# A G E N D A JAMES CITY COUNTY BOARD OF SUPERVISORS REGULAR MEETING County Government Center Board Room 101 Mounts Bay Road, Williamsburg, VA 23185 October 12, 2021 5:00 PM

# A. CALL TO ORDER

- B. ROLL CALL
- C. MOMENT OF SILENCE
- D. PLEDGE OF ALLEGIANCE
- E. PUBLIC COMMENT
- F. CONSENT CALENDAR

# G. PUBLIC HEARING(S)

- 1. Cable Franchise Agreement, Shenandoah Cable Television, LLC
- 2. Resolution to Authorize the Initiation of Condemnation Proceedings for the Clara Byrd Baker Elementary Safe Routes to School Project

# H. BOARD CONSIDERATION(S)

1. Appeal of Notice of Violation, 5032 River Drive

# I. CLOSED SESSION

- 1. Consideration of a personnel matter, the appointment of individuals to County Boards and/or Commissions, pursuant to Section 2.2-3711 (A)(1) of the Code of Virginia
- 2. Williamsburg Regional Library Board Appointment
- 3. Peninsula Agency on Aging Appointment

# J. ADJOURNMENT

1. Adjourn until 1 p.m. on October 26, 2021 for the Business Meeting

# **ITEM SUMMARY**

DATE:	10/12/2021
TO:	The Board of Supervisors
FROM:	Adam R. Kinsman, County Attorney
SUBJECT:	Cable Franchise Agreement, Shenandoah Cable Television, LLC

# **ATTACHMENTS:**

	Description	Туре
D	memo	Cover Memo
D	reso	Resolution
D	Initial Construction Area	Exhibit
D	Shentel-provided information	Exhibit
D	Draft Franchise Agreement	Exhibit

# **REVIEWERS:**

Reviewer	Action	Date
Kinsman, Adam	Approved	9/21/2021 - 2:34 PM
Daniel, Martha	Approved	9/21/2021 - 2:37 PM
Kinsman, Adam	Approved	9/27/2021 - 2:28 PM
Fellows, Teresa	Approved	10/1/2021 - 8:09 AM
Rinehimer, Bradley	Approved	10/4/2021 - 8:17 AM
Fellows, Teresa	Approved	10/4/2021 - 8:52 AM
	Kinsman, Adam Daniel, Martha Kinsman, Adam Fellows, Teresa Rinehimer, Bradley	Kinsman, AdamApprovedDaniel, MarthaApprovedKinsman, AdamApprovedFellows, TeresaApprovedRinehimer, BradleyApproved

# MEMORANDUM

DATE:	October 12, 2021
TO:	The Board of Supervisors
FROM:	Scott A. Stevens, County Administrator Patrick N. Page, Director, Information Resources Management Adam R. Kinsman, County Attorney
SUBJECT:	Cable Franchise Agreement, Shenandoah Cable Television, LLC

The attached Cable Franchise Agreement by and between James City County and Shenandoah Cable Television, LLC ("Shentel") is submitted to the Board of Supervisors for consideration pursuant to Section 626 of the Cable Communications Policy Act (the "Cable Act").

# I. <u>THIS FRANCHISE AGREEMENT DOES NOT</u>:

- <u>Grant a Monopoly</u>. This franchise agreement does not exclude other cable service providers. It does not grant a monopoly to Shentel. As required by the Cable Act, this is a non-exclusive franchise.
  - The County has previously invited, and continues to invite, other cable providers to establish new service in the County.
- <u>Address Internet Service</u>. This franchise agreement does not address internet or broadband services. A cable franchise agreement can only address the provision of cable television services in the County.
- <u>Establish Rates</u>. This franchise agreement does not regulate the rates for cable service. A cable franchise agreement may only address the terms of service and not rates for channels outside of basic tier service.

# II. THIS FRANCHISE AGREEMENT:

- Allows Shentel to begin offering cable television service in the County.
- Requires Shentel to provide cable service to public facilities including the schools and the County's recreation centers when they are added to a Franchise Area.
- Requires Shentel to provide three public access (PEG) channels in high definition.
- Requires Shentel to maintain a local office and a toll free telephone number to conduct business in the County and to address subscriber questions and concerns.

# III. CHANGES FROM EXISTING COX COMMUNICATIONS FRANCHISE

There are few substantive changes from the existing franchise agreement with Cox Communications. The definitions of "cable system" and "gross revenue" was changed to better align with Shentel's operation and the "service area" was narrowed to reflect Shentel's desire to being with a small geographic area before attempting to serve more of the County.

For years, the Board has received citizen requests for competition in the provision of cable television services in the County. We recommend that the Board adopt the attached resolution authorizing the County Administrator to execute those documents necessary to enter into a 10-year cable television franchise with Shentel.

SAS/PNP/ARK/ap ShentelCFrnAgmt-mem

Attachment

# **RESOLUTION**

#### CABLE TELEVISION FRANCHISE AGREEMENT

- WHEREAS, staff has negotiated a new, 10-year franchise agreement (the "2021 Franchise") with Shenandoah Cable Television, LLC ("Shentel"); and
- WHEREAS, the Board held a duly-advertised public hearing regarding the 2021 Franchise at its meeting on October 12, 2021.
- NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator is hereby authorized to execute those documents necessary to enter into a 10-year cable television franchise agreement with Shenandoah Cable Television, LLC.

Michael J. Hipple Chairman, Board of Supervisors

ATTEST:		VOTES	5		
		AYE	NAY	<b>ABSTAIN</b>	ABSENT
	SADLER				
Teresa J. Fellows	ICENHOUR				
Deputy Clerk to the Board	LARSON				
Deputy Clerk to the Board	MCGLENNON				
	HIPPLE				

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of October, 2021.

ShentelCFrnAgmt-res







# **Shentel and Glo Fiber Introduction**



# **Company Overview**

119 year old company (NASDAQ: SHEN) focused on delivering broadband, CATV, phone, and wireless service to rural markets.

- Advanced Networks
- Excellent Customer Support
- Local Community Investment & Partnership

860 employees

\$241 million in annual revenues and profitable

Offering fiber to the home (FTTH) as Glo Fiber

**Our Mission:** Ensure that rural communities have access to the same level of telecommunication services as those found anywhere else in the US





# 7,000 miles of fiber and counting



245K+ homes passed w/broadband | 88 counties covered by spectrum | Fiber to 500+ cell sites





What is it?

- 100% fiber network
- Triple play (Internet, Video & Phone)
- Ultra highspeed bandwidth
- Better reliability than cable or DSL
- Symmetrical bandwidth (upload speed equals download speed)
- Passive Optical architecture allows for future upgrades to multi-gigabit speeds









- Significant capital investment in the market
- Competitive offering for internet, television, and phone
- Positive Economic Development Impact
  - Hospitals/Medical Field
  - Education
  - Private Enterprise
  - Telecommuting





- 1. Municipal Engagement
- 2. Utility Engagement
- 3. Engineering & Construction
  - Engineering Surveys & Permits
  - Construction commence 9-12 months after franchise award
- 4. Local jobs will include Marketing, Sales, and Operations positions
- 5. Sales & Marketing
- 6. Community Engagement
- 7. Other



# Rates at a Glance Individual Service Options

Our pricing is straightforward and simple. No gimmicks, no hidden fees. The price you see is the price you pay, except for taxes of course.

# Internet

300 Mbps	\$65.00
1 Gbps (1000 Mbps)	\$80.00
2 Gbps (2000 Mbps)	\$250.00

# TV

Locals	\$40.00
Entertain	\$100.00
Delight	\$135.00
Indulge	\$175.00

# Phone Unlimited Calling ......\$20.00

Cable Franchise Agreement by and between James City County, Virginia and Shenandoah Cable Television, LLC

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# **Cable Franchise Agreement**

**THIS CABLE FRANCHISE AGREEMENT** (the "Franchise" or "Agreement") is entered into by and between the County of James City, Virginia, a political subdivision of the Commonwealth of Virginia (the "County") and Shenandoah Cable Television, LLC (Shentel), a corporation duly organized under the applicable laws of the Commonwealth of Virginia.

WHEREAS, the County wishes to grant Shentel a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, the County is a "franchising authority" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to the Code of Virginia, Va. Code Ann. § 15.2-2108 and the James City County Cable Television Systems Ordinance, Chapter 5 of the James City County Code of Ordinances (the "Cable Ordinance");

WHEREAS, Shentel has constructed and operates a Cable System in the Franchise Area for the transmission of Cable Service;

WHEREAS, the Cable System occupies the Public Rights-of-Way within the County;

WHEREAS, the County and Shentel have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of the County's grant of a franchise to Shentel, Shentel's promise to provide Cable Service to residents of the Franchise Area pursuant to and consistent with the Communications Act (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

# 1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. References in this section to any federal or state law shall include amendments thereto as may be enacted from time-to-time. In addition, the following definitions shall apply:

1.1. Access Channel or PEG Access Channel: A video Channel, which Shentel shall make available to the County without charge for non-commercial PEG use for the transmission of video programming as directed by the County.

1.2. *Affiliate*: In relation to any Person, another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.

1.3. *Basic Service*: A Cable Service tier that includes (i) the retransmission of local television broadcast Channels and (ii) PEG Channels required to be carried in the basic tier.

1.4. *Cable Operator:* Any person or group of persons who provides Cable Service over a cable system and directly through one or more affiliates owns a significant interest in such cable system or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

1.5. Cable Ordinance: The James City County Cable Communications Ordinance.

1.6. *Cable Service* or *Cable Services*: The one-way transmission to subscribers of (i) Video Programming or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Cable service does not include any Video Programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).

1.7. *Cable System* or *System*: 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 and designed in accordance with the International Telecommunication Union - Telecommunication Standardization Sector G.984 Standard for gigabit passive optical networks, but such

term does not include (I) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621 of the Cable Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; (5) any facilities of any electric utility used solely for operating its electric utility systems.

1.8. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), meaning a portion of the electromagnetic spectrum which

is used in a cable system and which is capable of delivering a television channel, as defined by the Federal Communications Commission by regulation.

1.9. Communications Act: The Communications Act of 1934, as amended.

1.10. County: James City County, Virginia.

1.11 *Demarcation Point*: shall be a point agreed upon by Franchisee and the County up to twelve (12) inches inside the building wall and consistent with Franchisee's direction of approach to the building, consistent with the FCC's rules as of the Effective Date of this Franchise Agreement or as later amended. For purposes of EG upstream feeds, a Demarcation Point shall be the point at which the equipment owned by the EG origination site interconnects with Franchisee's wiring and electronics.

1.12. *Educational Access Channel*: Any Channel required by this Franchise Agreement to be provided by Shentel to the County and set aside for non-commercial educational use.

1.13. FCC: The United States Federal Communications Commission or successor governmental entity thereto.

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

1.15. *Franchise Area*: The entire existing territorial limits of the County and such additional areas that may be included in the territorial limits of the County during the term of this Franchise.

1.16. *Franchisee or Shentel*: Shenandoah Cable Television, LLC, and any lawful and permitted successors, assigns and transferees.

1.17. *Government Access Channel*: Any Channel required by this Franchise Agreement to be provided by Shentel to the County and set aside for non-commercial government use.

1.18. Gross Revenue: means revenue derived by the Grantee from the operation of

Cable System in the Franchise Area to provide Cable Service, calculated in accordance with generally accepted accounting principles ("GAAP"). Gross Revenue includes monthly basic cable, premium and pay-per-view video fees, installation fees and subscriber equipment rental fees. Gross Revenue shall not include refundable deposits, late fees, investment income, advertising revenue, home shopping revenue, leased access fees, nor any taxes, franchise fees, or other fees or assessments imposed or assessed by any governmental authority. Gross Annual Revenues shall not include actual bad debt that is written off, consistent with

the

generally accepted accounting principles, provided however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in the Gross Annual Revenues in the period so collected.

1.19. *Non-Cable Services*: Any service that does not constitute the provision of Cable Service.

1.20. *Normal Business Hours*: 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.

1.21. *Normal Operating Conditions*: Those service conditions which are within the control of Shentel, except during periods in which Force Majeure applies. Those conditions which are ordinarily within the control of Shentel include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System.

1.22. *PEG*: Public, educational, and governmental.

1.23. *PEG Provider:* Any entity designated by the County to operate one or more PEG Channels.

1.24. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.25. *Public Access Channel*: Any Channel required by this Franchise Agreement to be provided by Shentel to the County and set aside for use by the general public who are residents of the Franchise Area, including groups and individuals, and which is available for such use on a non-discriminatory and non-commercial basis.

1.26. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are within the jurisdiction or control of the

County. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other non-wire communications or broadcast services.

1.27. Service Interruption: The loss of picture or sound on one or more cable channels.

1.28. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Shentel's express permission.

1.29. *Tap*: A passive device located on a pole or in a pedestal in the Public Right of Way that is installed on the main cable and that is the connection point for the cable drop to the customer premises.

1.30. *Transfer of the Franchise*: Any transaction in which (i) an ownership or other interest in the Franchisee is transferred, directly or indirectly, from one person or group of persons to another person or group of persons, so that majority control of the Franchisee is transferred; or (ii) the rights and obligations held by the Franchisee under the Franchise are transferred or assigned to another person or group of persons.

1.31. *Video Programming*: Programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

## 2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Communications Act, the County hereby grants Shentel the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. Nothing in this Franchise shall limit the rights of Shentel to offer any service over its Cable System unless otherwise provided in federal, State, or County law. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement. This Agreement does not confer any rights other than as expressly provided herein or as mandated by federal, state or local law.

2.2. *Term*: The Franchise and this Franchise Agreement shall become effective at 12:01 a.m. on October 13, 2021 (the "Effective Date") and shall expire at 12:01 a.m. on October 13, 2031, unless the Franchise is earlier revoked or its Term shortened as provided herein, or unless the Franchise is renewed or extended by mutual agreement.

2.3. *Grant Not Exclusive*: The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the County reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not expressly alter or purport to alter the

authority as granted under this Franchise or expressly grant authority or purport to grant authority to interfere with existing physical facilities, including equipment, of the Cable System.

2.4. *Franchise Subject to Federal Law*: Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act.

# 2.5. No Waiver:

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

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

# 2.6. Construction of Agreement:

2.6.1. Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545, or Virginia Code §§ 15.2-2108.19 – 2108.32.

2.6.2. *Precedence of Documents*: In the event of a conflict between a cable ordinance and this Agreement, this Agreement shall prevail. In the case of a conflict between the Cable ordinance and Virginia Code Sections 15.2-2108.19, et seq., the Virginia Code shall prevail, unless an otherwise applicable Virginia Code provision is preempted by federal law.

2.7. *Police Powers*: Shentel's rights are subject to the police powers of the County to adopt and enforce ordinances of general applicability necessary to protect and preserve the health, safety and welfare of the public. Shentel shall comply with all applicable general laws and ordinances enacted by the County pursuant to those powers. In the event of conflict between the Cable Ordinance (and any amendments thereto) and this Agreement, the Agreement shall control.

2.10. *Delegation of Rights, Powers, and Duties:* Any delegable right, power, or duty of the County under the Cable Ordinance or the Franchise may be transferred or delegated to an appropriate officer, employee, or department of the County.

# 3. PROVISION OF CABLE SERVICE

3.1. Service Area:

3.1.1 *General Availability*: The Franchisee shall make Cable Service generally available to businesses and residential dwelling units within the Franchise Area. The

Franchisee initially shall build out its Cable System to make Cable Service generally available to those business and residential units located within the red ovals shown on the map attached to this Franchise Agreement as Exhibit C. Within 30 days of execution of this Franchise, Franchisee shall use commercially reasonable efforts to commence detailed engineering and pursue all necessary certificates, permits, and agreements, which are required to construct and operate a Cable System in the county. Within 90 days the completion of all necessary engineering and receipt of such certificates, permits, and certificates, Franchisee shall commence construction of its Cable System. Construction shall follow a generally reasonable schedule (considering build out costs, geographical and geological conditions, and business conditions). In addition to the obligations and considerations set forth above, Franchisee shall offer Cable Service to all new or previously unserved business and residential units within 150 feet of the Franchisee's distribution cable.

3.1.2 *Service Drops:* The Franchisee shall extend its Cable System to potential Subscribers at no cost to said potential Subscribers other than the Franchisee's standard charge for a standard service drop (the "Standard Installation Fee"), provided that, if the point at which electric utility facilities enter the building (the "Entry Point") is located more than 250 feet from the Tap installed to serve that Subscriber, the Franchisee may charge an installation fee equal to the Standard Installation Fee, plus the actual cost of construction (defined as time and materials with a reasonable allocation for administrative costs) of Cable System facilities in excess of the 250 foot distance.

3.1.3. *Cost Sharing*: If the conditions of Sections 3.1.1 are not met, the Franchisee shall only be required to extend the Cable System if the Subscribers in and area requesting Cable Service are willing to share the capital costs of extending the Cable System by making a capital contribution in aid of construction including the actual cost of material, design, labor and easements. Subscribers who request service hereunder shall bear the construction costs on a pro rata basis. The Franchisee may require that the payment of the capital contribution in aid of construction borne by potential subscribers be paid in advance. Subscribers shall also be responsible for any applicable installation charges to extend the Cable System from the tap to the residence.

# 3.3. Cable Service to Public Facilities:

3.3.1. Subject to the terms of this Section 3.3, Shentel shall install upon request a service outlet at each facility occupied by a public office or agency in the County, to include without limitation County government agencies, recreation centers, fire stations, police stations, sheriff's offices, public schools, public libraries, and any other local government building as shall be designated by the County from time to time (each, a "Public Facility") that (i) is within the Franchise Area, and (ii) Shentel is granted access rights. The County shall secure any necessary right of entry required for Shentel to install its facilities. Shentel shall maintain, at no charge, a service outlet at each of the existing Public Facilities listed on Exhibit A. In addition, subject to subsection 3.3.2 below, within one hundred eighty (180) days after receiving a written request from the County for Cable Service to a Public Facility not currently served by Shentel ("New County Facility Service Request"), Shentel shall install and maintain a service outlet at each new Public Facility, as designated by the County from time to time.

3.3.2. If a new Public Facility is located within two hundred fifty (250) feet of the Public Rights-of-Way, then Shentel shall bear the cost of installation so long as such additional

Public Facilities do not exceed five (5) per calendar year. If such a Public Facility is located more than two hundred fifty (250) feet from the Public Rights-of-Way, then the County shall reimburse Shentel for the difference between the actual cost of installation and the actual cost of constructing facilities to serve up to two hundred fifty (250) feet from the Public Rights-of-Way. At the time Basic Service is provided as a result of a New County Facility Service Request, if Shentel elected to install facilities for the purpose of serving subscribers other than the government users located at such new Public Facility, then the County will be responsible for reimbursing Shentel only for the County's *pro rata* share of the cost of construction to such new Public Facility.

3.3.3. If County-owned conduit suitable for the placement of Shentel's facilities exists along any portion of a route capable of extending service to a Public Facility, and the County determines that it has conduit capacity available in excess of its likely needs for the foreseeable future, the parties shall meet in good faith to discuss the use of such conduit. Unless otherwise prohibited by law, Shentel may agree to use such conduit and the County may make such conduit available to Shentel on a sole-use basis if such use would lower the cost of installation of Shentel's facilities needed to serve a Public Facility that is more than two hundred fifty (250) feet from the Public Rights-of-Way. If suitable County-owned conduit is available to Shentel on a sole-use basis and the use of such conduit would reduce the cost of construction to serve a Public Facility, but Franchisee elects not to use such conduit, any amount that the County would be required to pay pursuant to Section 3.3.2 above shall be reduced by the amount by which the use of County conduit would reduce the total cost of the project.

3.3.4. Shentel shall provide Basic Service to each Public Facility.

3.3.5. There shall be no charge to the County or other entity or agency receiving service at a Public Facility for the cost of Basic Service, except for equipment costs as provided for in this section. There shall be no charge to the County or other entity or agency receiving service at a Public Facility for the cost of installation or the cost of maintenance except as provided in this Section 3.3. There also shall be no charge to the County or other entity or agency receiving service at a Public Facility for the cost of installation or the cost of maintenance except as provided in this Section 3.3. There also shall be no charge to the County or other entity or agency receiving service at a Public Facility for the cost of one converter or digital transport adapter at each such Public Facility.

3.3.6. The cost of inside wiring, additional drops or outlets, or additional converters or digital transport adapters requested by the County within these Public Facilities, including those drops, outlets, or digital transport adaptors in excess of those currently installed, are the responsibility of the County. The County or any public body responsible for managing a Public Facility may, at its expense, extend or install suitable wiring to permit Cable Service to be provided at multiple locations within the Public Facility. Should the County relocate one or more County Departments from an existing Public Facility to a new, different, or expanded Public Facility, the County may, at no additional cost, move its currently-installed digital transport adaptors to such new, different, or expanded Public Facility. Shentel agrees to reprovision any convertors and digital transport adaptors to their new locations at no charge. Shentel may charge for any new wiring or installation required by County as a result of a relocation of a convertor or digital transport adaptor. In addition, the County may request that the Franchisee install sufficient capacity and suitable equipment to ensure that all signals are provided at such additional outlets with sufficient strength to supply the entire Public Facility, taking into account the number of outlets to be served, the distance signals will be transported, and all technical factors necessary to ensure that all outlets receive a suitable signal. Upon Franchisee's request, the County shall provide specifications for serving a Public Facility in writing to the Franchisee. In constructing all facilities required under this Section 3.3.6, the Franchisee shall ensure that it meets the County's actual needs at each location. If meeting the County's needs for delivery of a suitable signal imposes costs on the Franchisee beyond the costs the Franchisee would bear in the absence of such requirements, the Franchisee may require that the County reimburse the difference, subject to Sections 3.3.2 and 3.3.3 hereof. Shentel shall not be responsible for any violations of FCC technical standards on the County's side of the Demarcation Point. After reasonable notice under the circumstances, Shentel may temporarily disconnect its service to a County site that does not correct such violations of FCC technical standards until such time as such violations are corrected.

# 4. SYSTEM FACILITIES

4.1. *System Characteristics*: Shentel's Cable System shall meet or exceed the following requirements:

4.1.1. The System shall be designed in accordance with the International Telecommunication Union - Telecommunication Standardization Sector G.984 Standard for gigabit passive optical networks.

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

4.1.3. Modern design utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the term of the Agreement.

4.1.4. Protection against outages due to power failures, so that back-up power is available at a minimum for at least 24 hours at the headend, and conforming to industry standards, but in no event rated for less than four hours, at each node. Such standby power supplies shall cut in automatically on failure of commercial utility AC power, and revert automatically to commercial power when it is restored.

4.1.5. Facilities and equipment sufficient to cure violations of any applicable FCC technical standards and to ensure that the Cable System remains in compliance with the standards specified in Section 4.1.18.

4.1.6. Facilities and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with any applicable FCC technical standards, as such standards may be amended from time to time.

4.1.7. All facilities and equipment designed to be capable of continuous twentyfour (24) hour daily operation in accordance with applicable FCC standards except as caused by a Force Majeure event.

4.1.8. All facilities and equipment designed, built and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment and (ii) interference with the reception of off-the-air signals by a subscriber. 4.1.9. All facilities and equipment designed, built and operated in compliance with all applicable safety codes.

4.1.10. Sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable Shentel to substantially comply with applicable law and its obligations under this Agreement, including applicable customer service standards.

4.1.11. All facilities and equipment required to properly test the Cable System in accordance with applicable law, conduct an ongoing and active program of preventive maintenance and quality control, and to be able to quickly respond to customer complaints and resolve system problems.

4.1.12. Design capable of interconnecting with other cable systems in the Franchise Area as set forth in Section 4.3 of this Agreement.

4.1.13. Facilities and equipment at the headend shall allow Shentel to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration in the content and functionalities associated with the signal. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all closed-captioned programming retransmitted over the Cable System shall include the closed-captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning.

4.1.14. Shall be capable of transmitting in high definition any Channels that are received in high definition format. Actual carriage of any such high definition Channels other than Access Channels will be at Shentel's sole discretion.

4.1.15. Shall offer parental control options, which will at a minimum offer as an option that a Person ordering programming must provide a personal identification number or other means provided by Shentel only to a Subscriber. Provided, however, that Shentel shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls.

4.1.16. The provision of additional channels, channel capacity, and/or upgrades of any kind to the Cable System is solely within the control and discretion of Shentel.

4.1.17. With the exception of any PEG Channels, all content and programming of Cable Services, including the mix, level, and/or quality of such content and programming, remains in the sole discretion of Shentel.

4.1.18. The Cable System must conform to or exceed all applicable FCC technical performance standards, as amended from time to time, and shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such

standards and regulations remain in effect and are consistent with accepted and applicable industry procedures:

4.1.18.1. Occupational Safety and Health Administration (OSHA) Safety and Health Standards;

4.1.18.2. National Electrical Code;

4.1.18.3. National Electrical Safety Code (NESC);

4.1.18.4. Obstruction Marking and Lighting, AC 70/7460 i.e., Federal

Aviation Administration;

4.1.18.5. Constructing, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17; and

4.1.18.6. The Virginia Uniform Statewide Building Code.

4.2. *General Description*: The Cable System shall meet or exceed applicable FCC's technical standards (Subpart K of Part 76 of the FCC's Rules).

4.3. *Interconnection*: Shentel shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

4.4. *Emergency Alert System*: Shentel shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

4.5. *Right of Way Permitting*: Before performing any work in the Public Rights-of-Way, Shentel shall obtain a right-of-way permit from the County's Engineering Department and shall comply with all conditions normally required of right-of-way permits. In addition, Shentel may be required to furnish a \$100,000 performance bond in favor of the County. The Performance Bond shall be maintained until the County Administrator has determined in writing that the construction requiring the Performance Bond is completed and for one (1) year after such determination. On the first anniversary date of the completion of the construction as determined by the County Administrator, Shentel shall no longer be required to maintain a performance bond.

4.6.. *Restoration of Property:* Shentel shall promptly repair and restore, to as good a condition as reasonably practicable before the work causing such disturbance was done, any and all Public Rights-of-Way and public or private property that is disturbed or damaged during the construction, operation or maintenance of the Cable System. Any restoration of non-commercial private property by Shentel shall be done in accordance with Shentel's contractual obligations to affected landowners, except to the extent that any such contractual obligations conflict with the requirements of this section. If Shentel fails to restore or repair Public Rights-of-Way or public

property that has been damaged or is disturbed within thirty (30) days, the County may perform the necessary repairs and restoration, and submit an invoice for said expense.

4.6. *Relocation of Facilities:* In the event that a location or a grade, line, or other characteristic of a portion of the Public-Rights-of-Way that Shentel is authorized to use or occupy is altered by the County for the purpose of a public works project that requires the relocation of all users of the Public Rights-of-Way, Shentel shall, at its sole expense, relocate or otherwise modify its Cable System to as to conform to the new location of the new grade, line or other right-of-way characteristic. If the County controls public funds from any source that are available to any other user of the Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the County shall notify Shentel of the availability of such funding and make such funds available on an equal basis to Shentel. It is understood that there is no guarantee by the County that public funds will, in every instance, be available to defray costs of altering or relocating the cable system to conform to new grades or lines. In addition, Shentel shall obtain a relocation deed, if required by law. All relocation costs of the Cable System.

# 5. <u>PEG SERVICES</u>

### 5.1 Access Channels:

5.1.1 Franchisee, at no charge to the County, shall provide three (3) Access Channels. The Access Channels shall be placed on Franchisee's Basic Service Tier. As of the Effective Date, the standard definition EG Channels are located on Channels 46, 47, and 48. Franchisee may, upon written request to County, which shall not be unreasonably denied, utilize any Access Channel for programming when it is not scheduled for EG use. County and Franchisee shall establish rules and procedures for such alternative use by Franchisee in accordance with Section 611 of the Cable Act (47 U.S.C. § 531).

5.1.2 County may not request additional Channel capacity beyond the three (3) Access Channels for EG use except in accordance with applicable law. County shall be responsible for all programming requirements, including but not limited to scheduling, playback, training, staffing, copyright clearances, and equipment, maintenance and repair.

5.1.3 Shentel shall continue to make available to all Subscribers on the Cable System three (3) High Definition Channels for PEG access use. Shentel shall continue to own the channels and will provide downstream transmission of such Access Channels on its Cable System at no charge to the County or other PEG access programmers.

5.1.4 As of the Effective Date, one of the three Access Channels set aside pursuant to Section 5.1.1 shall be used by the County government, a second Access Channel shall be used by the James City County Schools, and a third may be designated for use by a public access organization approved by the Board of Supervisors.

5.1.5 All PEG Access Channels required by subsections 5.1.1 or 5.1.3 shall be provided on the Basic Service tier, unless the County and Shentel otherwise mutually agree in writing.

5.1.6 The existing PEG Access Channels shall be carried on the channel numbers assigned to them in Exhibit B. Thereafter, PEG Access Channel assignments may be changed at the discretion of Shentel. PEG Access Channel assignments shall be the same throughout the County. If Shentel decides to change the channel designation for any of the PEG Access Channels, it must provide at least thirty (30) days prior written notice to the County, and shall reimburse the County, and/or designated PEG Providers for the reasonable costs incurred by the County or other designated PEG Providers, including, but not limited to, logo modifications, stationery, promotion, and advertising, not to exceed \$2,500 per channel change.

# 5.1.7 *PEG Interconnection*:

5.1.7.1. Shentel shall design its Cable System so that it is capable of interconnecting with other like networks (including but not limited to wireless systems) at suitable locations as determined by Shentel. Interconnection capabilities shall be provided for the exchange of all PEG signals. Such interconnection shall preserve the quality of the PEG signals so that there is no significant degradation between the signals as received by Shentel and the signals as transmitted to the interconnecting system. Shentel shall not interfere with the ability of any other cable operator holding a franchise issued by the County ("Competing Operator") to obtain the content of any of the programming on the PEG Channels, nor shall Shentel object to the transmission of the PEG Access Channel signals by any Competing Operator.

5.1.7.2. Shentel will interconnect in real time with Community Video Center, 1114 Ironbound Road, Williamsburg, Virginia 23188 and Board of Supervisors Video Control Room at 101 Mounts Bay Road, Williamsburg, Virginia 23185 or other mutually agreed upon location, for the purpose of ensuring carriage of the Government, Educational, and Public Access Channels. Nothing in this Agreement shall determine the extent to which Shentel or the interconnecting system shall bear these or future costs of interconnection.

5.1.8 *Management of Channels:* The County may designate one (1) or more entities, including a non-profit access management corporation, to manage the use of one or more of the PEG Access Channels.

5.1.9 *Technical Standards:* The PEG Access Channels shall be carried in compliance with all applicable FCC rules. All PEG Access Channels shall meet the same technical standards applicable to the commercial channels carried on the Basic Tier, provided that Shentel shall not be responsible for the production quality of PEG access programming. In addition, in the event the County desires to implement additional functionality on one or more of the PEG Access Channels comparable to additional functionality available on any other channel on the Basic Service tier, Shentel shall cooperate with the County to make such functionality available, provided that implementation of such functionality does not require the use of additional capacity on the System, or impose any cost on Shentel. If Shentel makes changes to the Cable System that require improvements to PEG access facilities and equipment, Shentel shall make any necessary changes to Shentel's headend and distribution facilities or equipment within thirty (30) days so that PEG access facilities and equipment may be used as intended in this Agreement. Nothing in this Section

shall require Shentel to provide PEG Access Channels in high definition or other advanced display standard.

5.1.10 *Costs and Payments Not Franchise Fees:* The parties agree that any costs to Shentel associated with the provision of support for PEG access pursuant to this Franchise Agreement, and any PEG payments made to the County under, pursuant to or outside of this Agreement, do not constitute and are not part of a franchise fee, and fall within one or more of the exceptions to 47 U.S.C. § 542.

5.1.11 *Editorial Control:* Except as expressly permitted by federal law, Shentel shall not exercise any editorial control over the content of programming on the PEG Access Channels (except for such programming as Shentel may cablecast on such PEG Access Channels).

# 5.1.12 Return Feed from PEG Origination Facilities:

5.1.12.1. Shentel shall maintain the existing fiber optic links and provide the necessary encoding and decoding equipment and support necessary for the transmission of PEG access video signals from Community Video Center, 1114 Ironbound Road, Williamsburg, Virginia 23188 and Board of Supervisors Video Control Room at 101 Mounts Bay Road, Williamsburg, Virginia 23185or other mutually agreed upon location.

5.1.12.2. At the County's request, if any existing or future origination site designated pursuant to this Section is moved or replaced to a location within the Franchise Area, Shentel shall construct and maintain a new fiber-optic link to the new location, including, without limitation, installing new facilities, moving terminal equipment, and splicing fiber, as necessary. Subject to and except as otherwise provided in Section 5.1.12.4, the cost of installing any new link, including fiber construction and the necessary encoder and decoder required for the transmission of the PEG access video signal, shall be borne by the County. After construction of a new link, Shentel shall bear the cost of maintenance.

5.1.12.3. The Franchisee shall monitor the PEG Access Channels and the fiber optic return links provided pursuant to this Section 5.1.12 for technical quality, and shall ensure that the return links are maintained in accordance with the same technical standards that the Franchisee applies to the Cable System as a whole.

5.1.12.4. Within sixty (60) days after receiving a request from the County for the construction of any of the fiber links required by Section 5.1.12.2 (each, a "PEG Origination Link"), the Franchisee shall provide the County with a detailed written construction estimate of such costs, with sufficient explanation and supporting material to allow the County to verify the accuracy of the Franchisee's calculations. The construction estimate shall consist of the Actual Cost of the requested PEG Origination Link. For purposes of this section, "Actual Cost" means the direct cost to the Franchisee of materials and labor necessary to perform design, installation and construction of the requested PEG Origination Link and related facilities. If requested, the Franchisee shall in good faith discuss the specifics of such estimate and less costly alternatives, if any, with the County.

5.1.12.5. If the County chooses to proceed with the project, The County may direct the Franchisee to construct the PEG Origination Link within twelve (12) months of a written request to proceed with the project, provided that the County or the entity to be served by the proposed PEG Origination Link shall pay the Franchisee the Actual Cost of the PEG Origination Link.

5.1.12.6. After construction of a PEG Origination Link, the Franchisee shall bear the cost of maintenance. Franchisee reserves the right to pass through costs related to PEG Access return line maintenance to Subscribers in accordance with applicable law.

5.1.12.7. If County-owned conduit suitable for the placement of the Franchisee's facilities exists along any portion of a route between a PEG origination facility and the Franchisee's headend, and the County determines that it has conduit capacity available in excess of its likely needs for the foreseeable future, the parties shall meet in good faith to discuss the use of such conduit. Unless otherwise prohibited by law, the Franchisee may agree to use such conduit and the County may make such conduit available to Shentel on a sole-use basis if such use would lower the cost of installation of Franchisee's facilities. If suitable County-owned conduit is available to Shentel on a sole-use basis and the use of such conduit would reduce the cost of construction to serve a PEG origination facility, but Franchisee elects not to use such conduit, any amount that the County or a PEG entity would be required to pay pursuant to Section 5.1.12.5 above shall be reduced by the amount by which the use of suitable County conduit would reduce the total cost of the project.

# 5.2. PEG Grant:

5.2.1. Annual Capital Grant: As of the Effective Date of this Agreement, the amount of the PEG Grant is set at zero cents (\$0.00). If separately approved by the Board of Supervisors and upon providing ninety (90) days written notice to Shentel, Shentel, upon request of the County pursuant to the terms herein, shall provide an annual grant to the County to be used in support of the production of local PEG programming (the "Annual PEG Access Capital Grant"). Such grant may be used by the County, in its sole discretion for (i) PEG access equipment, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment; and (ii) renovation or construction of PEG access facilities.

5.2.2. Amount of Grant: The Annual PEG Access Capital Grant provided by Shentel hereunder may be up to forty-five cents (\$0.45) per month, per Subscriber in the Franchise Area. The Annual PEG Access Capital Grant payment, along with a brief summary of the Subscriber information and any supporting back-up information upon which it is based, shall be delivered to the County within sixty (60) days after the beginning of each calendar year during the Franchise Term. Calculation of the Annual PEG Access Capital Grant will commence with the first calendar month after the Effective Date.

5.3. *Itemization:* To the extent permitted by federal law, Shentel shall be allowed to externalize, itemize or pass through the costs of the Annual PEG Access Capital Grant or any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under

state and federal laws, Shentel may externalize, line-item, or otherwise pass-through interconnection costs to Subscribers.

## 6. FRANCHISE FEES

6.1. *Communications Tax:* Shentel shall comply with the provisions of Section 58.1-645 *et seq.* of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax, as amended (the "Communications Tax"), and Section 6.2 of this Agreement shall not have any effect, for so long as the Communications Tax or a successor state or local tax that would constitute a franchise fee for purposes of 47 U.S.C. § 542, as amended, is imposed on the sale of cable services by Shentel to subscribers in the County.

6.2. Payment of Franchise Fee to County: In the event that the Communications Tax is repealed and no successor state or local tax is enacted that would constitute a franchise fee for purposes of 47 U.S.C. § 542, as amended, and a franchise fee continues to be allowed pursuant to 47 U.S.C. § 542, Shentel shall pay to the County a Franchise fee of five percent (5%) of annual Gross Revenue, or such other amount as may then be allowed under federal law, beginning on the Effective Date of the repeal of such tax (the "Repeal Date"). Beginning on the Repeal Date, the terms of Section 6.2 of this Agreement shall take effect. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than thirty (30) days following the end of subtract that amount in a subsequent quarter, but no later than one hundred twenty (120) days following the close of the calendar year for which such amounts were applicable; such correction shall be documented in the supporting information required under Section 6.2.1.

6.2.1. *Supporting Information:* Within fifteen (15) days after submitting each Franchise fee payment, Shentel shall deliver to the County a brief report in the form of and containing the information required by Exhibit D, prepared by a representative of Shentel, showing the basis for the computation. The County shall have the right to reasonably request further supporting information for each Franchise fee payment.

6.2.2. *Limitation on Franchise Fee Actions*: The period of limitation for recovery of any Franchise fee payable hereunder shall be three years from the date on which payment by Shentel is due.

6.2.3. *Bundled Services*: If Shentel bundles Cable Service with non-Cable Service, Shentel agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the Franchise fee payments under this Agreement. In the event that Shentel or any Affiliate shall bundle, or combine Cable Services (which are subject to the franchise fee) with non-Cable Services (which are not subject to the franchise fee), so that subscribers pay a single fee for more than one class of service or receive a discount on Cable Services, a *pro rata* share of the revenue received for the bundled, or combined services shall, to the extent reasonable, and in a manner consistent with GAAP be allocated to gross revenues for purposes of computing the franchise fee. To the extent there are published charges and it is reasonable, the *pro rata* share shall be computed on the basis of the

published charge for each of the bundled, tied, or combined services, when purchased separately. However, the parties agree that there may be exceptions such as equipment or tariffed telecommunications services that cannot be discounted under state or federal law or regulations are excluded from the bundled allocation obligations in this section.

6.3. *Payment of PEG Access Capital Grant:* Shentel shall provide with each payment of the PEG Access Capital Grant information supporting its calculation of the PEG Access Capital Grant payment, including both a statement of the number of subscribers for any applicable period, and documentation demonstrating the accuracy of the number of subscribers used in the computation. The County shall preserve the confidentiality of such information to the extent permitted by applicable law.

# 7. VIRGINIA COMMUNICATIONS SALES AND USE TAX AND FCC 621 ORDER

7.1 *Complimentary Service:* The County and Franchisee agree that Franchisee's provision of Basic Cable Service and the next highest level of Cable Service generally available to all Subscribers (currently known as TV Essential service, or its successor tier), the equipment needed to receive such services, the connections listed in Section3.3, and the maintenance of the PEG transport links provided pursuant to Section 5.1 are "Complimentary Service." The fiber optic PEG transport links provided pursuant to Section 1 and the channel capacity dedicated for use as the Access Channels are not deemed "Complimentary Service." In the event the Virginia Communications Sales and Use Tax (Va. Code §§ 58.1-645 – 662 ) is found by a court or agency of competent jurisdiction to be a franchise fee as defined by 47 U.S. Code § 542, such Complimentary Service may be terminated by Franchisee, at its sole discretion, upon one hundred twenty (120) days' written notice to the County, subject to the County's right to continue to receive the any or all of the Complimentary Services at a cost not to exceed Franchisee's marginal cost, as provided in Section 7.3.

7.2 *Franchisee Options:* In the event Franchisee is legally permitted, in accordance with applicable law, to offset the value of additional elements of Cable Service against Franchise Fees payable to the County, the Franchisee reserves its rights to do so. Should the Franchisee choose to offset any or all of such Cable Service against Franchise Fees payable to the County, it agrees to provide the County with one hundred twenty (120) days' prior written notice. Such offsets shall be on similar terms and conditions as other localities served by the Franchisee in the Hampton Roads region and where Franchisee is legally authorized to impose said offset.

7.3 *County Options:* The County shall have right to discontinue receipt of all or any portion of Complimentary Service provided by Franchisee in the event Franchisee elects to offset or impose a charge against the County for the value of such services as provided in Section 7.2. The County also shall have the option of (1) requesting that Franchisee apply a nondiscriminatory charge, not to exceed Franchisee's marginal cost of providing the respective Complimentary Service (the "Marginal Cost Charge"), as an offset against its franchise fee payments; or (2) paying Franchisee the Marginal Cost Charge directly. The Franchisee in calculating the Marginal Cost Charge of any Complimentary Service at least sixty (60) days before imposing any such charge, and shall respond promptly to requests for information from the County regarding such calculations and information.

Franchisee and County do not waive any rights under applicable law regarding Complimentary Service.

7.4 FCC 621 Order: In the event the FCC's 2019 Third Report and Order In the Matter of Implementation of Section 621 of the Cable Act is reversed as to the proper treatment of complimentary cable services, whether as a result of a subsequent FCC order, a final non-appealable court decision, or federal legislation, within thirty (30) days of the result becoming final Franchisee will discontinue any charges for Complimentary Service, and provide such services to the County free of charge. Any additional levels of cable service, outlets, or service locations ordered by the County shall continue to be subject to regular non-discriminatory market rates.

# 8. CUSTOMER SERVICE

Franchisee shall be subject to the customer service standards consistent with 47 U.S.C. §§ 76.309, 1602, 1603, 1618, and 1619, as amended. Upon completion of the initial build out as depicted in red on Exhibit C, Franchisee shall at all times thereafter fully comply with the customer service standards set forth in this paragraph 8.

### 8.1. Definitions:

8.1.1. *Complaint*: Any written or verbal contact with Shentel in connection with a subscription or Shentel's Cable System in which a person expresses dissatisfaction with an act, omission, product or service that is (1) within Shentel's control; and (2) requires a corrective measure on the part of Shentel. Notwithstanding the foregoing, any contact from a Subscriber that is resolved in the course of a telephone call so that Shentel does not subsequently have to perform any corrective action shall not be deemed a "Complaint."

8.1.2. *Respond*: Shentel's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.

81.3. *Service Call*: The action taken by Shentel to correct a Service Interruption, or to perform other maintenance, repair, or adjustment requested by a Subscriber (but not including installation), the effect of which is limited to an individual Subscriber.

8.1.4. *Significant Outage*: A Significant Outage shall mean any loss of picture or sound on one or more Channels lasting at least four (4) continuous hours that affects at least two thousand five hundred (2,500) Subscribers in the County.

8.1.5. *Standard Installation*: Installations where the subscriber is within 250 feet of trunk or feeder lines.

8.2. Telephone and Office Availability:

8.2.1. *Local Office:* Shentel shall maintain an office at a convenient location in the James City County region, which shall be open during Normal Business Hours to allow Subscribers to request service, pay bills, exchange equipment, and conduct other business.

8.2.2. *Telephone Inquiries:* Shentel shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Shentel representatives trained and qualified to answer questions related to Cable Service in the Franchise Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries during Normal Business Hours. Shentel representatives shall identify themselves by name when answering this number.

8.2.3. *Shentel's Telephone Number:* Shentel's toll-free telephone numbers will appear on subscriber bills and Shentel's website.

## 8.2.4. Telephone Answering Method:

8.2.4.1.Shentel may at its sole discretion use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

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

8.2.5. *Telephone Answering Standards:* Under Normal Operating Conditions, calls received by Shentel shall be answered within thirty (30) seconds. Shentel shall meet this standard for ninety percent (90%) of the calls it receives at all call centers receiving calls from Subscribers, as measured on a quarterly basis. Measurement of this standard shall include all calls received by Shentel at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting. If a call needs to be transferred, transfer time shall not exceed thirty (30) seconds. This standard shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

8.2.6. *Busy Signals:* Under Normal Operating Conditions, callers to Shentel shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter, as measured on a quarterly basis.

# 8.3. Installations and Service Appointments:

8.3.1. *Compliance with Law:* All installations will be in accordance with applicable law, including but not limited to, appropriate grounding, connection of equipment to ensure

reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of Shentel-supplied equipment and Cable Service.

8.3.2. *Standard Installations:* Standard Installations shall be performed within seven (7) business days after an order is placed. Under Normal Operating Conditions, Shentel shall meet this standard for no less than ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis.

8.3.3. *Time for Performing Service Calls:* Shentel shall perform Service Calls, installations, and disconnects at least during Normal Business Hours. Shentel shall not cancel a service or installation appointment after the close of business on the business day preceding the appointment. Shentel will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless Shentel deems it appropriate to begin earlier by location exception. At Shentel's discretion, Shentel may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends. If at any time an installer or technician believes it impossible to make a scheduled appointment time, an attempt to contact the customer will be made prior to the end time of the appointment window and the appointment scheduled at a time convenient to the customer, if rescheduling is necessary. It is Shentel's burden to prove it met an appointment.

#### 8.4. Service Interruptions and Outages:

8.4.1. *Notice of Unplanned Outage:* If Shentel becomes aware of an unplanned Significant Outage, Shentel shall promptly notify the County of the Significant Outage. The County shall provide Shentel with a single point of contact telephone number and email address to be used by Shentel in notifying the County.

8.4.2. *Planned Outages:* Shentel shall exercise commercially reasonable efforts to limit any planned Significant Outage necessary for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, Shentel may schedule a planned Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after the County and each affected Subscriber have been given fifteen (15) days prior notice of the planned Significant Outage. Notwithstanding the foregoing, Shentel may perform modifications, repairs and upgrades to the System without prior notification between 12.01 a.m. and 6 a.m., which may interrupt service.

8.4.3. *Ability to Respond:* Shentel representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.

8.4.4. *Time for Response:* Under Normal Operating Conditions, Shentel must Respond to a call from a Subscriber regarding a Service Interruption or other service problem within twenty-four (24) hours, including weekends, of receiving the Subscriber's call.

8.4.5. *Completion of Work:* Under Normal Operating Conditions, Shentel shall use best efforts to complete Service Calls within seventy-two (72) hours of the time Shentel commences to Respond to the Service Interruption or other request for a Service Call, not including situations where the Subscriber is not reasonably available for a Service Call.

8.4.6. *Performance Standard:* Under Normal Operating Conditions, Shentel shall meet the standard in Subsection 8.4.5 of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

8.4.7. *Credit for Loss of Service:* Under Normal Operating Conditions, Shentel shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow Shentel to verify the problem if requested by Shentel. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

8.4.8. *Credit for Outage:* Under Normal Operating Conditions, if a Significant Outage affects all Cable Services for more than twenty-four (24) consecutive hours, Shentel shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out. If a Significant Outage occurs during a period when Normal Operating Conditions do not apply, Shentel may exercise its own discretion in deciding whether to issue credits for the Significant Outage. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the Significant Outage. Notwithstanding the foregoing, if Shentel has issued an automatic credit to affected Subscribers but inadvertently fails to issue a credit to one or more Subscribers entitled to the credit, the County shall not find Shentel to be in violation of this requirement if the number of Subscribers who did not receive the credit is *de minimis* and Shentel offers the credit promptly upon being notified of the error.

8.5. *Customer Complaints:* Under Normal Operating Conditions, Shentel shall (i) investigate Subscriber complaints referred by the County within five (5) days; (ii) resolve Subscriber complaints referred by the County within thirty (30) days; (iii) provide a response as to the complaint resolution to the Subscriber; and (iv) provide notice to the County upon resolution of a referred complaint. Shentel shall ensure that all such referred complaints are treated by the responsible Shentel personnel as priority, until they are resolved. Shentel shall notify the County of those matters that necessitate an excess of thirty (30) days to resolve The County may require reasonable documentation to be provided by Shentel to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that Shentel shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.
#### 8.6. *Billing*:

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

8.6.2. *Payment Due Date:* Every Subscriber with a current account balance sending payment directly to Shentel shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

8.6.3. *Notice of Due Date:* A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Section 8.6.2 above.

8.6.4. *Billing Disputes:* Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:

(1) The Subscriber pays all undisputed charges;

(2) The Subscriber provides notification of the dispute to Shentel in writing within five(5) days prior to the due date; and

(3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

It shall be within Shentel's sole reasonable discretion to determine when the dispute has been resolved.

8.6.5. *Billing Complaints:* Under Normal Operating Conditions, Shentel shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

8.6.6. *Contact Information:* Shentel shall provide a toll-free telephone number and address on the bill for Subscribers to contact Shentel.

8.6.7. *Bill Inserts:* Shentel shall forward a copy of any Cable Service related billing inserts or other mailing sent to Subscribers to the County upon written request.

8.6.8. *Method of Payment:* Shentel shall provide all Subscribers with option of paying for Cable Service by such means as credit card, by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Based on credit history, at the option of Shentel, the payment alternative may be limited.

#### 8.7 Deposits, Refunds and Credits:

8.7.1. *Deposits:* Shentel may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to Shentel, or 3) who rent Subscriber equipment from Shentel, so long as such deposits are applied on a non-discriminatory basis and the amounts of such deposits are established in accordance with applicable law.

8.7.2. *Refunds and Credits:* Shentel shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. Shentel shall pay interest on other deposits if required by law.

8.7.3. *Timing of Refunds:* Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

8.7.4. *Timing of Credits:* Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

8.7.5. *Receipt of Payment:* Bills shall be considered paid when appropriate payment is received by Shentel or its authorized agent. Appropriate time considerations shall be included in Shentel's collection procedures in accordance with applicable law to assure that payments due have been received before late notices or termination notices are sent.

### 8.8. Rates, Fees and Charges:

8.8.1. *Late Fees:* Shentel shall not, except to the extent permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Shentel's plant or equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Shentel equipment incorrectly), failure of Subscriber-owned equipment, or by the failure of the Subscriber to take reasonable precautions to protect Shentel's equipment (for example, a dog chew).

8.8.2. *Notice of Late Fee:* Shentel shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

### 8.9. Disconnection / Denial of Service:

8.9.1. *Disconnection:* Shentel shall not terminate Cable Service for nonpayment of a delinquent account unless Shentel mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to

whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

8.9.2. *Restoration of Service:* Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

8.9.3. *Denial of Service:* Nothing in these standards shall limit the right of Shentel to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Shentel's equipment, abusive and/or threatening behavior toward Shentel's employees or representatives, or refusal to provide credit history information or refusal to allow Shentel to validate the identity, credit history and credit worthiness via an external credit agency.

### 8.10. Communications with Subscribers:

8.10.1. *Identification of Shentel Personnel:* All Shentel personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of Shentel shall wear a clearly visible identification card bearing their name and photograph. Shentel shall make reasonable effort to account for all identification cards at all times. In addition, all Shentel representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of Shentel and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Shentel vehicles shall have Shentel's logo plainly visible. The vehicles of those contractors and subcontractors working for Shentel shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to Shentel.

8.10.2. *Contacts with Subscribers:* All contact with a Subscriber or potential Subscriber by a Person representing Shentel shall be conducted in a courteous manner.

8.10.3. *Notice of County's Role in Complaint Process:* Shentel shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by Shentel may be referred to the County.

8.10.4. Form of Notice: All notices identified in this Section shall be by either:

(1) A separate document that is either mailed directly to the customer, included with a billing statement, or included on the portion of the monthly bill that is to be retained by the Subscriber; or

(2) A separate electronic notification.

8.10.5. *Notice of Changes in Rates and Services:* Shentel shall provide reasonable notice to Subscribers and the County of any pricing changes or additional charges (excluding sales discounts, new products or offers) and, subject to the foregoing, any significant changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of Shentel, and Shentel

shall provide a copy of the notice to the County including how and where the notice was given to Subscribers.

8.10.6. Annual Notice to Subscribers: In accordance with applicable law, Shentel shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Section 8.10.5, at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of Shentel:

(1) Products and Cable Service offered;

(2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by Shentel related to Cable Service;

(3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;

(4) Channel positions of Cable Services offered on the Cable System;

(5) Complaint procedures, including the name, address and telephone number of the County, but with a notice advising the Subscriber to initially contact Shentel about all complaints and questions;

(6) Procedures for requesting Cable Service credit;

(7) The availability of a parental control device;

(8) Shentel practices and procedures for protecting against invasion of privacy; and

(9) The address and telephone number of Shentel's office to which complaints may be reported.

Where reasonably possible Shentel shall give the County advance copies of the notices required in this subsection prior to distribution to subscribers if the reason for notice is due to a change that is within the control of Shentel and as soon as possible if not within the control of Shentel.

8.10.7. *Content of Notice of Rate Changes:* Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

8.10.8. *Channel Changes:* Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

8.10.9. *Termination Notices:* Every notice of termination of Cable Service shall include the following information:

(1) The name and address of the Subscriber whose account is delinquent;

(2) The amount of the delinquency for all services billed;

(3) The date by which payment is required in order to avoid termination of Cable Service; and

(4) The telephone number for Shentel where the Subscriber can receive additional information about their account and discuss the pending termination.

### 9. REPORTS AND RECORDS

9.1. Open Books and Records: Upon reasonable written notice to Shentel, the County shall have the right to inspect and copy Shentel's books and records pertaining to Shentel's provision of Cable Service in the Franchise Area, to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Shentel may organize the necessary books and records for appropriate access by the County. Shentel shall not be required to maintain any books and records for Franchise compliance purposes longer than five (5) years. Notwithstanding anything to the contrary set forth herein, Shentel shall not be required to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Franchise Area. Shentel shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551. Books and records shall be accorded confidential treatment to the extent provided by and in accordance with Section 9.4 hereof.

9.1.1. Voluminous Materials. Books and records shall be made available at Shentel's office in the County during Normal Business Hours, or at such other reasonable time and place as the parties may agree, including electronic submission. If any books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then Shentel may request that any inspection take place at some other location, provided that (1) Shentel shall make necessary arrangements for copying documents selected by the County after review; and (2) electronically transmitting said documents to the County.

9.1.2. Audit Provision: The County shall have the right to conduct an audit or review of the books and records of Shentel under the procedures specified in Section 9.1 of this Agreement for purposes of verifying and recomputing any amounts determined to be payable by Shentel to the County under this Agreement, including, without limitation, the PEG Capital Grant. Shentel shall bear the County's reasonable expenses of any such audit or review performed by a qualified, independent third-party expert, up to a maximum of seven thousand five hundred dollars (\$7,500), if such audit or review discloses an underpayment by Shentel of more than three percent (3%) of any quarterly payment and five thousand dollars (\$5,000) or more. The County shall not conduct such an audit or review of Shentel more frequently than once every twenty-four (24) months. The County shall have no more than five (5) years from the time Shentel delivers a payment to initiate an audit or review of that payment pursuant to this Section 9.1.2. In the event that Shentel disputes

any underpayment discovered as the result of an audit or review conducted by the County, the County shall work together with Shentel in good faith to promptly resolve such dispute. The County and Shentel maintain all rights and remedies available at law regarding any disputed amounts.

9.2. Records Required: Shentel shall at all times maintain:

9.2.1. Records of unplanned Significant Outages for a period of four (4) years after occurrence, indicating date, duration, area, cause and the number of Subscribers affected;

9.2.2. Records of service calls for repair and maintenance for a period of four (4) years after resolution by Shentel, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved; and

9.2.3. Records of installation/reconnection and requests for service extension for a period of four (4) years after the request was fulfilled by Shentel, indicating the date of request, date of acknowledgment, and the date and time service was extended.

9.3. *Maps:* Upon fifteen (15) days' written notice, Shentel shall make updated, as-built design maps of the Cable System available for examination by the County at Shentel's regional office, or at another mutually acceptable location. The Franchisee shall also provide the County with updated strand maps of the Cable System at the following times: (i) within thirty (30) days of the Effective Date of this Agreement; (and (ii) annually, within thirty (30) days after written request from the County. Such strand maps shall be provided in a CAD (computer-aided design) or other electronic format approved by the County, such as ESRI or AutoCAD. Maps shall be accorded confidential treatment to the extent provided by and in accordance with Section 9.4 hereof.

9.4. *Proprietary and Confidential Information:* Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Franchise Area. Except as otherwise required by applicable law, including without limitation the Virginia Freedom of Information Act, the County shall treat any information disclosed by Franchisee as confidential and only disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

## 10. INSURANCE AND INDEMNIFICATION

## 10.1. Insurance:

10.1.1. Shentel shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

10.1.1.1. Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for property damage and bodily injury. Such

insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Shentel's Cable Service business in the County.

10.1.1.2. Automobile Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.

10.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the Commonwealth of Virginia.

10.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: one hundred thousand dollars (\$100,000); and (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) employee limit; five hundred thousand dollars (\$500,000) policy limit.

10.1.2. The County shall be designated as additional insured under each of the insurance policies required in this Article 9 except Workers' Compensation and Employers' Liability Insurance.

10.1.3. Shentel shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

10.1.4. All policies shall be issued by companies qualified to write insurance in the Commonwealth of Virginia and which maintain throughout the policy term a general rating of A-VII and a financial size category of "A:X" as determined by AM Best Rating Company.

10.1.5. Shentel shall deliver to the County Certificates of Insurance showing evidence of the required coverage within thirty (30) days after the Effective Date, and upon written request thereafter.

10.2. Indemnification:

10.2.1. Shentel agrees to indemnify, save and hold harmless, and defend the County, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent caused by Shentel's negligent construction, operation, or maintenance of its Cable System, provided that the County shall give Shentel written notice of its obligation to indemnify the County within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Shentel shall not indemnify the County, for any damages, liability or claims resulting from the willful misconduct or negligence of the County, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Shentel in connection with PEG Access Channels or EAS, or the distribution of any Cable Service over the Cable System.

10.2.2. With respect to Shentel's indemnity obligations set forth in Section 10.2.1, Shentel shall provide the defense of any claims brought against the County by selecting counsel of Shentel's choice to defend the claim, subject to the consent of the County, which shall not

unreasonably be withheld. Nothing herein shall be deemed to prevent the County from cooperating with Shentel and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the County, Shentel shall have the right to defend, settle or compromise any claim or action arising hereunder, and Shentel shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the County and the County does not consent to the terms of any such settlement or compromise, Shentel shall not settle the claim or action but its obligation to indemnify the County shall in no event exceed the amount of such settlement.

10.2.3. The County shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the County for which the County is legally responsible, subject to any and all defenses and limitations of liability provided by law. Shentel shall not be required to indemnify the County for acts of the County which constitute willful misconduct or negligence on the part of the County, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

### 11. TRANSFER OF FRANCHISE

11.1 *Approval Required.* No Transfer of the Franchise shall occur without the prior consent of the Board of Supervisors, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No application for the approval of a Transfer shall be approved by the Board unless the transferee agrees in writing that it will abide by and accept all terms of this agreement, and that it will assume the obligations, liabilities and responsibility for all acts and omissions, known and unknown, of the incumbent Shentel under this agreement, for all purposes, including renewal, unless the Board, in its discretion, expressly waives all or part of this requirement.

11.2. *No Consent Required*. No such consent shall be required, however, for the following:

11.2.1. A transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Shentel in the Franchise or Cable System in order to secure indebtedness; or

11.2.2. Transfer of an ownership or other interest in Shentel to the parent of Shentel or to another Affiliate of Shentel; transfer of an interest in the Franchise or the rights held by Shentel under the Franchise to the parent of Shentel or to another Affiliate of Shentel; any action which is the result of a merger of the parent of Shentel; or any action which is the result of a merger of another Affiliate of Shentel.

11.3. *Preservation of County's Rights*. In the case of any Transfer, regardless of whether consent of the Board of Supervisors is required, the transferee shall assume the obligations, liabilities and responsibility for all acts and omissions, known and unknown, of the incumbent Shentel under this agreement, for all purposes, including renewal, and agree to be bound by the terms of this Franchise.

11.4 Approval does not constitute waiver of rights. Approval by the Board of a Transfer, or consummation of a Transfer permitted by Section 11.2, does not constitute a waiver or release of any of the rights of the Board under this agreement against the transferor franchisee, whether arising before or after the date of the Transfer.

## 12. <u>RENEWAL OF FRANCHISE</u>

12.1. *Federal Law:* The County and Shentel agree that any proceedings undertaken by the County that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

12.2. *Needs Assessment:* The County agrees that if the County issues a request for a proposal under 47 U.S.C. § 546(b), the County shall provide Shentel with copies of any assessments of future cable-related needs and interests or the past performance of Shentel that were relied upon by the County in preparing the request for proposal.

12.3. *Informal Renewal:* Notwithstanding anything to the contrary set forth herein, Shentel and the County agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the County and Shentel may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the County may grant a renewal thereof.

12.4. *Consistent with Law:* Shentel and the County consider the terms set forth in this Article 12 to be consistent with the express provisions of 47 U.S.C. § 546 and Virginia Code Section 15.2-2108.30.

### 13. ENFORCEMENT AND TERMINATION OF FRANCHISE

13.1. *Notice of Violation*: If at any time the County believes that Shentel has not complied with the terms of the Franchise, the County shall make a good faith effort to informally discuss the matter with Shentel.

13.2. Shentel's Right to Cure or Respond: Before seeking enforcement of the Franchise, the County shall notify Shentel in writing of the nature of the alleged noncompliance (the "Noncompliance Notice"). Shentel shall have twenty (20) business days from receipt of the Noncompliance Notice to: (i) respond to the County, if Shentel contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such twenty (20) day period, initiate reasonable steps to remedy such noncompliance and notify the County of the steps being taken and the date by which cure is projected to be completed. Upon cure of any noncompliance, County shall provide written confirmation that such cure has been effected. The foregoing 20-day cure period shall not apply to customer service obligations measured on a quarterly basis ("Quarterly Standards"), which shall be governed by Section 13.3.

13.3. Quarterly Standards: Upon written request from the County, no later than thirty (30) days after the end of each calendar quarter, the Franchisee shall provide the County a written report demonstrating the Franchisee's level of compliance with each of the Quarterly Standards. If the Franchisee fails to meet any Quarterly Standard in a calendar quarter, the County shall have the right to begin the process of assessing liquidated damages pursuant to Section 13.4.4 by sending a Noncompliance Notice notifying the Franchisee that the Franchisee failed to comply with the Quarterly Standard in question, in order to inform the Franchisee that the Franchisee is not in compliance with such Quarterly Standard. Receipt of the Noncompliance Notice shall be deemed opportunity to cure. Upon submitting any report to the County that demonstrates that the Franchisee has not complied with a Quarterly Standard, or within fifteen (15) days after receipt of a Noncompliance Notice, the Franchisee may submit information to the County describing any extenuating circumstances related to any such noncompliance, and may request that the County waive liquidated damages, as provided in Section 13.6. If the Franchisee fails to meet the same Quarterly Standard in the immediately succeeding calendar quarter, the County shall have the right to assess liquidated damages pursuant to Section 13.4.4 by sending a Notice of Assessment in accordance with Section 13.8.

13.4. *Enforcement*: Subject to applicable federal and state law and the terms and conditions of this Agreement, including Section 13.3, the County may apply one of the following remedies if the County determines that Shentel is in default of any provision of this Franchise:

13.4.1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

13.4.2. Commence an action at law for monetary damages or seek other equitable relief; or

13.4.3. In the case of a default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 13.10; or

13.4.4. Assess and collect liquidated damages as set forth in Section 13.5 of this

13.4.5. Apply any other remedy provided for in this Agreement or applicable federal, state or local laws.

Agreement; or

13.5. *Liquidated Damages*: Because Shentel's failure to comply with provisions of this Franchise may result in injury to the County, because it may be difficult to quantify the extent of such injury, and in full satisfaction for the term of this Agreement of the obligations set forth in this Agreement, the County and Shentel agree that, subject to the procedures in Section 13.8, liquidated damages as set forth herein may be assessable against Shentel for certain violations of provisions of this Franchise. On an annual basis from the Effective Date of this Franchise, liquidated damages in total will not exceed ten thousand dollars (\$10,000). Shentel hereby waives any defense as to the validity of any liquidated damages stated in this Franchise Agreement on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual

damages. The liquidated damages shall not apply when caused by Force Majeure events and shall only apply from the date of the Notice of Assessment as provided for in Section 13.8.

13.5.1. Failure to materially comply with reporting requirements set forth in Section 9 of this Agreement: Two hundred dollars (\$200) per day for each day the violation continues.

13.5.2. Failure to materially comply with requirements related to (i) the technical quality and reliability of the PEG channels, including without limitation downstream signal quality and reliability of return feeds from PEG origination sites to the headend, and (ii) provision of channel capacity for use as PEG channels: Two hundred fifty dollars (\$250) for each violation for each day the violation continues.

13.5.3. Failure to materially comply with Customer Service Standards set forth in Section 8 of this Agreement, other than Quarterly Standards: One hundred dollars (\$100) for the first violation; two hundred fifty dollars (\$250) for any violation within 12 months after the first violation; and five hundred dollars (\$500) for any violation within 12 months after the second or any subsequent violation. Liquidated damages shall not be paid where the Subscriber is otherwise compensated by Franchisee for the alleged non-compliance.

13.5.4. For violation of a Quarterly Standard: One thousand five hundred dollars (\$1500);

13.5.5. For violation of applicable FCC technical standards: Two hundred fifty dollars (\$250) per day for each for each day the violation continues;

13.5.6. For any other material violation of this Agreement for which actual damages may not be ascertainable: Two hundred dollars (\$200) per day for each violation for each day the violation continues.

13.6. *Waiver:* The County may reduce or waive any of the above-listed liquidated damages if the County determines that such waiver is in the best interests of the County.

13.7. *Single Violation*: For purposes of any liquidated damages assessments, all similar violations or failures from the same factual events affecting multiple Subscribers shall be assessed as a single violation, and a violation or a failure may only be assessed under any single one of the above-referenced categories.

13.8. Assessment of Liquidated Damages: In order to assess the liquidated damages set forth herein, the County, following provision to Shentel of a written Noncompliance Notice as set forth in Section 13.2 or Section 13.3, and the expiration of applicable cure periods, shall issue to Shentel, by certified mail or other comparable means, a notice of intention to assess liquidated damages ("Notice of Assessment"). The Notice of Assessment shall set forth the basis of the assessment, and shall inform Shentel that liquidated damages will be assessed from the date of the notice. Unless the County indicates to the contrary, or the violation is for a Quarterly Standard, liquidated damages shall be assessed beginning with the date on which the County sent the Notice of Assessment and continuing thereafter until such time as the violation ceases as determined by the County. Payment by Shentel of any assessment of liquidated damages shall be due thirty (30) days

after the date of the Notice of Assessment. If Shentel objects to the Notice of Assessment, Shentel shall have the right to challenge the assessment in the Circuit Court for James City County, or the United States District Court for the Eastern District of Virginia, and in no other courts, in which case the assessment will be stayed until the issue is decided by such court, or the parties resolve the matter in some other fashion.

#### 14. MISCELLANEOUS PROVISIONS

14.1. Actions of Parties: In any action by the County or Shentel that is mandated or permitted under the terms hereof, such party shall act in a reasonable and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall be provided in good faith and not withheld, delayed or conditioned in a manner inconsistent with applicable law.

14.2. *Binding Acceptance*: This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

14.3. *Preemption*: In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the County.

14.4. *Force Majeure*: Shentel shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

14.5. *Notices*: Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, or sent via recognized national overnight courier service to the addressees below. Notwithstanding the foregoing, notices required by Sections 8.5, 8.10.5, 8.10.6, or 8.10.8 may be sent via electronic mail. Each party may change its designee by providing written notice to the other party.

14.5.1. Notices to Shentel shall be mailed to:

Industry Affairs & Regulatory Shenandoah Cable Television, LLC 500 Shentel Way Edinburg, VA 22824

14.5.2. Notices to the County shall be mailed to:

County Administrator James City County P.O. Box 8784 Williamsburg, Virginia 23187-8784

with a copy to:

County Attorney P.O. Box 8784 Williamsburg, Virginia 23187-8784

14.6. *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Shentel and the County, and it supersedes all prior or contemporaneous agreements, representations or understanding (whether written or oral) of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

14.7. *Amendments*: Amendments to this Franchise shall be mutually agreed to in writing by the parties.

14.8. *Captions*: The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.9. *Severability*: If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

14.10. *Recitals*: The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.11. *Independent Review*: The County and Shentel each acknowledge that they have received independent legal advice in entering into this Agreement.

14.12. *No Third Party Beneficiary:* Nothing in this Agreement is intended to confer third-party beneficiary status on any member of the public, Person or private entity not a party to this Franchise Agreement and any such member of the public, Person or private entity shall not have third party status hereunder to enforce the terms of this Franchise.

## [SIGNATURE PAGE FOLLOWS]

AGREED TO THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.

# **County of James City, Virginia**

By: \_\_\_\_\_

County Administrator

Approved as to Form:

County Attorney, County of James City

# SHENANDOAH CABLE TELEVISION, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

# EXHIBITS

Exhibit A: County Buildings to be Provided Free Cable Service Exhibit B: PEG Channel Assignments Exhibit C: Priority Buildout Map

# EXHIBIT A

# LOCAL GOVERNMENT BUILDINGS TO BE PROVIDED COURTESY CABLE SERVICE

Location	Address	<b>Current DTAs</b>
Jcc / Mounts Bay	101 Mounts Bay Rd	2 DTA
Jamestown High School	3751 John Tyler Hwy	0 DTA
Wjcc School Board-Jcc	117 Ironbound Rd	4 DTA
Jcc / Berkely Studio	1114 Ironbound Rd	12 DTA
Jcc Fleet	103 Tewning Rd	4 DTA
James City County	119 Tewning Rd	7 DTA
Wjcc School Board-Jcc	117 Ironbound Rd	4 DTA
Williamsburg-James City County	101 Mounts Bay Rd	4 DTA
James City County Recreation	5301 Longhill Rd	52 DTA
Police Dispatch Jcc	3127 Forge Rd	21 DTA
Williamsburg/James City County Emergency Communication	5201 Monticello Ave	11 DTA
Center	3131 Forge Rd	5 DTA
Wata Main Office	7239 Pocahontas Trl	1 DTA
James City County Police	4600 Opportunity Way	12 DTA
James City County - Fire Admin	5077 John Tyler Hwy	9 DTA
James City County / Human	5249 Olde Towne Rd	8 DTA
Jcc / Fire Station 4	5312 Olde Towne Rd	4 DTA
James City Fire Station 3	5077 John Tyler Hwy	17 DTA
James City County / Government	101 Mounts Bay Rd	9 DTA
James City County Parks & Rec.	5300 Palmer Ln	2 DTA
James City County/ Va		
Department	4095 Ironbound Rd	4 DTA
James City County - Government	101 Mounts Bay Rd	4 DTA
Jcc - County Complex	101 Mounts Bay Rd	1 DTA
Jcc - Master	5340 Palmer Ln	1 DTA
Jcc - Master	5320 Palmer Ln	3 DTA
Jcc - Williamsburg Probation		
And	5244 Olde Towne Rd	1 DTA
Abram Frink Jr. Community		
Center	8901 Pocahontas Trl	4 DTA
James City County Recreation	5301 Longhill Rd	21 DTA
Police Dispatch Jcc	3127 Forge Rd	7 DTA
Jcc - Fire Station 2	8421 Pocahontas Trl	6 DTA
Jcc / Fire Station 5	3201 Monticello Ave	8 DTA
James City County-Thalhiemer		
Bld	4093 Ironbound Rd	1 DTA
Jcc Jcsa Water Treatment	4321 John Tyler Hwy	12 DTA

Jcc - Fire Station 1 (New)	3135 Forge Rd	5 DTA
Williamsburg/James City County	5201 Monticello Ave	4 DTA
Emergency Communication		
Center	3131 Forge Rd	52 DTA
James City County Police	4600 Opportunity Way	12 DTA

# EXHIBIT B

# **PEG CHANNEL ASSIGNMENTS**

James City County Government Channel – Channel 46, 1046

James City County Public School Channel – Channel 47, 1047

James City County Public Access Channel – Channel 48, 1048



EXHIBIT C PRIORITY BUILDOUT MAP

## **ITEM SUMMARY**

DATE:	10/12/2021
TO:	The Board of Supervisors
FROM:	Adam R. Kinsman, County Attorney
SUBJECT:	Resolution to Authorize the Initiation of Condemnation Proceedings for the Clara Byrd Baker Elementary Safe Routes to School Project

# **ATTACHMENTS:**

	Description		Туре
D	memo		Cover Memo
D	res		Resolution
<b>REVIEWERS:</b>			
Department	Reviewer	Action	Date
Attorney	Kinsman, Adam	Approved	9/21/2021 - 10:26 AM
Publication Management	Pobiak, Amanda	Approved	9/21/2021 - 11:10 AM
Legal Review	Kinsman, Adam	Approved	9/21/2021 - 2:34 PM
Board Secretary	Fellows, Teresa	Approved	9/22/2021 - 3:09 PM
Board Secretary	Rinehimer, Bradley	Approved	9/23/2021 - 7:06 AM
Board Secretary	Fellows, Teresa	Approved	9/27/2021 - 10:05 AM

## **MEMORANDUM**

DATE:	October 12, 2021
TO:	The Board of Supervisors
FROM:	Adam R. Kinsman, County Attorney Paul D. Holt, III, Director of Community Development and Planning
SUBJECT:	Authorization for Condemnation

James City County (the "County") is locally administering the Clara Byrd Baker Elementary School Safe Routes to School Project (the "Project") along Ironbound Road, further identified as State Project No. EN18-047-723, RW201 and Federal Project No. TAP-5A04 (074). The Project will include many improvements to the corridor, including a Sidewalk along John Tyler Highway from 0.1 mile west of Ironbound Road to Ironbound Road. A pedestrian actuated crosswalk will be added on the western leg of the John Tyler Highway and Ironbound Road intersection. Additionally, there will be crosswalk modifications and installation of a sidewalk at the entrance in the interior of Clara Byrd Baker Elementary School and a sidewalk along Ironbound Road from 0.05 mile west of Village Park Drive to Village Park Drive.

The property located at 3109 Ironbound Road, further identified as James City County Real Estate Tax Map No. 4710100061 (the "Property") is located along the Project route and is owned by Ms. Virginia Pressey Banks, Ms. Pearline Pressey Williams, and Mr. Jerry N. Pressey (collectively, the "Owners"). Beginning in September 2020, the County has attempted to purchase a 1,501-square-foot permanent easement (the "Easement") from the Owners. Due to the location of the Property, acquisition of the Easement is necessary to begin the Project. The Easement was valued at a total of \$1,425.36, and both Virginia Banks and Jerry Pressey have informally agreed to sell their respective 1/3 interest in the Easement area for \$1,000 each, plus an additional \$500 to Mr. Pressey to compensate for the expected loss of some recently-planted trees on the Property. To date, County staff have had several productive conversations with Mr. and Mrs. Williams; however, they have yet to agree to sell their 1/3 interest in the Easement area and have stopped returning telephone calls. Further delay will put the Project in jeopardy.

Adoption of the attached resolution will authorize initiation of condemnation proceedings of the interest in the Easement area held by the Owners. In the interim, staff will continue to attempt to formalize the agreement with Ms. Banks and Mr. Pressey and to reestablish contact with Ms. Williams.

ARK/PDH/ap Condmn3109Irnbd-mem

Attachment

## **RESOLUTION**

#### RESOLUTION TO AUTHORIZE INITIATION OF CONDEMNATION PROCEEDINGS AND

### USE OF "QUICK TAKE"PROCEDURES FOR ACQUISITION OF PROPERTY AND

#### INTERESTS IN PROPERTY FOR THE CLARA BYRD BAKER ELEMENTARY

#### SCHOOL SAFE ROUTES TO SCHOOL PROJECT

- WHEREAS, on November 14, 2017, the Board of Supervisors of James City County, Virginia (the "Board") approved the plans, specifications, design elements, and estimated cost for the construction of a transportation alternatives program project to be administered by James City County (the "County") known as the Clara Byrd Baker Elementary School Safe Routes to School Infrastructure Project (the "Project") and granted authority for the County Administrator to execute project agreements for the Project; and
- WHEREAS, on December 11, 2018, the Board appropriated \$361,949 for the Project; and
- WHEREAS, in order to accomplish the Project it is necessary for the County to acquire interest in a permanent easement (the "Easement") shown and described on the survey entitled "RW Plans," sheet number 4RW, made by Timmons Group, last revised on October 6, 2020 and dated October 9, 2020; and
- WHEREAS, the Project is for a public use as it provides for the improvement of the public streets and roads that will be constructed in the Right- of- way to be turned over to the Virginia Department of Transportation for maintenance in its secondary system of state highways (the "Public Use"); and
- WHEREAS, there are approximately 1,501 square feet for a permanent easement for public street purposes on land belonging to Ms. Virginia Pressey Banks, Ms. Pearline Pressey Williams, and Mr. Jerry N. Pressey (collectively, the "Owners") located at 3109 Ironbound Road and further identified as James City County Real Estate Tax Map No. 4710100061 (the "Property"); and
- WHEREAS, the specific portion of the Property required for the Project is depicted as "Prop. Perm. Sidewalk Easement" on the Owners' Property shown on the survey entitled "RW Plans," sheet number 4RW, made by Timmons Group, last revised on October 6, 2020 and dated October 9, 2020 (the "Plat"); and
- WHEREAS, the specific portion of the Property required for the Project, as shown on the Plat, shall hereinafter be referred to as the Subject Property; and
- WHEREAS, condemnation of the Subject Property is necessary pursuant to Virginia Code Section 15.2-1903. A because the County and the Owners cannot agree on the terms of the County's purchase of the Subject Property; and
- WHEREAS, a public hearing was held pursuant to Virginia Code Section 15.2-1903(B) prior to adoption of this Resolution; and

- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia:
  - 1. The Board has determined that the construction of the Project serves a Public Use as defined in Virginia Code §1-219.1, specifically as it provides for the improvement of the public streets and roads, and the Public Use is hereby approved.
  - 2. The Board has determined that a public necessity exists for the acquisition of the Subject Property, specifically the Subject Property is essential and necessary for the completion of the Project as shown on the approved Construction Plans.
  - 3. The Board hereby declares the intention to enter upon the Subject Property and take the Subject Property, as shown on the Plats, for use on the Project.
  - 4. The Board has offered compensation to Ms. Virginia Pressey Banks, Ms. Pearline Pressey Williams, and Mr. Jerry N. Pressey in the amount of \$1,000 each, plus an additional \$500 for Mr. Pressey to compensate for the loss of recently-planted trees, as the easement is necessary to construct the Project. The offer has been tentatively accepted by Virginia Pressey Banks and Jerry N. Pressey, but has been not been accepted by Pearline Pressey Williams.
  - 5. The Board hereby declares pursuant to Virginia Code Section 15.2-1905 (c) that it is necessary to enter upon and take the Subject Property prior to or during the condemnation proceeding in order to keep construction of the Project on schedule and to avoid increased costs due to Project delays.
  - 6. The County Attorney is hereby authorized and directed, on behalf of the Board, to initiate judicial proceedings (and take other steps necessary) to acquire Ms. Virginia Pressey Banks, Ms. Pearline Pressey Williams, and Mr. Jerry N. Pressey's interest in the Subject Property for the Public Use by condemnation, in accordance with Virginia Code §§15.2-1900, et seq., and §§25.1-200, et seq., including, if applicable, conducting the condemnation proceedings in accordance with the procedures set forth in Virginia Code §§25.1-300 et seq. County staff is hereby authorized to pay the compensation set forth in Paragraph 4 above in the form of a certificate of take to be filed with the circuit court in accordance with the requirements of Virginia Code §§25.1-300 et seq.
  - 7. This Resolution shall take effect upon passage.

	Michael J. Hipple Chairman, Board of Supervisors					
ATTEST:	VOTES					
		AYE	NAY	ABSTAIN	ABSENT	
	SADLER					
Teresa J. Fellows	ICENHOUR					
Deputy Clerk to the Board	LARSON					
	MCGLENNON					
	HIPPLE					

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of October, 2021.

Condmn3109Irnbd-res

#### **ITEM SUMMARY**

DATE:	9/14/2021
TO:	The Board of Supervisors
FROM:	Michael Woolson, Section Chief - Resource Protection
SUBJECT:	Appeal of Notice of Violation, 5032 River Drive

## **ATTACHMENTS:**

Description	Туре
Memorandum	Cover Memo
Resolution to Affirm ESC Violation	Resolution
Resolution to Affirm SWM Violation	Resolution
Resolution to Reverse ESC Violation	Resolution
Resolution to Reverse SWM violation	Resolution
Figure 1. June 23, 2017	Backup Material
Figure 2. July 2, 2017	Backup Material
Figure 3. September 15, 2017	Backup Material
Figure 4. September 15, 2017	Backup Material
Figure 5. October 17, 2020	Backup Material
Figure 6. May 31, 2021	Backup Material
Figure 7. June 18, 2021	Backup Material
Figure 8. June 21, 2021	Backup Material
Figure 9. June 23, 2021	Backup Material
Figure 10. July 1, 2021	Backup Material
Figure 11. July 1, 2021	Backup Material
Exhibit A. Sensitive Area Activity Application, June 28, 2017	Backup Material
Exhibit B. : The Structures Group, forensic review and structural design of retaining wall, June 19, 2017	Backup Material
Exhibit C. ECS slope evaluation, August 3, 2001	Backup Material
Exhibit D: Building Permit application, June 21, 2017	Backup Material
Exhibit E: Building Permit Final, December 8, 2017	Backup Material
	Memorandum Resolution to Affirm ESC Violation Resolution to Affirm SWM Violation Resolution to Reverse ESC Violation Resolution to Reverse SWM violation Figure 1. June 23, 2017 Figure 2. July 2, 2017 Figure 3. September 15, 2017 Figure 4. September 15, 2017 Figure 5. October 17, 2020 Figure 6. May 31, 2021 Figure 7. June 18, 2021 Figure 8. June 21, 2021 Figure 9. June 23, 2021 Figure 10. July 1, 2021 Figure 10. July 1, 2021 Exhibit A. Sensitive Area Activity Application, June 28, 2017 Exhibit B. : The Structures Group, forensic review and structural design of retaining wall, June 19, 2017 Exhibit C. ECS slope evaluation, August 3, 2001 Exhibit D: Building Permit application, June 21, 2017 Exhibit E: Building Permit Final,

# **REVIEWERS:**

Department	Reviewer	Action	Date
Engineering & Resource Protection	Small, Toni	Approved	8/30/2021 - 9:10 AM

Development Management Publication Management Legal Review Board Secretary Board Secretary Board Secretary Holt, Paul Daniel, Martha Kinsman, Adam Fellows, Teresa Purse, Jason Purse, Jason Approved Approved Approved Approved Approved Approved 8/30/2021 - 10:53 AM 8/30/2021 - 10:57 AM 8/31/2021 - 9:19 AM 9/1/2021 - 9:06 AM 9/7/2021 - 7:40 AM 9/7/2021 - 7:42 AM

# **MEMORANDUM**

DATE:	October 12, 2021
TO:	The Board of Supervisors
FROM:	Michael D. Woolson, Section Chief, Resource Protection Elizabeth Parman, Assistant County Attorney
SUBJECT:	Appeal of Notice of Violation for Land Disturbing, Erosion and Sediment Control, and Stormwater Management Ordinance Violations, dated June 28, 2021 - 5032 River Drive

Mr. Gregory S. Bean filed an appeal to the James City County Board of Supervisors (the "Board") on July 28, 2021, on behalf of Mr. Danny Patterson (the "Owner"). The Owner is appealing the administrative decision that there are violations of County Code Chapter 8 - Erosion and Sediment Control Ordinance ("Ordinance") at 5032 River Drive (the "Property") because the permit requirements outlined in Section 8-4 and Section 8-22 of the James City County Code have not been met.

Mr. Gregory S. Bean, Esq. represents Mr. Patterson in this matter.

Mr. Bean appeared at the September 14, 2021 Board of Supervisors meeting to request a one month deferral which was granted.

Pursuant to James City County Code Section 8-8 and Section 8-32, the Board of Supervisors shall hear appeals of administrative decisions. In reviewing the agent's actions, the Board of Supervisors shall consider evidence and opinions presented by the aggrieved applicant and the County agent. After considering the evidence and opinions, the Board of Supervisors may affirm, reverse, or modify the decision of the County agent. The Board of Supervisors' decision shall be final, subject only to review by the circuit court of James City County.

#### **Background Information**

On June 21, 2021, staff received a phone call from the Virginia Marine Resources Commission (VMRC) about a potential navigation hazard in Diascund Creek due to some trees in the water. Staff conducted a field investigation on June 21, 2021, and discovered that the hillside between the existing house located at 5032 River Drive and Diascund Creek had collapsed sending debris into the creek. The hillside collapse appeared to affect 5030, 5032, and 5034 River Drive, an area of approximately 6,000 square feet. In the ensuing office investigation, staff was not able to locate the submittal of any plan or permit showing the work to be done at 5032 River Drive. After talking to neighbors, it was determined that approximately 30 to 50 dump truck loads of dirt were delivered and spread out in the rear yard with the understanding that it was intended to fill in holes from a recently removed deck.

On June 28, 2021, staff sent a Notice of Violation to Mr. Patterson that outlined the nature of the violations on the property. Specifically, the work caused a global rotational slope failure in the Resource Protection Area (RPA). Neither Mr. Patterson nor his contractor submitted an erosion and sediment control plan or applied for a land disturbing permit as required by County Code Chapter 8.

### History

In 2017, Mr. Patterson applied for a Chesapeake Bay Preservation Waiver (CBE-17-095) to allow for the construction of a retaining wall to help stabilize the structural integrity of the existing home. He also

Appeal of Notice of Violation for Land Disturbing, Erosion and Sediment Control, and Stormwater Management Ordinance Violations, dated June 28, 2021 - 5032 River Drive October 12, 2021 Page 2

submitted an erosion and sediment control plan (E&S-028-17) and received a building permit (B17-2037). The retaining wall received final building approval on December 8, 2017. When E&S-028-17 was approved, it was determined that a land disturbing permit was not required because the extent to the work was less than 2,400 square feet.

In 2001, Mr. Patterson commissioned ECS Consulting Engineers to do a slope stability analysis. The report was supplied to the County on June 28, 2017 as supporting documentation for the justification of a retaining wall in the Chesapeake Bay Preservation Ordinance Sensitive Area Activity Application. The results of this slope stability analysis showed that a rotational slope failure was possible.

The retaining wall built in 2017 was removed at some point in time prior to the slope failure of June 21, 2021. There are no records that Mr. Patterson applied for a demolition permit to remove the retaining wall or the deck on the back of the house.

## **Staff Findings**

Staff has reviewed the appeal and associated documents and offers the following information for the Board's consideration.

- 1. Mr. Danny Patterson is the current owner of the Property located at 5032 River Drive.
- 2. On June 21, 2021, Mr. Patterson hired a contractor to fill in a portion of his rear yard, the entirety of which is in the RPA.
- 3. At approximately 3:30 p.m. on June 21, 2021, the slope collapsed due to the extra weight that had been placed on it over the course of the day. The slope failure affected neighboring properties and resulted in land disturbance of approximately 6,000 square feet. Staff received a call from the VMRC at approximately 4:30 p.m. relaying concerns about navigation hazards in Diascund Creek.
- 4. Neither Mr. Patterson nor his contractor applied for or received any County approvals for the work that was done. He did not submit an erosion and sediment control plan as required by County Code Section 8-4 and he did not apply for a land disturbing permit as required by County Code Section 8-22. Mr. Patterson previously applied for permits for a retaining wall completed in 2017.

### Issues to be Decided by the Board

- 1. Whether Mr. Patterson violated County Code Section 8-4 for failing to submit an erosion and sediment control plan for land disturbing activity.
- 2. Whether Mr. Patterson violated County Code Section 8-22 for failing to obtain a stormwater (land disturbing) permit.

MDW/EP/md AppViol-5032RvrDr-mem

Attachments:

1. Figures Figure 1. Picture, June 23, 2017 Figure 2. Picture, July 2, 2017 Appeal of Notice of Violation for Land Disturbing, Erosion and Sediment Control, and Stormwater Management Ordinance Violations, dated June 28, 2021 - 5032 River Drive October 12, 2021 Page 3

Figure 3. Picture, September 15, 2017
Figure 4. Picture, September 15, 2017
Figure 5. Picture, October 17, 2020
Figure 6. Picture, May 31, 2021
Figure 7. Picture, June 18, 2021
Figure 8. Picture, June 21, 2021
Figure 9. Picture, June 23, 2021
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Figure 11. Picture, July 1, 2021
Exhibits
Exhibit A: Sensitive Area Activity Application, June 28, 2017
Exhibit B: The Structures Group, forensic review and structural design of retaining wall, June 19, 2017

Exhibit C: ECS slope evaluation, August 3, 2001

Exhibit D: Building Permit application, June 21, 2017

Exhibit E: Building Permit Final, December 8, 2017

## **RESOLUTION**

#### AFFIRMING THE EROSION AND SEDIMENT CONTROL VIOLATION

#### AT 5032 RIVER DRIVE

- WHEREAS, Mr. Gregory Bean, Esq., on behalf of Mr. Danny Patterson ("Appellant"), has appeared before the Board of Supervisors of James City County (the "Board") on October 12, 2021, to appeal a Notice of Violation issued on June 28, 2021, to the Appellant for violations of County Code Chapter 8, Erosion and Sediment Control Ordinance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 0930300007 and further identified as 5032 River Drive (the "Property"); and
- WHEREAS, the Board, pursuant to County Code Section 8-8, has listened to the arguments presented by the Appellant and by the County agent and has carefully considered all evidence entered into the record.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, by a majority vote of its members affirms the Notice of Violation issued to Mr. Danny Patterson on June 28, 2021, and finds that Mr. Danny Patterson is in violation of County Code, Chapter 8, Article I, Erosion and Sediment Control Section 8-4.
- NOW, THEREFORE, BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, encourages the parties to reach a settlement agreement to abate the violation.
- NOW, THEREFORE, BE IT FINALLY RESOLVED that the Board of Supervisors of James City County, Virginia, urges the County Attorney's Office to seek the maximum penalties allowed by the County Code if this matter is brought before the Circuit Court.

Michael J. Hipple Chairman, Board of Supervisors

ATTEST:		VOTE	S		
		AYE	NAY	<b>ABSTAIN</b>	<b>ABSENT</b>
	SADLER				
Teresa J. Fellows	ICENHOUR				
Deputy Clerk to the Board	LARSON				
Deputy Clerk to the Board	MCGLENNON				
	HIPPLE				

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of October, 2021.

AFFESCViol-5032RvrRd-res

## <u>**RESOLUTION**</u>

#### AFFIRMING THE STORMWATER MANAGEMENT VIOLATION AT 5032 RIVER DRIVE

- WHEREAS, Mr. Gregory Bean, Esq., on behalf of Mr. Danny Patterson ("Appellant"), has appeared before the Board of Supervisors of James City County (the "Board") on October 12, 2021, to appeal a Notice of Violation issued on June 28, 2021, to the Appellant for violations of County Code Chapter 8, Erosion and Sediment Control Ordinance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 0930300007 and further identified as 5032 River Drive (the "Property"); and
- WHEREAS, the Board, pursuant to County Code Section 8-32, has listened to the arguments presented by the Appellant and by the County agent and has carefully considered all evidence entered into the record.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, by a majority vote of its members affirms the Notice of Violation issued to Mr. Danny Patterson on June 28, 2021, and finds that Mr. Danny Patterson is in violation of County Code, Chapter 8, Article II, The Virginia Stormwater Management Program, Section 8-22.
- NOW, THEREFORE, BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, encourages the parties to reach a settlement agreement to abate the violation.
- NOW, THEREFORE, BE IT FINALLY RESOLVED that the Board of Supervisors of James City County, Virginia, urges the County Attorney's Office to seek the maximum penalties allowed by the County Code if this matter is brought before the Circuit Court.

		Michael J. Chairman,	· ·	Supervisors	_
ATTEST:		VOTES	5		
		AYE	NAY	<u>ABSTAIN</u>	ABSENT
	SADLER				
Teresa J. Fellows	ICENHOUR				
Deputy Clerk to the Board	LARSON				
Deputy Clerk to the Board	MCGLENNON				
	HIPPLE				

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of October, 2021.

#### AffSWMViol-5032RvrDr-res

## <u>**RESOLUTION**</u>

#### REVERSING THE EROSION AND SEDIMENT CONTROL VIOLATION

#### AT 5032 RIVER DRIVE

- WHEREAS, Mr. Gregory Bean, Esq., on behalf of Mr. Danny Patterson ("Appellant"), has appeared before the Board of Supervisors of James City County (the "Board") on October 12, 2021, to appeal a Notice of Violation issued on June 28, 2021, to the Appellant for violations of County Code Chapter 8, Erosion and Sediment Control Ordinance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 0930300007 and further identified as 5032 River Drive (the "Property"); and
- WHEREAS, the Board, pursuant to County Code Section 8-8, has listened to the arguments presented by the Appellant and by the County agent and has carefully considered all evidence entered into the record.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, by a majority vote of its members reverses the Notice of Violation issued to Mr. Danny Patterson on June 28, 2021, and finds that Mr. Danny Patterson is not in violation of County Code, Chapter 8, Article I, Erosion and Sediment Control.

	Michael J. Hipple Chairman, Board of Supervisors						
ATTEST:	VOTES						
		AYE	NAY	ABSTAIN	ABSENT		
	SADLER ICENHOUR						
Teresa J. Fellows	LARSON						
Deputy Clerk to the Board							
	MCGLENNON HIPPLE						

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of October, 2021.

RevESCViol-5032RvrRd-res

# <u>RESOLUTION</u>

## REVERSING THE STORMWATER MANAGEMENT VIOLATION AT 5032 RIVER DRIVE

- WHEREAS, Mr. Gregory Bean, Esq., on behalf of Mr. Danny Patterson ("Appellant"), has appeared before the Board of Supervisors of James City County (the "Board") on October 12, 2021, to appeal a Notice of Violation issued on June 28, 2021, to the Appellant for violations of County Code Chapter 8, Erosion and Sediment Control Ordinance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 0930300007 and further identified as 5032 River Drive (the "Property"); and
- WHEREAS, the Board, pursuant to County Code Section 8-32, has listened to the arguments presented by the Appellant and by the County agent and has carefully considered all evidence entered into the record.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, by a majority vote of its members reverses the Notice of Violation issued to Mr. Danny Patterson on June 28, 2021, and finds that Mr. Danny Patterson is not in violation of County Code, Chapter 8, Article II, The Virginia Stormwater Management Program.

Michael J. Hipple Chairman, Board of Supervisors

ATTEST:		VOTES			
		AYE	NAY	ABSTAIN	ABSENT
Teresa J. Fellows Deputy Clerk to the Board	SADLER ICENHOUR LARSON MCGLENNON				
	HIPPLE				

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of October, 2021.

RevSWMViol-5032RvrRd-res






















James City	Enringe	JUN 28 2017	
County Chesapeak	e Bay Preservation Q rea Activity Applica	tionCEIVEY	
		For Office Use CB Number <u>(</u>	Only CBE 17-095 BS 17-028
Submission Requirements: (Check	all applicable)	-	an a
<ul> <li>✓ A \$25 non-refundable processing RPA - landward 50' - Complete RPA - seaward 50' - Complete payable to Treasurer, James City Conservation Easement - Complete Steep Slopes ≥ 25 percent - Complete Attach plans as required (see instr Applicable surety as required for</li> </ul>	Items $1 - 5$ , and sign on Page 3. Items $1 - 5$ , sign on Page 3 a County, for the Chesapeake Bay ete Items 1, 2, 3, and 5, and sign blete Items 1, 2, 3, and 5, and sign ruction on Page 4, Item 4). mitigation (see <b>Mitigation Rate</b>	nd submit an additional \$10 Board. on Page 3. gn on Page 3. es Table on Page 2).	
<u>Upon completion, please return pa</u>	ges 1-3 to the JCC Engineering	<u>e and Resource Protection D</u>	<u>ivision</u>
<b>Property Owner Information:</b>		Date: 6	-19-17
Name: <u>Danny E. Patterson</u>	· · · · · · · · · · · · · · · · · · ·		
Address: <u>5032 River Drive; Lanexa,</u> Phone: <u>757-897-2871</u> Fa		Email: depatterson@verize	· · · · ·
<u>Contact (if different from above)</u> :		DI	
Name: Michael A. Matthews		Phone: <u>757-220-0465</u> Email: <u>mmatthews@thestr</u>	ucturesgroup.com
Project Information:			Provide the second seco
Project Address: <u>5032 River Drive; L</u>		: 	
Subdivision Name, Lot, and Section N		· · · · · · · · · · · · · · · · · · ·	· · · · · · · · · · · · · · · · · · ·
Parcel Identification No. or Tax Map Date Lot was platted: <u>7-8-83</u>	No.: <u>0930300007</u> Line or Bldg Pe	rmit No.: <u><u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u></u></u>	7/EJS-28-17
Activity Location and Impacts (Square	e Feet - SF): (check all that app	bly)	
✓ Steep Slopes ≥ 25 percent 2,197         Conservation Easement         Trees to be Removed	(SF) (SF) (#)	<ul> <li>✓ RPA - Landward 50' 2,1!</li> <li>▲ RPA - Seaward 50'</li> <li>✓ Proposed Impervious Cov</li> </ul>	97 (SF) (SF) /er <u>+122</u> (SF)
Activity involves: (check all that apply)	•. •.		
New principal structure construction Permitted buffer modifications:	Dead/diseased/dyi	weed removal	Attached Deck Sightline Access path/trail
Accessory (Detached) Structure or P			

 Engineering and Resource Protection Division
 101-E Mounts Bay Road, P.O. Box 8784
 Williamsburg, VA 23187-8784

 P: 757-253-6670
 F: 757-259-4032
 jamescitycountyva.gov

 Resource.Protection@jamescitycountyva.gov
 Revised: March 2012

**Chesapeake Bay Preservation Ordinance Sensitive Area Activity Application** 

Page 2

For Office Use Only CBEIT-095

#### 1. Description of requested sensitive area activity and reason for request:

(In the description, please indicate the reason for the proposed structure or activity, the location, sizes and dimensions of feature. For decks or expansions, indicate if ground floor, first floor or other levels) A timber retaining wall is proposed to be installed approximately 20'-0" down slope from the existing residence to prevent additional erosion and distress to the residence. The retaining wall is proposed to be 122' long and up to 8-0" tall.

- As per Section 23-9 of the Chesapeake Bay Preservation Ordinance, if there is an on-site sewage disposal system on this property, has it been inspected and/or pumped out is the past five years? Yes No
- 3. Are permits from other local, State or Federal agencies required for any portion of this project? Yes No (If yes, please explain) James City County Building Permit

#### 4. Water Quality Impact Assessment

The purpose of a water quality impact assessment is to demonstrate that the project will result in the removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development stormwater run-off and that it will retard runoff, prevent accelerated erosion, promote infiltration, and filter non-point source pollution equivalent to the full undisturbed 100-foot buffer.

A. Why is this encroachment necessary? Can it be relocated to avoid RPA impacts? The existing slope has failed. No, The entire rear portion of the property is completely within the RPA boundary.

B. What measures will be used to minimize impervious area? Examples: pervious pavers, removal of existing impervious surfaces (concrete, pavement, etc.) in the RPA not needed for the project The proposed retaining wall will be filled and graded with topsoil to minimize the impact of the impervious cover.

#### 5. Proposed mitigation measures:

**Note:** All mitigation measures must be shown in detail on a mitigation plan. Show both location of mitigation measures and plant species if applicable. All mitigation plants must be native species and be located in the sensitive area (RPA or Conservation Easement).

#### **Mitigation Rates Table**

Impervious Area (SF)	Mitigation Required	Surety
<400	1 tree and 3 shrubs	\$250
400-1,000	1 canopy tree, 2 understory trees and 3 shrubs per 400 SF (or fraction thereof)	\$1,000
>1,000	Plant at same rate as 400 – 1,000; or may be determined by Director of Engineering and Resource Protection Division	To be determined

# Chesapeake Bay Preservation Ordinance Sensitive Area Activity Application

Page 3

For Office Use Only CBB 17-093 CB Number 17-028

A. Vegetation/ground cover enhancement of buffer (see Mitigation Rates Table on previous page).

Number of native canopy trees		
Number of native understory trees		
Number of native shrubs		
Square feet of native ground cover		
Square feet of mulch	<u>.</u>	

B. Best Management Practices (BMPs)

EC-2 (degradable) erosion control matting	Bioretention or rain garden practice
Dry Swale	Infiltration Area/Trench/Drywell
✓ Silt fence	Structural BMP (Wet or Dry Pond)
Turf (Nutrient) Management Plan	Rain Barrel
Gravel under deck (3" of gravel over synthetic filter fabric	under entire deck area)
Other:	

I understand that the following are approval conditions:

- 1) Mitigation for the above activity shall follow the approved mitigation plan and be guaranteed with a form of surety acceptable to the County Attorney.
- 2) Limits of disturbance as shown on the approved plan shall not be exceeded.
- 3) This approval shall become null and void if construction has not begun within 12 months of the approval date.
- 4) Surety will be released following the completion and inspection of mitigation plantings.

Property owner signature Date Program Administrator Date Authorized Signature

For Office Use Only **Surety Amount:** I of retaining wall and drainage nos to granamter the structural of the existing home. wood expires 7/6/18 Date/Rec No.: Fee Paid? Ye No Amount: 23 # 31 Date/Rec No.:

Engineering and Resource Protection Division101-E Mounts Bay Road, P.O. Box 8784Williamsburg, VA 23187-8784P: 757-253-6670F: 757-259-4032jamescitycountyva.govResource.Protection@jamescitycountyva.govF: 757-259-4032Revised: March 2012



# **Building Safety** & Permits Copy

APPROVED FOR GENERAL CONFORMANCE TO THE

2012 USBC

B١

The Structures Group, Inc.

June 19, 2017

**Consulting Engineers** 

Danny E. Patterson 5032 River Drive Lanexa, Virginia 23089

> Re: Patterson/5032 River Drive TSG No. VA17083.FOR

Dear Mr. Patterson:

With your authorization, we performed a cursory forensic review and structural design for the retaining wall structure to resolve the slope failure at the rear of the single family residence located at 5032 River Drive within the Cypress Point section of James City County, Virginia. The purpose of our review was to determine the nature and extent of distress exhibited in the slope.

Our site visit was conducted on Friday, May 26, 2017, in your company as well as Michael Woolson and Ashely Tatge with the James City County Engineering and Resource Protection Division. During our site visit, we reviewed the existing slope failure as well as the foundation of the residence, cataloging areas of distress noted.

The single family residence is a two (2) story timber framed structure, with an attached one (1) car garage located on the front elevation. The exterior of the main residence consists of wood siding. The residence is partially constructed over a slab on grade and partially over a masonry foundation enclosing a vented crawl space. The roof consists of gable framed roofs over the main portion of the residence as well as the garage, with all roof surfaces covered with asphalt shingles. A timber framed deck is located along the rear elevation of the residence. Closer review revealed the exterior finish grade of the property sloped from front to rear.

During our site visit, we noted a global slope failure of the soil approximately 20' behind the rear elevation of the residence resulting in an approximate 5' to 6' vertical drop off. It was noted that the slope failure also led to the collapse of both the dock and the stairwell leading to the dock. Further, it was also noted that the slope failure led to the collapse of the existing timber bulkhead located approximately 10' from the shore of Diascund Creek. Closer inspection of the shoreline revealed that the rip-rap had also been pushed out towards the creek.

Along the foundation of the deck attached to the residence, it was noted that the lattice had been pushed out away from the residence and towards the creek. Further inspection of the foundation of the residence revealed minor cracks in the parged surface of the rear corner of the left and right elevation masonry foundation walls.

Danny E. Patterson TSG No. VA17083.FOR June 19, 2017 Page 2

#### SOIL SURVEY AND RESEARCH

Our research included a review of the Soil Survey of James City and York Counties and the City of Williamsburg Virginia, produced in 2014 by the United States Department of Agriculture. This soil survey revealed that the residence was constructed in an area consisting of primarily Emporia complex soil series with 15 to 25 percent slopes. This soil has a moderate shrink-swell potential.

Based on our research, it seems the residence, while constructed circa 1960, lies within the Chesapeake Bay Resource Preservation Area (RPA) of James City County. It should be noted that James City County, Virginia is one of 84 localities in Virginia subject to the requirements of the Bay Act program because of the County's geographic location in the Tidewater region of Virginia. The Bay Act program is mandated by the Commonwealth of Virginia by Title 62.1, Chapter 3.1, Article 2.5 of the Code of Virginia and Chapter 830, Chesapeake Bay Preservation Designation and Management Regulations, 9VAC25-830-10 et. seq. of Virginia Administrative Code. Construction within the RPA of James City County is governed by an ordinance that controls and regulates runoff towards wetlands, streams, and tributaries to the Chesapeake Bay. Most land use activities in the RPA are generally prohibited or restricted unless an exception or waiver is granted by the Chesapeake Bay Preservation Board.

Upon research of past geotechnical work performed on the property, it was noted that a geotechnical report was prepared by ECS dated August 3, 2001. According to the report, bulkheads were constructed between the house and the creek in 1987 and 1994 and failed along with a significant portion of the slope in August of 2000. While repairs to the rip-rap toe support and slope were performed in October 2000, further settlement and movement of the slope was detected in March/April of 2001. Therefore, in order to stabilize the slope, ECS recommended the installation of a retaining wall along the toe of the slope, just beyond the edge of the rip-rap. ECS recommended piles spaced 5' on center with a minimum embedment depth of at least 15' below the mean low water. This retaining wall system was constructed; however, it has recently failed due to a global slope failure and has overturned towards the creek damaging the adjacent boat dock.

The report by ECS also included soil boring logs from two (2) locations on the property and included an analysis of the existing slope in 2001. The 2001 ECS report and boring logs have been attached to this report.

#### CONCLUSIONS

Our analysis of the existing slope failure and the existing distress to the foundation of the residence revealed that the existing earth on the steep slope of the lot is unstable and has experienced a global failure. It is our opinion that the slope failure, if left unmitigated, will result in future distress and possible failure of the foundation of the residence.

Following our meeting, it was determined that some form of a retaining wall system would be needed to stabilize the slope and protect the foundation and deck of the existing residence. It was determined that due to the severity of the existing global slope failure and its location within the Resource Protection Area, the review of such remedial repair plans will go through the James City County Environmental Department as well as the Building Safety and Permits Division.

A retaining wall site plan has been prepared and two (2) copies of this plan have been submitted to the James City County Engineering and Resource Protection Division with a copy of this letter. It is our

Danny E. Patterson TSG No. VA17083.FOR June 19, 2017 Page 3

recommendation that the proposed retaining wall site plan be submitted as part of the application to the Chesapeake Bay Board. Based on our discussions at the site, we feel that this project may go through a brief administrative review process.

Likewise, to facilitate a simultaneous review process, we have submitted the James City County Building Permit Application to the James City County Building Safety and Permits Division along with an additional two (2) copies of the plan. For your reference, we have attached one (1) copy of the drawings and copies of the Chesapeake Bay Board Application and James City County Permit Application which have been submitted.

We appreciate the opportunity to be of service in this matter. If you have any questions, please feel free to contact our office.

Sincerely, The Structures Group, Inc.

Joseph W. Krallinger, E.I.T. Staff Engineer

Michael A. Matthews, P.E. President

MAM/msv

attachments





#### ENGINEERING CONSULTING SERVICES, LTD.

Geotechnical • Construction Materials • Environmental

August 3, 2001

Mr. Danny Patterson 5032 River Drive Lanexa, VA 23089

ECS Project No. 6521

Reference: Slope Evaluation Patterson Residence – 5032 River Drive Lanexa, Virginia

Dear Mr. Patterson:

Engineering Consulting Services, Ltd. is pleased to present the results of the subsurface exploration and geotechnical engineering analysis for the above referenced project.

#### **Overview:**

It is our understanding that the existing residence was built on a relatively level plateau in 1980. The north side of the property slopes down about 20 feet to Diascund Creek, a tributary of the Chickahominy River that is located about 1,500 feet to the south. Bulkheads were constructed between the house and the creek in 1987 and 1994. These bulkheads (retaining walls) failed, along with a significant portion of the slope in August 2000. Repairs to the slope ("rip-rip" toe support and slope reconstruction) was performed in October 2000; however, settlement/movement of the "rip-rap" and slope cracks were detected in March/April 2001.

#### Scope of Work:

Two (2) soil test borings (extended to depths of 20 and 30 feet) were performed by Scott Drilling on May 11, 2001. The 20 foot boring (B-2) was performed within the front yard of the house and the 30 foot boring (B-1) was performed near the top of the slope at the rear of the house. A slotted PVC-Pipe was installed at each borehole location for groundwater readings. The purpose of the borings was to ascertain the general subsurface conditions (soil type and groundwater), to aid in evaluating the stability of the existing slope. A location diagram and the boring logs are attached with this report.

2119-D North Hamilton Street, Richmond Virginia 23230 • (804) 353-6333 • Fax (804) 353-9478 Offices: Richmond, VA • Washington, D.C. • Norfolk, VA • Williamsburg, VA • Roanoke, VA • Fredericksburg, VA • Danville, VA Baltimore, MD • Frederick, MD • Research Triangle Park, NC • Wilmington, NC • Charlotte, NC • Greensboro, NC • Greenville, SC • Atlanta, GA The test borings were performed with an ATV-mounted drill rig, which utilized continuous flight augers to advance the boreholes. Representative soil samples were obtained from the borings by means of the split-barrel sampling procedure in accordance with ASTM Specification D-1586. In this procedure, a 2 inch O.D., split barrel sampler is driven into a soil a distance of 24 inches by a 140-pound hammer falling 30 inches. The first 6 inches is considered the seating interval. The number of blows required to drive the sampler through the next two 6-inch intervals is termed the Standard Penetration Test (SPT) value, and is indicated for each sample on the boring logs. A reference notes sheet for the boring logs is attached with this letter.

ECS engineering personnel visually classified representative soil samples that were collected from the borings and returned to our ECS office. The engineering properties of the soil, along with groundwater data collected on various dates (5/13, 5/14, and 6/1/01), were utilized for slope stability analysis.

#### **Conclusions and Recommendations:**

Based on visual inspection of the existing slope, in it's current condition, it is obvious that the "Rip-Rap" toe reinforcement and slope reconstruction that was performed in or about October 2000 wasn't effective in stabilizing the already weakened slope. Although the concept of reinforcing the toe of the previously failed slope with "Rip-Rap" is considered an acceptable stabilization method (alternative), it is my opinion that prudent engineering design wasn't employed. In this respect, if the base of the slope was mucked-out (including the excavation at the toe), and if a heavy duty geosynthetic fabric and/or geogrid had been used to retain the "Rip-Rap", the additional slope movement may have been prevented. Furthermore, the depth of the excavation and "Rip-Rap" placement should have been extended below the potential failure plane for maximum effectiveness. It should be noted, however, that the actual conditions at the time of "Rip-Rap" placement are not fully known at this time. Reportedly, the base area was very wet and soft, which made construction difficult. Typically under these working conditions, the quality of the work is greatly reduced, and some form of additional failure occurs regardless of the design.

ECS has performed a limited evaluation of the existing slope using PCSTABL software. This evaluation is considered limited since a detailed survey of the slope isn't available. The evaluation was performed based on linear measurements and slope angle approximation. Based on this evaluation the existing slope is approximately 2H (horizontal) to 1V (vertical), and has a calculated Safety Factor of 1.33 against failure. Most slopes are designed with a maximum slope of 2H:1V and a minimum Safety Factor of 1.5. A plot of the slope configuration is included with this report.

ECS Project No. 6521 Page 3

Since the calculated Safety Factor of the existing slope is less than 1.5, consideration should be given to improving the stability of the slope. Typically, flattening the slope is the most common and inexpensive method for slope stability improvement; however, this alternative is not practical due to space restrictions. Reinforcing the toe is also a common alternative; however, the presence of surface water (in this case a tidal condition) and the presence of existing "Rip-Rap" stone makes standard excavation impractical. Installation of a retaining wall supported by a piling system could possibly be the most practical and cost effective alternative. Generally speaking, the pilings could consist of driven timber or concrete piles, or cast-in-place concrete piles. The piles should be installed in a row along the face of the slope, just beyond the edge of the "Rip-Rap" or at the approximate mid-point of the slope (where the current fault line exists). The tip of the piles should extend at least 15 feet below the MLW elevation. Piles should be installed on approximate 5 foot center-to-center spacing. The top of the piles should be extended above the surface as required for pile cap (bracing) or retaining wall construction.

#### Closing:

We have enjoyed being of service to you on this project. If you should have any questions regarding the information and recommendations contained herein or if we can be of further assistance, please do not hesitate to contact us.

Respectfully,



GEOTECH/REPORTS/6521.doc









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## **REFERENCE NOTES FOR BORING LOGS**

#### I. Drilling and Sampling Symbols:

SS - Split Spoon Sampler ST - Shelby Tube Sampler RC - Rock Core; NX, BX, AX

DC - Dutch Cone Penetrometer PA - Power Auger (no sample) HSA - Hollow Stem Auger PM - Pressuremeter WS - Wash Sample BS - Bulk Sample of Cuttings RB - Rock Bit Drilling

Standard Penetration Test (SPT) refers to the blows per foot of a 140 lb hammer free falling 30 inches on a 2 in. O.D. split-spoon sampler, as specified in ASTM D-1586. The SPT blow count is commonly referred to as the N-value. Typically the split-spoon sampler is driven to depths of 18 to 24 inches. The SPT result, N-value, is commonly determined by summing the second and third 6-inch increments.

#### II. Correlation of Penetration Resistances to Soil Properties:

CONSISTENCY	SPT, N (Blows/Foot)	UNDRAINED SHEAR STRENGTH C, (PSF)
VERY SOFT	< 2	<250
SOFT	3-5	250 - 500
MEDIUM STIFF	6 - 10	500 - 1000
STIFF	11 - 15	1000 - 2000
VERY STIFF	16- 30	2000 - 4000
HARD	> 31	> 4000

#### COHESIVE SOILS (CLAY, SILT and COMBINATIONS)

#### NON-COHESIVE SOILS (SAND, GRAVEL, SILT and COMBINATIONS)

DENSITY	SPT, N (Blows/Foot)	RELATIVE DENSITY (%)
VERY LOOSE	< 5	0-15
LOOSE	6 – 10	16 — 35
MEDIUM DENSE	11 – 30	36 - 65
DENSE	31 – 50	66 - 85
VERY DENSE	51 – 80	86 - 98 .
EXTREMELY DENSE	> 81	99 - 100

[Particle Size Identification]:

*	Boulders:		8 inch diameter or more
	Cobbles:		3 to 8 inch diameter
	Gravel:	Ċoarse	1 to 3 inch
		Medium	1/2 to 1 inch
	•	Fine	1/4 to 1/2 inch
*	Sand:	Coarse	2.00 mm to 1/4 inch (diameter of pencil lead)
		Medium	.42 mm to 2.00 mm (diameter of broom straw)
		Fine	.074 mm to .42 mm (diameter of human hair)

#### III. <u>Water Level Measurement Symbols:</u>

WL - Water Level	WS - While Sampling	WD - While Drilling	ACR - After Casing Removal
WCI - Wet Cave In	DCI - Dry Cave In	BCR - Before Casing Ren	noval

The water levels are those water levels actually measured in the borehole at the times indicated by the symbol. The measurements are relatively reliable when augering, without adding drilling fluids in a granular soil. In clays and plastic silts, the accurate determination of water levels may require several days for the water level to stabilize. In such cases additional methods of measurement are generally applied.

UNIFIED SOIL CLASSIFICATION SYSTEM (USCS)

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	Typical names	Well-graded gravels and gravel- sand mixtures, little or no fines	Poorly graded gravels and gravel-sand mixtures, little or no fines	Silty gravels, gravel-sand-silt mixtures	Clayey gravels, gravel-sand-clay mixtures	Well-graded sands and gravelly sands, little or no fines	Poorly graded sands and gravelly sands, little or no fines	Silty sands, sand-silt mixtures	Clayey sands, sund-cluy mixtures	Inorganic silts, very fine sands, rock flour, silty or claycy fine ands	Inorganic clays of low to	mocuum passuoty, graveny clays, sandy clays, silty clays, lean clays	Organic silts and organic silty clays of low plasticity	Inorganic silts, micaceous or diatomaceous fine sands or silts, clastic silts	Inorganic clays of high plasticity, fat clays	Organic clays of medium to high plusticity	Peat, muck, and other lighly organic soils
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These documents were printed from the official JCC Records Management Imaging site

Reprinted from the Annual Book of ASTM Standards

Engineering Consulting Services, Ltd.



Contractor Information	Owner Information
License No.: 270515633	Name: <u>Danny Patterson</u>
Company Name: RA-Colomn 7	Address: 5032 River Drive
Address: 4626 Hockory Slanford	
City: WUMMANDOL State: VA Zip:	<b>Z3185</b> Phone No.: (757) 897-2871 Fax No. ()
Phone No.: (757) 903-4855 Fax No. ()	Email Address: depatterson@verizon.net
Email Address: RANNY @ RAGIONAN	TUC. Com Signature: han S. Hatter
Signature: Rullic	
Print Name: Rowing A Colour JA	
	Print Name: Michael A. Matthews, P.E.
Description of Work: Construction of new t	imber retaining to be installed to prevent additional slope failure
6 11 7	JUN 1, 3
Location of Work	ر (For Commercial Projects Only) Site Plan No. Date Approved:
Tax Map No.: <u>0930300007</u>	Date Approved:
Street Address: <u>5032 River Drive</u>	Mechanic's Lien Agent
City: <u>Lanexa</u> State: <u>VA</u> Zip:	
Zone: A1 Subdivision:	
	City: State: Zip:
Building Information	Phone No.: () Fax No. ()
Stories No. Rooms No. Baths No	b. Bath Fix Floor Area (sq.ft.):
No. Fireplaces Type:	
Exterior Finish: vinyl brick wood ot	Dools (so ft ):
Interior Finish: Gypsum wallboard wood	
Flooring: Carpet Wood Vinyl Other	Personant Area (caft)
Roofing: asphalt fiberglass wood oth	Gamaga Amag (ag ff)
Heat Type: gas heat pump electric of	ther Total Area (sq.ft.):
Air Conditioning Type: central window	Public Sewer Septic Well Grinder Pump
Estimated Construction Value	TUblic H <sub>2</sub> O
(Do not include Lot \$)	Dosent email to Mry Patterson
OFFICE USE ONLY	Special Flood Hazard Area: Yes 🗹 No 🗌 Zone 🛛 A E
	rovement Code: <u>RW</u> acture Used As: <u>Retaining</u> Wall <u>Notes</u> : <u>AOJA USBC.</u>
-	upancy Class: <u>R5</u> <u>All</u> <u>ADJA USBC.</u>
	upancy Load: Taxes are current
	e Construction: VB
	ing Approved:
	Approved. SUN
	AN REVIEW FEE: 15.00
	$\frac{\text{RMIT FEE: } 500.00}{\text{REFE}} = 70 \text{NF}$
TOT	

Building Safety and Permits Division P: 757-253-6626 buildingsafetyandpermits@jamescitycountyva.gov Buildingsafetyandpermit

es Daba	Perm	nit No:	<b>B17-2037</b>		08-Dec-20	17
nty NIA own	Addr	ess:	5032 RIVER DRI	VE	Ticket Soil:	439903 MODERA
	Tax I	Map #:	0930300007	SubDivision:	CYPRESS PO	
	Time	Preferen	ce (Not Guaranteed)	Owner:	DANNY E PAT	ITERSON
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Iding	RW	Fina	Sched: PILINGS RANDY COLEMA			

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DATE:	10/12/2021
TO:	The Board of Supervisors
FROM:	Teresa J. Fellows, Deputy Clerk
SUBJECT:	Consideration of a personnel matter, the appointment of individuals to County Boards and/or Commissions, pursuant to Section 2.2-3711 (A)(1) of the Code of Virginia

## **REVIEWERS:**

Department	Reviewer	Action	Date
Board Secretary	Fellows, Teresa	Approved	10/1/2021 - 2:08 PM

DATE:	10/12/2021
TO:	The Board of Supervisors
FROM:	Teresa J. Fellows, Deputy Clerk
SUBJECT:	Williamsburg Regional Library Board Appointment

# ATTACHMENTS:

	Description	Туре	
<b>REVIEWERS:</b>			
Department	Reviewer	Action	Date
Board Secretary	Fellows, Teresa	Approved	10/5/2021 - 11:20 AM

DATE:	10/12/2021
TO:	The Board of Supervisors
FROM:	Teresa J. Fellows, Deputy Clerk
SUBJECT:	Peninsula Agency on Aging Appointment

# ATTACHMENTS:

	Description	T	уре
<b>REVIEWERS:</b>			
Department	Reviewer	Action	Date
Board Secretary	Fellows, Teresa	Approved	10/5/2021 - 11:22 AM

DATE:	10/12/2021
TO:	The Board of Supervisors
FROM:	Teresa J. Fellows, Deputy Clerk
SUBJECT:	Adjourn until 1 p.m. on October 26, 2021 for the Business Meeting

## **REVIEWERS:**

Department	Reviewer	Action	Date
Board Secretary	Fellows, Teresa	Approved	10/1/2021 - 2:09 PM