's Responsibility**. A Grantee shall assist the County in its inquiry into an assignee's or transferee's capabilities under Section 5e.

2. **Assignee's or Transferee's Responsibility**. In seeking the County's consent to any change in ownership or control of a Franchise or of a Grantee, assignee or transferee shall have the responsibility to establish, to the satisfaction of County, that assignee or transferee has all of the legal, financial, and technical qualifications necessary to perform all of the terms, conditions and obligations of a Grantee under its

Franchise Agreement for the remaining term thereof. The County may request, and assignee or transferee shall provide, all reasonable financial data relative to the transfer, including but not limited to the materials specified in Section 5e of this Ordinance. In addition, assignee or transferee shall provide to the County the terms and conditions of the sale, credit agreements, partnership agreements and any other information reasonably related to the assignee's or transferee's acquisition of a Grantee's Franchise which is needed to clarify the change in ownership.

G. Transfer or Assignment without Prior Consent Deemed to be Material Breach, and may be Subject to Liquidated Damages

Any transfer or assignment of a Franchise or of ownership or control of Grantee without the prior consent of the County shall be null and void unless later ratified by the County and shall: (i) be deemed a material breach of a Franchise Agreement and (ii) among and/or in addition to other remedies available to the County, be subject to a penalty or liquidated damages assessment, on a daily basis, until the transfer or assignment is approved, or if not approved, until the prior ownership, control or other status quo is restored to a condition satisfactory to the County.

H. County May Revoke Franchise if Unauthorized Transfer or Assignment Occurs

If the County fails to approve or denies its consent to any such transfer or assignment of a Franchise or of the ownership or control of a Grantee and such action has nevertheless been effected, the County may revoke a Franchise and terminate a Franchise Agreement unless control of a Grantee or the system is promptly restored to its status prior to such unauthorized action or to a status acceptable to the County.

I. Consent of County to Transfer or Assignment shall not Constitute Waiver of County Rights

The consent or approval of the Board of Supervisors to any transfer or assignment of a Franchise or of ownership or control of a Franchise shall not constitute a waiver or release of any of the rights of the County unless the Board of Supervisors specifically releases or waives such rights.

J. No Transfer or Assignment to be Approved within Three Years or Prior to Completion of Grant, Construction or Acquisition

In the absence of compelling circumstances, the Board of Supervisors will not approve any transfer of control of a Grantee or assignment of a

Franchise or Cable System within three (3) years of its grant or initial construction or acquisition, respectively.

K. Grantee Must Notify County of any Agreement to Transfer or Assign Cable System and Terms of Sale

A Grantee must notify the County whenever it reaches a definitive written agreement to sell, transfer or assign its Cable System, or any portion thereof. A Grantee must also notify the County of the terms and conditions of any proposed sale as required by Section 5a, 5d and 5f2.

L. Successor-in-Interest Must Become Signatory to an Agreement

In no event shall an assignment of a Franchise or a transfer of ownership or control be approved without the successor-in interest becoming a signatory to the existing Franchise Agreement.

M. Grantee Not to Enter Into Any Management Contract if it Results in a Change of Control

A Grantee shall not enter into any management contract or other arrangement for the management of the system, to the extent that such contract or other arrangement would result in a significant change of operational control of a Grantee or the system (as defined in Section 5g) without the prior consent of the County.

N. Processing Fee May Be Imposed By County

The County may impose a processing fee upon a Grantee and/or the assignee or transferee to cover its costs of considering and evaluating an application for assignment or transfer of a Franchise.

SECTION 6-6: LIABILITY AND INDEMNIFICATION

A. Indemnification of the County

It shall be expressly understood and agreed by ad between the County government and a Grantee that a Grantee shall save the County government and its agents and employees harmless from and against all claims, damages, losses, and expenses, including attorneys fees sustained by the County government on account of any suit, judgment, execution, claim or demand whatsoever arising out of but not limited to copyright infringements and all other damages arising out of the installation, operation or maintenance of the cable system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance and any franchise granted hereunder. A Grantee shall be promptly notified in writing by the County of any notice of any claims, and Grantee shall have control of the defense of any action on such claims and all negotiations for its settlement or compromise. Should any actions or inaction of a Grantee become, or in a Grantee's opinion be likely to become, the subject of any

such claim or action, the County shall permit a Grantee, at its option and expense, to take such reasonable action as may be necessary in order to avoid or mitigate any such claim. Lastly, a Grantee shall have no liability to the County under any provision of this paragraph with respect to any claim or action brought against the County which is based solely on the actions of the County.

B. Reimbursement of Costs

A Grantee shall pay all expenses incurred by the County defending itself with regard to all damages and penalties mentioned in Section 6 (a) above.

C. Public Liability Insurance

A Grantee shall maintain and by its acceptance of a franchise, specifically agrees that it will maintain liability insurance in the form approved by the County Attorney, throughout the term of the Franchise. Such insurance will be with an insurance company that is:

(1) licensed to do business in the State of Virginia;

(2) approved by the State of Virginia;

(3) acceptable to the County;

(4) rated "A-VI" or better by A.M. Best or "A" or better by Standard and Poor's.

Such insurance will:

(1) name Fauquier County and its officers, employee, board members, and elected representatives and agents as additional insured (as the interests of each insured may appear) as to all applicable coverage;

(2) will provide for forty-five (45) days notice to the County for cancellation, non-renewal, or material change;

(3) provide for notice to the County Administrator by certified mail;

(4) provide that all provisions of this Cable Regulatory Ordinance, as amended, concerning liability, duty, and standard of care shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies; and

(5) insure the County and a Grantee in the minimum amount of:

a. Workmen's Compensation: As required by all applicable Federal, State, and other laws;

b. Company Liability: Each occurrence one million dollars ($1,000,000);

c. Comprehensive General Liability: Bodily injury, each occurrence one million dollars ($1,000,000); property damage, each occurrence one million dollars ($1,000,000) and aggregate one million dollars ($1,000,000);

d. Comprehensive Automobile Liability: Including non-ownership and hired car coverage as well as owned vehicles with minimum limits as follows: bodily injury for each occurrence three hundred thousand dollars ($300,000); property damage for each occurrence one hundred thousand dollars ($100,000); and

e. Copyright infringement insurance indemnifying, defending, and saving harmless the County and its officers, boards, commissions, agents, and employees from and against all claims of any person whatsoever for copyright infringement occasioned by the operations of the Grantee under the Franchise granted under this Ordinance, or alleged to have been so caused or occurred, within a minimum of one million dollars ($1,000,000).

Neither the provisions of this section nor any damages recovered by the County thereunder, shall be construed to or limit the liability of a Grantee under any franchise issued hereunder or for damages.

Insurers shall have no right of recovery against the County, it being the intention that the insurance policies shall protect Grantee and the County and shall be primary coverage for all losses covered by the policy(ies).

The company(ies) issuing the insurance policies shall have no recourse against the County for payment of any premiums or assessments which all are set at the sole risk of a Grantee.

D. Notice of Cancellation or Reduction of Coverage

The insurance policies mentioned above shall state that the policies are extended to cover the liability assumed by a Grantee under the terms of any Franchise Agreement and shall contain the following endorsement:

> "It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduce until thirty (30) days after receipt by the County by registered mail of written notice of such intent to cancel or reduce the coverage"

E. Evidence of Insurance Filed with The County

A certificate of insurance which certifies that a Grantee has obtained insurance coverage in compliance with this section and that all

required premiums have been paid, shall be filed and maintained with the Office of the Fauquier County Clerk during the term of the franchise and may be changed from time to time to reflect changing liability limits. A Grantee shall immediately advise the County Attorney of any litigation that may develop that would affect this insurance.

F. No Waiver of Insurance, Construction Bond or Letter of Credit or Cash Surety

Recovery by the County of any amounts under insurance, the Construction Bond (Section 6g.) or Letter of Credit or Cash Surety (Section 16), or otherwise does not limit a Grantee's duty to indemnify the County in any way; nor shall such recovery relieve a Grantee of its obligations under a Franchise, limit the amounts owed to the County, or in any respect prevent the County from exercising any other right or remedy it may have.

G. Construction Bond

Prior to any Cable System construction, upgrade, or other work in the Public Rights-of-Way, a Grantee shall establish in the County's favor a performance bond in an amount specified in a Franchise Agreement or other authorization as necessary to ensure a Grantee's faithful performance of the construction, upgrade, or other work.

In the event a Grantee subject to such a performance bond fails to complete the Cable System construction, upgrade, or other work in the Public Rights-of-Way in a safe, timely, and competent manner in accord with the provisions of a Franchise Agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the County as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of a Grantee, or the cost of completing or repairing the Cable System construction, upgrade, or other work in the Public Rights-of-Way, plus a reasonable allowance for attorney's fees, up to the full amount of the bond. The County may also recover against the bond any amount recoverable against the Letter of Credit or Cash Surety where such amount exceeds that available under the Letter of Credit or Cash Surety.

Upon completion of the Cable System construction, upgrade, or other work in the Public Rights-of-Way and payment of all construction obligations of the Cable System to the satisfaction of the County, the County may eliminate the bond or reduce its amount after a time appropriate to determine whether the work performed was satisfactory, which time shall be established considering the nature of the work performed. The County may subsequently require a new bond or an increase in the bond amount for any subsequent construction, upgrade, or other work in the Public Rights-of-Way.

The construction bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition and shall be subject to the approval of the County.

The construction bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the County, by registered mail, of written notice of such intent to cancel or not to renew"

SECTION 6-7: CABLE SYSTEM CONSTRUCTION

A. Map and Plan to be Provided

Grantee shall submit a construction or reconstruction plan not less than sixty (60) days prior to the date Grantee intends to commence construction or reconstruction of the Cable System, and that plan shall be incorporated by reference and made a part of a Grantee's Franchise Agreement. The plan shall include Cable System design details, equipment specifications, and design performance criteria. The plan shall also include a map of the entire Franchise Area and shall clearly delineate the following:

1. Areas within the Franchise Area where the Cable System will be available to Subscribers, including a time schedule of construction or reconstruction for each year that construction or reconstruction is proposed; and

2. Areas within the Franchise Area where the Cable System cannot reasonably be extended due to lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

B. Delay in System Construction or Reconstruction Requires Consent by Board of Supervisors

Any delay in the Cable System construction or reconstruction beyond the times specified in the plan shall require application to the County and consent of the Board of Supervisors after receiving recommendation from the County Administrator. Any delay beyond the construction or reconstruction timetable set forth in the plan, unless approved by the Board of Supervisors, will be considered a violation of the Franchise for which the provisions of Sections 6g, 16 and 17 shall apply. However, nothing in this Section shall prevent a Grantee from constructing or reconstructing the Cable System earlier than planned.

C. System Construction and Operation to be Consistent with County Requirements; the County may Observe Annual Proof of Performance Tests; the County May Conduct Independent Tests

Grantee shall construct, install, operate and maintain its system in a

manner such that it operates at all times consistent with all laws, ordinances, and construction standards of the County; the rules and regulations of the Federal Communications Commission; and detailed standards submitted by a Grantee as part of its application, which standards shall be incorporated by reference into a Franchise Agreement. In addition, a Grantee shall provide the County with the opportunity to observe the conduct of, and receive a written report of the results of Grantee's proof of performance tests. The County may at any time conduct independent measurements of the system.

The Grantee shall continue, through the term of the franchise, to maintain the technical, operational, and maintenance standards and quality of service set forth in this Ordinance. Should the Board of Supervisors find that the Grantee has failed to maintain these standards and quality of service, the Grantee shall comply with the corrective measures ordered by the Board of Supervisors that are designed to restore the cable system and the cable services provided to standards required by this Ordinance. Failure to comply with the Board of Supervisor's order will constitute a breach of a franchise for which the remedy of Section 17 and 18 is applicable.

All construction within the Fauquier County shall conform to the standards that are set forth in the current edition of the County's Standards for Rights-of-Way/Easement Construction. A Grantee shall at all times abide by the requirements and standards therein, including, but not limited to those provisions pertaining to job site traffic control.

D. Additional Specifications - Standby Power, National, State and Local Codes

Grantee shall construct, install and maintain the Cable System in an orderly and professional manner, using due diligence and materials of good and durable quality. All cables and wires shall be installed, where possible, parallel with and in the same manner as electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations. Underground installations shall be in conformance with all applicable codes.

A Grantee shall maintain equipment capable of providing standby power to be engaged automatically in the event of a power failure for twenty-four (24) hours at the primary headend, tower, and HVAC systems and for a minimum of twenty-four (24) hours to the first active device on all trunk lines or two (2) hours at fiber optic nodes.

A Grantee shall at all times comply with applicable Sections of the following, all as from time to time amended and revised, and all other applicable rules and regulations now in effect or hereinafter adopted by the County:

1. National Electrical Safety Code (ANSI) most recently adopted;

2. National Electrical Code (National Bureau of Fire Underwriters);

3. The Bellcore Blue Book Manual of Construction;

4. The Rules and Regulations of the Federal Communications Commission;

5. The County Building Code;

6. County Subdivision Regulations;

7. Fauquier County's Standards for Right-of-Way/Easement Construction.

In any event, a Grantee shall not endanger or interfere with the safety of persons or property in the Franchise area or other areas where a Grantee may have equipment located.

E. Access to Grantee's Trenches by Other Utilities

Grantee 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 County will provide advance notice to any Grantee when it plans to open a trench and each Grantee shall provide notice to the County when it plans to open a trench. A Grantee and the County will offer to make space available to the other and to other Persons who participate in joint trenching, on reasonable terms and conditions.

F. If County Determines Any Part of Facilities are Harmful to Health and Safety of Any Person, Grantee Shall Promptly Correct

If, at any time, it is determined by the County or any other agency or authority of competent jurisdiction that any part of the system facilities are endangering the public, including without limitation missing vault or pedestal covers, temporary drop cables that cross walkways, driveways or other areas, and low cables, riser problems and other violations of State or local laws that are harmful to the health or safety of any person, then a Grantee shall correct all such conditions, at its own costs and expense, within 24 hours of receipt of notice from the County or any other agency or authority of competent jurisdiction. Until such conditions are corrected, Grantee shall post suitable warnings to ensure that the health and safety of persons possibly affected is ensured.

G. Grantee to Maintain System in Conformance with FCC Radiation Rules

A Grantee shall construct, operate and maintain the system in conformance with FCC Signal Leakage requirements, 47 C.F.R. 76 subpart K, to prevent interference with the transmission or reception of over-the-air broadcast signals. A Grantee shall not interfere with the ability of any Subscriber to utilize his or her television receiver for any

lawful purpose. The connection of any cable input selector device or any converter to a Subscriber's terminal shall not be considered as interference with the Subscriber's ability to utilize his or her television receiver.

H. Grantee to Take All Necessary Steps to Prevent Accidents

A Grantee shall, at its own cost and expense, take all necessary efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, and security personnel and, at night, suitable and sufficient lighting.

I. Notice of Cable Construction/Repair to Subscribers

Grantee shall notify residents on affected streets of pending construction, or major repairs including any which require street or sidewalk trenching, at least forty-eight (48) hours prior to commencement of such work. Notification shall be by leaving an appropriate notice at the residence (i.e. door hanger notice and by first-class mail). All notices shall include the Company's telephone number.

In the event of a system extension or rebuild, possibly affecting general system reception, a Grantee shall notify all of its Subscribers by a character generated message on a local origination channel, stating the scope and duration of the proposed extension or rebuild and its impacts at least fourteen (14) days prior to commencement of such work. Emergency repairs shall be handled by a door hanger.

SECTION 6-8: REGULATIONS PERTAINING TO USE OF COUNTY STREETS AND PUBLIC RIGHTS-OF-WAY

A. The County Has the Right to Use Poles and Conduits Owned By Grantee

The County shall have the right to install and maintain free of charge upon any poles or in any conduit owned by a Grantee any wire and pole fixtures that do not unreasonably interfere with a Grantee's own use of the poles and conduits. Grantee shall notify the County when it enters into an agreement for use of its poles and conduits. Copies of agreements for use of Grantee's conduits or poles in the Public Rights-of-Way or on other public property shall be available for review upon the County's request.

B. All Grantee's Facilities to be Installed Only at Locations Approved by County Administrator or his/or her Designee

Any poles, wires, cable lines, conduits or other properties of a Grantee to be constructed or installed in streets shall be so constructed or installed only at such locations and in such manner as shall be approved in writing by the County Administrator or his/or her designee in the exercise of his or her reasonable discretion.

C. During Construction, Reconstruction or Maintenance of System Grantee, Shall Not Obstruct Public Ways Without Prior Consent of Authorities

In connection with the construction, reconstruction, operation, maintenance, repair, or removal of the system, a Grantee shall give due regard to the aesthetics of the Franchise areas and shall not obstruct the public ways, streets, railways, passenger travel, or other traffic to, from or within the County, without prior consent of the appropriate County authorities. In addition:

1. All transmission and distribution structures, lines, and equipment erected by a Grantee within the County shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any streets or public way.

2. In case of any disturbance to any public way, street, easement, paved area or other property, a Grantee at its own cost and expense and in a manner and time period approved by the County, shall replace and restore such Public Rights-of-Way in as good condition as before the work involving such disturbance was done.

D. Restoration of Property

In case of any damage of any property during installation, construction, operation, or removal, the Grantee shall, at its own cost and expense justly compensate the owner of said property for all damages incurred by the property owner.

E. Permits Required to be Obtained Prior to Any Physical Work Being Performed in County's Streets

A Grantee or its authorized contractors must obtain permits from the County Administrator or his/or her designee, Building and/or other appropriate Departments prior to any physical work being performed in the County's streets, or on County-owned property. Permits will be issued to a Grantee or its contractors only on approved plans by approved contractors, which plans must be submitted concurrently with or prior to the request for the construction permit. All work will be done in accordance with the County's specifications including the County's

regulations pertaining to aesthetically considerations and must comply with all Applicable Law.

F. Grantee to Prepare Detailed Maps of Entire System Prior to Issuance of Permit for Construction or Reconstruction. Maps also to be Filed With Affected Utility Companies

A Grantee shall provide strand maps of the entire Cable System to the Office of the County Administrator or his/or her designee.

In addition, Grantee shall provide to the County full and unrestricted access to Grantee's as built maps, plans, records, and documents so as to permit the County to review Grantee's system prior to issuance of any construction or reconstruction permits, provided however the County shall have no right to copy as built maps unless afforded by a court of competent jurisdiction or as may be agreed to by the Franchisee.

G. Upon Undergrounding of Utility Lines, Grantee Shall Concurrently Place Lines Underground in Conduits at Depth Approved by County Administrator or his/or her designee

Trunk, feeder and drop cable may be constructed overhead where poles now exist and electrical or telephone lines or both are now overhead, but where electrical or telephone lines are now underground, all trunk, feeder and drop cable shall be constructed underground at such depths and locations as shall be approved by the County Administrator or his/or her designee.

In all sections of the County where all the cables, wires, or other like facilities of public utilities are placed underground, a Grantee shall place its cables, wires or other like facilities underground to the maximum extent that the existing technology reasonably permits a Grantee to do so.

If at any time the County Administrator determines that existing wires, cable or other like facilities of public utilities anywhere in the County shall be changed from an overhead to an underground installation, a Grantee shall also, at Grantee's sole expense, convert its system to an underground installation. However, if public funds of the Fauquier County are available to other public utilities for the purpose of defraying the cost of the change in facilities, such funds shall also be made available to a Grantee.

Whenever and wherever electrical lines and telephone lines are moved from overhead to underground placement in an area, all Cable System facilities and plant in that area shall be similarly and concurrently moved underground by a Grantee at a Grantee's sole cost and expense at such depths and locations as shall be approved by the County Administrator or his/or her designee.

H. Grantee May Be Required to Move its Facilities to Accommodate Changes in Public Improvements

A Grantee shall from time to time protect, support, temporarily dislocate, or temporarily or permanently, as may be required, remove or relocate, without expense to the County or any other governmental entity, any facilities installed, used, or maintained under a Franchise, if and when made necessary by any lawful change of grade, alignment, or width of any public street by the County or any other governmental entity, or made necessary by any other public improvement or alteration in, under, on, upon or about any public street or other public property, whether such public improvement or alteration is at the instance of the County or another governmental entity, and whether such improvement or alteration is for a governmental or proprietary function, or made necessary by traffic conditions, public safety, street vacation or any other public project or purpose of the County or any other governmental entity. The decision of the County Administrator or his/or her designee under this Section, absent review by the Board of Supervisors, shall be final and binding on a Grantee.

I. Grantee Shall Obtain Prior Approval Before Altering any County Facility; Alterations to be at Cost of Grantee

In connection with the construction, operation, maintenance, repair, or removal of the system, a Grantee shall, at its own cost and expense, protect any and all existing structures belonging to the County. A Grantee shall obtain the prior approval of the County before altering any water main, sewage or drainage system, or any other municipal structure in any public way or street, because of the presence of the system in the public ways or streets. Any such alteration shall be made by a Grantee, at its sole cost and expense, and in a manner reasonably prescribed by the County. A Grantee shall also be liable, at its own cost and expense, to replace or repair and restore to as close to its prior condition as is reasonably possible and in a manner reasonably specified by the County, any public way, street or any municipal structure involved in the construction of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of a Grantee.

J. Grantee Shall Temporarily Move its Wires to Permit Moving of Buildings

Grantee shall, at the request of any person holding a moving permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid to a Grantee by the person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less then ten (10) days prior written notice to arrange for such temporary wire changes.

K. Grantee Shall Repair and Restore Damage to County Facilities and Shall Maintain Restoration

In the event that a Grantee during construction, installation, inspection or repair of its facilities causes damage to pavement, sidewalks, driveways, landscaping or other property, a Grantee or the authorized agent shall, at its own expense and in a manner approved by the County, replace and restore such places to the same condition which existed before said work was commenced. A Grantee shall further continue to maintain all such restoration in the condition approved by the County should the County reasonably determine, within two (2) years from the date of such restoration, that such surface requires additional restoration work to place it in as good a condition as before the commencement of the work, a Grantee shall perform such additional restoration to the reasonable satisfaction of the County.

In the event the construction or maintenance (except for emergency repairs) of the cable system requires the temporary closing of a traffic lane or lanes, a Grantee shall notify the County Administrator not less than three (3) days prior to the construction or maintenance. The County Administrator may require a Grantee to submit a traffic control plan and may also require that all lanes of traffic be open and available to traffic during peak traffic hours.

L. Failure by Grantee to Complete Required Work in any Street Can Result in County Causing Work to be done at Expense of Grantee

Upon failure of a Grantee to complete any work required by law, or by the provisions of a Franchise, to be done in any street or other public place, within ten (10) days following due notice and to the satisfaction of the County Administrator or his/or her designee, the County may, at its option, cause such work to be done and a Grantee shall pay to the County the cost thereof in the itemized amounts reported by the County Administrator or his/or her designee to a Grantee within ten (10) days after receipt of such itemized report. Or, at County's option, County may demand of Grantee the estimated cost of such work as estimated by the County Administrator or his/or her designee, and such shall be paid by Grantee to County within ten (10) days of such demand; upon award of any contract or contracts for such work, Grantee shall pay to County within ten (10) days of demand any additional amount necessary to provide for cost of such work. Upon completion of such work, Grantee shall pay to County or County shall refund to Grantee such sums so that the total received and retained by County shall equal the cost of such work. "Cost" as used herein shall include fifteen percent (15%) for County's overhead expense.

M. County May Remove Grantee's Facilities as may be Required During Emergencies

The County reserves the right to remove any portion of a Grantee's equipment and facilities as may be required in any emergency as determined by the County without liability for interruption of Cable Service and the County shall not be obligated to restore Cable Service or to pay the costs of expenses of restoring Cable Service.

N. Cost of Tree Trimming is to be at Expense of Grantee; County has Option to Decide Whether County or Grantee Does the Trimming

A Grantee shall notify the County regarding the need to trim trees upon and overhanging streets of the County so as to prevent the branches of such trees from coming in contact with the wires and cables of a Grantee. At the option of the County, such trimming may be done by the County at the expense of a Grantee, or by a Grantee under the County's supervision and direction at the expense of a Grantee. When authorized, such trimming shall be limited to the area required for clear cable passage and shall not include major structural branches, which materially alter the appearance and natural growth habits of the tree. If such trimming is not performed by the County, a Grantee shall be responsible for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed, or for damage to property or person caused by such trimming and removal of any tree.

O. Grantee Shall Remove System from any Public Street Following Termination or Expiration of Franchise

In the event that the use of a part of the Cable System is discontinued for any reason for a continuous period of twelve (12) months, or in the event such Cable System or property has been installed in any street or public place without complying with the requirements of the Franchise, or the Franchise has been terminated, canceled or has expired without renewal, a Grantee shall promptly, at its own expense, and upon being given ten (10) days notice from the County Administrator, remove from the streets or public places all such property and poles of such Cable System other than any which the County Administrator may permit to be abandoned in place. In the event of such removal, a Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the County Administrator.

P. Grantee's Property May be Considered Abandoned 90 Days After Termination or Expiration of Franchise

Any property of a Grantee remaining in place ninety (90) days after the termination or expiration of a Franchise shall be, at the option of the Board of Supervisors, considered permanently abandoned. The County Administrator or his/or her designee may extend such time not to exceed an additional thirty-(30) days.

Q. Abandonment in Place shall be Done at Direction of the Department of Community Development: Ownership of Property Shall be Transferred to County

Any property of a Grantee permitted to be abandoned in place shall be abandoned in such a manner, as the Department of Community Development shall prescribe. Upon permanent abandonment of the property of a Grantee in place, a Grantee shall submit to the County an instrument in writing, with form to be approved by the County Attorney transferring to the County the ownership of such property. If such an instrument is not received within thirty-(30) days of the abandonment, the property shall automatically become that of the County.

R. Placement of Cable System Equipment

Nothing contained in this ordinance nor any franchise agreement executed under the authority contained in this ordinance shall operate to convey to the Grantee the right to use or locate any poles, equipment or other parts of the cable system in the boundaries of any private rights of way or private streets located in the County. Grantee shall, prior to construction of any portion of the cable system within a private street or private right of way, obtain and record all necessary easements, or grants of use from the owner(s) of the private streets or rights of way.

SECTION 6-9: SYSTEM OPERATION

A. Type and Scope of System

A Grantee shall install and maintain the system as proposed and agreed upon in a Franchise Agreement.

B. Basic Service Tier

Each Grantee of a Cable System shall provide its Subscribers a separately available Basic Service Tier to which subscription is required for access to any other tier of service.

C. Access Channels

A Grantee shall provide and maintain the number and type of access channels as are set forth in a Franchise Agreement.

D. Supervision and Regulation of Franchises by The County

The County may do all things necessary and proper to supervise, inspect, and regulate the construction and operation of cable television systems Franchised under this Ordinance; implement complaint procedures; regulate rates as authorized by Federal, State, and Local laws; monitor and enforce compliance with this Ordinance and any cable

television Franchise granted by the County.

In order to serve and maintain the County's continuing regulatory jurisdiction and supervision over the operation of outstanding cable franchises, the County Administrator, or his/her designee shall have general supervisory authority over all outstanding cable franchises.

E. Performance Evaluation Sessions

The County and the Grantee shall hold scheduled performance evaluation sessions once every three years on the anniversary of a Franchise Agreement. All such evaluation sessions shall be open to the public.

Ninety (90) days prior to each performance evaluation session, the Grantee shall submit to the County a written report, in reasonable detail, covering the significant events related to the Grantee's performance or nonperformance of the terms and conditions of its Franchise Agreement and the Cable Ordinance during the period from the submission of the last report. Such reports shall, cover significant events including, but not limited to those events related to the following topics:

1. Compliance with, and any modification necessary with respect to, the financial commitments required under the Franchise Agreement;

2. Compliance with requirements regarding system characteristics and technical performance and testing requirements;.

3. Compliance with construction terms, standards, and schedules;

4. Compliance with all other provisions of this Ordinance and a Franchise Agreement.

5. A description of the changes made or contemplated to the mix and quality of programming in the broad categories of video programming or other services on the system. Nothing in this paragraph, however, shall imply the County has regulatory authority or power of censorship over the content of programming on the Grantee's channels, the public and educational access channels or the leased channels;

6. The status of the State-of-the Art communications technologies;

7. Compliance with, and any modification necessary with respect to the Grantee's privacy protection policies;

8. A summary of all service interruptions;

9. A summary of all significant and representative Subscriber and user complaints and the action taken by the Grantee in response thereto;

10. A summary of relevant developments in the legal and regulatory arenas; and

11. Other events which the County, or the Grantee may find significant.

Within sixty (60) days after receipt of the Grantee's report, the County Administrator may request for clarification, additional reasonable and appropriate information on specific topics which the Grantee shall supply within sixty (60) days of such request. [Clarification Period] The County may review the Grantee's performance to determine whether the Grantee has complied with the terms and conditions of the Franchise Agreement and shall, following completion of any such review, provide for a public performance evaluation session to discuss the report with the Grantee and seek public participation and comments regarding Grantee's operations. Nothing in this Section shall affect the County's enforcement remedies provided elsewhere in this Ordinance and a Franchise Agreement.

Special evaluation sessions may be held at any time during the term of a Franchise Agreement at the request of the County or the Grantee.

All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice at least ten (10) days proceeding each session. A Grantee shall notify its Subscribers of all evaluation sessions by: (1) a mailing directly to all Subscriber households and units at least ten (10) days preceding each session and (2) by announcement on at least one (1) channels (within channels 2-12) of its system between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days preceding each session.

Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to: service rate structures; Franchise fees; liquidated damages; free or discounted services; application of new technologies; system performance; services provided; access channels; programming offered; Subscriber complaints; privacy; judicial and FCC rulings; line extension policies; and other Grantee, or County rules and regulations.

Within sixty (60) days after the conclusion of the public evaluation session, the County Administrator shall prepare a report with respect to the adequacy of system performance and quality of service. If inadequacies are found which result in the apparent violation of any of the material provisions of this Cable Ordinance or a Franchise Agreement, the Grantee shall be notified by the County Administrator that the Grantee shall have a maximum of thirty (30) days from the date of the notice to respond and propose a plan for implementing any improvement or correction for curing any deficiency cited in the County Administrator's report.

If a Grantee fails or refuses to correct a deficiency within the thirty (30) days notification or any extension of time granted by the County Administrator or Board of Supervisors, a Grantee shall pay to the County a penalty of five thousand dollars ($5000.00) plus one hundred dollars ($100.00) per calendar day, including the first day, for each day that the deficiency continues.

Assessment of all penalties against a Grantee may be appealed to the Board of Supervisors, which shall have the authority, by resolution, to waive or adjust penalties if it is in the Board of Supervisor's judgement a waiver is deemed to be justified.

F. Grantee to Maintain an Office or Service Center in County Limits

A Grantee shall maintain a business office or service center within the County limits, which shall be open during the business hours stated in the Consumer Services Standards of Section 10, and staffed and operated to respond to customers in at least four ways: accept payments and resolve billing difficulties; to give out and exchange or accept return converters; schedule and conduct service or technician calls; answer Subscriber inquiries; and resolve complaints. Grantee shall also provide additional convenient bill payment locations through cooperative arrangements with banks, shopping centers and /or similar facilities. Subscribers shall be promptly notified of any change of address or telephone numbers of such business office or bill payment locations. Grantee shall also prepare a written notice to familiarize residents with the location of said business office and bill payment locations, the services available, and complaint procedures. This notice is to be given to each new Subscriber upon installation of service, and is to be distributed at least once per year to all Subscribers.

G. Repair and Maintenance Crew to be Maintained that is Capable of Responding to Subscriber Complaints

Grantee shall maintain sufficient repair and maintenance crews capable of responding to Subscriber complaints or requests for service in accordance with Customer Service Standards described in Section 10.

H. Outage Log to be Maintained Showing Details of Service Failures

A Grantee shall maintain an outage log showing the date, approximate time, location, duration, number of Subscribers affected, type and probable cause of all headend, trunk, or distribution line service failures due to causes other than routine testing or maintenance at reasonable times. A copy of such log showing the "availability criteria" (below) shall be filed with the County Administrator of the County on a quarterly basis and shall be retained by a Grantee for a period of three (3) years.

A Grantee will design, procure, install and maintain its equipment with the objective of meeting a monthly system availability criteria of 99.5% measured as follows:

$$\frac{\text{Power On} - \text{Outage Time}}{\text{Power On}}$$

I. Planned Service Interruption

A Grantee 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 the affected Subscribers' service problems, only after a minimum of forty-eight (48) hours prior notice to Subscribers and the County of the anticipated service interruption; provided, however, that planned maintenance that does not require more than two (2) hours' interruption of service and that occurs between the hours of 12:00 midnight and 6:00 a.m. shall not require such notice to Subscribers, but shall require notice to the County no less than twenty-four (24) hours prior to the anticipated service interruption.

J. The County Can Require Grantee to Test System and Report on System Performance

When there have been repeated complaints made or when there exists other evidence which, in the judgment of the County, casts doubt on the reliability or quality of Cable Service, the County shall have the right and authority to compel a Grantee at its expense to test, analyze, and report on the performance of the Cable System. Such report shall be delivered to the County no later than fourteen (14) days after the County formally notifies a Grantee and shall include the following information: the nature of the complaints which precipitated the special test(s); which Cable System component(s) was/were tested, the equipment used, and procedure(s) employed in said testing; the results of such test(s); and the methods(s) in which said complaints were resolved.

K. Required Tests May be Done by Independent Qualified Engineer

The County Administrator of the County may require that tests and analyses shall be supervised by a qualified engineer selected by the County who is not on the permanent staff of a Grantee. Said tests shall be paid for by a Grantee within twenty (20) days after the County submits the engineer's invoice if the engineer's tests reveal substantial

substandard technical performance pursuant to FCC and established industry standards. The aforesaid engineer shall sign all records of the special tests and forward to the County Administrator such records with a report interpreting the results of the tests and recommending actions to be taken by a Grantee and the County.

SECTION 6-10: CUSTOMER SERVICE STANDARDS

A. Definitions

1. *"Normal business hours"* means 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 night per week and/or some weekend hours.

2. *"Normal operating conditions"* means those service conditions, which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator 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.

3. *"Service interruption"* means the loss of picture or sound on one or more cable channels.

B. Exceptions

Nothing in this Ordinance is intended to prevent or prohibit:

1. The County and a Grantee from agreeing to customer service requirements that exceed the standards set forth in this Ordinance;

2. The County from enacting or enforcing any consumer protection law ; or

3. The establishment or enforcement of any ordinance or regulation concerning customer service that imposes customer service requirements that exceed or address matters not addressed by the standards set forth in this Ordinance.

C. Customer Service Standards

A Grantee shall conform to minimum standards as shall be established by the County for telephone access, repair service response, timeliness of installation work, and work order scheduling. A Grantee is subject to the following customer service standards, which are to be

certified quarterly as to compliance by a Grantee to the County.

Telephone Access: Use by the company of a telephone answering machine (except for an automated call handling and audio response unit) in connection with its customer service functions is prohibited. Furthermore, use of an answering service is limited to no more than 8 hours per day.

Answering Promptness: At least 90% of the time, telephone callers shall be connected to a live service representative staff member or operator within thirty seconds, seven days per week. Busy conditions should not be encountered by subscribers attempting to make contact with the company more frequently than 3% of the time.

Office Access: A company's local office shall be open for business at least eight hours per day on weekdays.

Installation and Repair Service: The following policies with regard to installation and service shall be met by all Grantees:

- Installations must be completed within five business days;
- Grantees shall respond on a same day basis to all individual outages that are reported prior to 4:00 p.m.;
- Grantees shall respond the next day to all individual outages that are reported after 4:00 p.m.;
- Grantees shall respond immediately to all reported outages affecting between 3 and 19 subscribers when the outage is reported between 6:00 a.m. and midnight;
- Grantees shall respond by 6:00 a.m. to all outages affecting between 3 and 19 subscribers when the outage is reported between midnight and 6:00 a.m.;
- Grantees shall respond immediately to all reported outages affecting more than 20 subscribers, regardless of when the outage is reported;
- Grantees shall respond the next business day to all reports of poor reception;
- Grantees shall offer subscribers the option of appointment windows, six days per week, including at least 8:00 a.m. until noon, 1:00 p.m. until 5:00 p.m. and 5:00 p.m. until 8:00 p.m. (Sunday excluded).
- Drop wires in underground service areas that are temporarily placed above ground shall be buried within two weeks of the date and time of the temporary

installation, except in those situations where weather conditions make trenching impractical.

- Between the time that a new customer is signed up for service and the time service is installed, he or she shall be afforded a right of rescission.
- The installation completion objectives shall be met at least 90% of the time as measured on a quarterly basis.
- At $20 rebate shall be given to subscribers when a Grantee fails to meet its service appointment schedule; and no installation fee shall be charged in the event that the company's installers miss their appointment.

D. Rebates

Subscribers shall be compensated through the use of a rebate for cable service outages lasting longer than 24 hours. Cable service outages for the purpose of this section shall be defined as complete loss of video and/or audio. The right of the subscriber to receive a rebate for cable service outages of twenty-four (24) hours or more shall be clearly stated in the Customer Service Brochure.

E. Parental Control Feature

Grantee shall provide a parental control option to all subscribers. The availability of this option should be clearly stated in the Customer Service Brochure (described below).

F. Customer Service Brochure

Consistent with §76.309 of the Rules and Regulations of the Federal Communications Commission, Grantee shall provide an informational package to all of its new subscribers at the time they are first connected to the cable. This information shall include, at minimum: a full and complete listing of all rates and charges (including all available discounts, if any, such as those that apply to senior citizens) and a statement of the company's various operating policies, including those that relate to late charge assessments and instructions on filing of complaints. The material shall also describe the customer service standards that the company is required to meet. In addition, the brochure shall contain a channel/service guide as well as instructions as to how to contact a Grantee for service and what to do if problems cannot be resolved through normal channels. The brochure shall also present subscribers with instructions on how to connect VCRs and other such devices as part of the cable installation. Thereafter, subscribers shall be provided a copy of all of this information at least once a year on a routine basis.

G. Sales of Subscriber Lists Prohibited

The Grantee shall not sell or allow use of subscriber lists for any purpose not connected with the operation of the cable system.

H. Monitoring

No monitoring of any terminal connected to the cable system shall take place without specific written authorization by the user of the terminal in question of each occasion.

I. Customer Service Statistics and Reporting

A Grantee shall provide the County Administrator annual customer service performance statistical reports that contain the following information:

- Service outages by location (area) and the number of subscribers affected, listing the time each outage was first noted and the time service was restored;
- Number of repair service requests received in the past quarter;
- Average hold time for customer service telephone calls that were received in the past period;
- Percentage of telephone calls that were answered within 30 seconds during the past period;
- Percentage of time when all incoming trunk lines were in a busy condition;
- Breakdown by type of complaint received (e.g. “complete outage” or “snowy picture” etc.);
- Breakdown by cause of problem (e.g. “subscriber equipment” or “drop/converter” or “system” etc.);
- Breakdown by time of response or resolution (e.g. “within 24 hours” or “same day” etc.);
- Subscribers added, each tier and each premium channel; and Subscribers disconnected each tier and each premium channel.

SECTION 6-11: CUSTOMER BILLING

Customers shall be notified of any changes in rates, programming services, or channel positions as soon as possible through announcements on the Cable System and in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, a Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required to be disclosed to Subscribers.

Bills shall be clear, concise, and understandable. Bills must be fully itemized with itemizations including, but not being limited to, basic and premium service charges and equipment charges. Bills shall clearly delineate all activity during the billing period, including operational charges, rebates, and credits. In case of a billing dispute, a Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

Refund checks shall be issued promptly, but not later than:

- The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or

- Upon the return of the equipment supplied by the cable operator if service is terminated.

- Credits will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

SECTION 6-12: ENFORCEMENT OF CUSTOMER SERVICE STANDARDS

Reports Required of Compliance and Enforcement of Customer Service Standards

A Grantee shall report to the County on annually on or before June 30th of each year regarding its compliance with customer service standards [Report shall include information not already included in response to Section 10d]. A report form shall be developed in consultation between the County and a Grantee that will provide the detail necessary to monitor Grantee's compliance with customer service standards. Upon breach of the customer service standards and failure of a Grantee to remedy such breach upon ten (10) days prior written notice from the County, the County may invoke the penalty provisions of this Section or the liquidated damages provision of the Franchise Agreement without prejudice to any other remedy otherwise available to the County. A Grantee shall also promptly comply with all procedures established by the County regarding the handling of all complaints received directly by the County from County residents regarding cable television service.

1. A Grantee shall file with the County a notarized statement signed by an officer or local system manager certifying compliance with these customer service standards on a quarterly basis.

2. An officer or local system manager who knowingly and/or intentionally signs a false certificate shall be guilty of a misdemeanor punishable by up to ninety (90) days in jail or a fine of $500 or both.

3. Failing to file a certificate shall subject a Grantee to pay a civil

forfeiture to the County of $500 per day.

4. A Grantee in non-compliance shall file with the County a statement specifying areas of non-compliance along with a remedial plan. Failing to file a non-compliance statement and a remedial plan shall subject a Grantee to pay a civil forfeiture to the County of $500 per day.

SECTION 6-13: REPORTS AND RECORDS OF CABLE TV OPERATION

A. Annual Financial Reports Required

During the term of a Franchise, a Grantee shall file annually with the County Administrator not later than 90 days after the end of its fiscal year and, if the Franchise is terminated or expires prior to the end of a Grantee's fiscal year, 90 days after such termination or expiration, two (2) copies of:

1. A financial statement applicable to the Cable System serving the County, including a detailed statement of Gross Revenues applicable to its operation during the preceding twelve (12) month period; and the gross revenue from each revenue source attributable to the operations of Grantee from within the County; and

2. An operational report that summarizes the annual report information required in Section 12.

These reports shall be certified as being correct by a responsible financial representative authorized to represent the Grantee and there shall be submitted along with them such other reasonable information as the County shall request.

B. Grantee Shall Annually File Prior to March 31 Current Maps Showing Location of Equipment Installed

A Grantee shall file in a format acceptable to the County Administrator or his/or her designee, on or before the last day in March of each year, up-dated strand maps showing all Cable System equipment installed and in place in streets, public or private rights-of-way and other public or private places of the County. The maps shall be provided to the County in electronic format, if available, and on hard copy.

C. Ownership Reports Required

During the term of a Franchise, a Grantee shall file with the County not later than three (3) months after the end of each subsequent fiscal year during which a Franchise was accepted and within three (3) months after the end of each subsequent fiscal year two (2) copies of the Grantee's annual report:

1. The names and both business and residential addresses and phone numbers of the cable television system resident manager and engineer shall be made available to the County Administrator.

D. Public Availability of Reports

Such reports as required under this Ordinance shall be available to the public in the Office of the County Clerk, during normal business hours.

E. Correspondence

Upon request a Grantee shall simultaneously file with the County Administrator a copy of any petition, application, report and communication pertaining to the operations of the cable television system that are transmitted by a Grantee to, or received by a Grantee from, any federal, state or other regulatory commissions, agencies or courts regarding the local Cable System.

F. County's Access to Records

The County shall have access during all normal business hours to all Grantee's records required to be maintained by this Ordinance or any Franchise Agreement.

Note: Section 14 – Rate Regulation – is being handled in a different manner in the County's document vs. the Town's.

SECTION 6-14: RATE REGULATION

A. County Reserves Right to Regulate Rates

The County reserves the right to regulate at a later date Grantee's rates for cable service to the fullest extent permitted by Applicable Law.

B. Current Rate Schedule to be Filed with County: 30 Days Notice Required Prior to Rate Change

A Grantee, for information purposes, shall provide the County with a complete schedule of all current basic service and enhanced service rates and charges, including pay TV and pay per view rates and charges, and shall give thirty (30) days prior notice from the date of mailing to the County and to all affected Subscribers of any pricing changes or additional charges, excluding temporary marketing and sales discounts or offers. Forty-five (45) days before any price changes or additional charges are to take effect, a Grantee shall provide the County with a copy of the proposed notification for Subscribers so that the County may review the text of the notice to assure accuracy of information being presented to subscribers.

C. Grantee to Furnish Service to Each Person in Franchise Area Making Request for Service

Grantee shall furnish and maintain Cable Service to each person within the Franchise area who makes a bona fide request to receive such service that is based upon the requirements of this Ordinance and/or a Franchise Agreement. Nothing in a Franchise Agreement shall limit the right of a Grantee to deny service to any Person who has a negative credit or service history with a Grantee, which may include non-payment of bills or theft or damage to a Grantee's equipment, or who has threatened or assaulted employees of a Grantee in the course of their employment. Provided that in the event service is denied, a Grantee shall give written notice to the Person requesting service of his or her right to appeal to the County a Grantee's decision to deny service, and of the County's authority to reverse a Grantee's decision in instances where a Grantee has acted unreasonably.

D. Discriminatory or Preferential Practices Prohibited

The Grantee shall not, in its rates or charges, or in making available the service or facilities of its system, or in its rules and regulations, or in any other respect discriminate on the basis of race, religion, ethnicity or gender. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscriptions to the system or other legitimate uses thereof. County Adopts Rate Regulation Procedures Consistent With FCC Rules.

E. County Adopts Rate Regulation Procedures Consistent With FCC Rules

The County hereby adopts by reference rules of the Federal Communications Commission set forth in Subpart N (Cable Rate Regulation) of Part 76 (Cable Television Service) of Chapter I of Title 47 of the Code of Federal Regulation regarding the regulation of cable television rates for basic service and associated equipment, as amended.

The County adopts by reference procedures set forth in 47 CFR Sec. 0.459 regarding confidential business information submitted by a Grantee in a rate regulation proceeding.

A Grantee which willfully or repeatedly fails to comply with a rate regulation or refund order directed specifically at a Grantee shall be subject to a monetary forfeiture as determined by the County.

SECTION 6-15: FRANCHISE RENEWAL PROCESS

The Franchise renewal process of the County shall be in accordance with Section 626 [47 U.S.C. 546] Communications Act of 1934, as amended, and with all other applicable state and federal laws.

SECTION 6-16: LETTER OF CREDIT OR CASH SURETY

A. Grantee is Required to File an Irrevocable Letter of Credit or Cash Surety

Within thirty (30) days after the effective date of a Franchise, Grantee shall deposit with the County an Irrevocable Letter of Credit or Cash Surety in the amount set forth in the Franchise Agreement and issued by a local federally insured commercial lending institution that has been approved by the County. The form and substance of said Letter of Credit or Cash Surety shall be subject to the approval by the County Attorney. The Letter of Credit shall be used to assure: the faithful performance by a Grantee of all provisions of the Franchise Agreement and the Cable Ordinance; compliance with all orders, permits and directions of the County Administrator or any agency, commission, board, department, division or office of the County having jurisdiction over any aspect of a Grantee's performance under a Franchise and this Ordinance; and the payment by a Grantee of any penalties, liquidated damages, claims, liens, Franchise Fees, taxes or other fees due to the County which arise by reason of the construction, operation or maintenance of the Cable System, including cost of removal of any property of a Grantee.

B. Letter of Credit or Cash Surety May Be Drawn Upon By the County After Following Specified Procedure that Assures Due Process to Grantee

The Letter of Credit or Cash Surety may be drawn upon by the County by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the County Administrator certifying that a Grantee has failed to comply with the Franchise Agreement and/or this Ordinance, stating the nature of the noncompliance, and stating the amount being drawn. Examples of the nature of the noncompliance for drawing upon the Letter of Credit or Cash Surety include, but are not limited to, the following:

1. Failure of a Grantee to pay to the County any Franchise Fees, taxes, liens or other fees after ten (10) days written notice of delinquency;

2. Failure of a Grantee to pay to the County after ten (10) days written notice, any amounts due and owing by reason of the indemnity provisions of Section 5;

3. Failure of a Grantee to pay to the County any liquidated damages due and owing pursuant to a Franchise Agreement;

4. Failure to make any payment required by an Agreement within the time fixed therein;

5. Failure to pay to the County within ten (10) working days after receipt of written notice, any damages, claims, costs or expenses which the County has been compelled to pay or incur by the reason of any material act or default by a Grantee;

6. Failure to comply within ten (10) working days after receipt of written notice from the County, with any material provisions of an Agreement or Cable Ordinance which the County reasonably determines can be remedied by an expenditure of an amount from the Letter of Credit, Cash Surety or other instrument.

In the event of such noncompliance, the County may order the withdrawal of the appropriate amount of liquidated damages, penalties, fees or otherwise from the letter or other instrument for payment to the County, provided that, prior to each such withdrawal; (i) a Grantee shall be afforded an opportunity to cure any of said failures within thirty (30) days after written notice from the County that the withdrawal is to be made; or (ii) if such cure cannot be reasonably accomplished within such thirty (30) days, then a Grantee shall have a reasonable time to cure, provided that a Grantee commences such cure within such thirty (30) days and diligently pursues such cure to completion.

C. Letter of Credit or Cash Surety shall be Replenished to Original Amount Following Any Draw Down

Grantee shall structure the Letter of Credit or Cash Surety in such a manner so that if the County at any time draws upon the Letter of Credit or Cash Surety, the amount of available credit shall automatically increase to the extent necessary to replenish that portion of the available credit exhausted by the honoring of the draft. The intent of this Subsection is to make available to the County at all times a Letter of Credit or Cash Surety in the amount specified in the Franchise Agreement.

D. The County's Rights with Respect to Letter of Credit or Cash Surety Are in Addition to Other Rights

The rights reserved to the County with respect to the Letter of Credit or Cash Surety are in addition to all other rights of the County, whether reserved by a Franchise Agreement or authorized by law, and no action or proceeding against a Letter of Credit or Cash Surety shall affect any other right the County may have.

SECTION 6-17: LIQUIDATED DAMAGES

A. Parties Shall Agree to Specific Liquidated Damages to be Paid by Grantee for Certain Delays or Non-performance

A Grantee's failure to comply with any timing or performance

requirement set forth in a Franchise Agreement will result in damage to the County, the amount of which will be impracticable to ascertain. Therefore, the County and a Grantee will negotiate the amount of liquidated damages to be set forth in a Franchise Agreement. Every Franchise Agreement shall provide that the County's recovery of such damages shall be without prejudice to any other remedy the County may have.

B. Procedures Established to Assure Grantee of Due Process and Opportunity to Cure Problem Before Damages Assessed

If the County Administrator, following prior reasonable notice to a Grantee to cure any problem that might result in liquidated damages, concludes that a Grantee is liable for liquidated damages pursuant to the Franchise Agreement, he/she shall issue to Grantee by certified mail a Notice of Intention to Assess Liquidated Damages. The Notice shall set forth the basis of the assessment, and shall inform a Grantee that liquidated damages will be assessed from the date of the Notice unless the Assessment Notice is appealed for hearing before the Board of Supervisors and the Board rules (a) that the violation has been corrected, or (b) that an extension of the time or other relief should be granted. If a Grantee desires a hearing before the Board, it shall send a written Notice of Appeal by certified mail to the County Administrator within ten (10) days of the date on which the County Administrator sent the Notice of Intention to Assess Liquidated Damages. After the hearing, if the Board sustains in whole or in part the County Administrator's Assessment of Liquidated Damages, the County Administrator may at any time thereafter draw upon the Letter of Credit or Cash Surety required by Section 16. Unless the Board indicates to the contrary, said liquidated damages shall be assessed beginning with the date on which the County Administrator sent the Notice of Intention to Assess Liquidated Damages and continuing thereafter until such time as the violation ceases, as determined by the County Administrator.

SECTION 6-18: FORFEITURE AND TERMINATION

A. Franchise May be Terminated for Material Breach of Terms and Conditions – Examples Given

In addition to all other rights and powers retained by the County, the County reserves the right to terminate a Franchise and all rights and privileges of a Grantee in the event of a material breach of this Ordinance or a Franchise Agreement. A material breach by a Grantee shall include, but shall not be limited to, the following:

1. Violation of any material provision of the Cable Ordinance or Franchise Agreement or any material rule, order, regulation or determination of the County made pursuant to a Franchise;

2. Practice any fraud or deceit upon the County or the Subscribers of

the Cable System;

3. Failure to begin or complete Cable System construction, reconstruction or Cable System extension as provided under a Franchise Agreement;

4. Failure to restore Cable Service after forty-eight (48) consecutive hours of interrupted Cable Service, except when there is just cause and when approval of such interruption is obtained from the County Administrator;

5. Substantial failure to satisfy the requirements regarding system characteristics or repeated failure to meet the technical performance standards specified in a Franchise Agreement;

6. Abandonment of the system, in whole or in material part, without the prior written consent of the County;

7. Substantial failure to supply the Access channels and other support and any related services, equipment and facilities as required in a Franchise Agreement;

8. Substantial and repeated failure to comply with the consumer service standards and requirements set forth in the Cable Ordinance and Franchise Agreement;

9. Any material misrepresentation of fact, made by or on behalf of a Grantee in its proposal to obtain a Franchise, or in connection with the negotiation or re-negotiation of, or any amendment or other modification to a Franchise Agreement, to the extent that any such misrepresentation was relied upon by the County;

10. There is made an assignment for the benefit of creditors or an appointment of a receiver or trustee to take over the business of a Grantee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless the conditions set forth in Section 18(e) (1) and (2) are fulfilled.

B. Procedures Outlined Leading to Possible Termination of Franchise

The County Administrator may make a written demand that a Grantee comply with any provision, rule, order, or determination under or pursuant to the Cable Ordinance or a Franchise Agreement. If the violation breach, failure, refusal or neglect by a Grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the County Administrator may place the issue of termination of a Franchise before the Board of Supervisors. The County Administrator shall cause to be served upon Grantee, at least twenty (20)

days prior to the date of such Board of Supervisors meeting, a written notice of intent to request such termination and the time and place of the meeting. The causes for pending termination and the reasons alleged to constitute such cause shall be recited in the notice. Public notice shall be given of the meeting and the issue, which the Board of Supervisors is to consider.

C. Board of Supervisors Shall Hear and Consider Issues and Determine if a Violation has Occurred

In a public proceeding, the Board of Supervisors shall hear and consider the issue and shall hear any person interested therein, and shall determine, whether or not any violation by a Grantee has occurred. In such a proceeding, the grantee shall be afforded the right to call witnesses, give testimony, and introduce evidence into the record.

D. Board of Supervisors May Declare Franchise Terminated if Compliance Does Not Occur Within Specified Period

If the Board of Supervisors shall determine the violation by a Grantee was the fault of a Grantee and within its control, the Board of Supervisors, may, by resolution, declare that the Franchise of a Grantee be terminated, unless there is compliance within such period as the Board of Supervisors may fix.

E. Franchise May Cease and Terminate One Hundred Twenty (120) Days After Appointment of Receivers

Any Franchise granted shall, at the option of County, cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy, or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Such receivers or trustees shall have within one hundred twenty (120) days, after their election or appointment fully complied with all the terms and provisions of this Ordinance and a Franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the Franchise; and,

2. Such receivers or trustees shall have within one hundred twenty (120) days executed an Agreement duly approved by the Court having jurisdiction, whereby such receivers or trustees assume and agree to be bound by each and every term, provision, and limitation of the Franchise Agreement.

F. Procedure if a Foreclosure Occurs

In the case of a foreclosure or other involuntary sale of the plant, property, and equipment of Grantee, or any part thereof, County may serve notice of termination upon Grantee and to the purchaser at such sale, in which event the Franchise Agreement and rights and privileges of Grantee shall cease and terminate thirty (30) days after service of such notice unless:

1. County has approved the transfer of the Franchise, as and in the manner in this Ordinance provided; and

2. Such successful purchaser shall have covenanted and agreed with County to assume and be bound by all the terms and conditions of the Franchise Agreement.

SECTION 6-19: PURCHASE OF CATV SYSTEM BY COUNTY

A. Rights to Purchase

In the event a Grantee forfeits or County revokes a Franchise for cause, or when the renewal of a Franchise has been denied, County shall have the right, directly or as an intermediary to purchase the Cable System.

B. Franchise Valuation

Under circumstances where the Franchise has been revoked for cause, forfeited or non-renewed for cause by the County, the acquisition shall be at an equitable price in accordance with 47 U.S.C.§ 547.

C. Date of Valuation

The date of valuation shall be no earlier than the day following the date of expiration or termination and no later then the date County makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.

D. Transfer to County

Upon exercise of this option and the payment of the above sum by the County, a Grantee shall immediately transfer to the County possession and title to those facilities and property, real and personal, used in the operation of the Cable System, free from any and all liens and encumbrances not agreed to be assumed by the County in lieu of some portion of the purchase price set forth above; and a Grantee shall execute such warranty deeds or other instruments of conveyance to County as shall be necessary for this purpose.

SECTION 6-20: WAIVERS

Any provision of this Ordinance may be waived for good cause shown, at

the sole discretion of the County, by resolution of the Board of Supervisors.

A Grantee may submit a written request for a waiver to the Board of Supervisors at any time during the Franchise term. Such request for a waiver, at the sole discretion of the Board of Supervisors, may be set for a public hearing, and a decision shall be made within 120 days following the submission. Procedures for the modification of Franchise obligations shall be in compliance with Section 625 [47 U.S.C. 545] Title VI, Communication Act of 1934.

The Board of Supervisors may authorize the economic, technical, or legal evaluation of such waiver request, and a Grantee shall be required to reimburse the County for any expenditure incurred by the County in connection with such evaluation.

This Section is enacted solely for the convenience and benefit of the Grantor and shall not be construed in such a manner as to create any right or entitlement for a Grantee.

SECTION 6-21: SUNDRY PROVISIONS

Every direction, notice or order by the County to be served upon a Grantee shall be delivered or sent by registered mail to the office responsible for the local Cable System. Every notice served upon the County shall be delivered or sent by first class mail to the County Administrator, Fauquier County, Virginia.

All provisions of this Ordinance shall apply to a Grantee, its successors, and assignees, as may be approved by Board of Supervisors in accordance with this Ordinance.

The rights granted by this Ordinance are subject to all Franchises and permits heretofore or hereafter granted by the Board to use the streets of the County by other public utility or public service corporations. It is not intended by the grant of a Franchise to abridge the exercise of the police power heretofore or hereafter granted to the County by the State. The grant of a Franchise is subject to all Ordinances and resolutions or agreements adopted by the Board of Supervisors as the same now exist or may be hereafter amended, revised or codified, in the lawful exercise of any other power granted to the County.

Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

If any particular Section of this Ordinance, or the particular application thereof, shall be held invalid, the remaining provisions, and their application, shall not be affected thereby.

A Grantee, upon its acceptance of a Franchise, shall be bound by the provisions of this Ordinance, all responses, statements, and all matters agreed upon in a Franchise Agreement.

A Grantee shall assume the cost of any publications required by law and such is payable upon a Grantee's filing of acceptance of a Franchise Agreement.

In the event that any provision of the Cable Act of 1984, 1992, or 1996 or other statute, law or regulation, which is relied on herein or in any Franchise Agreement for any definition or requirement, is repealed, then the language of such provision at the time of such repeal shall nevertheless continue to apply for purposes of this Ordinance or any Franchise Agreement, regardless of such repeal, except as otherwise provided herein or in any Franchise Agreement or as prohibited by such subsequent repeal or amendment.

The rights and remedies reserved to the County by this Ordinance are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the County may have with respect to the subject matter of this Ordinance. A waiver of any right or remedy by a party at one time shall not affect the exercise of said right or remedy or any other right or other remedy by such party at any other time. The failure of the County to take any action in the event of a material breach by a Grantee shall not be construed or otherwise be deemed to constitute a waiver of the right of the County to take such action at any other time in the event that said material breach has not been cured, or with respect to any other material breach by a Grantee.

In the event that, after the effect date of this Ordinance, any court, agency, commission, legislative body, or other authority of competent jurisdiction: (i) declares the Ordinance invalid, in whole or in part, or (ii) requires a Grantee either to: (a) perform any act which is inconsistent with any provision of the Ordinance or (b) cease performing any act required by any provision of the Ordinance, the County shall reasonably determine whether said declaration or requirement has a material and adverse effect on the Ordinance. When a Grantee intends to exercise its rights pursuant to such declaration, a Grantee shall so notify the County of said declaration or requirement.

The headings contained in this Ordinance and any Franchise Agreement are to facilitate reference only, do not form a part of this Ordinance or a Franchise Agreement, and shall not in any way affect the construction or interpretation hereof.

SECTION 6-22: EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days from and after its passage.

Repeal of Ordinances in Conflict [If Any]

[List Specific Ordinances]

A Resolution to Consent to the Provision of Water and Sewer Services by the Town of Warrenton to the Woods at Warrenton, LLC

RESOLUTION

A RESOLUTION TO CONSENT TO THE PROVISION OF

WATER AND SEWER SERVICES BY THE TOWN OF

WARRENTON TO THE WOODS AT WARRENTON, LLC

WHEREAS, on May 18, 2001, the Woods at Warrenton, LLC, filed a plan of subdivision for that certain 156 acre parcel of property (the "Property) located in Fauquier County and conveyed by Anne B. Gee and William R. Benner, Executors of the Will of John R. Benner, deceased, to The Woods at Warrenton, LLC, which plan of subdivision is titled "The Woods at Warrenton"; and

WHEREAS, the Property does not lie within the boundaries of the Town of Warrenton, but does lie within the sewer and water service area for the Town of Warrenton; and

WHEREAS, The Woods at Warrenton, LLC has requested of the Town of Warrenton that it (The Woods at Warrenton, LLC) be allowed to utilize water and sewer utilities to service the Property as set forth in The Woods at Warrenton subdivision plan; and

WHEREAS, the Town of Warrenton has indicated its willingness to provide such service to the Property; and

WHEREAS, the Property is located in the Phase I service district area as identified by the Fauquier County Comprehensive Plan; and

WHEREAS, Section 15.2-2143 of the Code of Virginia, 1950, as amended, provides that a locality may provide water and sewer service to a location under the jurisdiction of an adjacent locality with the consent of the adjoining locality; and

WHEREAS, the Fauquier County Board of Supervisors has no objection to the provision of water and sewer service to the Property in accordance with The Woods at Warrenton subdivision plan; and

WHEREAS, the Fauquier County Board of Supervisors believes that the provision of water and sewer services to the Property in accordance with The Woods at Warrenton subdivision plan would

promote the health, safety, and welfare of the citizens in the use of that site; and

WHEREAS, the Fauquier County Board of Supervisors is willing to enter into a water and sewer service agreement reasonably acceptable to the Town for the provision of water and sewer service to The Woods at Warrenton, Subdivision; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That Fauquier County does hereby grant its consent for the provision of water and sewer services by the Town of Warrenton to the proposed Woods at Warrenton Subdivision in the County of Fauquier.

A Resolution to Accept Lake Whippoorwill Phases I, II and Section II, Phases I Through III Streets Into the State Secondary Highway System

RESOLUTION

A RESOLUTION TO ACCEPT LAKE WHIPPOORWILL PHASES I, II

AND SECTION II, PHASES I THROUGH III STREETS INTO THE STATE SECONDARY HIGHWAY SYSTEM, SCOTT MAGISTERIAL DISTRICT

WHEREAS, certain streets on the sketch titled "Lake Whippoorwill Phases I, III and Section II, Phases I through III, Scott Magisterial District, Fauquier County" dated June 13, 2001, and described on the Additions Form SR-5(A), fully incorporated herein by reference, are shown on plats recorded in the Clerks Office of the Circuit Court of Fauquier County; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised this Board that the streets meet the requirements established by the *Subdivision Street Requirements* of the Virginia Department of Transportation; and

WHEREAS, the above streets serve a genuine public need; and

WHEREAS, Fauquier County and the Virginia Department of Transportation entered into an agreement on February 7, 1995, for comprehensive stormwater detention, which applies to this request for addition; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the Virginia Department of Transportation be, and is hereby, requested to take the necessary action to add the above described streets in the State Highway Secondary System for maintenance, as provided in Sec. 33.1-229, Code of Virginia, and the

Virginia Department of Transportation's *Subdivision Street Requirements*; and, be it

RESOLVED FURTHER, That this Board does guarantee the Commonwealth of Virginia a minimum unrestricted right-of-way of fifty feet in Lake Whippoorwill Subdivision, with necessary easements for cuts, fills, and drainage; as recorded in Deed Book 742, Page 626, dated August 15, 1995; Deed Book 789, Page 813, dated October 29, 1997; Deed Book 805, Page 225, dated May 14, 1998; Deed Book 838, Page 520, dated May 6, 1999; and in Deed Book 860, Page 159, dated January 21, 2000; and, be it

RESOLVED FINALLY, That a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

A Resolution to Accept Snow Hill Subdivision, Phase IV Streets Into the State Secondary Highway System

RESOLUTION

A RESOLUTION TO ACCEPT SNOW HILL, PHASE IV STREETS INTO THE

STATE SECONDARY HIGHWAY SYSTEM, SCOTT MAGISTERIAL DISTRICT

WHEREAS, certain streets on the sketch titled "Snow Hill Subdivision, Phase IV, Scott Magisterial District, Fauquier County" dated June 13, 2001, and described on the Additions Form SR-5(A), fully incorporated herein by reference, are shown on plats recorded in the Clerks Office of the Circuit Court of Fauquier County; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised this Board that the streets meet the requirements established by the *Subdivision Street Requirements* of the Virginia Department of Transportation; and

WHEREAS, the above streets serve a genuine public need; and

WHEREAS, Fauquier County and the Virginia Department of Transportation entered into an agreement on February 7, 1995, for comprehensive stormwater detention, which applies to this request for addition; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the Virginia Department of Transportation be, and is hereby, requested to take the necessary action to add the above described streets in the State Highway Secondary System for maintenance, as provided in Sec. 33.1-229, Code of Virginia, and the Virginia Department of Transportation's *Subdivision Street Requirements*; and, be it

RESOLVED FURTHER, That this Board does guarantee the Commonwealth of Virginia a minimum unrestricted right-of-way of fifty feet in the Snow Hill Subdivision, with necessary easements for cuts, fills, and drainage; as recorded in Deed Book 734, Page 1028, dated February 9, 1995; and, be it

RESOLVED FINALLY, That a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR TO CONTRACT FOR RADIO COMMUNICATIONS CONSULTING SERVICES FOR A 150 MHz PUBLIC SAFETY RADIO SYSTEM

Mr. Atherton moved to adopt a resolution to authorize the County Administrator to contract for radio communications consulting services for a 150 MHz public safety radio system. Mr. Winkelmann seconded.

Mr. Weeks then moved to postpone, until the September 17, 2001 meeting, a resolution to authorize the County Administrator to contract for radio communications consulting services for a 150 MHz public safety radio system and Item #3, A Resolution to Suspend Development of a 150 MHz Public Safety Radio System and Direct the County Administrator to Proceed with Negotiations for Procurement of an 800 MHz Radio System, and to direct the County Administrator to proceed with negotiations with the two vendors that bid on the 800 MHz public safety radio system. Ms. McCamy seconded, and the vote for the motion to postpone was 3 to 2, as follows:

Ayes: Mr. Raymond Graham; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: Mr. Joe Winkelmann; Mr. Harry Atherton

Absent During Vote: None

Abstention: None

SPECIAL EXCEPTION – KENNETH E. PELTZER AND ASSOCIATES, INC.

A public hearing was held at the May 21, 2001 meeting to consider a request for special exception approval for Kenneth E. Peltzer and Associates, Inc. to allow for a waiver of the central water system requirement for residential subdivisions with seven or more lots. The property is located at the intersection of Wince Lane (Route 1103) and Meetze Road (Route 643), PIN #6993-09-3520-000, Center District. Mr. Winkelmann moved to adopt the following resolution. Mr. Atherton seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

RESOLUTION

A RESOLUTION TO APPROVE SPECIAL EXCEPTION #SE01-C-08

KENNETH E. PELTZER AND ASSOCIATES

WAIVER OF CENTRAL WATER SYSTEM REQUIREMENT

WHEREAS, Kenneth E. Peltzer and Associates, owner, has applied for a special exception under Section 5-3100 of the Zoning Ordinance to allow for a waiver of the central water system requirements and a public hearing was duly advertised before the Fauquier County Planning Commission; and

WHEREAS, the special exception application has been properly filed and all required notices of the public hearing have been properly made; and

WHEREAS, the applicant has presented oral and documentary evidence, and the staff has filed a staff report indicating compliance with the general standards for the special exception as set forth in Article 5 of the Zoning Ordinance; and

WHEREAS, the Fauquier County Board of Supervisors finds that the additional standards for special exception approval for a waiver of the central water system requirement in Section 5- 3100 of the Zoning Ordinance are satisfied by this application; and

WHEREAS, on April 26, 2001, the Fauquier County Planning Commission held a public hearing on the special exception request of Kenneth E. Peltzer and Associates, owner; and

WHEREAS, at its meeting on April 26, 2001, the Fauquier County Planning Commission approved a motion recommending approval of the requested special exception subject to certain conditions; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the Board of Supervisors does

hereby approve the special exception request of Kenneth E. Peltzer and Associates, owner of the property further identified as PIN #6993-09-3520-000 consisting of 8.12 acres, to allow for a waiver of the central water system requirement, subject to the following conditions:

1. The special exception is granted for and runs with the land indicated in this application and is not transferable to other land.

2. This special exception is granted only for the purpose(s), structure(s) and/or uses indicated on special exception plat approved with the application, as qualified by these development conditions.

3. This special exception is subject to the provisions of Article 12 of the Fauquier County Zoning Ordinance, Site Plans, as may be determined by the Fauquier County Department of Community Development. Any plan submitted pursuant to this special exception shall be in conformance with the special exception plat dated March 12, 2001, and these conditions.

4. Prior to the time of submission of the final subdivision plat, the applicant shall conduct testing of both new wells (on proposed lots #6 and 7) and obtain written verification from the Health Department that the wells meet drinking water standards and that there is no indication of perchloroethylene or other contaminants.

5. Within two (2) years of the approval of this special exception, the owners of Lot 3 in the Wince Subdivision shall have the right, at their expense, to connect to the well on proposed Lot 6, should future testing indicate significant levels of contaminants from the Frytown site. This condition shall only be enforceable if a new well is unable to be provided on Lot 3 such that no presence of perchloroethylene or other contaminants is indicated.

SPECIAL EXCEPTION – DARK HORSE CAPITAL, INC., OWNER/APPLICANT

A public hearing was held at the May 21, 2001 meeting to consider a request for special exception approval for Dark Horse Capital, Inc. for a waiver of the requirement for public streets in residential districts to allow for the administrative subdivision of a 1.76 acre lot into two lots of 40,592 and 36,072 square feet. The property is located at the end of Springs Drive, an existing private road, west of Springs Road (Route 802) in the Village of Fauquier Springs, PIN #6962-22-0761-000, Marshall District. At the request of the applicant, Mr. Atherton moved to postpone the decision until the July 16, 2001 meeting. Mr. Winkelmann seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L.

Weeks

Nays: None

Absent During Vote: None

Abstention: None

SPECIAL EXCEPTION AMENDMENT – DETTRA COMMUNICATIONS, INC., OWNER, AND NEXTEL COMMUNICATIONS, INC., APPLICANT

A public hearing was held at the May 21, 2001 meeting to consider a request for special exception amendment for Dettra Communications, Inc., Owner, and Nextel Communications, Inc., Applicant, to revise the approved conditions of an existing communications tower to allow co-location opportunities for wireless service providers. The site is located on Lovers Lane (Route 744), PIN #6983-60-1777-000, Marshall District. Mr. Atherton moved to adopt the following resolution. Mr. Winkelmann seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

RESOLUTION

A RESOLUTION TO APPROVE SPECIAL EXCEPTION AMENDMENT

(#SEA01-M-02) DETTRA COMMUNICATIONS, INC.

WHEREAS, Dettra Communications, Inc., owner, and Nextel Communications, Inc., applicant, have applied for a special exception amendment under Article 3.320, Public Utilities, of the Zoning Ordinance to revise the approved conditions for an existing communications tower, which will allow co-location opportunities for wireless service providers; and

WHEREAS, the special exception application has been properly filed; all required notices of the public hearing have been properly made; the applicant has presented evidence, both oral and documentary; the staff has a filed staff report, all indicating compliance with the general standards for the special exception as set forth in Article 5 of the Zoning Ordinance; and the Board finds that the more restrictive standards of

Section 5-2000 of said Zoning Ordinance are met in this application; and

WHEREAS, on March 29, 2001, the Fauquier County Planning Commission held a public hearing on the special exception request of Dettra Communications, Inc., owner, and Nextel Communications, Inc., applicant; and

WHEREAS, at its meeting on April 26, 2001, the Fauquier County Planning Commission approved a motion recommending approval of the requested special exception; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the Board of Supervisors does hereby approve the special exception amendment request of Nextel Communications, Inc., applicant, and Dettra Communications, Inc., owner of the property, further identified as PIN #6983-60-1777-000 consisting of 2.0 acres, to revise the approved conditions for an existing communications tower, subject to the following conditions:

1. Space on the top of the tower shall be reserved for Fauquier County Sheriff's Department and Emergency Services.
2. The special exception is limited to the existing tower.
3. A structural analysis, performed by a qualified engineering firm, shall be completed to verify structural integrity of the tower and presented to the Office of Zoning prior to site plan approval.
4. Radio Frequency energy exposure measurements shall be made after the antenna array is installed and appropriate enclosure fencing and warning/hazard signage shall be installed on the enclosure fence. No general advertising signs shall be installed on the fence. A mixture of evergreen and hardwood trees shall be shown on the site plan amendment to be located long the east and south sides of the property to create a vegetative buffer.
5. Any wireless communications system operator shall take all necessary steps to resolve any radio frequency interference between a wireless communications system on the tower and any present or future County public safety wireless communications system.

PRELIMINARY SUBDIVISION APPLICATION – VINT HILL

Mr. Graham moved to postpone the decision on the preliminary subdivision application for Vint Hill until the July 16, 2001 meeting. Mr. Weeks seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

A RESOLUTION TO AMEND THE FAUQUIER COUNTY FY 2001 BUDGET IN THE AMOUNT OF $4,000,000

A public hearing was held at the May 21, 2001 meeting to consider amending the Fauquier County FY 2001 budget in the amount of $4,000,000. Mr. Winkelmann moved to postpone the decision until the July 16, 2001 meeting. Mr. Weeks seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

PRELIMINARY SUBDIVISION APPLICATION – REYNARD'S CROSSING

Ms. McCamy moved to postpone the decision until the July 16, 2001 meeting on the preliminary subdivision application for Reynard's Crossing. Mr. Weeks seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

A RESOLUTION AUTHORIZING THE COUNTY ADMINISTRATOR TO SIGN A BOND PURCHASE AGREEMENT, SUBJECT TO BOARD OF SUPERVISORS RATIFICATION, TO REFUND THE 1993 GENERAL OBLIGATION BONDS

Mr. Graham moved to adopt the following resolution. Mr. Winkelmann seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry

Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

RESOLUTION

A RESOLUTION AUTHORIZING THE COUNTY ADMINISTRATOR TO SIGN A BOND PURCHASE AGREEMENT, SUBJECT TO BOARD OF SUPERVISORS' RATIFICATION, TO REFUND THE 1993 GENERAL OBLIGATION BONDS

WHEREAS, the Fauquier County Board of Supervisors has determined that it is necessary and desirable for Fauquier County (the "County") to take advantage of current interest rates and refund the 1993 general obligation bond issue; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the County Administrator is hereby authorized to execute a Bond Purchase Agreement (BPA) with Davenport and Company for the refunding of the 1993 general obligation bond issue, subject to ratification by the Board of Supervisors at the regularly scheduled meeting of July 16, 2001.

APPOINTMENTS

By unanimous consent, the following appointments were approved:

- Ray Tricarico and Kaye Horst were appointed to the Rappahannock Emergency Medical Services Council.
- Paul Blackmer was appointed to fill an unexpired term on the Water and Sanitation Authority until April 9, 2002.

CONVEYANCE OF COUNTY-OWNED PROPERTY – EX. PARIS WELL STATION AND NEW PARIS WELL NO. 2

A public hearing was held to consider conveying the Paris Water System to the Fauquier County Water and Sanitation Authority. No one spoke. The public hearing was closed. Mr. Atherton moved to adopt the following resolution. Mr. Winkelmann seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

RESOLUTION

A RESOLUTION AUTHORIZING THE CHAIRMAN OF THE BOARD OF SUPERVISORS TO SIGN A DEED CONVEYING THE PARIS WATER SYSTEM TO THE FAUQUIER COUNTY WATER AND SANITATION AUTHORITY

WHEREAS, on June 19, 2000, the Board of Supervisors approved the conveyance of the Paris Water System to the Fauquier County Water and Sanitation Authority; and

WHEREAS, the Board of Supervisors also authorized the transfer of $310,000 to the Fauquier County Water and Sanitation Authority from the Utility Fund as a part of the transfer; and

WHEREAS, Section 15.2-1800 of the Code of Virginia requires the County to conduct a public hearing prior to conveying real property; and

WHEREAS, after due notice and public hearing, the Board of Supervisors has determined that it is appropriate to convey the Paris Water System to the Fauquier County Water and Sanitation Authority; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the Chairman of the Board of Supervisors be, and is hereby, authorized to sign the deed of conveyance conveying the Paris Water System to the Fauquier County Water and Sanitation Authority.

AMENDMENT TO THE LANDFILL TIPPING FEE FOR SHREDDED TIRE MATERIAL

A public hearing was held to consider amending the Landfill tipping fee for shredded tire material to include construction debris. Kathleen King and Kitty Smith asked why the County would consider charging less money to dispose of material in the old Landfill than in the new Landfill. Dr. Smith also asked about access to the old Landfill would be. Tony Hooper, Assistant County Administrator, said that access to the old Landfill would be through the new Landfill. Mr. Hooper also explained that the costs for developing and operating a construction debris landfill was less than a regular Landfill. No one else spoke. The public hearing was closed. Mr. Graham moved to postpone the decision until the July 16, 2001 meeting. Mr. Winkelmann seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

FAUQUIER COUNTY CODE AMENDMENT – SECTION 2-4 – PROPERTY AND PROPERTY INSURANCE INVENTORIES

A public hearing was held to consider amending Section 2-4 of the Fauquier County Code regarding property and property insurance inventories to bring the Code into conformance with actual practice. No one spoke. The public hearing was closed. Mr. Winkelmann moved to adopt the following ordinance. Mr. Atherton seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

ORDINANCE

AN ORDINANCE AMENDING SECTION 2-4 OF THE CODE OF FAUQUIER COUNTY PERTAINING TO PROPERTY AND PROPERTY INSURANCE INVENTORIES

WHEREAS, the Director of Finance for the County of Fauquier has recommended certain changes to Section 2-4 of the Code of Fauquier County related to inventories of real and personal property owned by the County; and

WHEREAS, the Finance Committee of the Board of Supervisors of Fauquier County has unanimously recommended the hereinafter set forth changes to Section 2-4 of the Code of Fauquier County to the Board of Supervisors; and

WHEREAS, the Board of Supervisors, after due notice and public hearing, has determined that it is in the best interest of the County to amend Section 2-4 of the Code of Fauquier County; now, therefore, be it

ORDAINED by the Fauquier County Board of Supervisors this 18th day of June 2001, That Section 2-4 of the Code of Fauquier County be, and is hereby, amended as follows:

Sec. 2-4 Property and property insurance inventories

(a) The county administrator shall maintain, on file in his office, an inventory of all real property owned by or leased to the county. This inventory shall be maintained in current status and during

January of each year shall be revised, as may be appropriate, to show changes in value for each building or lot. Such inventory shall also show:

(1) A brief description;

(2) A reference to the deed, devise, lease or instrument whereby the county acquired title to or the use thereof;

(3) The department, office or agency charged with custody;

(4) The purpose or use;

(5) The insurance of all types thereon, together with notes as to premiums payable and anniversary dates; and

(6) For property owned by the county and leased to other persons, copies of such leases and appropriate notes as to the revenues derived therefrom.

(b) Each county officer having custody of items of personal property of value equal to or greater than insured under the county's policies owned by or leased to the county shall, during January of each year, prepare an itemized inventory of such property, showing for each item:

(1) Its value and a brief description, together with identification (by serial number, where applicable);

(2) A reference to the instrument, if any, whereby title of use was acquired;

(3) The department, office or agency having custody;

(4) The purpose or use; and

(5) The insurance of all types, if any, together with notes as to premiums payable and anniversary dates. The original copy of such inventory shall be filed in the office of the county administrator or in such place as the administrator shall designate before February first of each year.

PROPOSED LEASE OF COUNTY-OWNED PROPERTY – KEITH STREET PROPERTY IN THE TOWN OF WARRENTON

A public hearing was held to consider a proposed lease of County-owned property located on Keith Street in the Town of Warrenton to the Fauquier Family Shelter Services, Inc. The property consists of a thirty foot-wide strip of land on each side of the Fauquier Family Shelter to be used for parking, landscaping and open space. No one spoke.

The public hearing was closed. Mr. Winkelmann moved to adopt the following resolution. Ms. McCamy seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

RESOLUTION

A RESOLUTION AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN OPEN SPACE, PARKING AND LANDSCAPING LEASE AGREEMENT WITH FAUQUIER FAMILY SHELTER SERVICES, INC.

WHEREAS, Fauquier County has received a request from Fauquier Family Shelter Services, Inc. for permission to use a thirty foot-wide strip of land on each side of the Fauquier Family Shelter located on Keith Street in the Town of Warrenton; and

WHEREAS, Fauquier Family Shelter Services, Inc. seeks approval to use the area along the northern border for parking improvements and landscaping; and

WHEREAS, Fauquier Family Shelter Services, Inc. seeks approval to use the area along the southern border for landscaping and open space; and

WHEREAS, a review of County space plans and surrounding land uses has indicated that the County has no immediate plans for these areas and that the uses contemplated under the proposed lease agreement would not unduly impact the neighboring area; and

WHEREAS, the proposed lease agreement specifically requires Fauquier Family Shelter Services, Inc. to obtain the written concurrence of the Plane Tree Homeowners' Association and the Fauquier County Sheriff prior to the commencement of any site work; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the Fauquier County Board of Supervisors does hereby authorize the County Administrator to execute, on behalf of Fauquier County, an Open Space, Parking and Landscaping Lease Agreement with Fauquier Family Shelter Services, Inc.

PROPOSED ISSUANCE OF REVENUE BONDS - $400,000 – NEW BALTIMORE SERVICE DISTRICT

A public hearing was held to consider the issuance of $400,000 in revenue bonds for the New Baltimore Service District. On February 20, 2001, the Board of Supervisors authorized the issuance of bonds in the amount of $2,800,00 for sewer service in the New Baltimore Service District. On May 7, 2001, the Board adopted a resolution authorizing the issuance of bonds in an amount not to exceed $3,200,000. The $400,000 subject to this public hearing is the difference between the two amounts and is the estimated interest to be capitalized during the two-year construction period. Anita Tortorelli, Kathleen King, and Chuck Medvitz spoke regarding their concerns that the Board of Supervisors did not have enough information on this issue available prior to the public hearing. No one else spoke. The public hearing was closed. Mr. Weeks moved to adopt the following resolution. Mr. Winkelmann seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

RESOLUTION

A RESOLUTION RATIFYING THE ISSUANCE AND SALE OF A

WATER AND SEWER SYSTEM REVENUE BOND, SERIES

OF 2001, OF FAUQUIER COUNTY, VIRGINIA, IN THE

MAXIMUM PRINCIPAL AMOUNT OF $3,200,000 TO FINANCE

THE EXTENSION OF SEWER LINES IN THE NEW BALTIMORE

AREA OF THE COUNTY AND PROVIDING FINAL AUTHORIZATION

FOR SUCH ISSUANCE AND SALE

WHEREAS, the Board of Supervisors (the “Board”) of Fauquier County, Virginia (the “County”), adopted on May 7, 2001, a resolution entitled “Resolution Authorizing the Issuance, Sale and Award of and Providing for the Form, Details and Payment of, Sewer Revenue Bonds,

Series of 2001, in a Principal Amount Not to Exceed $3,200,000 of Fauquier County, Virginia" (the "Resolution"); and

WHEREAS, after publication of the requisite notice in accordance with Section 15.2-2606, Code of Virginia of 1950, as amended, the Board has held (a) on February 20, 2001, a public hearing on the proposed issuance and sale of water and sewer system revenue bonds of the County in the estimated maximum principal amount of $2,800,000 and (b) on the date hereof a public hearing on the proposed issuance and sale of water and sewer system revenue bonds of the County in the estimated maximum principal amount of $400,000 (such bonds collectively, the "Bond"); and

WHEREAS, the Board desires to ratify the pricing terms of the Bond contained in the Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF FAUQUIER COUNTY, VIRGINIA THIS 18TH DAY OF JUNE 2001:

1. Ratification of Resolution. The Board hereby ratifies the pricing terms of the Bond and authorizes the issuance and sale of the Bond in accordance with the provisions of the Resolution.

2. Other Actions. All other actions of officers of the County in conformity with the purposes and intent of the Resolution and in furtherance of the issuance and sale of the Bond are approved and confirmed. The officers of the County are authorized and directed to execute and deliver all certificates and instruments and to take all such further action as may be considered necessary or desirable in connection with the issuance, sale and delivery of the Bond.

3. Effective Date. This Resolution shall take effect immediately.

ZONING ORDINANCE TEXT AMENDMENT – SECTION 7-301 – PRIVATE STREETS

A public hearing was held to consider amending Section 7-301 of the Zoning Ordinance to permit Type I, II and III private streets in the Rural Agriculture (RA), Rural Conservation (RC) and residential zoning districts for administrative subdivisions in accordance with Paragraph 3-2 of the Subdivision Ordinance and for family transfer and large-lot divisions in accordance with Paragraph 2-39 of the Subdivision Ordinance. No one spoke. The public hearing was closed. Mr. Atherton moved to adopt the following ordinance. Mr. Winkelmann seconded, and

the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

ORDINANCE

AN ORDINANCE AMENDING SECTION 7-301 OF THE FAUQUIER COUNTY ZONING ORDINANCE TO ALLOW PRIVATE TYPE I, II AND III STREETS IN THE RURAL AGRICULTURE (RA), RURAL CONSERVATION (RC) AND RESIDENTIAL ZONING DISTRICTS FOR FAMILY TRANSFER, LARGE-LOT AND ADMINISTRATIVE SUBDIVISIONS

WHEREAS, Section 7-301 (Private Streets, Applicability) of the Fauquier County Zoning Ordinance currently limits by-right Type I private streets to the Rural Agriculture (RA) and Rural Conservation (RC) zoning districts; and

WHEREAS, Type II and III private streets are by-right uses in the RA and RC zoning districts for family transfer, large-lot and administrative subdivisions; and

WHEREAS, any private street in a residential zoning district currently requires special exception approval; and

WHEREAS, the amendments to Section 7-301 would allow Type I, II and III private streets in the RA, RC and residential zoning districts for family transfer, large-lot and administrative subdivisions; and

WHEREAS, private streets in all other subdivisions in the RA, RC and residential zoning districts still would require special exception approval; and

WHEREAS, the Fauquier County Planning Commission voted April 26, 2001 to recommend approval of these amendments; and

WHEREAS, the Board of Supervisors, following proper notice and

public hearing, believes these amendments to be in the best interest of the citizenry of Fauquier County; now, therefore, be it

ORDAINED by the Fauquier County Board of Supervisors this 18th day of June 2001, That Section 7-301 of the Fauquier County Zoning Ordinance be, and is hereby, amended to read as follows:

PART 3 7-300 PRIVATE STREETS

7-301 Applicability

Except as qualified in the Subdivision Ordinance, Type I and Type II private streets are permitted in the Commercial and Industrial zones. Private streets are prohibited for residential subdivisions except under the following circumstances:

~~1. Type I streets are permitted in the RA and RC zones. A special exception may be obtained in accordance with Section 5-2900 permitting the use of Type I private streets in any residential zone.~~

~~2. Type II and Type III private streets are permitted in the RA and RC zones only for those single family division which are not defined as subdivisions in Paragraph 2-39 of the Subdivision Ordinance (i.e., large lot and family transfer subdivisions) and those subdivision which qualify for administrative approval in accordance with paragraph 3-1 of the Subdivision Ordinance. A special exception permitting Type II or Type III private streets may be obtained in accordance with Section 5-2800 for other subdivisions in the RA and RC zones or in any residential zone pursuant to Section 5-2900.~~

1. Type I, II and III private streets are permitted in RA, RC and residential zones for administrative subdivisions approved in accordance with paragraph 3-2 of the Subdivision Ordinance and divisions under paragraph 2-39 of the Subdivision Ordinance (i.e. family transfer and large-lot divisions).

2. Private streets are prohibited for all other subdivisions in RA, RC and residential zones unless a special exception is obtained in accordance with the requirements of Section 5-2800 or 5-2900 of this Ordinance.

3. Resubdivision of substandard subdivisions in accordance with 10-205. See 10-205.3 for types of permitted private streets.

ZONING ORDINANCE TEXT AMENDMENT – SECTIONS 14-302 AND 14-303 – ARCHITECTURAL REVIEW BOARD

A public hearing was held to consider amending Sections 14-302 and 14-303 of the Zoning Ordinance to alter the requirements for membership on the Architectural Review Board to provide more flexibility for the appointing body. No one spoke. The public hearing was closed. Mr. Winkelmann moved to adopt the following ordinance. Mr. Weeks seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

ORDINANCE

AN ORDINANCE AMENDING SECTIONS 14-302 AND 14-303 OF THE FAUQUIER COUNTY ZONING ORDINANCE RELATED TO THE AUTHORITY, ESTABLISHMENT AND MEMBERSHIP OF THE ARCHITECTURAL REVIEW BOARD

WHEREAS, Section 14-302 of the Fauquier County Zoning Ordinance entitled "*Authority and Establishment"* establishes an Architectural Review Board in conformance with the Code of Virginia; and

WHEREAS, Section 14-302 contains references to Title 15.1 of the Code of Virginia; and

WHEREAS, Title 15.1 has been repealed and re-enacted as Title 15.2; and

WHEREAS, Section 14-303 of the Fauquier County Zoning Ordinance sets forth the membership and composition of the Architectural Review Board; and

WHEREAS, the Board of Supervisors wishes to consider proposed amendments to the requirements for membership on the Architectural Review Board; now, therefore, be it

ORDAINED by the Fauquier County Board of Supervisors this 18th day of June 2001, That Section 14-302 of the Fauquier County Zoning Ordinance entitled "*Authority and Establishment"* and Section 14-303 of the Fauquier County Zoning Ordinance entitled *"Membership"* be, and are hereby, amended to read as follows:

Section 14-302 Authority and Establishment

The Architectural Review Board was established in conformance with the resolution adopted by the Board of Supervisors pursuant to the provisions of Article ~~9~~ 7, Chapter ~~14~~ 22, Title ~~15.1~~ 15.2 of the Code of Virginia. The Architectural Review Board heretofore established shall continue as the Architectural Review Board for the purpose of the Ordinance, and such body shall be known as the "ARB."

Section 14-303 Membership

1. The Architectural Review Board is to be composed of seven (7) regular and voting members, ~~a majority of which are~~ all of which shall be residents of Fauquier County, with a demonstrated knowledge of the interest in the preservation of historic and architectural landmarks. ~~Membership of the seven~~ The seven (7) members of the ARB shall include two (2) persons of demonstrated knowledge and interest in the preservation of historical and architectural landmarks and be appointed as follows: ~~so appointed one shall be a licensed real estate broker, two shall be licensed architects, landscape architects or professionals planners, two shall be persons of demonstrated knowledge of and interest in the preservation of historical and architectural landmarks; one shall be a practicing lawyer with membership in the Virginia Bar~~, one member from each of the County's magisterial districts; one member of the Historic Resources Committee; and one ~~shall be a~~ member of the Fauquier County Planning Commission. ~~In addition, each designated historic District may be represented by one nonvoting represented by one nonvoting member appointed by the Board of Supervisors to represent Historic districts comprising sufficient population to require such representation.~~ Upon the termination of the Historic Resources Committee, that member shall be an at-large member. In addition, each designated Historic District may be represented by one non-voting member appointed by the Board of Supervisors to represent Historic Districts comprising sufficient population to require such representation. Members of the ~~Architectural Review Board~~ ARB shall be subject to the provisions of the Virginia Comprehensive Conflict of Interest Act as set forth in Section 2.1-~~347~~ 639.1 *et seq.*, Code of Virginia (1950, as amended).

PRELIMINARY BICYCLE/PEDESTRIAN FACILITY ASSESSMENT PLAN

A public hearing was held to consider adopting the Preliminary Bicycle/Pedestrian Facility Assessment Plan to be used in conjunction with grant applications, recommendations presented to the Virginia Department of Transportation in regard to new road construction design and associated bikeways, and the review of proposed subdivision and site plan applications in areas with bikeway plans approved as part of the

Comprehensive Plan and supplemental documents. No one spoke. The public hearing was closed. Mr. Graham moved to adopt the following resolution. Mr. Winkelmann seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

RESOLUTION

A RESOLUTION TO ADOPT THE FAUQUIER COUNTY PRELIMINARY

BICYCLE AND PEDESTRIAN FACILITY ASSESSMENT PLAN,

DATED APRIL 2001, AS A POLICY DOCUMENT

WHEREAS, Fauquier County needs a Bicycle and Pedestrian Facility Assessment Plan which will assist in the planning and construction of grant applications, the development of recommendations regarding specific VDOT roadway design and associated projects, the review of residential subdivision and business development site plan applications, and providing the foundation for the prioritized ranking of intended bikeway projects; and

WHEREAS, the Fauquier County Planning Commission conducted a public hearing on the Draft Plan on April 26, 2001, and recommended that it be adopted; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the Bicycle and Pedestrian Facility Assessment Plan is adopted as a policy document; and, be it

RESOLVED FURTHER, That this document be forwarded to the Department of Parks and Recreation for update on a periodic basis as part of the Parks, Recreation and Open Space Comprehensive Plan and the Fauquier County Comprehensive Plan.

(A copy of the adopted Plan is filed with the June 18, 2001 agenda package.)

11TH ADDITION TO SPRINGS VALLEY AGRICULTURAL AND FORESTAL DISTRICT; 17TH ADDITION TO MIDDLEBURG/MARSHALL AGRICULTURAL AND FORESTAL DISTRICT; 9TH ADDITION TO THE PLAINS AGRICULTURAL AND FORESTAL DISTRICT; 19TH ADDITION TO THE SOUTHERN FAUQUIER AGRICULTURAL AND FORESTAL DISTRICT; 11TH ADDITION TO MARSHALL/WARRENTON AGRICULTURAL AND FORESTAL DISTRICT; AND WITHDRAWAL FROM SOUTHERN FAUQUIER AGRICULTURAL AND FORESTAL DISTRICT – L. THOMAS GREENE

Public hearings were held to consider requests to add approximately 61.274 acres to the Springs Valley Agricultural and Forestal District; 172.798 acres to the Middleburg/Marshall Agricultural and Forestal District; 30.386 acres to The Plains Agricultural and Forestal District; 8.572 acres to the Southern Fauquier Agricultural and Forestal District; 43.731 acres to the Marshall/Warrenton Agricultural and Forestal District; and a request for withdrawal from the Southern Fauquier Agricultural and Forestal District from L. Thomas Greene. Kitty Smith spoke regarding the fact that all the lots being considered for inclusion into the Southern Fauquier Agricultural and Forestal District were less than twenty-five acres. L. Thomas Greene spoke in favor of his request for withdrawal from the Southern Fauquier Agricultural and Forestal District. No one else spoke. The public hearing was closed. Mr. Winkelmann moved to adopt the following ordinances to approve the additions and the following resolution to approve the withdrawal. Mr. Weeks seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. Raymond Graham; Mr. Joe Winkelmann; Mr. Harry Atherton; Ms. Sharon McCamy; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

ORDINANCE

AN ORDINANCE TO APPROVE THE 11TH ADDITION TO THE

SPRINGS VALLEY AGRICULTURAL AND FORESTAL DISTRICT

WITHIN FAUQUIER COUNTY

WHEREAS, Section 15.2-4310, Code of Virginia (1950) as amended, allows additional parcels of land to be added to an existing

district following the process described for the creation of a new district; and

WHEREAS, all requirements of Section 15.2-4310, Code of Virginia (1950) as amended have been met; now, therefore, be it

ORDAINED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the 11th Addition to the Springs Valley Agricultural and Forestal District be, and is hereby, adopted as follows:

1) That this addition is land which requires conservation and protection for the production of food and other agricultural and forestal products and as such is a valuable natural and ecological resource providing open space and clean air and adequate safe water supplies and other aesthetic purposes and is, therefore, valuable to public interest.

2) That this 11th Addition to the Springs Valley Agricultural and Forestal District is hereby added this 18th day of June 2001, in accordance with the provisions of Title 15.2, Chapter 43, Section 15.2-4310, Code of Virginia (1950) as amended, and for a period of eight years.

3) That the 11th Addition shall consist of the following parcel(s):

Yakir and Claire Lubowsky 6972-24-1748-000 61.274 acres

;and, be it

ORDAINED FURTHER, That the same conditions and restrictions shall apply, to wit:

4) That pursuant to Title 15.2, Chapter 43, Section 15.2-4312, (b) of the Code of Virginia (1950), as amended, the Fauquier County Zoning Ordinance shall apply except as modified below. The modifications are necessary to assure that the Ordinance does not conflict with the purpose for which the District was established.

   a) All uses allowed by right in the applicable zoning district(s) for each parcel shall require a special exception permit except that farming and single family dwellings on a legally recorded parcel of record shall be permitted by right.

   b) Subdivision of land as defined in Article 2-39 of the Fauquier County Subdivision Ordinance is not permitted.

   c) No special exception shall be in conflict with the purposes for which the District was created.

5) That these parcels qualify for land use value assessment provided that the parcels meet the criteria set forth in Article 4 of Section 58.1-3229 et seq. of Chapter 32 of Title 58.1 of the Code.

6) That the owners of land within the District shall not terminate the District except in accordance with Section 15.2-4314 of the Code.

7) That lawful termination of any owner's association in the District shall not serve to terminate the existence of the District, but the District shall continue in effect until the review required by Section 15.2-4314 of the Code.

8) That parcels under twenty-five (25) acres shall be excluded except where exempted by the Board.

9) That if any of the 61.274 acre parcel is subdivided or boundary adjusted to below twenty-five (25) acres, then the parcel shall be removed from the District.

10) That the District will expire on January 10, 2003.

ORDINANCE

AN ORDINANCE TO APPROVE THE 17TH ADDITION TO THE

MIDDLEBURG/MARSHALL AGRICULTURAL AND FORESTAL DISTRICT

WITHIN FAUQUIER COUNTY

WHEREAS, Section 15.2-4310, Code of Virginia (1950) as amended, allows additional parcels of land to be added to an existing district following the process described for the creation of a new district; and

WHEREAS, all requirements of Section 15.2-4310, Code of Virginia (1950) as amended have been met; now, therefore, be it

ORDAINED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the 17th Addition to the Middleburg/Marshall Agricultural and Forestal District be, and is hereby, adopted as follows:

1) That this addition is land which requires conservation and protection for the production of food and other agricultural and forestal products and as such is a valuable natural and ecological resource providing open space and clean air and adequate safe water supplies and other aesthetic purposes and is, therefore, valuable to public interest.

2) That this 17th Addition to the Middleburg/Marshall Agricultural and

Forestal District is hereby added this 18th day of June, 2001, in accordance with the provisions of Title 15.2, Chapter 43, Section 15.2-4310, Code of Virginia (1950) as amended, and for a period of eight years.

3) That the 17th Addition shall consist of the following parcel(s):

CLS Holdings Limited 6051-88-9952-000 172.798 acres

;and, be it

ORDAINED FURTHER, That the same conditions and restrictions shall apply, to wit:

4) That pursuant to Title 15.2, Chapter 43, Section 15.2-4312, (b) of the Code of Virginia (1950), as amended, the Fauquier County Zoning Ordinance shall apply except as modified below. The modifications are necessary to assure that the Ordinance does not conflict with the purpose for which the District was established.

a) All uses allowed by right in the applicable zoning district(s) for each parcel shall require a special exception permit except that farming and single family dwellings on a legally recorded parcel of record shall be permitted by right.

b) Subdivision of land as defined in Article 2-39 of the Fauquier County Subdivision Ordinance is not permitted.

c) No special exception shall be in conflict with the purposes for which the District was created.

5) That these parcels qualify for land use value assessment provided that the parcels meet the criteria set forth in Article 4 of Section 58.1-3229 et seq. of Chapter 32 of Title 58.1 of the Code.

6) That the owners of land within the District shall not terminate the District except in accordance with Section 15.2-4314 of the Code.

7) That lawful termination of any owner's association in the District shall not serve to terminate the existence of the District, but the District shall continue in effect until the review required by Section 15.2-4314 of the Code.

8) That parcels under twenty-five (25) acres shall be excluded except where exempted by the Board.

9) That if any of the 172.798 acre parcel is subdivided or boundary adjusted to below 25 acres, then the parcel shall be removed from

the District.

10) That the District will expire on March 6, 2006.

ORDINANCE

AN ORDINANCE TO APPROVE THE 9TH ADDITION TO THE

PLAINS AGRICULTURAL AND FORESTAL DISTRICT

WITHIN FAUQUIER COUNTY

WHEREAS, Section 15.2-4310, Code of Virginia (1950) as amended, allows additional parcels of land to be added to an existing district following the process described for the creation of a new district; and

WHEREAS, all requirements of Section 15.2-4310, Code of Virginia (1950) as amended, have been met; now, therefore, be it

ORDAINED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the 9th Addition to The Plains Agricultural and Forestal District be, and is hereby, adopted as follows:

1) That this addition is land which requires conservation and protection for the production of food and other agricultural and forestal products and, as such, is a valuable natural and ecological resource providing open space and clean air and adequate safe water supplies and other aesthetic purposes and is, therefore, valuable to public interest.

2) That this 9th Addition to The Plains Agricultural and Forestal District is hereby added this 18th day of June 2001, in accordance with the provisions of Title 15.2, Chapter 43, Section 15.2-4310, Code of Virginia (1950) as amended, and for a period of eight years.

3) That the 9th Addition shall consist of the following parcel(s):

Jeffrey M. and Elizabeth Baker Keffer 6989-89-2068-000 30.386 acres

;and, be it

ORDAINED FURTHER, That the same conditions and restrictions shall apply to wit:

4) That pursuant to Title 15.2, Chapter 43, Section 15.2-4312, (b) of the Code of Virginia (1950), as amended, the Fauquier County Zoning Ordinance shall apply except as modified below. The modifications

are necessary to assure that the Ordinance does not conflict with the purpose for which the District was established.

a) All uses allowed by right in the applicable zoning district(s) for each parcel shall require a special exception permit except that farming and single family dwellings on a legally recorded parcel of record shall be permitted by-right.

b) Subdivision of land as defined in Article 2-39 of the Fauquier County Subdivision Ordinance is not permitted.

c) No special exception shall be in conflict with the purposes for which the District was created.

5) That these parcels qualify for land use value assessment provided that the parcels meet the criteria set forth in Article 4 of Section 58.1-3229 et seq. of Chapter 32 of Title 58.1 of the Code.

6) That the owners of land within the District shall not terminate the District except in accordance with Section 15.2-4314 of the Code.

7) That lawful termination of any owner's association in the District shall not serve to terminate the existence of the District, but the District shall continue in effect until the review required by Section 15.2-4314 of the Code.

8) That parcels under twenty-five (25) acres shall be excluded except where exempted by the Board.

9) That if any of the 30.386 acre parcel is subdivided or boundary adjusted to below 25 acres, then the parcel shall be removed from the District.

10) That the District will expire on January 1, 2005.

ORDINANCE

AN ORDINANCE TO APPROVE THE 19TH ADDITION TO THE

SOUTHERN FAUQUIER AGRICULTURAL AND FORESTAL DISTRICT

WITHIN FAUQUIER COUNTY

WHEREAS, Section 15.2-4310, Code of Virginia (1950) as amended, allows additional parcels of land to be added to an existing district following the process described for the creation of a new district; and

WHEREAS, all requirements of Section 15.2-4310, Code of

Virginia (1950) as amended, have been met; now, therefore, be it

ORDAINED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the 19th Addition to the Southern Fauquier Agricultural and Forestal District be, and is hereby, adopted as follows:

1) That this addition is land which requires conservation and protection for the production of food and other agricultural and forestal products and as such is a valuable natural and ecological resource providing open space and clean air and adequate safe water supplies and other aesthetic purposes and is, therefore, valuable to public interest.

2) That this 19th Addition to the Southern Fauquier Agricultural and Forestal District is hereby added this 18th day of June 2001, in accordance with the provisions of Title 15.2, Chapter 43, Section 15.2-4310, Code of Virginia (1950) as amended, and for a period of eight years.

3) That the 19th Addition shall consist of the following parcel(s):

Natalie J. & Kenneth L. Ortberg 6993-30-1389-000
8.572 acres

;and, be it

ORDAINED FURTHER, That the same conditions and restrictions shall apply to wit:

4) That pursuant to Title 15.2, Chapter 43, Section 15.2-4312, (b) of the Code of Virginia (1950), as amended, the Fauquier County Zoning Ordinance shall apply except as modified below. The modifications are necessary to assure that the Ordinance does not conflict with the purpose for which the District was established.

   a) All uses allowed by right in the applicable zoning district(s) for each parcel shall require a special exception permit except that farming and single family dwellings on a legally recorded parcel of record shall be permitted by-right.

   b) Subdivision of land as defined in Article 2-39 of the Fauquier County Subdivision Ordinance is not permitted.

   c) No special exception shall be in conflict with the purposes for which the District was created.

5) That these parcels qualify for land use value assessment provided that the parcels meet the criteria set forth in Article 4 of Section 58.1-3229 et seq. of Chapter 32 of Title 58.1 of the Code.

6) That the owners of land within the District shall not terminate the District except in accordance with Section 15.2-4314 of the Code.

7) That lawful termination of any owner's association in the District shall not serve to terminate the existence of the District, but the District shall continue in effect until the review required by Section 15.2-4314 of the Code.

8) That parcels under twenty-five (25) acres shall be excluded except where exempted by the Board.

9) That if any of the 8.572 acre parcel is subdivided, boundary adjusted, or sold then the parcel shall be removed from the District.

10) That the District will expire on February 16, 2005.

ORDINANCE

AN ORDINANCE TO APPROVE THE 11TH ADDITION TO THE

MARSHALL/WARRENTON AGRICULTURAL AND FORESTAL DISTRICT

WITHIN FAUQUIER COUNTY

WHEREAS, Section 15.2-4310, Code of Virginia (1950) as amended, allows additional parcels of land to be added to an existing district following the process described for the creation of a new district; and

WHEREAS, all requirements of Section 15.2-4310, Code of Virginia (1950) as amended, have been met; now, therefore, be it

ORDAINED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the 11th Addition to the Marshall/Warrenton Agricultural and Forestal District be, and is hereby, adopted as follows:

1) That this addition is land which requires conservation and protection for the production of food and other agricultural and forestal products and, as such, is a valuable natural and ecological resource providing open space and clean air and adequate safe water supplies and other aesthetic purposes and is, therefore, valuable to public interest.

2) That this 11th Addition to the Marshall/Warrenton Agricultural and Forestal District is hereby added this 18th day of June 2001, in accordance with the provisions of Title 15.2, Chapter 43, Section

15.2-4310, Code of Virginia (1950) as amended, and for a period of eight years.

3) That the 11th Addition shall consist of the following parcel(s):

Thomas M. Lodahl and Kay Lewis Redditt 6975-37-7440-000 18.123 acres

Thomas M. Lodahl and Kay Lewis Redditt 6975-38-8139-000 14.938 acres

Thomas M. Lodahl and Kay Lewis Redditt 6975-48-3062-000 10.678 acres

;and, be it

ORDAINED FURTHER, That the same conditions and restrictions shall apply to wit:

4) That pursuant to Title 15.2, Chapter 43, Section 15.2-4312, (b) of the Code of Virginia (1950), as amended, the Fauquier County Zoning Ordinance shall apply except as modified below. The modifications are necessary to assure that the Ordinance does not conflict with the purpose for which the District was established.

a) All uses allowed by right in the applicable zoning district(s) for each parcel shall require a special exception permit except that farming and single family dwellings on a legally recorded parcel of record shall be permitted by-right.

b) Subdivision of land as defined in Article 2-39 of the Fauquier County Subdivision Ordinance is not permitted.

c) No special exception shall be in conflict with the purposes for which the District was created.

5) That these parcels qualify for land use value assessment provided that the parcels meet the criteria set forth in Article 4 of Section 58.1-3229 et seq. of Chapter 32 of Title 58.1 of the Code.

6) That the owners of land within the District shall not terminate the District except in accordance with Section 15.2-4314 of the Code.

7) That lawful termination of any owner's association in the District shall not serve to terminate the existence of the District, but the District shall continue in effect until the review required by Section 15.2-4314 of the Code.

8) That parcels under twenty-five (25) acres shall be excluded except

where exempted by the Board.

9) That if any of the parcels are subdivided, boundary adjusted, or sold then the parcel shall be removed from the District.

10) That the District will expire on January 20, 2005.

ORDINANCE

AN ORDINANCE TO APPROVE THE 11TH ADDITION TO THE

MARSHALL/WARRENTON AGRICULTURAL AND FORESTAL DISTRICT

WITHIN FAUQUIER COUNTY

WHEREAS, Section 15.2-4310, Code of Virginia (1950) as amended, allows additional parcels of land to be added to an existing district following the process described for the creation of a new district, and

WHEREAS, all requirements of Section 15.2-4310, Code of Virginia (1950) as amended have been met; now, therefore, be it

ORDAINED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the 11th Addition to the Marshall/Warrenton Agricultural and Forestal District be, and is hereby, adopted as follows:

1) That this addition is land which requires conservation and protection for the production of food and other agricultural and forestal products and as such is a valuable natural and ecological resource providing open space and clean air and adequate safe water supplies and other aesthetic purposes and is, therefore, valuable to public interest.

2) That this 11th Addition to the Marshall/Warrenton Agricultural and Forestal District is hereby added this 18th day of June 2001, in accordance with the provisions of Title 15.2, Chapter 43, Section 15.2-4310, Code of Virginia (1950) as amended, and for a period of eight years.

3) That the 11th Addition shall consist of the following parcel(s):

Thomas M. Lodahl and Kay Lewis Redditt 6975-36-1821-000 10.00 acres

;and, be it

ORDAINED FURTHER, That the same conditions and restrictions shall apply to wit:

4) That pursuant to Title 15.2, Chapter 43, Section 15.2-4312, (b) of the Code of Virginia (1950), as amended, the Fauquier County Zoning Ordinance shall apply except as modified below. The modifications are necessary to assure that the Ordinance does not conflict with the purpose for which the District was established.

   a) All uses allowed by right in the applicable zoning district(s) for each parcel shall require a special exception permit except that farming and single family dwellings on a legally recorded parcel of record shall be permitted by-right.

   b) Subdivision of land as defined in Article 2-39 of the Fauquier County Subdivision Ordinance is not permitted.

   c) No special exception shall be in conflict with the purposes for which the District was created.

5) That these parcels qualify for land use value assessment provided that the parcels meet the criteria set forth in Article 4 of Section 58.1-3229 et seq. of Chapter 32 of Title 58.1 of the Code.

6) That the owners of land within the District shall not terminate the District except in accordance with Section 15.2-4314 of the Code.

7) That lawful termination of any owner's association in the District shall not serve to terminate the existence of the District, but the District shall continue in effect until the review required by Section 15.2-4314 of the Code.

8) That parcels under twenty-five (25) acres shall be excluded except where exempted by the Board.

9) That if any of the 10.00 acre parcel is subdivided, boundary adjusted, or sold then the parcel shall be removed from the District.

10) That the District will expire on January 20, 2005.

RESOLUTION

A RESOLUTION TO APPROVE THE REQUEST OF L. THOMAS GREENE TO WITHDRAW APPROXIMATELY 112.277 ACRES FROM THE SOUTHERN FAUQUIER AGRICULTURAL AND FORESTAL DISTRICT

WHEREAS, the applicant, L. Thomas Greene, has petitioned the Board of Supervisors to withdraw approximately 112.277 acres from the

Southern Fauquier Agricultural and Forestal District; and

WHEREAS, Section 15.2-4314 of the Code of Virginia allows any owner of land lying in a district to file with the governing body that created that district to withdraw all or part of such land from such district for good and reasonable cause; and

WHEREAS, the Fauquier County Agricultural and Forestal Committee recommended approval of this request at a public meeting held on March 12, 2001; and

WHEREAS, the Fauquier County Planning Commission recommended approval of this request at a public meeting held on April 26, 2001; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 18th day of June 2001, That the request to withdraw 112.277 acres from the Southern Fauquier Agricultural and Forestal District for a good and reasonable cause, further described as PIN #6990-57-9877-000, made by Thomas L. Greene be, and is hereby, approved.

With no further business, the meeting was adjourned.

I hereby certify that this is a true and exact record of actions taken by the Fauquier County Board of Supervisors on June 18, 2001.

G. Robert Lee

Clerk