

Town of Keystone  
Town Council Regular Meeting  
March 12, 2024 at 7:00 p.m.  
1628 Sts John Rd  
Keystone, CO 80435

REGULAR MEETING AGENDA

I. CALL TO ORDER, ROLL CALL

II. APPROVAL OF AGENDA

III. COMMUNICATIONS TO COUNCIL

*Public Comment (Pursuant to Resolution 2024-18, comment is limited to non-agenda items only; 3-minute time limit please)*

IV. CONSENT AGENDA

A. FIRST READING OF ORDINANCES

1. Ordinance 2024-01 Establishing the Planning & Zoning Commission
2. Ordinance 2024-02 Authorizing Cable Franchise Agreement with Comcast

B. RESOLUTIONS

1. Resolution 2024-28 Adopting Colorado Municipal Records Retention Schedule
2. Resolution 2024-29 Approving the Town Employee Handbook

C. MEETING MINUTES – February 27, 2024, regular meeting

D. EXCUSED ABSENCES

1. Valerie Thisted – June 11 – Excused
2. Dan Sullivan – April 23 - Excused

V. CONTINUED BUSINESS

A. CONSIDERATION OF ORDINANCES (SECOND READING/PUBLIC HEARING) --  
NONE

B. RESOLUTIONS

1. Resolution 2024-30 Opposing HB24-1152
2. Resolution 2024-31 Adopting a Town Social Media Policy

C. OTHER

1. Discussion of Process for Hiring Town Manager

VI. PLANNING MATTERS -- NONE

VII. REPORT OF TOWN MANAGER AND STAFF

VIII. REPORT OF MAYOR AND COUNCIL

IX. OTHER MATTERS (Town Manager/Mayor/Councilmember may bring up items on other matters that are not on the agenda)

X. SCHEDULED MEETINGS

XI. EXECUTIVE SESSION

Executive Session Pursuant to C.R.S. § 24-6-402(4)(e)(I) for determining positions relative to an employment contract with a Town Manager, develop strategies for negotiation of that contract, and to instruct negotiators.

XII. ADJOURNMENT

# TOWN OF KEYSTONE, COLORADO

## STAFF REPORT

TO: Mayor & Town Councilmembers

THROUGH: Gary Martinez, Interim Town Manager  
Lindsay Hirsh, Community Development Director

FROM: Jennifer Madsen, Town Attorney

DATE: March 12, 2024

SUBJECT: Ordinance 2024-O-01, An Ordinance Prescribing The Membership, Powers And Duties, And Appointment Procedure For The Town Of Keystone Planning And Zoning Commission [FIRST READING]

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### **Executive Summary:**

Section 9.3, Article IX of the Town of Keystone Home Rule Charter created a Planning and Zoning Commission to assist Town Council in planning the development of the Town. Section 9.3 of the Home Rule Charter further provides that Town Council shall further prescribe by ordinance the powers and duties of the Planning and Zoning Commission, the qualifications of the members, and the appointment procedure.

Ordinance 2024-O-01 prescribes the membership, powers, and duties of the Planning and Zoning Commission.

### **Recommendation:**

Staff recommend that the Council approve Ordinance 2024-O-01 on first reading.

### **Background:**

The Home Rule Charter provides that a Planning and Zoning Commission is established to assist in planning the development of the Town. The Charter requires that Town Council is to adopt an ordinance to identify the powers and duties of the Planning and Zoning Commission, the qualifications of the members, and the appointment procedures:

#### **Section 9.3. Planning and Zoning Commission.**

There is hereby created a Planning and Zoning Commission to assist the Town Council, in such manner as provided by the Town Council, in planning the development of the Town. Councilmembers, the Mayor, or full-time employees shall not serve on the Planning Commission. At least a majority of the membership of the Planning and Zoning Commission shall consist of Primary Residents. The Town Council shall further prescribe by ordinance the powers and duties of the Planning and Zoning Commission, the qualifications of the members, and the appointment procedure.

### Membership

The ordinance provides that the Planning and Zoning Commission is made up of seven members. Community Development Director Hirsh supports the seven member commission.

The draft ordinance provides that the term of appointment is three years. The Town Council may lengthen or shorten the term. The initial terms are set up as staggered terms.

### Qualifications

The Home Rule Charter provides that “Councilmembers, the Mayor, or full-time employees shall not serve on the Planning Commission. At least a majority of the membership of the Planning and Zoning Commission shall consist of Primary Residents.”

### Powers and Duties

The powers and duties of the Planning and Zoning Commission are typically spelled out in the Land Use/Land Development Code. Because the Town has not yet adopted a Land Development Code, the draft ordinance provides that the duties are as required by the Summit County Land Use and Development Code.

### Appointment

The draft ordinance provides for the appointment of a Planning and Zoning Commission member by the Town Council. There may not need to be additional details in this ordinance on the appointment process.

The Town Attorney reviewed the draft ordinance with the Interim Town Manager and the Community Development Director.

### **Alternatives:**

Town Council may provide alternative direction on the implementation of a Planning and Zoning Commission and remove the ordinance from the consent agenda, by motion, for further discussion.

### **Financial Considerations:**

There is no financial consideration.

### **Previous Council Actions:**

Town Council discussed the establishment of the Planning and Zoning Commission at the February 27 work session.

### **Next Steps:**

If approved on first reading, Ordinance 2024-O-01 will be scheduled for second reading and public hearing on March 26, 2024.

### **Suggested Motions:**

Because this item is on the consent agenda, a motion to approve the consent agenda will approve this ordinance on first reading.

**Attachments:**

- Ordinance 2024-O-01, an Ordinance of the Town Council of the Town of Keystone, Colorado, Prescribing the Membership, Powers and Duties for the Town of Keystone Planning and Zoning Commission.

**TOWN OF KEYSTONE  
ORDINANCE NO. 2024-O-01**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF  
KEYSTONE, COLORADO, PRESCRIBING THE MEMBERSHIP,  
POWERS AND DUTIES, AND APPOINTMENT PROCEDURE FOR THE  
TOWN OF KEYSTONE PLANNING AND ZONING COMMISSION**

WHEREAS, the Town of Keystone (“Town”) is a home rule municipal corporation created pursuant to Article XX of the Colorado Constitution; and

WHEREAS, Section 9.3, Article IX of the Town of Keystone Home Rule Charter created a Planning and Zoning Commission to assist Town Council in planning the development of the Town; and

WHEREAS, Section 9.3 of the Home Rule Charter provides that Town Council shall further prescribe by ordinance the powers and duties of the Planning and Zoning commission, the qualifications of the members, and the appointment procedure; and

WHEREAS, Town Council desires to implement Section 9.3 of the Home Rule Charter and to prescribe the membership of the Planning and Zoning Commission, the qualifications of the members, the powers and duties of the Planning and Zoning Commission, and the appointment procedure.

**THE TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO,  
ORDAINS:**

Section 1. The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the Town Council.

Section 2. Town Council implements Section 9.3 of the Home Rule Charter and prescribes membership of the Planning and Zoning Commission, the qualifications of the members, the powers and duties of the Planning and Zoning Commission, and the appointment procedure:

- A. *Established.* The Planning and Zoning Commission is established pursuant to Section 9.3, Article IX, Boards and Commissions, Town of Keystone Home Rule Charter. The Planning and Zoning Commission consists of seven members and two alternates.
- B. *Qualifications.*
  - 1. Councilmembers, the Mayor, or full-time employees shall not serve on the Planning Commission.
  - 2. At least a majority of the membership of the Planning and Zoning Commission shall consist of Primary Residents.

3. Members of the Planning and Zoning Commission are expected to spend time in advance of the meetings reviewing and understanding the agenda materials. In addition, members of the Planning and Zoning Commission are expected to fulfill the quasi-judicial obligations as is required by law.
- C. *Powers.* The Planning and Zoning Commission is delegated the following powers:
1. *Review and Decision as required by the Land Use and Development Code of Summit County.*
  2. *Other Powers and Duties.* The Planning and Zoning Commission is also empowered to:
    - a. Review, adopt and amend comprehensive plans, sub-area plans, and special purpose plans for the use of land and physical development of the Town, which plans are approved by Town Council; and
    - b. Make recommendations related to the drafting and development of the Town of Keystone Land Development Code.
- D. *Appointment.* Members of the Planning and Zoning Commission are appointed by the Town Council in a process defined by Town Council.
- E. *Term of Appointment; Removal from Office.*
1. Planning and Zoning Commission members shall serve a term of three (3) years. For the first appointments in 2024, and to provide for staggering, three members and one alternate shall serve two (2) year terms and four members and one alternate shall serve (3) year terms. The terms of appointment for these first appointments in 2024 shall be determined in a manner prescribed by Town Council.
  2. Members may be removed by a vote of the majority of Town Council without cause and in the sole discretion of the Town Council. Examples of grounds to remove a member are: excessive absences from meetings; failure to comply with applicable statutes, ordinances, resolutions or laws; continuing obstructive, offensive, argumentative or disrespectful behavior that diminishes the effectiveness of the board, commission or committee's ability to conduct business and/or to make recommendations; or disclosure of confidential information of the board, commission or committee.

Section 3. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 4. Codification. This ordinance may be codified and numbered for purposes of codification without the need for further approval by the Town Council.

Section 5. Effective Date. This ordinance shall take effect and be enforced thirty (30) days after final publication.



INTRODUCED, READ AND PASSED AS AN ORDINANCE, ON FIRST READING, AT A  
REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE,  
COLORADO, THIS

\_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

READ, PASSED AND ADOPTED AS AN ORDINANCE ON SECOND READING, AT A  
REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE,  
COLORADO, THIS

\_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

\_\_\_\_\_  
Kenneth D. Riley, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

## TOWN OF KEYSTONE, COLORADO

### STAFF REPORT

TO: Mayor & Town Councilmembers

THROUGH: Gary Martinez, Interim Town Manager  
Jennifer Madsen, Town Attorney

FROM: Jill Hassman, Partner, Widner Juran LLP

DATE: March 12, 2024

SUBJECT: Ordinance 2024-O-02  
An Ordinance of the Town Council of the Town of Keystone, Colorado, Approving a Cable Television Franchise Agreement between the Town of Keystone, Colorado and Comcast of Colorado XI, Inc. (“Grantee”) to Provide Cable Television Services within the Town and Make Reasonable and Lawful Use of the Town Rights-Of Way for such Purposes

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#### **Executive Summary:**

On March 12 and March 26, 2024, Town Council will be asked to consider Ordinance No. 2024-O-02 on first and second readings, respectively, to approve a cable franchise agreement between the Town and Comcast of Colorado XI, Inc. (“Comcast”). The franchise agreement would allow for Comcast’s use of the Town’s public rights-of-way for its private cable television infrastructure in exchange for the remittance to the Town of a franchise fee of 5% of all revenues received from the sale of cable television service within the Town. If approved, the new franchise agreement will be effective for a term of ten (10) years.

#### **Recommendation:**

Staff recommends that the Town Council approve Ordinance No. 2024-O-02 on first reading which will cause the Ordinance to be scheduled for second reading and public hearing on March 26, 2024.

#### **Background:**

Franchise agreements allow private companies to make use of public rights-of-way for private, for-profit, commercial purposes. Franchise agreements include items such as terms to govern franchise fees, customer service, and use of the right-of-way and construction. A cable operator pays a franchise fee as compensation for the use of public property – similar to paying a lease for Town rights-of-way.

Comcast presently provides cable television service to residents within Summit County and the municipalities of Breckenridge, Frisco, Dillion, and Silverthorne pursuant to cable

franchise agreements executed with those jurisdictions that authorize the private use of the public rights-of-way. These jurisdictions are also members of the Summit County Telecommunications Consortium which is also known as the "SCTC." The SCTC is a nonprofit entity whose purpose is, among other things, to communicate with regard to franchise matters collectively and cooperatively. Under the current individual franchise agreements with these 5 communities, Comcast grants 4 Public Education and Government ("PEG") channels to the SCTC for their collective use. While more information is likely needed about the SCTC's benefits and operations, it may make sense for Keystone to seek membership into the SCTC following its execution of the cable franchise.

The recommended cable franchise agreement (attached) is largely based upon the current existing 2015 franchise agreement between Comcast and Summit County. Updates were made to this current agreement that are necessary to account for a recent Federal Communication Commission (FCC) order.<sup>1</sup> Comcast uses a standardized form of franchise agreement in municipalities throughout Colorado and typically executes franchises for ten-year terms.

The franchise proposed for Keystone is comprehensive and covers numerous topics. Following Town Council's review, please do not hesitate to reach out before second reading with any specific questions or concerns. A couple key terms to highlight include:

- Section 2.3. – Term of Franchise. As stated, the proposed franchise is for a customary term of ten years. We are aware that renewals are going to be negotiated with Keystone's peer Summit County communities soon as their franchises terminate in either June 2024 or June 2025. If any notable changes/additions are made to the standardized form being proposed to Keystone by Comcast now, the Town could consider amending the Town's franchise agreement subsequently to reflect those changes. The term of the Town's franchise could also be extended such that it coincides with the other towns and the County once those franchises are renewed. If the Town becomes a member of the SCTC, there is a benefit to having similar, if not identical, franchise agreements to the other member communities taking a regional approach to working with Comcast.
- Section 3 – Franchise Fee Payment and Financial Controls. The agreement (Section 3.2) requires quarterly payments to the Town for the quarters ending on March 31, June 30, September 30, and December 31. These quarterly payments are due and payable not later than 45 days after each date.
- Sec. 9 – This Section is different than the current County agreement as the County agreement addresses PEG access channels for cable services. Given that the Town does not currently have the ability to produce and deliver video content for

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<sup>1</sup> The FCC holds federal jurisdiction over franchises for many communication services. FCC's 621 Order established that in-kind services or equipment that is required pursuant to a cable franchise agreement must count toward the five percent cap on franchise fees.

distribution, the provision included in the proposed franchise agreement could help enable the Town to deliver video content via its website.

**Alternatives:**

Town Council may provide alternative direction or recommend modifications to the proposed cable franchise agreement.

**Financial Considerations:**

The recommended franchise agreement will require Comcast to remit to the Town 5% of all revenues received from the sale of cable television service within the Town on a quarterly basis. Other than nominal costs for administering the franchise agreement, the Town is not anticipated to incur any substantial financial expense.

**Previous Council Actions:**

No previous actions on this topic have been taken.

**Next Steps:**

The second reading and public hearing before the Town Council are scheduled for March 26, 2024. At this meeting a representative from Comcast will be present to answer specific questions related to the franchise agreement.

**Suggested Motions:**

As this matter is set for first reading, unless pulled from the consent agenda, a motion to approve the consent agenda will effectively approve Ordinance No. 2024-O-02 on first reading and set a second reading and public hearing for March 26, 2024.

**Attachments:**

- Ordinance 2024-O-02, An Ordinance of the Town Council of the Town of Keystone, Colorado, Approving a Cable Television Franchise Agreement between the Town of Keystone, Colorado and Comcast of Colorado XI, Inc. ("Grantee") to Provide Cable Television Services within the Town and Make Reasonable and Lawful Use of the Town Rights-Of Way for such Purposes.
- Proposed Franchise Agreement between the Town of Keystone and Comcast

**TOWN OF KEYSTONE  
ORDINANCE NO. 2024-O-02**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF  
KEYSTONE, COLORADO, APPROVING A CABLE TELEVISION  
FRANCHISE AGREEMENT BETWEEN THE TOWN OF KEYSTONE,  
COLORADO AND COMCAST OF COLORADO XI, INC. (“GRANTEE”)  
TO PROVIDE CABLE TELEVISION SERVICES WITHIN THE TOWN  
AND MAKE REASONABLE AND LAWFUL USE OF THE TOWN  
RIGHTS-OF WAY FOR SUCH PURPOSES**

WHEREAS, the Town of Keystone (“Town”) is a home rule municipal corporation created pursuant to Article XX of the Colorado Constitution; and

WHEREAS, pursuant to C.R.S. § 31-15-702, the Town Council is authorized to regulate streets and alleys and other public grounds within the Town of Keystone; and

WHEREAS, pursuant to C.R.S. § 31-15-101(c), the Town Council may enter into contracts on behalf of the Town of Keystone; and

WHEREAS, Comcast of Colorado XI, Inc. the Grantee, presently provides cable television service within Summit County pursuant to an existing cable franchise agreement and now seeks to provide such service within the Town of Keystone; and

WHEREAS, the Town Council finds and determines that it is in the best interest of the citizens of Keystone to enter into a franchise agreement for cable television services to ensure the continuation of cable services provided to residents pursuant to the Grantee’s franchise with Summit County and to ensure that the Town is lawfully compensated by the Grantee for the continued use of its rights-of-ways.

**THE TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO,  
ORDAINS:**

Section 1. The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the Town Council.

Section 2. Approval of Franchise Agreement. The Franchise Agreement in the form attached hereto (Attachment A) between Comcast of Colorado XI, Inc. and the Town of Keystone is approved subject to: (1) any revisions approved by the Town Council prior to approval on Second Reading; and (2) revisions made by the Town Manager following consultation with the Town Attorney and Mayor which revisions do not substantially change the obligations of the Town or are desired to improve the grammar, clarity, or understanding of the terms or conditions.

Section 3. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect,

impair, or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 4. Effective Date. This Ordinance shall take effect and be enforced thirty (30) days after final publication.

INTRODUCED, READ AND PASSED AS AN ORDINANCE, ON FIRST READING, AT A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO, THIS

\_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

READ, PASSED AND ADOPTED AS AN ORDINANCE ON SECOND READING, AT A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO, THIS

\_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

\_\_\_\_\_  
Kenneth D. Riley, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

**COMCAST OF COLORADO IX, LLC, AND  
THE TOWN OF KEYSTONE, COLORADO**

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**CABLE FRANCHISE AGREEMENT**

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EXHIBIT A: Customer Service Standards

EXHIBIT B: Report Form

**COMCAST OF COLORADO IX, LLC, AND  
TOWN OF KEYSTONE, COLORADO**

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**CABLE FRANCHISE AGREEMENT**

**SECTION 1. DEFINITIONS AND EXHIBITS**

**(A) DEFINITIONS**

For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Activated" means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.2 "Affiliate," when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.3 "Applicable Law" means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

1.4 "Bad Debt" means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.5 "Basic Service" is the level of programming service which includes, at a minimum, all Broadcast Channels and any additional Programming added by the Grantee and is made available to all Cable Services Subscribers in the Franchise Area.

1.6 "Broadcast Channel" means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

1.7 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.8 "Cable Act" means Title VI of the Communications Act of 1934, as amended.

1.9 "Cable Operator" means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for,

through any arrangement, the management and operation of such a Cable System.

1.10 "Cable Service" means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.11 "Cable System" means any facility, including Grantee's, consisting of a set of closed transmissions 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 a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.12 "Channel" means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.13 "Commercial Subscribers" means any Subscribers other than Residential Subscribers.

1.14 "Digital Starter Service" means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service and does not include Premium Services.

1.15 "Downstream" means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.16 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.17 "Effective Date" means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the "Term" section herein.

1.18 "FCC" means the Federal Communications Commission.

1.19 "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.20 "Franchise" means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the Town and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements, and other related matters.

1.21 "Franchise Area" means the area within the jurisdictional boundaries of the Town, including any areas annexed by the Town during the term of this Franchise.

1.22 "Franchise Fee" means that fee payable to the Town described in subsection 3.1.

1.23 "Grantee" means Comcast of Colorado IX, LLC, or its lawful successor, transferee or assignee.

1.24 "Grantor" or "Town" or "Town of Keystone" is the Town of Keystone, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.25 "Gross Revenues" means and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee's Cable System to provide Cable Services within the Town. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the Town;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Town;
- revenues from program guides;
- FCC Regulatory Fees; and,
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the Town.

(A) "Advertising Revenues" shall mean revenues derived from sales of advertising that are made available to Grantee's Cable System subscribers within the Town and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications ("NCC") and Comcast Spotlight ("Spotlight") or their successors associated with sales of advertising on the Cable System within the Town allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) "Gross Revenues" shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the Town;
- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- fees imposed by any municipality, state or other governmental unit on Grantee including without limitation to Public, Educational and Governmental (PEG) Fees;
- launch fees and marketing co-op fees;
- Franchise Fees; and,
- unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Town. The Town reserves its right to review and to challenge Grantee's calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.25 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee shall explain and document the required changes to the Town within three (3) months of making such changes, and as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.27(E) below.

(E) Resolution of any disputes over the classification of revenue should first be

attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the Town reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.26 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.27 "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.28 "Manager" means the Town Manager of the Town or designee.

1.29 "Person" means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.30 "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.31 "Residential Subscriber" means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.32 "Right-of-Way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Town: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, right-of-way and similar public property and areas. Parks, trails, and open space are not considered Right-of-Way.

1.33 "State" means the State of Colorado.

1.34 "Subscriber" means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee's regular and nondiscriminatory terms and conditions for receipt of service.

1.35 "Subscriber Network" means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.37 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.38 "Telecommunications Service" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.39 "Tier" means a group of Channels for which a single periodic subscription fee is charged.

1.40 "Town Council" means the Keystone Town Council, or its successor, the governing body of the Town of Keystone, Colorado.

1.41 "Town Staff" means Town employees and contractors overseen by the Town Manager as well as Town officers.

1.42 "Two-Way" means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.43 "Upstream" means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

## **(B) EXHIBITS**

The following documents, which are occasionally referred to in this Franchise, are formally incorporated and made a part of this Franchise by this reference:

- 1) *Exhibit A*, Customer Service Standards.
- 2) *Exhibit B*, Report Form.



## **SECTION 2. GRANT OF FRANCHISE**

### **2.1 Grant**

(A) The Town hereby grants to Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the Right-of-Way within the Town to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise and in any prior utility or use agreements entered into by Grantee with regard to any individual property. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) Nothing in this Franchise shall be deemed to waive (i) the lawful requirements of any generally applicable Town ordinance existing as of the Effective Date, as defined in subsection 1.17 or (ii) the right of the Grantee to offer such other services as may be permitted by and in accordance with Applicable Law.

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the Town, and the ordinances and regulations of the Town. The Charter, ordinances, and Municipal Code of the Town, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the Town may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) This Franchise shall not be interpreted to prevent the Town from imposing additional lawful conditions for use of the Right-of-Way.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the Town that may be required by the Town's ordinances and laws;

(2) Any permit, agreement, or authorization required by the Town for Right-of-Way users in connection with operations on or in Right-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the Town or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Right-of-Way in which the Town has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise is not a bar to the provision of non-Cable Services, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the Town an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

(I) In addition to the rights and limitations granted above with respect to cable system facilities in the Rights of Way, the Town may, in its sole and exclusive discretion, permit Grantee, upon request, to construct, operate, maintain, reconstruct, and rebuild Cable System Facilities within any Town-owned or controlled park, parkland, or open space property, upon such terms and conditions approved by the Town.

## **2.2 Use of Rights-of-Way**

(A) Subject to the Town's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Right-of-Way within the Town such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the Town. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the Town's Right-of-Way in compliance with all applicable Town construction codes and procedures. As trustee for the public, the Town is entitled to fair compensation as provided for in Section 3 of this Franchise to be paid for these valuable rights throughout the term of the Franchise.

(B) Grantee must follow Town established nondiscriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Right-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the Town's role in protecting public health, safety and welfare, the Town may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with Town's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the Town, or which is installed without prior Town approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements.

### **2.3 Effective Date and Term of Franchise**

The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act, or is extended by mutual agreement of the Town and Grantee.

### **2.4 Franchise Nonexclusive**

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, or licenses granted by the Town to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the Town to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The Town may at any time grant authorization to use the Right-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the Grantor deems appropriate.

### **2.5 Police Powers**

Grantee's rights hereunder are subject to the police powers of the Town to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the Town or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Town shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter.

### **2.6 Competitive Equity**

(A) The Grantee acknowledges and agrees that the Town has granted in the past, and reserves the right to grant in the future, one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the Franchising Area; provided, the Town agrees that, within ninety (90) days of the Grantee's request, it shall amend this Franchise to include any material terms, conditions, and obligations that it makes available to or imposes on any new entrant, or provide relief from existing material terms or conditions, so as to enhance the likelihood that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include but are not limited to: franchise fees; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video Programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section. Nothing in this section 2.6(A) shall allow the Grantee to seek amendment of this Franchise based on (a) any term of any existing Franchise granted by the Grantor to a third party or (b) the absence

of any term or terms from an existing Franchise granted by the Grantor to a third party.

(B) The modification process of this Franchise as provided for in Section 2.6 (A) shall only be initiated by written notice by the Grantee to the Grantor regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise; (2) identifying the Franchise terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise amendments to the Town, with a written explanation of why the proposed amendments are necessary and consistent.

(C) Upon receipt of Grantee's written notice as provided in Section 2.6 (B), the Town and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) daytime period, unless that time period is reduced or extended by mutual agreement of the parties. If the Town and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the Town shall amend this Franchise to include the modifications.

(D) In the alternative to Franchise modification negotiations as provided for in Section 2.6 (C), or if the Town and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the Town grants to another provider of Cable Services, with the understanding that Grantee will use its current system design and technology infrastructure to meet any requirements of the new franchise so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the Town shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Cable Services provider.

(E) Notwithstanding anything contained in this Section 2.6(A) through (D) to the contrary, the Town shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services available for purchase by Subscribers or customers under its franchise agreement with the Town.

(F) Notwithstanding any provision to the contrary, at any time that a wireline facilities-based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of video programming within the Franchise Area without a franchise or other similar lawful authorization granted by the Town, then:

(1) Grantee may negotiate with the Town to seek Franchise modifications as per Section 2.6(C) above; or

(a) the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of Grantee's notice; or,

(b) Grantee may assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

## **2.7 Familiarity with Franchise**

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms, and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

## **2.8 Effect of Acceptance**

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

## **SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS**

### **3.1 Franchise Fee**

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the Town's Rights-of-Way, Grantee shall pay as a Franchise Fee to the Town, throughout the duration of and consistent with this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

### **3.2 Payments**

Grantee's Franchise Fee payments to the Town shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates.

### **3.3 Acceptance of Payment and Recomputation**

No acceptance of any payment shall be construed as an accord by the Town that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Town may have for further or additional sums payable or for the performance of any other obligation of Grantee.

### **3.4 Quarterly Franchise Fee Reports**

Each payment shall be accompanied by a written report to the Town, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

### **3.5 Annual Franchise Fee Reports**

Grantee shall, within sixty (60) days after the end of each year, furnish to the Grantor a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

### **3.6 Audits**

On an annual basis, upon thirty (30) days prior written notice, the Town, including the Town's Auditor or his/her authorized representative, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise. Pursuant to subsection 1.25, as part of the Franchise Fee audit/review the Town shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for Town subscribers during the audit period. To the extent that the Town does not believe that the relevant data supplied is sufficient for the Town to complete its audit/review, the Town may require other relevant data. For purposes of this Section 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the Town to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the Town related to audits), Grantee shall pay the total cost of the audit/review, such cost not to exceed five thousand dollars (\$5,000) for each year of the audit period. The Town's right to audit/review and the Grantee's obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the Town.

### **3.7 Late Payments**

In the event any payment due quarterly is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date the payment was originally due until the date the Town receives the payment.

### **3.8 Underpayments**

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the Town.

### **3.9 Alternative Compensation**

In the event the obligation of Grantee to compensate the Town through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall comply with

any other Applicable Law related to the right to occupy the Grantor's Rights-of-Way and compensation therefor.

### **3.10 Maximum Legal Compensation**

The parties acknowledge that, at present, applicable federal law limits the Town to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the Town is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the Town through the same process that the Franchise was adopted to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the Grantor hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the Town of such amendment, so long as all cable operators in the Town are paying the same Franchise Fee amount.

### **3.11 Additional Commitments Not Franchise Fee Payments**

(A) Any charges incidental to the awarding or enforcing of this Franchise (including, without limitation, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damage) and Grantee's costs of compliance with Franchise obligations (including, without limitation, compliance with customer service standards and build out obligations) shall not be offset against Franchise Fees. Furthermore, the Town and Grantee agree that any local tax of general applicability shall be in addition to any Franchise Fees required herein, and there shall be no offset against Franchise Fees. Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with Applicable Law. The Town likewise reserves all rights it has under Applicable Law. Should Grantee elect to offset the items set forth herein, or other Franchise commitments such as complimentary Cable Service, against Franchise Fees in accordance with Applicable Law, including any Orders resulting from the FCC's 621 proceeding, MB Docket No. 05-311, Grantee shall provide the Town with advance written notice. Such notice shall document the proposed offset or service charges so that the Town can make an informed decision as to its course of action. Upon receipt of such notice, the Town shall have up to one hundred twenty (120) days to either (1) maintain the commitment with the understanding that the value shall be offset from Franchise Fees; (2) relieve Grantee from the commitment obligation under the Franchise; or (3) pay for the services rendered pursuant to the commitment in accordance with Grantee's regular and nondiscriminatory term and conditions.

(B) Grantee's notice pursuant to Section 3.11(A) shall, at a minimum, address the following: (1) identify the specific cash or non-cash consideration or obligations that must be offset from Grantee's Franchise Fee obligations; (2) identify the Franchise terms and conditions for which Grantee is seeking amendments; (3) provide text for any proposed Franchise amendments to the Town, with a written explanation of why the proposed amendments are necessary and consistent with Applicable Law; (4) provide all information and documentation reasonably necessary to address how and why specific offsets are to be calculated and (5) if applicable, provide all information and documentation reasonably necessary to document how Franchise Fee offsets may be passed through to Subscribers in accordance with 47 U.S.C. 542(e). Nothing in this Section 3.11(B) shall be construed to extend the one hundred twenty (120) day time period for Town to

make its election under Section 3.11(A); provided however, that any disagreements or disputes over whether sufficient information has been provided pursuant to this Paragraph (B) may be addressed under Sections 13.1 or 13.2 of this Franchise.

(C) Upon receipt of Grantee's written notice as provided in Section 3.11 (B), the Town and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications and agree to what offsets, if any, are to be made to the Franchise Fee obligations. Such negotiation will proceed and conclude within a one hundred twenty (120) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the Town and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the Town shall amend this Franchise to include those modifications.

(D) If the parties are unable to reach agreement on any Franchise Fee offset issue within one hundred twenty (120) days or such other time as the parties may mutually agree, each party reserves all rights it may have under Applicable Law to address such offset issues.

(E) The Town acknowledges that Grantee currently provides three outlets of Basic Service and Digital Starter Service and associated equipment to certain Town owned and occupied or leased and occupied buildings, schools, fire stations and public libraries located in areas where Grantee provides Cable Service. For purposes of this Franchise, "school" means all State-accredited K-12 public and private schools. Outlets of Basic and Digital Starter Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Grantee's commitment to provide this service is voluntary, and may be terminated by Grantee, at its sole discretion.

(1) Grantee's termination of complimentary services provided shall be pursuant to the provisions of Section 3.11(A)-(E) above. Town may make a separate election for each account or line of service identified in the notice (for example, Town may choose to accept certain services or accounts as offsets to Franchise Fees, and discontinue other services or accounts), so long as all elections are made within one hundred twenty (120) days. Grantee shall also provide written notice to each entity that is currently receiving complimentary services with copies of those notice(s) sent to the Town.

(2) Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with Applicable Law. The Town likewise reserves all rights it has under Applicable Law.

(F) The parties understand and agree that offsets may be required and agreed to as a result of the FCC's Order in what is commonly known as the 621 Proceeding, MB Docket No. 05-311. Should there be a change in Applicable Law as a result of the 621 Proceeding, which would permit any cash or non-cash consideration or obligations to be required by this Franchise without being offset from Franchise Fees, or would change the scope of the Town's regulatory authority over the use of the rights-of-way by the Grantee, the parties shall, within one hundred twenty (120) days of written notice from the Town, amend this Franchise to reinstate such consideration or obligations without offset from Franchise Fees, and to address the full scope of the Town's regulatory authority.



### **3.12 Tax Liability**

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the Town, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the Town. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

### **3.13 Financial Records**

Grantee agrees to meet with a representative of the Town upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the Town deems necessary for reviewing reports and records.

### **3.14 Payment on Termination**

If this Franchise terminates for any reason, the Grantee shall file with the Town within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Town reserves the right to satisfy any remaining financial obligations of the Grantee to the Town by utilizing the funds available in the letter of credit or other security provided by the Grantee.

## **SECTION 4. ADMINISTRATION AND REGULATION**

### **4.1 Authority**

(A) The Town shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Federal, state, and local law, to any agent in the Town's sole discretion.

(B) Nothing in this Franchise shall limit nor expand the Town's right of eminent domain under State law.

### **4.2 Rates and Charges**

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the Town to the full extent authorized by applicable federal, state, and local laws.

### **4.3 Rate Discrimination**

All of Grantee's rates and charges shall be published (in the form of a publicly available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the Town of Keystone. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or,

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or,

(C) The offering of rate discounts for Cable Service; or,

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

### **4.4 Filing of Rates and Charges**

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the Town a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of the Town, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

### **4.5 Cross Subsidization**

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

#### **4.6 Reserved Authority**

Both Grantee and the Town reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

#### **4.7 Time Limits Strictly Construed**

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise, and sufficient grounds for the Town to invoke any relevant remedy, in accordance with Section 13.1 of this Franchise.

#### **4.8 Franchise Amendment Procedure**

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the Town and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the Town Council for its approval. If so approved by the Town Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

#### **4.9 Performance Evaluations**

(A) The Grantor may hold performance evaluation sessions upon ninety (90) days written notice, provided that such evaluation sessions shall be held no more frequently than once every two (2) years. All such evaluation sessions shall be conducted by the Town.

(B) Special evaluation sessions may be held at any time by the Town during the term of this Franchise, upon ninety (90) days written notice to Grantee.

(C) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in any manner within the discretion of the Town. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the Town, provided Grantee receives appropriate advance notice.

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the Town's or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the Town and shall provide such information and documents as the Town may reasonably require to perform the evaluation.

#### **4.10 Late Fees**

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with the Town's Customer Service Standards, as the same may be amended from time to time by the Town Council acting by ordinance or resolution, or as the same may be superseded by Applicable Law.

(B) Nothing in this subsection shall be deemed to create, limit, or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be consistent with Applicable Law.

#### **4.11 Force Majeure**

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the Town. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, pandemics, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the Town and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably required by the Town to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the Town with its proposed plan for remediation, including the timing for such cure.

### **SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS**

#### **5.1 Indemnification**

(A) General Indemnification. Grantee shall indemnify, defend and hold the Town, its officers, officials, boards, commissions, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and

cooperate with the Town while conducting its defense of the Town. Grantee shall not be obligated to indemnify the Town to the extent of the Town's negligence or willful misconduct.

(B) Indemnification for Relocation. Grantee shall indemnify the Town for any damages, claims, additional costs, or reasonable expenses assessed against, or payable by, the Town arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the Town.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold the Town harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

(1) The lawful actions of the Town in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(3) Any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the Town arising out of a release of hazardous substances caused by the Cable System.

(D) Procedures and Defense. If a claim or action arises, the Town or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The Town may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees, expenses or other costs that Town may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(F) is required. In that event the provisions of Paragraph 5.1(F) shall govern Grantee's responsibility for Town's attorney's fees, expenses or other costs. In any event, Grantee may not agree to any settlement of claims affecting the Town without the Town's approval.

(E) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(F) Expenses. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the Town and the counsel selected by Grantee to represent the Town, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the Town in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and Town desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then Town shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. The Town's expenses shall include all reasonable

out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the Town Attorney or his/her assistants or any employees of the Town or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the Town by Grantee.

## **5.2 Insurance**

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance, but in no event shall occurrence basis minimum limits be less than provided for by C.R.S. § 24-10-114(1)(b):

(1) Commercial General Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage and three million dollars (\$1,000,000.00) annual aggregate. Such insurance shall cover liability for premises, operations, independent contractors, products/completed operations, personal and advertising injury, and the tort liability of another assumed in a business contract. Such policy shall provide completed operations coverage for additional insured and shall have cross liability coverage either by way of a separation of insureds clause or otherwise. There shall be a waiver of subrogation and rights of recovery against the Town, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial Automobile Liability insurance with minimum single limits for bodily injury and property damage of one million dollars (\$1,000,000.00) each accident with respect to each of Grantee's owned, hired, and non-owned vehicles assigned to or used in the operation of the Cable System in the Town. These requirements can be satisfied by providing either excess liability or umbrella liability coverage consistent with the requirements described in subsection (1) above. The policy shall contain a severability of interests provision.

(B) The insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the Town, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

## **5.3 Deductibles / Certificate of Insurance**

Any deductible of the policies shall not in any way limit Grantee's liability to the Town.

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The Town, its officers, officials, boards, commissions, employees

and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or Applicable Law, or in the construction, operation or repair, or ownership of the Cable System;

(b) Grantee's insurance coverage shall be primary insurance with respect to the Town, its officers, officials, boards, commissions, employees, and agents. Any insurance or self-insurance maintained by the Town, its officers, officials, boards, commissions, employees, and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A VII."

(C) Verification of Coverage. The Grantee shall furnish the Town with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

#### **5.4 Letter of Credit**

(A) If there is a claim by the Town of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the Town may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the Town, to the Town as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the Town in the amount of ten thousand dollars (\$10,000).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained at ten thousand dollars (\$10,000) until the allegations of the uncured breach have been resolved.

(C) After completion of the procedures set forth in Section 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by the Town for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the Town sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the Town to correct Franchise violations not corrected by Grantee;

(3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and,

(4) Failure to comply with the Customer Service Standards of the Town, as the same may be amended from time to time by the Town Council acting by ordinance or resolution.

(D) The Town shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(E) Grantee shall have the right to appeal to the Town Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the Town erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

## **SECTION 6. CUSTOMER SERVICE**

### **6.1 Customer Service Standards**

Grantee shall comply with Customer Service Standards of the Town, as the same may be amended from time to time by the Town Council. Any requirement in Customer Service Standards for a "local" telephone number may be met by the provision of a toll-free number. The Customer Services Standards in effect as of the Effective Date of this Franchise are attached as Exhibit A. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise.

### **6.2 Subscriber Privacy**

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal, State, or local law.

### **6.3 Subscriber Contracts**

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the Town a sample of the Subscriber contract or service agreement then in use.

### **6.4 Advance Notice to the Town**

The Grantee shall use reasonable efforts to furnish information provided to Subscribers or the media in the normal course of business to the Town in advance.



## **6.5 Identification of Local Franchise Authority on Subscriber Bills**

Within sixty (60) days after written request from the Town, Grantee shall place the Town's phone number on its Subscriber bills, to identify where a Subscriber may call to address escalated complaints.

## **SECTION 7. REPORTS AND RECORDS**

### **7.1 Open Records**

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the Town. The Town, including the Town's Auditor or his/her authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the Town access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate or a third party. The Town may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the Town, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the Town inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the Town upon written request as set forth above, and if the Town determines that an examination of such records is necessary or appropriate for the performance of any of the Town's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

### **7.2 Confidentiality**

The Town agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the Town aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the Town believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the Town receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the Town shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the Town for all reasonable costs and attorney's fees incurred in any legal proceedings pursued under this Section.

### **7.3 Records Required**

(A) Grantee shall at all times maintain, and shall furnish to the Town upon 30 days written request and subject to Applicable Law:

(1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Right-of-Way but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the Town's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the Town. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the Town;

(3) Current Subscriber Records and information;

(4) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, all construction activity, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the Town is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

### **7.4 Annual Reports**

Within sixty (60) days of the Town's written request, Grantee shall submit to the Town a written report, in a form acceptable to the Town, which shall include, but not necessarily be limited to, the following information for the Town:

(A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;

(B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);

(C) The number of homes passed, beginning and ending plant miles, any services added or dropped, and any technological changes occurring in the Cable System;

(D) A statement of planned construction, if any, for the next year; and,

(E) A copy or hyperlink of the most recent annual report Grantee filed with the SEC or other governing body.

The parties agree that the Town's request for these annual reports shall remain effective and need only be made once. Such a request shall require the Grantee to continue to provide the reports annually, until further written notice from the Town to the contrary.

### **7.5 Copies of Federal and State Reports**

Within thirty (30) days of a written request, Grantee shall submit to the Town copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the Town. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

### **7.6 Complaint File and Reports**

(A) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain available for viewing to the Town during normal business hours at Grantee's local business office.

(B) Within thirty (30) days of a written request, Grantee shall provide the Town a quarterly executive summary in the form attached hereto as Exhibit A, which shall include the following information from the preceding quarter:

- (1) A summary of service calls, identifying the number and nature of the requests and their disposition;
- (2) A log of all service interruptions;
- (3) A summary of customer complaints referred by the Town to Grantee; and,
- (4) Such other information as reasonably requested by the Town.

The parties agree that the Town's request for these summary reports shall remain effective and need only be made once. Such a request shall require the Grantee to continue to provide the reports quarterly, until further written notice from the Town to the contrary.

### **7.7 Failure to Report**

The failure or neglect of Grantee to file any of the reports or filings required under this Franchise or such other reports as the Town may reasonably request (not including clerical errors or errors made in good faith), may, at the Town's option, be deemed a breach of this Franchise.

### **7.8 False Statements**

Any false or misleading statement or representation in any report required by this Franchise (not including clerical errors or errors made in good faith) may be deemed a material breach of

this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to the Town under this Franchise or otherwise.

## **SECTION 8. PROGRAMMING**

### **8.1 Broad Programming Categories**

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary; and
- (I) National news, weather and information.
- (J) Public, Educational and Government Access, to the extent required by this Franchise.

### **8.2 Deletion or Reduction of Broad Programming Categories**

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the Grantor.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date of this Franchise shall be deemed the mix and quality of Cable Services required under this Franchise throughout its term.

### **8.3 Obscenity**

Grantee shall not transmit or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or

agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

#### **8.4 Parental Control Device**

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps, or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

#### **8.5 Continuity of Service Mandatory**

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall cooperate with the Town, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Manager, or without just cause, the Town may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the Town or a permanent Cable Operator is selected. If the Town is required to fulfill this obligation for Grantee, Grantee shall reimburse the Town for all reasonable costs or damages that are the result of Grantee's failure to perform.

#### **8.6 Services for the Disabled**

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

### **SECTION 9. ACCESS**

#### **9.1 Web-Based Video On Demand and Streaming**

As of the Effective Date, the Town is not able to provide web-based video on demand and streaming on its website. In the event the Town provides written notice to Grantee that it wishes to commence such service, the parties agree the following section shall be added to this Franchise, and the parties will mutually agree upon the locations and cost for the same.

(A) Within ninety (90) days after written request of the Town, Grantee shall provide a one-time grant of funding, in an amount not to exceed two thousand dollars (\$2,000) which the Town shall use to acquire a video on demand server for facilitating the web-based Access programming described in this Section 9.1.

(B) The Town's Designated Access Provider(s) may provide web-based video on demand programming online; provided however, that such Designated Access Provider(s) shall be responsible for its own costs related to a video on demand server, broadband connection and service and any other associated equipment.

(C) Any costs incurred by Grantee in facilitating the web-based on demand Access programming described in this Section 9.1 may be recovered from Subscribers by Grantee in accordance with Applicable Law.

## **SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION**

### **10.1 Right to Construct**

Subject to Applicable Law, regulations, rules, resolutions, and ordinances of the Town and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

### **10.2 Right-of-Way Meetings**

Grantee will regularly attend and participate in meetings of the Town, of which the Grantee is made aware, regarding Right-of-Way issues that may impact the Cable System.

### **10.3 Joint Trenching/Boring Meetings**

Grantee will regularly attend and participate in planning meetings of the Town, of which the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the Town.

### **10.4 General Standard**

All work authorized and required hereunder shall be done in a safe, thorough, and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

### **10.5 Permits Required for Construction**

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the Town. As part of the permitting process, the Town may impose such conditions and regulations as are necessary for the purpose of protecting any

structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite Town permits received by Grantee.

## **10.6 Emergency Permits**

In the event that emergency repairs are necessary, Grantee shall immediately notify the Town of the need for such repairs. Grantee may initiate such emergency repairs and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

## **10.7 Compliance with Applicable Codes**

(A) Town Construction Codes. Grantee shall comply with all applicable Grantor construction codes, including, without limitation, the Uniform Building Code and other building codes, the Uniform Fire Code, the Uniform Mechanical Code, the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, and zoning codes and regulations.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.

(C) Safety Codes. Grantee shall comply with all federal, state, and the Town safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by Applicable Law during construction, operation, and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

## **10.8 GIS Mapping**

Grantee shall comply with any generally applicable ordinances, rules, and regulations of the Town regarding geographic information mapping systems for users of the Rights-of-Way.

## **10.9 Minimal Interference**

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the Town, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the Town's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the Town may deem proper to

make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the Town may require the removal or relocation of Grantee's lines, cables, equipment, and other appurtenances from the property in question at Grantee's expense.

#### **10.10 Prevent Injury/Safety**

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the Town's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change, and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

#### **10.11 Hazardous Substances**

(A) Grantee shall comply with any and all Applicable Laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

(B) Upon reasonable notice to Grantee, the Town may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to indemnify the Town against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the Town arising out of a release of hazardous substances caused by Grantee's Cable System.

#### **10.12 Locates**

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the Town and to the notification association established in C.R.S. Section 9-1.5-105, as such may be amended from time to time.

Within forty-eight (48) hours after any Town bureau or franchisee, licensee or permittee notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all of its located underground facilities within the area of the proposed excavation;

(B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.



### **10.13 Notice to Private Property Owners**

Grantee shall give notice to private property owners of work on or adjacent to private property in accordance with the Town's Customer Service Standards, as the same may be amended from time to time by the Town Council acting by Ordinance or resolution.

### **10.14 Underground Construction and Use of Poles**

(A) When required by general ordinances, resolutions, regulations, or rules of the Town or applicable State or federal law, Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the Town or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the Town's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) The Grantee shall utilize existing poles and conduit wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of Grantee shall be located as designated by the proper Town authorities.

(E) This Franchise does not grant, give, or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Town or any other Person. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon request by the Town.

(F) The parties recognize that the Town may desire to place its own cable or conduit for Fiber Optic cable in trenches opened by the Grantee. Therefore, if Grantee upgrades its Cable System, Grantee shall submit these plans to the Town in accordance with the Town's permitting process so that such opportunities may be explored. However, nothing set forth herein shall obligate the Grantee to slow the progress of any future upgrade of the Cable System to accommodate the Town. In addition, the Grantee agrees to cooperate with the Town in any other construction by the Grantee that involves trenching or boring. If sufficient space is reasonably available, the Grantee may allow the Town to lay its cable, conduit, and Fiber Optic cable in the Grantee's trenches and bores, provided the Town shares in the total cost of the trenching, boring, and network installation on the same terms and conditions as the Grantee. The Town will bear the cost of the Town cable, conduit, pullboxes, and all other materials and infrastructure to be installed.

Unless otherwise agreed between the Town and Grantee, the Town will also contribute to the total cost of installation on a pro rata basis. The total cost of installation shall include all direct and indirect costs associated with installing conduit, materials or infrastructure, including, but not limited to, labor and equipment costs. The Town may extend the same courtesies above to the Grantee when it undertakes trenching, boring, and network installation construction work, and if the Grantee chooses to collocate, it, too, will contribute to the total costs of the project as outlined above. The Town shall be responsible for maintaining its respective cable, conduit, and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph. Additionally, any Town conduit or infrastructure installed by Grantee shall not be used to provide services in competition with Grantee's services. All provisions in this subsection are purely discretionary and intended to promote collaboration between the Parties. Co-location as provided herein shall only occur upon each party's express written consent, and such consent shall remain in the sole discretion of the party undertaking the primary project.

### **10.15 Undergrounding of Multiple Dwelling Unit Drops**

In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where it is determined to be technologically feasible in agreement with the owners and/or owner's association of the Multiple Dwelling Units.

### **10.16 Burial Standards**

(A) Depths. Unless otherwise required by law, Grantee, and its contractors, shall comply with the following burial depth standards. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities, or existing telephone facilities in the same portion of the Right-of-Way, so long as those facilities have been buried in accordance with Applicable Law:

- (1) Underground cable drops from the curb shall be buried at a minimum depth of twelve (12) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.
- (2) Feeder lines shall be buried at a minimum depth of eighteen (18) inches.
- (3) Trunk lines shall be buried at a minimum depth of thirty-six (24) inches.
- (4) Fiber Optic cable shall be buried at a minimum depth of thirty-six (36) inches.

In the event of a conflict between this subsection and the provisions of any customer service standard, this subsection shall control.

(B) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one calendar week of initial installation, or at a time mutually-agreed upon between the Grantee and the Subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the

revised schedule is not met.

### **10.17 Cable Drop Bonding**

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

### **10.18 Prewiring**

Any ordinance or resolution of the Town which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

### **10.19 Repair and Restoration of Property**

(A) The Grantee shall protect public and private property from damage. If damage occurs, including damage to any underground facility as such is defined in C.R.S. § 9-1.5-102, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the Town may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Town.

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with the Grantor's Customer Service Standards, as the same may be amended from time to time by the Town Council acting by ordinance or resolution.

### **10.20 Acquisition of Facilities**

Upon Grantee's acquisition of Cable System-related facilities in any Town Right-of-Way, or upon the addition to the Town of any area in which Grantee owns or operates any such facility, Grantee shall, at the Town's request, submit to the Town a statement describing all such facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise.

## **10.21 Discontinuing Use/Abandonment of Cable System Facilities**

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for the Town's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the Town's permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the Town may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The Town may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the Town. Until such time as Grantee removes or modifies the facility as directed by the Town, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the Town may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes.

## **10.22 Movement of Cable System Facilities for Town Purposes**

The Town shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the Town for public purposes, in the event of an emergency, or when the public health, safety or welfare requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the Town for public purposes). Such work shall be performed at the Grantee's expense. Except during an emergency, the Town shall provide reasonable notice to Grantee, not to be less than forty-five (45) business days and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding \$500,000 in expenditures by the Town which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the Town shall provide at least sixty (60) days' written notice to Grantee. Following notice by the Town, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the Town. If the Town requires Grantee to relocate its facilities located within the Rights-of-Way, the Town shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

If the Grantee fails to complete this work within the time prescribed and to the Town's satisfaction, the Town may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the Town due to Grantee's delay. In such event, the Town shall not be liable for any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the Town.

### **10.23 Movement of Cable System Facilities for Other Franchise Holders**

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another Town franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee shall require that the costs associated with the removal or relocation be paid by the benefited party.

### **10.24 Temporary Changes for Other Permittees**

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower, or remove its wires as necessary to permit the moving of a building, vehicle, equipment, or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

### **10.25 Reservation of Town's Use of Right-of-Way**

Nothing in this Franchise shall prevent the Town or public utilities owned, maintained, or operated by public entities other than the Town from constructing sewers; grading, paving, repairing, or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

### **10.26 Tree Trimming**

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the Town's Rights-of-Way which interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulations of the Town regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

### **10.27 Inspection of Construction and Facilities**

The Town may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior notice. The Town shall have the right to charge generally applicable inspection fees therefore. If an unsafe condition is found to exist, the Town, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the Town establishes. The Town has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefore.

## **10.28 Stop Work**

(A) On notice from the Town that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the Town, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the Town.

(B) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

## **10.29 Work of Contractors and Subcontractors**

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the Town's ordinances, regulations, and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise and other Applicable Law and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors, or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other Applicable Law governing the work performed by them.

## **SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING**

### **11.1 Subscriber Network**

(A) Grantee's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 750 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall deliver no less than one hundred ten (110) Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals

received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

(C) All construction shall be subject to the Town's permitting process.

(D) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

(E) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

(F) Grantee shall not be required to obtain permits for construction work related to the connection and disconnection of Subscribers between the distribution plant in the public rights of way and the Subscriber's residence to the extent such work does not require cuts to the street, curb, or sidewalk and disturbs no more than 20 feet of the public right of way.

## **11.2 Technology Assessment**

(A) The Town may notify Grantee on or after five (5) years after the Effective Date, that the Town will conduct a technology assessment of Grantee's Cable System. The technology assessment may include without limitation, determining whether Grantee's Cable System technology and performance are consistent with current technical practices and range and level of services existing in the fifteen (15) largest U.S. cable systems owned and operated by Grantee's Parent Corporation and/or Affiliates pursuant to franchises that have been renewed or extended since the Effective Date.

(B) Grantee shall cooperate with the Town to provide necessary non-confidential and proprietary information upon the Town's reasonable request as part of the technology assessment.

(C) At the discretion of the Town, findings from the technology assessment may be included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the Town pursuant to 47 U.S.C. §546.

## **11.3 Standby Power**

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the Town no later than thirty (30) days following receipt of a request.

## **11.4 Emergency Alert Capability**

Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the

FCC. Upon request, the Town shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

### **11.5 Technical Performance**

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The Town shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

### **11.6 Cable System Performance Testing**

(A) Grantee shall provide to the Grantor a copy of its current written process for resolving complaints about the quality of the video programming services signals delivered to Subscriber and shall provide the Grantor with any amendments or modifications to the process at such time as they are made.

(B) Grantee shall, at Grantee's expense, maintain all aggregate data of Subscriber complaints related to the quality of the video programming service signals delivered by Grantee in the Grantor for a period of at least one (1) year, and individual Subscriber complaints from the Grantor for a period of at least three (3) years, and make such information available to the Grantor upon reasonable request.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the Grantor upon reasonable request.

(D) Grantee shall perform any tests required by the FCC.

### **11.7 Additional Tests**

Where there exists other evidence which in the judgment of the Town casts doubt upon the reliability or technical quality of Cable Service, the Town shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the Town in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (A) the nature of the complaint or problem which precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and



- (E) any other information pertinent to said tests and analysis which may be required.

## **SECTION 12. SERVICE AVAILABILITY**

### **12.1 Service Availability**

(A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the Town. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Except as otherwise provided herein, Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

(2) At a non-discriminatory installation charge for a standard installation, consisting of a 125-foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to the Town;

(3) At non-discriminatory monthly rates for Residential Subscribers.

(B) Service to Multiple Dwelling Units. Consistent with this Section 12.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the Town and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit in the form of an access and wiring agreement that is mutually satisfactory to the Grantee and the property owner. The Town acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

(C) Subscriber Charges for Extensions of Service. Grantee agrees to extend its Cable System to all persons living in areas with a residential density of forty-five (45) residences per mile of Cable System plant and if the area is within 1,320 cable-bearing strand feet of Grantee's existing distribution plant. If the residential density is less than forty-five (45) residences per 5,280 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals forty-five (45). Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

## **SECTION 13. FRANCHISE VIOLATIONS**

### **13.1 Procedure for Remedying Franchise Violations**

(A) If the Town reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the Town shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the Town, contesting the Town's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;

(2) cure the default; or,

(3) notify the Town that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the Town in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the Town may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the Town orders a meeting in accordance with subsection (A)(3), the Town shall set a meeting to investigate said issues or the existence of the alleged default. The Town shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the Town determines that a default exists, the Town shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the Town shall determine. In the event Grantee does not cure within such time to the Town's reasonable satisfaction, the Town may:

(1) Withdraw an amount from the letter of credit as monetary damages;

(2) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,

(3) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the Town, provided that any such final determination may be subject to

appeal to a court of competent jurisdiction under Applicable Law.

(E) It shall not be a violation of this Franchise if Grantee decides, on a company-wide basis, to cease providing Cable Services. Grantee shall provide a minimum of one year's written notice to Town of the termination date, and upon that date all rights, duties and obligations of this Franchise shall terminate except for those that by their nature, should survive termination.

### **13.2 Revocation**

(A) In addition to revocation in accordance with other provisions of this Franchise, the Town may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the Town and Grantee;

(2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;

(3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the Town or Subscribers; or

(4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, the Town shall give written notice to the Grantee of the Town's intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) Any proceeding under the paragraph above shall be conducted by the Town Council and be open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. An electronic audio recording shall be made of such proceeding by the Town, which at the request and cost of any party may be converted into a written transcript. The Town Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the Town Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and

conditions that the Town Council determines are reasonable under the circumstances. If the Town determines that the Franchise is to be revoked, the Town shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the Town's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision. Upon a successful appeal, Grantee shall be entitled to such relief as the Court may deem appropriate.

(3) The Town Council may at its sole discretion take any lawful action which it deems appropriate to enforce the Town's rights under the Franchise in lieu of revocation of the Franchise.

### **13.3 Procedures in the Event of Termination or Revocation**

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the Town may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the Town's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and (A)(2) above, the Town may order the removal of the above-ground Cable System facilities and such underground facilities from the Town at Grantee's sole expense within a reasonable period of time as determined by the Town. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places, and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3 (B) to the Town's satisfaction, after written notice to Grantee, the Town may cause the work to be done and Grantee shall reimburse the Town for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the Town may recover the costs through the letter of credit provided by Grantee.

(D) The Town may seek legal and equitable relief to enforce the provisions of this Franchise.

### **13.4 Purchase of Cable System**

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the Town shall have the option to purchase the Cable System.

(B) The Town may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the Town within which to accept or reject the offer.

(C) In any case where the Town elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the Town's audit of a current profit and loss statement of Grantee. The Town shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the Town would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

### **13.5 Receivership and Foreclosure**

(A) At the option of the Town, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the Town may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The Town has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the Town to assume and be bound by all of the terms and conditions of this Franchise.

### **13.6 No Monetary Recourse Against the Town**

Grantee shall not have any monetary recourse against the Town or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the Town under this Franchise are in addition to, and shall not be read to limit, any immunities the Town may enjoy under federal, State or local law.

### **13.7 Alternative Remedies**

No provision of this Franchise shall be deemed to bar the right of the Town to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Town to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

### **13.8 Assessment of Monetary Damages**

(A) The Town may assess against Grantee monetary damages (i) up to five hundred dollars (\$500.00) per day for general construction delays, violations of payment obligations, (ii) up to two hundred fifty dollars (\$250.00) per day for any other material breaches, or (iii) up to one hundred dollars (\$100.00) per day for defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, Town shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and-in this Franchise. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the Town in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by the Town of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by the Town by reason of the breach of this Franchise.

### **13.9 Effect of Abandonment**

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Town, at its option,

may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Town, or until the Franchise is revoked and a new franchisee is selected by the Town; or obtain an injunction requiring the Grantee to continue operations. If the Town is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Town or its designee for all reasonable costs, expenses and damages incurred.

### **13.10 What Constitutes Abandonment**

The Town shall be entitled to exercise its options in subsection 13.9 if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for four (4) consecutive days, unless the Town authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

For purposes of this section, a "substantial portion of the Franchise Area" means twenty percent (20%) or more of the Subscribers.

## **SECTION 14. FRANCHISE RENEWAL AND TRANSFER**

### **14.1 Renewal**

(A) The Town and Grantee agree that any proceedings undertaken by the Town that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the Town agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and the Town agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the Town and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Town may grant a renewal thereof. Grantee and the Town consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement and Grantee and the Town are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis, with the same terms and conditions as provided in the Franchise, and the Grantee and the Town shall continue to comply with all

obligations and duties under the Franchise.

## **14.2 Transfer of Ownership or Control**

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the Town, which consent shall be by the Town Council, acting by ordinance/resolution.

(B) The Grantee shall promptly notify the Town of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the Town shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to the Town for its approval of a sale or transfer and furnish all information required by law and the Town.

(D) In seeking the Town's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the Town may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) The Town shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise or by Applicable Law. The Town and the Grantee may by mutual agreement, at any time, extend the 120-day period. Subject to the foregoing, if the Town fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Town agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Town, Grantee shall file with the Town a copy of the deed, agreement, lease or other written



instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to Applicable Law, and will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, the Town may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Town in so inquiring. The Town may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the Town shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Town and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the Town; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

## **SECTION 15. SEVERABILITY**

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which shall remain in full force and effect for the term of the Franchise.

## **SECTION 16. MISCELLANEOUS PROVISIONS**

### **16.1 Preferential or Discriminatory Practices Prohibited**

**NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

### **16.2 Notices**

Throughout the term of the Franchise, each party shall maintain and file with the other a

local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the Town or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

Comcast of Colorado IX, LLC  
8000 E. Iliff Ave.  
Denver, CO 80231  
Attn: Government Affairs

The Town's address shall be:

Town of Keystone  
1628 Saints John Road  
Keystone, CO 80435

### **16.3 Descriptive Headings**

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only and shall not affect the meaning or interpretation of the text herein.

### **16.4 Publication Costs to be Borne by Grantee**

Grantee shall reimburse the Town for all costs incurred in publishing this Franchise, if such publication is required.

### **16.5 Binding Effect**

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

### **16.6 No Joint Venture**

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

### **16.7 Waiver**

The failure of the Town at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the Town hereafter to enforce the same. Nor shall the waiver by the Town of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

### **16.8 Reasonableness of Consent or Approval**

Whenever under this Franchise "reasonableness" is the standard for the granting or denial

of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

**16.9 Entire Agreement**

This Franchise and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

**16.10 Jurisdiction**

Jurisdiction and venue for any judicial dispute between the Town and Grantee arising under or out of this Franchise shall be proper and exclusive in Summit County District Court, Colorado, or in the United States District Court in Denver.

IN WITNESS WHEREOF, this Franchise is signed in the name of the Town of Keystone Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**TOWN OF KEYSTONE, COLORADO:**

\_\_\_\_\_  
Kenneth D. Riley, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

Accepted and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**COMCAST OF COLORADO IX, LLC**

State of Colorado )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2024 by \_\_\_\_\_, as \_\_\_\_\_, for Comcast of Colorado, IX, LLC.

My commission expires: \_\_\_\_\_

(SEAL)

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Notary Public

## **EXHIBIT A:**

# **Cable Television Customer Service Standards For the Town of Keystone**

## **I. POLICY**

The Cable Operator should resolve citizen complaints without delay and interference from the Franchising Authority.

Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the Franchising Authority should intervene. In addition, where a pattern of unremedied complaints or noncompliance with the Standards is identified, the Franchising Authority should prescribe a cure and establish a reasonable deadline for implementation of the cure. If the noncompliance is not cured within established deadlines, monetary sanctions should be imposed to encourage compliance and deter future non-compliance.

These Standards are intended to be of general application and are expected to be met under normal operating conditions; however, the Cable Operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the franchise area. The Cable Operator is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

These Standards supersede any contradictory or inconsistent provision in federal, state or local law (Source: 47 U.S.C. § 552(a)(1) and (d)), provided, however, that any provision in federal, state or local law, or in any original franchise agreement or renewal agreement, that imposes a higher obligation or requirement than is imposed by these Standards, shall not be considered contradictory or inconsistent with these Standards. In the event of a conflict between these Standards and a Franchise Agreement, the Franchise Agreement shall control.

These Standards apply to the provision of any Cable Service, provided by a Cable Operator over a Cable System, within the Town of Keystone.

## **II. DEFINITIONS**

When used in these Customer Service Standards (the "Standards"), the following words, phrases, and terms shall have the meanings given below.

"Adoption" shall mean the process necessary to formally enact the Standards within the Franchising Authority's jurisdiction under applicable ordinances and laws.

"Affiliate" shall mean any person or entity that is owned or controlled by, or under common ownership or control with, a Cable Operator, and provides any Cable Service or Other Service.

"Applicable Law" means, with respect to these standards and any Cable Operator's privacy policies, any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law that determines the legal standing of a case or issue.

"Cable Operator" shall mean any person or group of persons (A) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System. Source: 47 U.S.C. § 522(5).

"Cable Service" shall mean (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Source: 47 U.S.C. § 522(6). For purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by a television broadcast station. Source: 47 U.S.C. § 522(20). "Other programming service" is information that a Cable Operator makes available to all subscribers generally. Source: 47 U.S.C. § 522(14).

"Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the televisions signals of one or more television broadcast stations, or (B) a facility that serves subscribers without using any public right of way. Source: 47 U.S.C. § 522(7).

"Colorado Communications and Utilities Alliance" or "CCUA" shall mean an association comprised primarily of local governmental subdivisions of the State of Colorado, or any successor entity. The CCUA may, on behalf of its members, be delegated the authority to review, investigate or otherwise take some related role in the administration and/or enforcement of any functions under these Standards.

"Contractor" shall mean a person or entity that agrees by contract to furnish materials or perform services for another at a specified consideration.

"Customer" shall mean any person who receives any Cable Service from a Cable Operator.

"Customer Service Representative" (or "CSR") shall mean any person employed with or under contract or subcontract to a Cable Operator to assist, or provide service to, customers, whether by telephone, writing service or installation orders, answering customers' questions in person, receiving and processing payments, or performing any other customer service-related tasks.

"Escalated complaint" shall mean a complaint that is referred to a Cable Operator by the Franchising Authority.

"Franchising Authority" shall mean the Town of Keystone, Colorado.

"Necessary" shall mean required or indispensable.

"Non-cable-related purpose" shall mean any purpose that is not necessary to render or conduct a legitimate business activity related to a Cable Service or Other Service provided by a Cable Operator to a Customer. Market research, telemarketing, and other marketing of services or products that are not related to a Cable Service or Other Service provided by a Cable Operator to a Customer shall be considered Non-cable-related purposes.

"Normal business hours" shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include at least some evening hours one night per week, and include some weekend hours. Source: 47 C.F.R. § 76.309.

"Normal operating conditions" shall mean those service conditions which are within the control of a Cable Operator. Conditions which are not within the control of a Cable Operator include, but are not necessarily limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of a Cable Operator include, but are not necessarily limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade to the Cable System.

"Other Service(s)" shall mean any wire or radio communications service provided using any of the facilities of a Cable Operator that are used in the provision of Cable Service.

"Personally Identifiable Information" shall mean specific information about an identified Customer, including, but not be limited to, a Customer's (a) login information for the use of Cable Service and management of a Customer's Cable Service account, (b) extent of viewing of video programming or Other Services, (c) shopping choices, (d) interests and opinions, (e) energy uses, (f) medical information, (g) banking data or information, or (h) any other personal or private information. "Personally Identifiable Information" shall not mean any aggregate information about Customers which does not identify particular persons, or information gathered by a Cable Operator necessary to install, repair or service equipment or Cable System facilities at a Customer's premises.

"Service interruption" or "interruption" shall mean (i) the loss or substantial impairment of picture and/or sound on one or more cable television channels.

"Service outage" or "outage" shall mean a loss or substantial impairment in reception on all channels.

"Subcontractor" shall mean a person or entity that enters into a contract to perform part or all of the obligations of another's contract.

"Town" shall mean the Town of Keystone, Colorado.

"Writing" or "written" as the term applies to notification shall include electronic communications.

Any terms not specifically defined in these Standards shall be given their ordinary meaning, or where otherwise defined in applicable federal law, such terms shall be interpreted consistent with those definitions.

### **III. CUSTOMER SERVICE**

#### **A. Courtesy**

Cable Operator employees, contractors and subcontractors shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with customers.

#### **B. Accessibility**

1. A Cable Operator shall provide customer service centers/business offices ("Service Centers") which are conveniently located, and which are open during Normal Business Hours. Service Centers shall be fully staffed with Customer Service Representatives offering the following services to Customers who come to the Service Center: bill payment, equipment exchange, processing of change of service requests, and response to Customer inquiries and request.

Unless otherwise requested by the Town, a Cable Operator shall post a sign at each Service Center, visible from the outside of the Service Center, advising Customers of its hours of operation and of the telephone number at which to contact the Cable Operator if the Service Center is not open at the times posted.

The Cable Operator shall use commercially reasonable efforts to implement and promote "self-help" tools and technology, in order to respond to the growing demand of Customers who wish to interact with the Cable Operator on the Customer's own terms and timeline and at their own convenience, without having to travel to a Service Center. Without limitation, examples of self-help tools or technology may include self-installation kits to Customers upon request; pre-paid mailers for the return of equipment upon Customer request; an automated phone option for Customer bill payments; and equipment exchanges at a Customer's residence in the event of damaged equipment. A Cable Operator shall provide free exchanges of faulty equipment at the customer's address if the equipment has not been damaged in any manner due to the fault or negligence of the customer.

2. A Cable Operator shall maintain local telephone access lines that shall be available twenty-four (24) hours a day, seven (7) days a week for service/repair requests and billing/service inquiries.

3. A Cable Operator shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays.

4. If a customer service telephone call is answered with a recorded message providing the customer with various menu options to address the customer's concern, the recorded message must provide the customer the option to connect to and speak with a CSR within sixty (60) seconds of the commencement of the recording. During Normal Business Hours, a Cable Operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to technical service/repair and billing/service inquiry lines are answered by a customer service representative within thirty (30) seconds or less from the time a customer chooses a menu option to speak directly with a CSR or chooses a menu option that pursuant to the automated voice message, leads to a direct connection with a CSR. Under normal operating conditions, this thirty



(30) second telephone answer time requirement standard shall be met no less than ninety (90) percent of the time measured quarterly.

5. Under normal operating conditions, a customer shall not receive a busy signal more than three percent (3%) of the time. This standard shall be met ninety (90) percent or more of the time, measured quarterly.

### **C. Responsiveness**

#### **1. Guaranteed Seven-Day Residential Installation**

a. A Cable Operator shall complete all standard residential installations or modifications to service requested by customers within seven (7) business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty five (125) feet from the existing distribution system. If the customer requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is required, the Cable Operator shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.

b. All underground cable drops to the home shall be buried at a depth of no less than twelve inches (12"), or such other depth as may be required by the Franchise Agreement or local code provisions, or if there are no applicable Franchise or code requirements, at such other depths as may be agreed to by the parties if other construction concerns preclude the twelve inch requirement, and within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the Cable Operator and the customer.

#### **2. Residential Installation and Service Appointments**

a. The "appointment window" alternatives for specific installations, service calls, and/or other installation activities will be either a specific time, or at a maximum, a four (4) hour time block between the hours of 8:00 a.m. and 6:00 p.m., six (6) days per week. A Cable Operator may schedule service calls and other installation activities outside of the above days and hours for the express convenience of customers. For purposes of this subsection "appointment window" means the period of time in which the representative of the Cable Operator must arrive at the customer's location.

b. A Cable Operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment, unless the customer's issue has otherwise been resolved.

c. If a Cable Operator is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the Cable Operator shall take reasonable efforts to contact the customer promptly, but in no event later than the end of the appointment window. The appointment will be rescheduled, as necessary at a time that is convenient to the customer, within Normal Business Hours or as may be otherwise agreed to between the customer and Cable Operator.

d. A Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the customer within forty-eight (48) hours.

### 3. Residential Service Interruptions

a. In the event of system outages resulting from Cable Operator equipment failure, the Cable Operator shall correct such failure within 2 hours after the 3rd customer call is received.

b. All other service interruptions resulting from Cable Operator equipment failure shall be corrected by the Cable Operator by the end of the next calendar day.

c. Records of Complaints.

i. A Cable Operator shall keep an accurate and comprehensive file of any complaints regarding the cable system or its operation of the cable system, in a manner consistent with the privacy rights of customers, and the Cable Operator's actions in response to those complaints. These files shall remain available for viewing by the Franchising Authority during normal business hours at the Cable Operator's business office and shall be retained by the Cable Operator for a period of at least three (3) years.

ii. Upon written request a Cable Operator shall provide the Franchising Authority an executive summary quarterly, which shall include information concerning customer complaints referred by the Franchising Authority to the Grantee and any other requirements of a Franchise Agreement but no personally identifiable information. These summaries shall be provided within fifteen (15) days after the end of each quarter. Once a request is made, it need not be repeated and quarterly executive summaries shall be provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required.

iii. Upon written request a summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the Cable Operator for each quarter and submitted to the Franchising Authority by the fifteenth (15th) day of the month after each calendar quarter. Once a request is made, it need not be repeated and quarterly summary of service requests shall be provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required. Complaints shall be broken out by the nature of the complaint and the type of Cable service subject to the complaint.

d. Records of Service Interruptions and Outages. A Cable Operator shall maintain records of all outages and reported service interruptions. Such records shall indicate the type of cable service interrupted, including the reasons for the interruptions. A log of all service interruptions shall be maintained and provided to the Franchising Authority quarterly, upon written request, within fifteen (15) days after the end of each quarter. Such records shall be submitted to the Franchising Authority with the records identified in Section 3.c.ii above if so requested in writing, and shall be retained by the Cable Operator for a period of three (3) years.

e. All service outages and interruptions for any cause beyond the control of the Cable Operator shall be corrected within thirty-six (36) hours, after the conditions beyond its control have been corrected.

#### 4. TV Reception

a. A Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). A Cable Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).

b. If a customer experiences poor video or audio reception attributable to a Cable Operator's equipment, the Cable Operator shall:

i. Assess the problem within one (1) day of notification;

ii. Communicate with the customer regarding the nature of the problem and the expected time for repair;

iii. Complete the repair within two (2) days of assessing the problem unless circumstances exist that reasonably require additional time.

c. If an appointment is necessary to address any video or audio reception problem, the customer may choose a block of time described in Section III.C.2.a. At the customer's request, the Cable Operator shall repair the problem at a later time convenient to the customer, during Normal Business Hours or at such other time as may be agreed to by the customer and Cable Operator. A Cable Operator shall maintain periodic communications with a customer during the time period in which problem ascertainment and repair are ongoing, so that the customer is advised of the status of the Cable Operator's efforts to address the problem.

#### 5. Problem Resolution

A Cable Operator's customer service representatives shall have the authority to provide credit for interrupted service, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the customer within four (4) hours and resolve the problem within forty-eight (48) hours or within such other time frame as is acceptable to the customer and the Cable Operator.

#### 6. Billing, Credits, and Refunds

a. In addition to other options for payment of a customer's service bill, a Cable Operator shall make available a telephone payment option where a customer without account irregularities can enter payment information through an automated system, without the necessity of speaking to a CSR.

b. A Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the customer's account. The administrative fee must reflect the average costs incurred by the Cable Operator in attempting to collect the past due payment in accordance with applicable law. If the customer's service bill is not paid within forty-five (45) days of the beginning date of the applicable service period, the Cable Operator may perform a "soft" disconnect of the customer's service. If a customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the customer's service, provided it has provided two (2) weeks' notice to the customer that such disconnection may result.

c. The Cable Operator shall issue a credit or refund to a customer within 30 days after determining the customer's entitlement to a credit or refund.

d. Whenever the Cable Operator offers any promotional or specially priced service(s) its promotional materials shall clearly identify and explain the specific terms of the promotion, including but not limited to manner in which any payment credit will be applied.

## 7. Treatment of Property

To the extent that a Franchise Agreement does not contain the following procedures for treatment of property, Operator shall comply with the procedures set forth in this Section.

a. A Cable Operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by a Cable Operator, any employee or agent of a Cable Operator during installation or construction shall be restored to their prior condition or replaced within seven (7) days, unless seasonal conditions require a longer time, in which case such restoration or replacement shall be made within seven (7) days after conditions permit. Trees and shrubs on private property shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.

b. A Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the Franchising Authority, restore any private property to as good condition as before the work causing such disturbance was initiated. A Cable Operator shall repair, replace or compensate a property owner for any damage resulting from the Cable Operator's installation, construction, service or repair activities. If compensation is requested by the customer for damage caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner one hundred (100) percent of the actual cost of the damage.

c. Except in the case of an emergency involving public safety or service interruption to a large number of customers, a Cable Operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry, unless such notice is waived by the customer. For purposes of this subsection, "reasonable notice" shall be considered:

- i. For pedestal installation or similar major construction, seven (7) days.
- ii. For routine maintenance, such as adding or dropping service, tree trimming and the like, reasonable notice given the circumstances. Unless a Franchise Agreement has a different requirement, reasonable notice shall require, at a minimum, prior notice to a property owner or tenant, before entry is made onto that person's property.
- iii. For emergency work a Cable Operator shall attempt to contact the property owner or legal tenant in person and shall leave a door hanger notice in the event personal contact is not made. Door hangars must describe the issue and provide contact information where the property owner or tenant can receive more information about the emergency work.

Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law.

- d. Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

#### **D. Services for Customers with Disabilities**

1. For any customer with a disability, a Cable Operator shall deliver and pick up equipment at customers' homes at no charge unless the malfunction was caused by the actions of the customer. In the case of malfunctioning equipment, the technician shall provide replacement equipment, hook it up and ensure that it is working properly, and shall return the defective equipment to the Cable Operator.
2. A Cable Operator shall provide either TTY, TDD, TYY, VRS service or other similar service that are in compliance with the Americans with Disabilities Act and other applicable law, with trained operators who can provide every type of assistance rendered by the Cable Operator's customer service representatives for any hearing-impaired customer at no charge.
3. A Cable Operator shall provide free use of a remote-control unit to mobility-impaired (if disabled, in accordance with Section III.D.4) customers.
4. Any customer with a disability may request the special services described above by providing a Cable Operator with a letter from the customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

#### **E. Cable Services Information**

1. At any time a customer or prospective customer may request, a Cable Operator shall provide the following information, in clear, concise written form, easily accessible and located on Cable Operator's website (and in Spanish, when requested by the customer):
  - a. Products and services offered by the Cable Operator, including its channel lineup;

- b. The Cable Operator's complete range of service options and the prices for these services;
- c. The Cable Operator's billing, collection and disconnection policies;
- d. Privacy rights of customers;
- e. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator, and the FCC;
- f. Use and availability of parental control/lock out device;
- g. Special services for customers with disabilities;
- h. Days, times of operation, and locations of the service centers;

2. At a Customer's request, a Cable Operator shall make available either a complete copy of these Standards and any other applicable customer service standards, or a summary of these Standards, in a format to be approved by CCUA and the Franchising Authority, which shall include at a minimum, the URL address of a website containing these Standards in their entirety; provided however, that if the CCUA or Franchising Authority does not maintain a website with a complete copy of these Standards, a Cable Operator shall be under no obligation to do so;

If acceptable to a customer, Cable Operator may fulfill customer requests for any of the information listed in this Section by making the requested information available electronically, such as on a website or by electronic mail.

3. Upon written request, a Cable Operator shall meet annually with the Franchising Authority to review the format of the Cable Operator's bills to customers. Whenever the Cable Operator makes substantial changes to its billing format, it will contact the Franchising Authority at least thirty (30) days prior to the time such changes are to be effective, in order to inform the Franchising Authority of such changes.

4. Copies of notices provided to the customer in accordance with subsection 5 below shall be filed (by fax or email acceptable) concurrently with the Franchising Authority and the CCUA.

5. A Cable Operator shall provide customers with written notification of any change in rates for nondiscretionary cable services, and for service tier changes that result in a deletion of programming from a customer's service tier, at least thirty (30) days before the effective date of change. For purposes of this section, "nondiscretionary A Cable Operator shall not use the Cable System to collect, monitor or observe Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer unless, and only to the extent that such information is: (i) used to detect unauthorized reception of cable communications, or (ii) necessary to render a Cable Service or Other Service provided by the Cable Operator to the Customer and as otherwise authorized by applicable law.

a. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent any Affiliate from using the facilities of the Cable Operator

in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit an Affiliate unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service. This subsection F.2.b shall not be interpreted to prohibit an Affiliate from obtaining access to Personally Identifiable Information to the extent otherwise permitted by this subsection F.

b. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent a person or entity (other than an Affiliate) from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit such person or entity unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service.

6. Disclosure of Personally Identifiable Information. A Cable Operator shall not disclose Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer, unless otherwise authorized by applicable law.

a. A minimum of thirty (30) days prior to making any disclosure of Personally Identifiable Information of any Customer for any Non-Cable related purpose as provided in this subsection F.3.a, where such Customer has not previously been provided the notice and choice provided for in subsection III.F.9, the Cable Operator shall notify each Customer (that the Cable Operator intends to disclose information about) of the Customer's right to prohibit the disclosure of such information for Non-cable related purposes. The notice to Customers may reference the Customer to his or her options to state a preference for disclosure or non-disclosure of certain information, as provided in subsection III.F.10.

b. A Cable Operator may disclose Personally Identifiable Information only to the extent that it is necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to the Customer.

c. To the extent authorized by applicable law, a Cable Operator may disclose Personally Identifiable Information pursuant to a subpoena, court order, warrant or other valid legal process authorizing such disclosure.

7. Access to Information. Any Personally Identifiable Information collected and maintained by a Cable Operator shall be made available for Customer examination within thirty (30) days of receiving a request by a Customer to examine such information about himself or herself at the local offices of the Cable Operator or other convenient place within the Town designated by the Cable Operator, or electronically, such as over a website. Upon a reasonable showing by the Customer that such Personally Identifiable Information is inaccurate, a Cable Operator shall correct such information.

8. Privacy Notice to Customers

a. A Cable Operator shall annually mail or provide a separate, written or electronic copy of the privacy statement to Customers consistent with 47 U.S.C. Section 551(a)(1), and shall provide a Customer a copy of such statement at the time the Cable Operator enters into an agreement with the Customer to provide Cable Service. The written notice shall be in a clear and conspicuous format, which at a minimum, shall be in a comparable font size to other general information provided to Customers about their account as it appears on either paper or electronic Customer communications.

b. In or accompanying the statement required by subsection F.5.a, a Cable Operator shall state substantially the following message regarding the disclosure of Customer information: "Unless a Customer affirmatively consents electronically or in writing to the disclosure of personally identifiable information, any disclosure of personally identifiable information for purposes other than to the extent necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service, is limited to:

i. Disclosure pursuant to valid legal process authorized by applicable law.

ii. Disclosure of the name and address of a Customer subscribing to any general programming tiers of service and other categories of Cable Services provided by the Cable Operator that do not directly or indirectly disclose: (A) A Customer's extent of viewing of a Cable Service or Other Service provided by the Cable Operator; (B) The extent of any other use by a Customer of a Cable Service; (C) The nature of any transactions made by a Customer over the Cable System; or (D) The nature of programming or websites that a Customer subscribes to or views (i.e., a Cable Operator may only disclose the fact that a person subscribes to a general tier of service, or a package of channels with the same type of programming), provided that with respect to the nature of websites subscribed to or viewed, these are limited to websites accessed by a Customer in connection with programming available from their account for Cable Services."

The notice shall also inform the Customers of their right to prohibit the disclosure of their names and addresses in accordance with subsection F.3.a. If a Customer exercises his or her right to prohibit the disclosure of name and address as provided in subsection F.3.a or this subsection, such prohibition against disclosure shall remain in effect, unless and until the Customer subsequently changes their disclosure preferences as described in subsection F.9 below.

9. Privacy Reporting Requirements. The Cable Operator shall include in its regular periodic reports to the Franchising Authority required by its Franchise Agreement information summarizing:

a. The type of Personally Identifiable Information that was actually collected or disclosed by Cable Operator during the reporting period;

b. For each type of Personally Identifiable Information collected or disclosed, a statement from an authorized representative of the Cable Operator certifying that the Personally Identifiable Information collected or disclosed was: (A) collected or disclosed to the extent Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator; (B) used to the extent Necessary to detect unauthorized



reception of cable communications; (C) disclosed pursuant to valid legal process authorized by applicable law; or (D) a disclosure of Personally Identifiable Information of particular subscribers, but only to the extent affirmatively consented to by such subscribers in writing or electronically, or as otherwise authorized by applicable law.

c. The standard industrial classification (SIC) codes or comparable identifiers pertaining to any entities to whom such Personally Identifiable Information was disclosed, except that a Cable Operator need not provide the name of any court or governmental entity to which such disclosure was made pursuant to valid legal process authorized by applicable law;

d. The general measures that have been taken to prevent the unauthorized access to Personally Identifiable Information by a person other than the Customer or the Cable Operator. A Cable Operator shall meet with Franchising Authority if requested to discuss technology used to prohibit unauthorized access to Personally Identifiable Information by any means.

10. Nothing in this subsection III.F shall be construed to prevent the Franchising Authority from obtaining Personally Identifiable Information to the extent not prohibited by Section 631 of the Communications Act, 47 U.S.C. Section 551 and applicable laws.

11. Destruction of Personally Identifiable Information. A Cable Operator shall destroy any Personally Identifiable Information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection 4 of this subsection III.F, pursuant to a court order or other valid legal process, or pursuant to applicable law.

12. Notice and Choice for Customers. The Cable Operator shall at all times make available to Customers one or more methods for Customers to use to prohibit or limit disclosures, or permit or release disclosures, as provided for in this subsection III.F. These methods may include, for example, online website "preference center" features, automated toll-free telephone systems, live toll-free telephone interactions with customer service agents, in-person interactions with customer service personnel, regular mail methods such as a postage paid, self-addressed post card, an insert included with the Customer's monthly bill for Cable Service, the privacy notice specified in subsection III.F.5, or such other comparable methods as may be provided by the Cable Operator. Website "preference center" features shall be easily identifiable and navigable by Customers, and shall be in a comparable size font as other billing information provided to Customers on a Cable Operator's website. A Customer who provides the Cable Operator with permission to disclose Personally Identifiable Information through any of the methods offered by a Cable Operator shall be provided follow-up notice, no less than annually, of the Customer's right to prohibit these disclosures and the options for the Customer to express his or her preference regarding disclosures. Such notice shall, at a minimum, be provided by an insert in the Cable Operator's bill (or other direct mail piece) to the Customer or a notice or message printed on the Cable Operator's bill to the Customer, and on the Cable Operator's website when a Customer logs in to view his or her Cable Service account options. The form of such notice shall also be provided on an annual basis to the Franchising Authority. These methods of notification to Customers may also include other comparable methods as submitted by the Cable Operator and approved by the Franchising Authority in its reasonable discretion.

## **G. Safety**

A Cable Operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever a Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

## **H. Cancellation of New Services**

In the event that a new customer requests installation of Cable Service and is unsatisfied with their initial Cable Service, and provided that the customer so notifies the Cable Operator of their dissatisfaction within 30 days of initial installation, then such customer can request disconnection of Cable Service within 30 days of initial installation, and the Cable Operator shall provide a credit to the customer's account consistent with this Section. The customer will be required to return all equipment in good working order; provided such equipment is returned in such order, then the Cable Operator shall refund the monthly recurring fee for the new customer's first 30 days of Cable Service and any charges paid for installation. This provision does not apply to existing customers who request upgrades to their Cable Service, to discretionary Cable Service such as PPV or movies purchased and viewed On Demand, or to customer moves and/or transfers of Cable Service. The service credit shall be provided in the next billing cycle.

## **IV. COMPLAINT PROCEDURE**

### **A. Complaints to a Cable Operator**

1. A Cable Operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts and shall have such procedures printed and disseminated at the Cable Operator's sole expense, consistent with Section III.E.1.e of these Standards.

2. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in writing to a Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices. If a representative of the Franchising Authority notifies the Cable Operator of a customer complaint that has not previously been made by the customer to the Cable Operator, the complaint shall be deemed to have been made by the customer as of the date of the Franchising Authority's notice to the Cable Operator.

3. At the conclusion of the Cable Operator's investigation of a customer complaint, but in no more than ten (10) calendar days after receiving the complaint, the Cable Operator shall notify the customer of the results of its investigation and its proposed action or credit.

4. Cable Operator shall also notify the customer of the customer's right to file a complaint with the Franchising Authority in the event the customer is dissatisfied with the Cable Operator's decision and shall thoroughly explain the necessary procedures for filing such complaint with the Franchising Authority.

5. A Cable Operator shall immediately report all customer Escalated complaints that it does not find valid to the Franchising Authority.

6. A Cable Operator's complaint procedures shall be filed with the Franchising Authority prior to implementation.

### **B. Complaints to the Franchising Authority**

1. Any customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the time period set forth below shall be entitled to have the complaint reviewed by the Franchising Authority.

2. The customer may initiate the review either by calling the Franchising Authority or by filing a written complaint together with the Cable Operator's written decision, if any, with the Franchising Authority.

3. The customer shall make such filing and notification within twenty (20) days of receipt of the Cable Operator's decision or, if no decision has been provided, within thirty (30) days after filing the original complaint with the Cable Operator.

4. If the Franchising Authority decides that further evidence is warranted, the Franchising Authority shall require the Cable Operator and the customer to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.

5. The Cable Operator and the customer shall produce any additional evidence, including any reports from the Cable Operator, which the Franchising Authority may deem necessary to an understanding and determination of the complaint.

6. The Franchising Authority shall issue a determination within fifteen (15) days of receiving the customer complaint, or after examining the materials submitted, setting forth its basis for the determination.

7. The Franchising Authority may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

### **C. Security Fund or Letter of Credit**

A Cable operator shall comply with any Franchise Agreement regarding Letters of Credit. If a Franchise Agreement is silent on Letter of Credit the following shall apply:

1. Within thirty (30) days of the written notification to a Cable Operator by the Franchising Authority that an alleged Franchise violation exists, a Cable Operator shall deposit with an escrow agent approved by the Franchising Authority fifty thousand dollars (\$25,000) or, in the sole discretion of the Franchising Authority, such lesser amount as the Franchising Authority deems reasonable to protect subscribers within its jurisdiction. Alternatively, at the Cable Operator's discretion, it may provide to the Franchising Authority an irrevocable letter of credit in the same amount. A letter of credit or cash deposit, with the approval of the Franchising Authority, may be

posted jointly for more than one member of the CCUA, and may be administered, and drawn upon, jointly by the CCUA or drawn upon individually by each member; provided however that if such letter of credit or cash deposit is provided to CCUA on behalf of more than one of its members, the letter of credit or cash deposit may, in the sole discretion of CCUA and its effected members, be required in an amount not to exceed one hundred thousand dollars (\$100,000).

The escrowed funds or letter of credit shall constitute the "Security Fund" for ensuring compliance with these Standards for the benefit of the Franchising Authority. The escrowed funds or letter of credit shall be maintained by a Cable Operator at the amount initially required, even if amounts are withdrawn pursuant to any provision of these Standards, until any claims related to the alleged Franchise violation(s) are paid in full.

2. The Franchising Authority may require the Cable Operator to increase the amount of the Security Fund, if it finds that new risk factors exist which necessitate such an increase.

3. The Security Fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the performance by a Cable Operator of all its obligations under these Customer Service Standards.

4. The rights reserved to the Franchising Authority with respect to the Security Fund are in addition to all other rights of the Franchising Authority, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding or exercise of a right with respect to same shall in any way affect, or diminish, any other right the Franchising Authority may otherwise have.

#### **D. Verification of Compliance**

A Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the Franchising Authority.

#### **E. Procedure for Remediating Violations**

1. If the Franchising Authority has reason to believe that a Cable Operator has failed to comply with any of these Standards, or has failed to perform in a timely manner, the Franchising Authority may pursue the procedures in its Franchise Agreement to address violations of these Standards in a like manner as other franchise violations are considered.

2. Following the procedures set forth in any Franchise Agreement governing the manner to address alleged Franchise violations, if the Franchising Authority determines in its sole discretion that the noncompliance has been substantiated, in addition to any remedies that may be provided in the Franchise Agreement, the Franchising Authority may:

a. Impose assessments of up to one thousand dollars (\$1,000.00) per day, to be withdrawn from the Security Fund in addition to any franchise fee until the non-compliance is remedied;

- b. Order such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these Standards;
- c. Reverse any decision of the Cable Operator in the matter;
- d. Grant a specific solution as determined by the Franchising Authority; or
- e. Except for in emergency situations, withhold licenses and permits for work by the Cable Operator or its subcontractors in accordance with applicable law.

## **V. MISCELLANEOUS**

### **A. Severability**

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

### **B. Non-Waiver**

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of a Cable Operator under said provision, or any other provision of these Standards. Revised 6/18/13.

## EXHIBIT B

### Report Form

Comcast  
Quarterly Executive Summary - Escalated Complaints  
Section 7.6 (B) of our Franchise Agreement  
Quarter Ending \_\_\_\_\_, Year  
Town of Keystone

<b><u>Type of Complaint</u></b>	<b><u>Number of Calls</u></b>
Accessibility	0
Billing, Credit and Refunds	0
Courtesy	0
Drop Bury	0
Installation	0
Notices/Easement Issues (Non-Rebuild)	0
Pedestal	0
Problem Resolution	0
Programming	0
Property Damage (Non-Rebuild)	0
Rates	0
Rebuild/Upgrade Damage	0
Rebuild/Upgrade Notices/Easement Issues	0
Reception/Signal Quality	0
Safety	0
Service and Install Appointments	0
Service Interruptions	0
Serviceability	0
<b>TOTAL</b>	<b>0</b>

Compliments

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# TOWN OF KEYSTONE, COLORADO

## STAFF REPORT

TO: Mayor & Town Councilmembers

FROM: Gary Martinez, Interim Town Manager  
Madeleine Sielu, Town Clerk

DATE: March 12, 2024

SUBJECT: Resolution Adopting the Colorado Municipal Records Retention Schedule

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### **Executive Summary:**

This resolution approves adoption of the Colorado Municipal Records Retention Schedule and authorizes the Town Clerk to submit the Town's approval to the State Archivist for final approval.

### **Recommendation:**

Staff recommends that Council approve Resolution 2024-28 approving the adoption of the Colorado Municipal Records Retention Schedule.

### **Background:**

The [Colorado Municipal Records Retention Schedule \(CMRRS\)](#) was developed in 2001 through a partnership between the State Archivist, the Colorado Municipal Clerks Association, and local municipalities to provide a standardized comprehensive records retention schedule for municipalities across the state. A comprehensive ten-year review of this policy was conducted in 2010-2011. The Colorado Municipal Clerks Association (CMCA) has established a records management committee that works in partnership with the State Archivist to provide continued review as additional records classes are created or existing records classes change. Supplement 13 is the most recent supplement published in 2022.

To utilize the CMRRS, a municipality must approve adoption of the schedule via resolution and notify the State Archivist via the attached Exhibit A. The State Archivist will offer final approval and include the municipality's information as an approved adopter on their website. This provides the municipality with authorization to dispose of records according to this schedule without requiring consent from the State Archivist.

The CMRRS is divided into 21 major sections spanning many record types commonly held by municipalities of varying sizes. Each section is separated by subject matter and

includes a schedule for more general records including communications and emails (Schedule 40 - General Administrative Records). There are several appendices with extra information, and an index to narrow down the search for a specific record type.

The CMRRS is designed to be as all-inclusive as possible while still retaining a general description of file types, as different municipalities will define records in various ways. Often, the same file could be classified under several different schedules. As the Town of Keystone continues to grow, additional records policies that address any discrepancies or provide clarity and consistency in the disposition of records can be adopted in coordination with this retention schedule.

**Alternatives:**

N/A

**Financial Considerations:**

None.

**Previous Council Actions:**

Adoption of Resolution 2024-24 Approving a Colorado Open Records Act policy and designating the Town Clerk as the custodian of records.

**Next Steps:**

None.

**Suggested Motions:**

Because this resolution is on the consent agenda, a motion to approve the consent agenda will approve this resolution.

**Attachments:**

Resolution 2024-28 Adopting the Colorado Municipal Records Retention Schedule and Authorizing the Town Clerk to Submit the Approval Form to the State Archivist.

Exhibit A – Approval Form for Submission to State Archivist



**TOWN OF KEYSTONE**  
**Summit County, Colorado**

**RESOLUTION 2024-28**

**A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO**  
**ADOPTING THE COLORADO MUNICIPAL RECORDS RETENTION SCHEDULE**

WHEREAS, Town Council recognizes the need to establish a comprehensive record retention schedule for the destruction of non-permanent municipal records and the retention of municipal records of enduring and historical value; and

WHEREAS, the Colorado State Archives adopted the Colorado Municipal Records Retention Schedule for statewide use by Colorado municipalities in September 2001; and

WHEREAS, adoption of the Colorado Municipal Records Retention Schedule and its subsequent revisions and amendments will benefit the Town of Keystone, Colorado, and its residents by providing retention periods for its municipal records.

**Now, Therefore, be it Resolved by the Town Council of the Town of Keystone, Colorado, that:**

Section 1. The Colorado Municipal Records Retention Schedule approved by the Colorado State Archives in September 2001, most recently amended in 2022, is hereby adopted by reference, along with its subsequent revisions and amendments.

Section 2. Town Council authorizes the Town Clerk to obtain the required authorization from the Colorado State Archives to follow said schedule for the disposition and retention of the Town of Keystone's municipal records, using the attached Exhibit A.

Section 3. Effective Date. This Resolution shall take effect upon its approval by the Town Council.

**ADOPTED by a vote of \_\_ in favor and \_\_ against, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.**

By: \_\_\_\_\_  
Kenneth D. Riley, Mayor

ATTEST:

Approved as to Form:

By: \_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_  
Town Attorney

EXHIBIT A  
APPROVAL REQUEST FORM FOR THE STATE ARCHIVIST

<p style="text-align: center;"><b>APPENDIX C</b></p> <p style="text-align: center;"><b>APPROVAL REQUEST FORM</b></p>
--

Name of Municipality: \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Local Exceptions:

(List and provide basis and description of any local exceptions for records retention periods that are specified by local ordinance, Home Rule Charter provision, formal direction of the governing body, etc., that differ from those set out in the Colorado Municipal Records Retention Schedule. Use additional pages if needed.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The above municipality hereby requests approval from the Colorado State Archives to follow the *Colorado Municipal Records Retention Schedule* in effect on \_\_\_\_\_, with the local exceptions indicated.

\_\_\_\_\_  
Signature of Authorized Municipal Representative

\_\_\_\_\_  
Date of Submittal of Request for Approval

Mail Approval Request Form to: Colorado State Archivist, 1313 Sherman Street, Room 120, Denver, CO 80203. For further information, contact the Colorado State Archives at 303-866-2358.

COLORADO STATE ARCHIVES APPROVAL

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

Date of Approval: \_\_\_\_\_

# TOWN OF KEYSTONE, COLORADO

## STAFF REPORT

TO: Mayor & Town Councilmembers

FROM: Gary Martinez, Interim Town Manager

FROM: Jennifer Madsen, Town Attorney

DATE: March 12, 2024

SUBJECT: Resolution 2024-29, Approving The Town Of Keystone Employee Handbook

---

### **Executive Summary:**

Councilmember Sarah Keel has worked with Employers Council consultant, Elizabeth Cox, on the employee handbook. Town Attorney Jennifer Madsen has also reviewed the handbook.

Resolution 2024-29 approves the Town of Keystone Employee Handbook.

### **Recommendation:**

Interim Town Manager and Town Attorney recommend that the Town Council approve Resolution 2024-29 approving the Town of Keystone Employee Handbook.

### **Background:**

During the work session on February 27, 2024, Town Council finalized the Town of Keystone Employee Handbook.

### **Alternatives:**

None currently.

### **Financial Considerations:**

None.

### **Previous Council Actions:**

The handbook was discussed at the February 27, 2024, work session.

### **Next Steps:**

None.

### **Suggested Motions:**

Because this resolution is on the consent agenda, a motion to approve the consent agenda will be an approval of this resolution.

**Attachments:**

- Resolution 2024-29, Approving The Town Of Keystone Employee Handbook
- Employee Handbook

**TOWN OF KEYSTONE  
Summit County, Colorado**

**RESOLUTION 2024-29**

**A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO  
APPROVING THE TOWN OF KEYSTONE EMPLOYEE HANDBOOK**

WHEREAS, the Town of Keystone is a home rule municipality in Colorado; and

WHEREAS, the Keystone Town Council desires to attract and retain qualified individuals to work for the Town of Keystone; and

WHEREAS, the Town Council desires to adopt an Employee Handbook for purposes of setting personal policies and guidelines for Town employees.

**Now, Therefore, be it Resolved by the Town Council of the Town of Keystone, Colorado, that:**

Section 1. The Town Council adopts the Town of Keystone Employee Handbook attached as Exhibit A. The Town Manager is authorized to make non-substantive amendments to the Employee Handbook.

Section 2. Effective Date. This Resolution shall take effect upon its approval by the Town Council.

**ADOPTED by a vote of \_\_ in favor and \_\_ against, this \_\_\_\_ day of \_\_\_\_\_, 2024.**

By: \_\_\_\_\_  
Kenneth D. Riley, Mayor

ATTEST:

Approved as to Form:

By: \_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_  
Town Attorney

# Town of Keystone

EST 2024



## Employee Handbook

2024

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## **IMPORTANT NOTICE (AT-WILL)**

---

**THIS HANDBOOK IS DESIGNED TO ACQUAINT EMPLOYEES WITH THE TOWN OF KEYSTONE AND SOME INFORMATION ABOUT WORKING HERE. THE HANDBOOK IS NOT ALL INCLUSIVE BUT IS INTENDED TO PROVIDE EMPLOYEES WITH A SUMMARY OF SOME OF THE TOWN'S GUIDELINES. THIS EDITION REPLACES ANY PREVIOUSLY ISSUED EDITIONS.**

**NEITHER THE EMPLOYEE NOR THE TOWN OF KEYSTONE IS COMMITTED TO AN EMPLOYMENT RELATIONSHIP FOR A FIXED PERIOD OF TIME. EMPLOYMENT WITH THE TOWN OF KEYSTONE IS AT-WILL. EITHER THE EMPLOYEE OR MANAGEMENT HAS THE RIGHT TO TERMINATE THE EMPLOYMENT RELATIONSHIP AT ANY TIME, FOR ANY REASON. THE LANGUAGE USED IN THIS HANDBOOK AND ANY VERBAL STATEMENTS BY MANAGEMENT ARE NOT INTENDED TO CONSTITUTE A CONTRACT OF EMPLOYMENT, EITHER EXPRESS OR IMPLIED, NOR IS THERE A GUARANTEE OF EMPLOYMENT FOR ANY SPECIFIC DURATION.**

**THE CONTENTS OF THIS HANDBOOK ARE SUMMARY GUIDELINES FOR EMPLOYEES AND THEREFORE ARE NOT ALL INCLUSIVE. EXCEPT FOR THE AT-WILL NATURE OF THE EMPLOYMENT, THE TOWN RESERVES THE RIGHT TO SUSPEND, TERMINATE, INTERPRET, OR CHANGE ANY OR ALL OF THE GUIDELINES MENTIONED, ALONG WITH ANY OTHER PROCEDURES, PRACTICES, BENEFITS, OR OTHER PROGRAMS OF THE TOWN OF KEYSTONE. THESE CHANGES MAY OCCUR AT ANY TIME, WITH OR WITHOUT NOTICE.**

**NO EMPLOYEE HANDBOOK CAN ANTICIPATE EVERY CIRCUMSTANCE OR QUESTION. AFTER READING THE HANDBOOK, EMPLOYEES THAT HAVE QUESTIONS SHOULD TALK WITH THEIR IMMEDIATE SUPERVISOR OR THE HUMAN RESOURCES REPRESENTATIVE.**

## *WELCOME TO KEYSTONE!*

We are glad you're here! We asked you to become a member of our team because we are confident that you will help us render the highest standard of service in our community and help us pioneer a model vision of local government.

We believe that our town's quality of services depends upon many people with a variety of skills and talents, all of whom play a valuable role in helping to achieve our goals. We hope that you will take pride in being a member of this dynamic team. Whatever your particular job may be, we want you to be successful. This handbook was developed to describe some of the guidelines, programs, and benefits for employees. All employees should familiarize themselves with the contents of the employee handbook as soon as possible, as it may answer many questions about employment with our Town. Please read it carefully and retain it for future reference.

We hope that your experience here will be challenging and enjoyable. We are excited to have you join our team!

*Town Manager,*

*Mayor*

*&*

*Town Council*



## EMPLOYMENT

### **Equal Employment Opportunity and Unlawful Harassment**

The Town of Keystone is dedicated to the principles of equal employment opportunity. We prohibit unlawful discrimination against applicants or employees on the basis of age (40 and over), race (including traits historically associated with race, such as hair texture and length, protective hairstyles), sex, sexual orientation, gender identity, gender expression, color, religion, creed, national origin, ancestry, disability, military status, genetic information, marital status, or any other status protected by applicable state or local law.

### **Disability and Religious Accommodation**

The Town will make reasonable accommodation for qualified individuals with known disabilities unless doing so would result in an undue hardship to the Town or cause a direct threat to health or safety. The Town will make reasonable accommodation for employees whose work requirements interfere with a religious belief, unless doing so poses an undue hardship on the Town.

### **Pregnancy Accommodation**

Employees have the right to be free from discriminatory or unfair employment practices because of pregnancy, a health condition related to pregnancy, or the physical recovery from childbirth.

Employees who are otherwise qualified for a position may request a reasonable accommodation related to pregnancy, a health condition related to pregnancy, or the physical recovery from childbirth. If an employee requests an accommodation, the Town will engage in a timely, good-faith, and interactive process with the employee to determine whether there is an effective, reasonable accommodation that will enable the employee to perform the essential functions of their position. A reasonable accommodation will be provided unless it imposes an undue hardship on the Town's business operations.

The Town may require that an employee provide a note from their health care provider detailing the medical advisability of the reasonable accommodation. Employees who have questions about this policy or who wish to request a reasonable accommodation under this policy should contact their Human Resources representative or the Town Manager.

The Town will not deny employment opportunities or retaliate against an employee because of an employee's request for a reasonable accommodation related to pregnancy, a health condition related to pregnancy, or the physical recovery from childbirth. An employee will not be required to take leave or accept an accommodation that is unnecessary for the employee to perform the essential functions of the job.

## **EEO Harassment**

The Town strives to maintain a work environment free of unlawful harassment. Unlawful harassment includes any unwelcome physical or verbal conduct or any written, pictorial, or visual communication directed at an individual (or group) because of that individual's (or group's) membership in, or perceived membership in, a protected class, that is subjectively offensive to the individual alleging harassment, and is objectively offensive to a reasonable individual who is a member of the same protected class. Harassment does not need to be in-person and can occur over electronic media such as Zoom or other electronic platforms. Prohibited behavior may include but is not limited to the following:

- Written form, such as cartoons, emails, posters, drawings, or photographs.
- Verbal conduct, such as epithets, derogatory comments, slurs, or jokes.
- Physical conduct such as assault or blocking an individual's movements.

This policy applies to all employees, including managers, supervisors, coworkers, and non-employees, such as customers, clients, vendors, consultants, etc.

## **Sexual Harassment**

Because sexual harassment raises issues that are, to some extent, unique in comparison to other types of harassment, the Town believes it warrants separate emphasis.

The Town strongly opposes sexual harassment and inappropriate sexual conduct. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct or communication is made explicitly or implicitly a term or condition of employment.
- Submission to, objection to, or rejection of, such conduct or communication is used as a basis for employment decisions affecting an individual.
- Such conduct or communication has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

All employees are expected to conduct themselves in a professional and business-like manner at all times. Conduct that may violate this policy includes, but is not limited to, sexually implicit or explicit communications whether in:

- Written form, such as cartoons, posters, calendars, notes, letters, and emails.
- Verbal form, such as comments, jokes, foul or obscene language of a sexual nature, gossiping or questions about another's sex life, or repeated unwanted requests for dates.
- Physical gestures and other nonverbal behavior, such as unwelcome touching, grabbing, fondling, kissing, massaging, and brushing up against another's body.



## Complaint Procedure

If you believe there has been a violation of the EEO policy or harassment based on a protected class, including sexual harassment, please use the following complaint procedure. The Town has established a program designed to prevent harassment, deter future harassers, and protect employees from harassment. The Town takes prompt action to investigate and/or address alleged discriminatory or unfair employment practices. The Town also takes prompt remedial actions, when warranted, in response to complaints of discriminatory or unfair employment practices. The Town therefore expects employees to make a timely complaint to enable the Town to investigate and correct any behavior that may be in violation of this policy.

Report the incident to your Human Resources Representative or to the Town Manager, who will investigate and/or address the matter and may take corrective action. Your complaint will be kept as confidential as practicable. If you prefer not to go to either of these individuals with your complaint, you should report the incident to another supervisor.

The Town prohibits retaliation against an employee for filing a complaint under this policy or assisting in a complaint investigation. If you perceive retaliation for making a complaint or participating in the investigation, please follow the complaint procedure outlined above. The situation will be investigated.

If the Town determines that an employee's behavior violates this policy, disciplinary action will be taken, up to and including termination of employment.



## *EMPLOYEE STATUS*

### **Employee Classifications**

Employees of the Town are classified as either exempt or nonexempt under federal and state wage and hour laws, and are further classified for administrative purposes, such as the administration of fringe benefits like paid vacation or holidays. These classifications do not determine eligibility for participation in the Town's group health plan. Eligibility for participation in the Town's group health plan is governed by the terms of the plan documents as well as applicable law. To obtain a copy of the Summary Plan Description or to discuss whether you are eligible to participate in the Town's group health plan, please contact your Human Resources Representative. The following classifications are used throughout this Handbook.

#### **Exempt Employees**

Exempt employees are employees whose job assignments meet specific tests established by the federal Fair Labor Standards Act (FLSA) and who are exempt from minimum wage and/or overtime pay requirements.

#### **Nonexempt Employees**

Nonexempt employees are employees whose job positions do not meet FLSA or applicable state exemption tests, and who are not exempt from minimum wage and/or overtime pay requirements. Nonexempt employees shall be paid time and one-half of their regular rate of pay for any work in excess of forty hours per workweek (excluding duty free meal periods). The workweek is defined as Sunday to Saturday.



#### **Full-Time Employees**

Full-time employees are those who are normally scheduled to work a schedule of no less than 32 hours per week.

#### **Part-Time Employees**

Part-time employees are those who are normally scheduled to work fewer than 32 hours per week. Part-time employees may be assigned a work schedule in advance or may work on an as-needed basis.

#### **Temporary Employees**

Temporary employees are those who are employed for short-term assignments. Temporary employees are generally hired to temporarily supplement the workforce or assist in the completion of a specific project. These temporary employment assignments are of limited



duration. Temporary employees may be classified as exempt or nonexempt based on job duties and compensation.

## *EMPLOYEE BENEFITS*

### **Benefits Overview**

As part of its compensation strategy, the Town offers several different insurance plans for eligible employees. Employment benefits vary according to the position and status of the employee. To receive certain benefits, eligible employees may be required to meet participation requirements and pay required premiums and other contributions. The Town complies with all applicable federal and state laws regarding the provision of benefits to same-sex spouses, domestic partners, and couples in a civil union.

Benefit plans offered by the Town are defined in legal documents such as insurance contracts and summary plan descriptions. In the event information in this Handbook or other employee communication conflicts with the actual terms and conditions of coverage, the plan documents will control. Benefits described in this Handbook, including the types of benefits offered and/or the requirements for eligibility of coverage, may be modified or discontinued from time to time at the Town's discretion as permitted by law. The Town and its designated benefit plan administrators reserve the right to determine eligibility, interpretation and administration of issues related to benefits offered by the Town.

Employees will have an opportunity to make changes to their benefit selections during the Town's annual open enrollment period. Employees who experience a qualifying life event such as marriage, divorce or the birth of a child will also be allowed to make a change in their benefit selection when that event occurs, in accordance with the terms of the plan document.

In the event you take a personal or other leave of absence, please consult Human Resources to determine the impact the leave may have upon your benefits, including eligibility and/or making any required premium payments.

### **Summit County Housing Stipend**

The Town recognizes the high cost of living in Summit County and offers a \$500 per month housing stipend for employees who reside in Summit County. The employee is paid \$230.77 each bi-weekly pay period to offset the high cost of living. This benefit is offered to regular, full-time employees.





## Health and Wellness Subsidy

The Town offers a Health and Wellness Subsidy with a wide variety of benefits to choose from to best meet the employee's health, wellness, recreation, or retirement. Regular, full-time employees receive an annual credit amount of \$2500 to apply towards the following benefits:

- HSA, FSA, and LSA Accounts
- Health Insurance Premiums
- Supplemental Life Insurance Costs
- 457 Deferred Compensation

## Health Benefits Program

### Medical, Dental, Vision, and optional Spending Accounts

The Town of Keystone offers health benefit options which feature medical, dental and vision coverage. The Town pays 80% of the cost of coverage. There are also HSA, FSA and LSA options. Employees must be classed as full-time to be eligible for benefits. Coverage begins on the first of the month following the date of hire. All employees will receive enrollment information no later than their date of hire. Plans may only be changed during the annual open enrollment period or if a qualifying event occurs.

### Life Insurance and Supplemental Life Insurance

The Town provides life insurance at no cost to full-time benefit eligible employees. Coverage begins the first of the month following date of hire. Employees may have to meet certain qualifying conditions set forth by the provider. Supplemental Life Insurance is available.

### Short-Term and Long-Term Disability Insurance

The Town provides disability insurance at no cost to full-time benefit eligible employees. Coverage begins the first of the month following date of hire. Employees may have to meet certain qualifying conditions set forth by the provider.

### Employment Assistance Program (EAP)

The Town provides a rich EAP program, designed to help alleviate issues and stressors due to mental health, substance abuse, and other personal and workplace issues.

Please see Human Resources for detailed benefit information.

## Retirement Plans

The Town has chosen NOT to participate in Social Security and instead offers a qualified retirement plan offered by the Colorado Retirement Association. This means the employee will not pay the 6.2% FICA tax and quarters worked for the Town of Keystone will not count for Social Security benefits.

- 401 (a) Retirement Savings Plan

All full-time employees are automatically enrolled in the 401(a) Qualified Retirement Savings Plan beginning on their date of hire. The Town contributes 8% of the employee's salary. The employee is required to contribute 3% of their salary to the plan.

- 457 Deferred Compensation Plan

The Town also offers a 457 Retirement Plan. All full-time employees are eligible to participate as of their date of hire. The Town provides a dollar-for-dollar match of employee contributions up to 3% of the employee's salary. The IRS sets the maximum annual contribution amount. The Town match is deposited in the employee's 401(a) Retirement Savings Plan.

For more information about these plans, including Summary Plan Documents, and the terms, conditions, or eligibility requirements, please contact Human Resources or the Town Manager.

## **Holidays**

The Town currently observes the following holidays as days off with pay:

- New Year's Day
- Martin Luther King Day
- Memorial Day
- Independence Day
- Labor Day
- Veterans Day
- Thanksgiving Day
- Friday after Thanksgiving
- Christmas Day
- A Floating Holiday

The floating holiday is normally provided by management at the beginning of each year. It is typically scheduled to make a long weekend of the employee's choice.

When a holiday falls on a Saturday, it is observed on the preceding Friday. When the holiday falls on a Sunday, the following Monday is observed. Should any one of the observed holidays occur during an employee's vacation period, an additional day of vacation may be granted.

Holiday time is not counted as hours worked in the computation of overtime. Full-time employees receive eight hours of holiday pay at their regular rate of pay. Holiday pay for part-time employees is prorated based on their regularly scheduled work hours.

## **Paid Sick and Exigency Leave**

All employees accumulate sick time at the rate of one hour per 30 hours worked, up to a maximum of 64 hours in a year. Paid sick leave may be used if an employee:

- (1) has a mental or physical illness, injury, or health condition that prevents them from working;
- (2) needs to get preventive medical care or to get a medical diagnosis, care, or treatment of any mental or physical illness, injury, or health condition;
- (3) needs to care for a family member who has a mental or physical illness, injury, or health condition or who needs to get preventive medical care or to get a medical diagnosis, care, or treatment of any mental or physical illness, injury, or health condition;
- (4) the employee or the employee's family member having been a victim of domestic abuse, sexual assault, or criminal harassment and needing leave for related medical attention, mental health care, or other counseling, victim services (including legal services), or relocation;
- (5) due to a public health emergency, a public official having closed either (A) the employee's place of business, or (B) the school or place of care of the employee's child, requiring the employee needing to be absent from work to care for the child;
- (6) needs to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the closure of the family member's school or place of care;
- (7) needs to grieve, attend funeral services or a memorial, or deal with financial and legal matters that arise after the death of a family member; or
- (8) needs to evacuate the employee's place of residence due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the need to evacuate the employee's residence.

Paid sick leave may be used in one-hour increments. Employees begin accruing sick time upon hire.

It is your responsibility to notify your manager each day at the beginning of your shift when you cannot come to work because of an illness, injury, medical care, domestic violence, care for family whose school has been closed, evacuation of residence, or bereavement. Also, let your manager know when you expect to return to work. In the event you are absent for four or more workdays, medical or legal certification is required.

If you have an extended illness, accumulated sick time currently provides pay while you are away from work. Unused sick hours are currently carried over from year to year up to 192 hours. Paid sick time will not be used in the calculation of overtime and is not paid out when employment ends with the Town.

This Paid Sick and Exigency Leave complies with the Colorado Healthy Families and Workplaces Act (“HFWA”). The Town’s leave policy provides leave as follows:

- (1) In at least an amount of hour and with pay sufficient to satisfy HFWA;
- (2) For all the same purposes covered by HFWA; and
- (3) Under all the same conditions as in HFWA and applicable rules.

Employers shall not retaliate against an employee for requesting or using paid sick leave. Additional rules will apply in the case of a public health emergency.

**Vacation**

Full time and part time Employees are eligible for vacation time. The Town of Keystone values the work-life balance of employees and encourages employees to use the full vacation accrual. Vacation hours are accrued on a per pay period basis and are prorated for Employees hired after January 1 of each year.

Employees are responsible for scheduling their vacation, in advance, with their supervisor and must receive their supervisor’s approval. Vacations are scheduled in a manner that minimizes interruptions to the operations of the Town.

Vacation time will not be counted in the computation of overtime.

Upon separation of employment, employees receive pay for earned, unused vacation.

We encourage employees to use all their earned vacation each year. Employees may carry unused vacation year over year, subject to a cap. The maximum vacation that employees may accumulate is 200 hours. At no point can they exceed this cap.



<b>Position Type</b>	<b>Annual Year 1 through the end of 3 years</b>	<b>Annual – Year 4 through the end of year 6</b>	<b>Annual – Year 7 and longer</b>
Full-time Employees	4.62 hours per pay period - 120 hours annually	6.16 hours per pay period – 160 hours annually	7.7 hours per pay period – 200 hours annually
Part-time Employees	0.06 hours per hour worked.	0.08 hours per hour worked.	0.1 hours per hour worked.

## *LEAVES OF ABSENCE*

### **Domestic Abuse and Crime Victim Leave**

Employees subjected to domestic abuse, or a victim of a crime may be eligible for a leave of absence. Please see the Human Resources Representative for more information.

### **Funeral Leave**

Employees are currently eligible for paid bereavement leave as part of Colorado's Healthy Families and Workplaces Act. (See "Paid Sick and Exigency Leave" above). In addition, in the event of a death in their immediate family, full- and part-time employees currently are granted a supplemental paid leave of up to three workdays to attend a funeral or memorial service. For the purposes of this supplemental leave, immediate family is defined as spouse, partner, siblings, parents, children, and grandparents. For funerals of other relatives or friends, employees may take vacation or unpaid leave upon the approval of their supervisor.

### **Jury Duty**

The Town recognizes jury duty as a civic responsibility of everyone. When summoned for jury duty, an employee will be granted leave to perform their duty as a juror. If the employee is excused from jury duty during their regular work hours, he or she is expected to report to work promptly.

Employees receive regular pay for the first three days of jury duty if they were scheduled to work and they provide confirmation of juror service.

Beginning the fourth day and thereafter, employees, as jurors, are paid \$50.00 per day by the State of Colorado for state, district, or county court jury duty. For jury duty in excess of three days, employees receive the difference between jury duty pay and their regular pay up to a maximum of ten days (80 hours). Jury duty leave beyond this time is without pay from the Town.

### **FAMLI**

The Town has voted to opt-out of participating in the FAMLI state-run family leave program. All employees of the Town have the option to participate in FAMLI on an individual basis; however, the Town has chosen not to participate in the employer portion of the program. FAMLI provides benefits and protections, including partial income protection for eligible employees who are temporarily unable to work due to their or a family member's qualifying medical or legal reason, specifically, for the care of a newborn, adopted child, or fostered child; to care for a family member with a serious health condition; for the employee's own serious health condition; for qualifying military exigency leave; or to address safety needs or the impact of domestic violence and/or sexual assault. Partially paid leave is available for up to 12 weeks in a calendar year or up to 16 weeks under certain circumstances related to pregnancy and childbirth. Please see the Human Resources representative to obtain additional copies of the required notices to employees of local government employers who have opted out of FAMLI that are distributed upon hiring.

## Medical Leave

A medical leave of absence of not more than three months may currently be granted to full-time employees. This unpaid leave is for absences arising from illness, injury, or pregnancy.

For a medical leave to be granted, the following conditions must be met:

- The employee has completed ninety (90) days of employment with our Town.
- Human Resources or the Town Manager is notified by the employee as soon as possible of the need for medical leave.
- The employee submits to the supervisor a written statement from the attending physician outlining the reason for leave and the estimated time needed. (The Town may require the employee to obtain an opinion from a medical provider selected by the Town)
- Approvals are obtained from the Town Manager and the Human Resources Representative prior to the leave.
- All available sick leave and earned vacation are used at the beginning of the leave of absence.
- When the estimated period of leave is less than three months, and an employee needs to extend the leave, another medical provider's statement is required indicating the new estimated length of leave.

An employee ready to return to work from leave must present a doctor's statement indicating ability to return to work.

The Town may reinstate an employee ready to return from a medical leave of absence, when in the opinion of the Town, it is practical to do so or as a reasonable accommodation under the Colorado Anti-Discrimination Act (CADA).

The Town does not guarantee reinstatement of an employee to the former job. When the employee is available to return to work, if the former job is not available, the employee is free to apply for any vacancy available and will be considered along with other applicants.

The Town currently continues health insurance benefits for an employee on leave for a maximum of three months if the employee continues to pay the employee's portion of the premium.

Vacation and sick leave will not accrue during a medical leave of absence. Holidays, funeral pay, or employer's jury duty pay will not be granted during the leave.

Employees who fail to return at the expiration of their authorized leave may be terminated. If the employee's failure to return is due to a disability under the Colorado Anti-Discrimination Act (CADA) or other law, additional accommodations may be provided. Employees must supply sufficient information from their medical provider indicating that they have a covered disability and when they can return to work with or without reasonable accommodation. Accommodations must not cause undue hardship to the employer.



Potential accommodations will be determined in an interactive process between the employee and the Town.

Part-time employees are not eligible for medical leave except as provided by the Healthy Families and Workplaces Act and to accommodate a disability as required by CADA. Medical leaves, and any extension of leaves, generally will be limited to no longer than 12 weeks.

### **Military Leave**

Employees granted a military leave of absence are re-employed and paid in accordance with the laws governing veteran's reemployment rights. The Town pays for the first three weeks of leave per year. After that time, leave is without pay.

### **Personal Leave**

Normally, personal leaves of absence are not granted. If, on rare occasions, management deems the circumstances warrant approval, an unpaid leave for reasons other than illness, disability, vacation or a leave of absence otherwise protected under federal, or state law may be granted on a case-by-case basis.

### **Voting**

Voting is an important responsibility we all assume as citizens. We encourage employees to exercise their voting rights in all municipal, state, and federal elections.

Under most circumstances, it is possible for employees to vote either before or after work. If it is necessary for employees to arrive late or leave work early to vote in any election, employees should arrange with their supervisor/manager no later than the day prior to Election Day.

## **PAY**

### **Overtime**

From time to time, your supervisor may require you to work overtime. In these instances, you are given as much advance notice as practical.

For nonexempt employees, hours worked in excess of 40 hours per workweek are paid at one and one-half (1 1/2) times the employee's regular rate. The established workweek begins at 12:00 a.m. midnight on Sunday and ends at 11:59 p.m. on Saturday.

For purposes of calculating overtime payments, only hours actually worked are counted. Consequently, hours paid but not worked, e.g., vacation, are not counted.

### **Paydays**

Employees are paid every other Friday. If the regular payday occurs on a holiday, the payday is the last working day prior to the holiday.

On each payday, employees receive a statement showing gross pay, deductions, and net pay.

Automatic deductions such as additional tax withholding, contributions to voluntary benefit plans, and individual savings plans are arranged through the Human Resources Representative.

The Town deposits paychecks automatically into employees' bank accounts. Upon hire, this information is gathered from each employee.

### **Pay for Exempt Employees**

Exempt employees must be paid on a salary basis. This means exempt employees will regularly receive a predetermined amount of compensation each pay period on a bi-weekly basis. The Town is committed to complying with salary basis requirements which allows properly authorized deductions.

If you believe an improper deduction has been made to your salary, you should immediately report this information to Human Resources representative. Reports of improper deductions will be promptly investigated. If it is determined that an improper deduction has occurred, you will be promptly reimbursed.

### **Time Reporting**

Nonexempt employees are required to complete a timecard daily. At the conclusion of each pay period employees must sign the timecard and submit it to their immediate supervisor for signature and approval. It is necessary for employees to indicate whether the recorded hours are for time worked, or for time off.

Notify your supervisor immediately if your lunch is shorter than 30 minutes or if your lunch is interrupted by work.

Exempt employees are required to report to their department manager if they have taken time off from their regular work schedule.

These records are the only ones used by the Town to calculate employee pay and paid time off balances. It is very important that they are accurate and complete. Nonexempt employees are expected to submit accurate and complete time records reflecting all hours worked. Employees who also choose to keep their own personal time records must provide them to the Town if they find a discrepancy between the Town's records and their records. Employees should contact their supervisors or the Human Resources Representative with any questions about how their pay is calculated. Employees must promptly notify their supervisors of any mistakes in their time records or pay.

Employees also must notify a supervisor or Human Resources Representative if they perceive that anyone is interfering with their ability to record their time accurately and completely. All reports will be investigated, and appropriate corrective action will be taken.





The Town will not tolerate retaliation against employees for making a report or participating in an investigation.

### **Meal Periods**

Non-exempt employees who work 6 or more consecutive hours will be provided with at least one unpaid 30-minute meal break. During the break, employees will be relieved of all duties and permitted to pursue personal activities. If the nature of the business activity or other circumstances exist that makes an uninterrupted meal break impracticable, the employee will be allowed to consume an on-duty meal without any loss of time or compensation.

## *WORK ENVOIRNMENT*

### **Accommodations for Nursing Employees**

A private space will be provided, and reasonable time will be permitted for nursing employees to express milk during the workday for up to two years following the birth of a child. The time permitted typically will run concurrently with the time already provided for meal and rest breaks. If the breaks cannot run concurrently and/or additional time is needed, human resources representative and the employee will agree upon a schedule that might include the employee using unpaid leave (if non-exempt), annual leave/vacation time, arriving at work earlier, or leaving later. In the event unpaid leave is used, the employee will be relieved of all work-related duties during any unpaid break.

Employees will be provided with the use of a room, office, or other private area, other than a bathroom or toilet stall, that is shielded from view and free from intrusion from coworkers and the public. The Town will make a reasonable effort to identify a location within close proximity to the work area for the employee to express milk.

Nursing employees are responsible for using anti-microbial wipes to clean milk expression areas, and for keeping the general lactation space clean for the next user. This responsibility extends to other areas where expressing milk is permitted, equipment is cleaned, and milk storage areas.

The Town reserves the right to not provide additional break time or a private location for expressing breast milk if doing so would substantially disrupt the Town's operations.

The Town will not demote, terminate, or otherwise take adverse action against an employee who requests or makes use of the accommodations and break time described in this policy.

### **Alcohol and Drugs**

Alert and rational behavior is required for the safe and adequate performance of job duties. Therefore, working after the apparent use of alcohol, a controlled substance or abuse of any other substance is prohibited. This includes working after the apparent use of marijuana, whether or not you are a lawfully registered user. Furthermore, the possession, purchase, or consumption (use), or sale of a controlled substance or alcohol on Town premises or while conducting Town business is prohibited.

## **Anti-Violence**

Any action, which in the management's opinion is inappropriate to the workplace, will not be tolerated. Such behaviors may include, but are not limited to, physical and/or verbal intimidating, threatening, or violent conduct, vandalism, sabotage, arson, use of weapons, bullying, veiled threats, profanity, and vicious or abusive statements.

Employees should immediately report any such occurrences to the Human Resources Representative or the Town Manager. The Town will investigate complaints. When employees are found to have engaged in the above conduct, management will take action that it believes is appropriate.

*Employees should directly contact law enforcement, security, and/or emergency services if they believe there is an imminent threat to the safety and health of themselves or co-workers.*

If you are a victim of domestic violence, please contact Human Resources for assistance.

*Workplace bullying is repeated mistreatment through verbal abuse, offensive conduct/behaviors, and work interference. If you are subjected to workplace bullying, please contact human resources.*

## **Appearance and Attire**

Our work environment encourages employees to dress comfortably for work. Good judgment is the main guideline to follow. This includes being clean and neat, with attire that meets reasonable grooming standards. So long as clothing does not conflict with the dress code, employees' attire may be based on their gender identity.

## **Attendance and Punctuality**

All employees are expected to be on time and punctual when showing up to work. In addition, regular attendance is considered an essential function and is necessary for the efficient operation of the business.

Employees who are going to be absent or late must contact their supervisor as soon as possible prior to the start of their shift. Leaving messages with other employees or on voice mail is not acceptable.

Failure to call in when absent for three consecutive days will result in termination.



## **Communication Systems**

The Town's computer network, access to the Internet, e-mail and voice mail systems are business tools intended for employees to use in performing their job duties. Therefore, all documents and files are the property of the Town. All information regarding access to the Town's computer resources, such as user identifications, modem phone numbers, access codes, and passwords are confidential Town information and may not be disclosed to non-Town personnel.

All computer files, documents, and software created or stored on the Town's computer systems are subject to review and inspection at any time. This includes web-based email employees may access through Town systems, whether password protected or not. Employees should not assume that any such information is confidential, including e-mail either sent or received.

Computer equipment should not be removed from the Town premises without written approval from a department head. Upon separation of employment, all communication tools should be returned to the Town.

## **Personal Use of the Internet**

Some employees need to access information through the Internet to do their job. Use of the Internet is for business purposes during the time employees are working. Personal use of the Internet should not be on business time, but rather before or after work or during breaks or lunch period. Regardless, the Town prohibits the display, transmittal, or downloading of material that is in violation of Town guidelines or otherwise is offensive, pornographic, obscene, profane, discriminatory, harassing, insulting, derogatory, or otherwise unlawful at any time.

## **Personal Use of Social Media Guidelines**

Personal use of social media is never permitted during working time by means of the Town's computers, Town-issued mobile devices, networks, and other IT resources and communications systems. Use of personal mobile devices during work time should be kept to a minimum. Postings by an employee on a blog, wiki, chat room, or social networking site are considered personal communications and are not Town communications.

Nothing in this guideline is meant to interfere with employees' right under state law to engage in protected and concerted activity, including employees' ability to discuss terms and conditions of their employment.

## **Political Participation**

The Town encourages employees to participate in matters of responsible citizenship. The Town will not interfere with the conduct of Town employees engaged in political activity, if the activities are confined to hours when the employees are not on duty, are not campaigning in their official Town uniforms, and that the activities do not impair the employee's job efficiency or that of others. Full time employees may not serve on a board,

commission, or committee related to their functions. Employees may not hold a Town Elective Office, either by election or by appointment.

Employees whose principal employment is in connection with federally financed activities are subject to the following federal requirements as a condition of such employment.

Covered employees may not use their official authority or influence for the purposes of interfering with or affecting the results of elections or nominations for office.

In addition, they may not coerce, attempt to coerce, command, or advise other covered employees to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.

Political beliefs, activities, and affiliations are the private concern of the employee. An employee's work status is not affected by participating or not participating in lawful civic and political activities. No employee of the Town can directly or indirectly coerce or command any other employee to pay, lend, or contribute salary, compensation, service, or anything else of value to any political party, group, organization, or candidate.

Any Town employee may be a candidate for a partisan political office provided that the involvement does not interfere or present a conflict of interest with their job. If involvement is necessary during normal working hours, the individual must take vacation leave or leave without pay. Employees whose salary comes in part or in whole from federal government sources are subject to the Federal Hatch Act and its revisions.

No employee will be forced to pay any contributions to any political organization whatsoever.

Employees will not be required to work for, or participate in, the support of any political candidate during their off-duty hours.

### **Software and Copyright**

The Town fully supports copyright laws. Employees may not copy or use any software, images, music, or other intellectual property (such as books or videos) unless the employee has the legal right to do so. Employees must comply with all licenses regulating the use of any software and may not disseminate or copy any such software without authorization. Employees may not use unauthorized copies of software on personal computers housed in Town facilities.

### **Unauthorized Use**

Employees may not attempt to gain access to another employee's personal file of e-mail messages or send a message under someone else's name without the latter's express permission. Employees are strictly prohibited from using the Town communication systems in ways that management deems to be inappropriate. If you have any question whether your behavior would constitute unauthorized use, contact your immediate supervisor before engaging in such conduct.

## **E-mail**

E-mail is to be used for business purposes. While personal e-mail is permitted, it is to be kept to a minimum. Personal e-mail should be brief and sent or received as seldom as possible. The Town prohibits the display, transmittal, or downloading of material that is offensive, pornographic, obscene, profane, discriminatory, harassing, insulting, derogatory, or otherwise unlawful at any time. No one may solicit, promote, or advertise any outside organization, product, or service through the use of e-mail or anywhere else on Town premises at any time. Management may monitor e-mail from time to time. Employees should be aware that emails might be public records and subject to public disclosure.

Employees are prohibited from unauthorized use of encryption keys or the passwords of other employees to gain access to another employee's e-mail messages.

## **Voice Mail**

The Town's voice mail system is intended for transmitting business-related information. Although the Town does not monitor voice messages as a routine matter, the Town reserves the right to access and disclose all messages sent over the voicemail system for any purpose. Employees must use judgment and discretion in their personal use of voice mail and must keep such use to a minimum.

## **Telephones/Cell Phones/Mobile Devices**

Employee work hours are valuable and should be used for business. Excessive personal phone calls can significantly disrupt business operations. Employees should use their break or lunch period for personal phone calls.

Phones and mobile devices with cameras should not be used in a way that violates other Town guidelines such as, but not limited to, EEO/Sexual Harassment and Confidential Information. Employees' use of a cell phone or mobile device to access Town systems is discouraged as this may subject the employee's personal device to discovery requests or Town action.

For safety reasons, employees should avoid the use of cell phones and mobile devices to make calls while driving. Texting is permitted only where the vehicle is at rest and lawfully parked.

## **Confidential Information**

Employees of the Town will have access to confidential information of the Town and those we interact with. If uncertain whether information is confidential, contact your supervisor.

Employees are prohibited from disclosing confidential information. This non-disclosure prohibition applies both during and after an employee's employment. Any copying, reproducing, or distributing of confidential information in any manner must be authorized by management. Confidential information remains the property of the employer and must be returned to the Town upon separation or at any time upon demand.

In addition, employees are prohibited from purchasing or selling securities based on information not generally available to the public.

## **Conflicts of Interest**

The Town requires that employees protect Town information and avoid outside activities or relationships, which do or could improperly influence their decisions or actions on the job.

Conflict of interest situations, which could arise while moonlighting for a contractor of the Town's, should also be avoided.

Other examples of conflict of interest could be: Serving as a board member or director of a firm, holding financial interest in a business, or being self-employed in an occupation which provides goods or services to the Town, or ownership, partnership, or personal involvement in supplier companies or distribution outlets related to Town business.

If employees have any question whether a situation is a conflict of interest, employees should discuss the matter with their supervisor. If it remains unresolved, refer the matter to the Town Manager for a final determination.

## **Data Disposal Policy**

During the course of employment, the Town will collect certain information that is classified as "personal identifying information," or PII, under applicable laws. Such information may include, but is not limited to:

- Employee first and last name or initials;
- Username(s) and password(s);
- Social security number;
- Driver license or other identification card number;
- Medical documentation;
- Biometric data;
- And more.

The Town may keep these records in electronic format.

When such documentation is no longer needed, pursuant to records retention requirements and best practices, the Town will either (a) destroy the records or (b) arrange for their destruction, in such a manner as to render the personal identifying information unreadable or indecipherable through any means.

## **Discipline/Discharge**

Occasionally performance or other behavior falls short of our standards and/or expectations. When this occurs, management will take action, which in its opinion, seems appropriate.

Disciplinary actions can range from a formal discussion with the employee about the matter to immediate discharge. Action taken by management in an individual case does not establish a precedent in other circumstances.



## **Inspections**

We may conduct searches of employees' personal effects after notice is given and with the employee's consent. This may include, but is not limited to, lunch bags, boxes, purses, personal computers, packages, or vehicles.

We may conduct searches of the above items without employee consent if we have a reasonable suspicion to believe that illegal activity is taking place and after obtaining a warrant to do so. Any illegal and unauthorized articles discovered may be taken into custody and will be turned over to law enforcement representatives.

Employees do not have a reasonable expectation of privacy in lockers, desks, cabinets, or file drawers, all of which are keyed by the Town and copies of those keys are kept by the Town.

## **Job Related Problems**

Employees who disagree or are dissatisfied with a Town practice should promptly discuss the matter with their immediate supervisor, where appropriate. Normally, this discussion should be held within three to five days of the incident, or in a timely manner. Discussions held in a timely manner will enhance the ability to resolve concerns while they are fresh in everyone's mind. The majority of misunderstandings can be resolved at this level.

Please see the Human Resources Representative or the Town Manager for the formalized complaint procedure.

## **References**

The Town does not furnish open letters of recommendation addressed "To Whom It May Concern."

If employees receive a call inquiring about a former employee, please refer the caller to Town Manager. Only they have the authority to respond to such inquiries. This restriction includes recommendations on social media sites.

## **Safety/Reporting of Injury**

The Town is committed to a safe work environment for employees. Employees should report any unsafe practices or conditions to their supervisor.

If employees are injured on the job, no matter how minor, they must report this fact in writing as soon as they are able within 10 days after the injury to the Human Resources Representative or the Town Manager.

If medical treatment for an on-the-job injury is needed, it must be obtained from one of the Town's designated physicians. If not, the employee may be responsible for the cost of medical treatment.

## **Smoking and Vaping**

It is our objective to provide a smoke-free environment within our organization. Smoking and vaping are prohibited within all areas of the building and within 25 feet of the main entrance into the building. Employees may smoke in designated outdoor areas. This restriction applies to all employees and visitors, at all times, including non-business hours.

## **Separation of Employment**

If you desire to end your employment relationship with the Town, we ask that you notify us as soon as possible of the intended separation. Notice generally allows sufficient time to transfer work, cover shifts, return Town property, review eligibility for continuation of insurance, and make arrangements for your final pay.

Employees who plan to retire are asked to provide sufficient advance notice to the Town so we can timely process any pension forms or other retirement benefits to which an employee may be entitled.

*CONNECT WITH KEYSTONE*

970-450-3500

INFO@TOWNOFKEYSTONE.US

1628 SAINTS JOHN RD

KEYSTONE, CO 80435

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*ACKNOWLEDGMENT OF RECEIPT (AT-WILL)*

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**I HAVE RECEIVED A COPY OF THE EMPLOYEE HANDBOOK DATED MARCH 12, 2024. I UNDERSTAND THAT I AM TO BECOME FAMILIAR WITH ITS CONTENTS. FURTHER, I UNDERSTAND:**

**EMPLOYMENT WITH THE TOWN OF KEYSTONE IS AT-WILL. I HAVE THE RIGHT TO END MY WORK RELATIONSHIP WITH THE TOWN, WITH OR WITHOUT ADVANCE NOTICE FOR ANY REASON. THE TOWN HAS THE SAME RIGHT.**

**THE LANGUAGE USED IN THIS HANDBOOK AND ANY VERBAL STATEMENTS OF MANAGEMENT ARE NOT INTENDED TO CONSTITUTE A CONTRACT OF EMPLOYMENT, EITHER EXPRESSED OR IMPLIED, NOR ARE THEY A GUARANTEE OF EMPLOYMENT FOR A SPECIFIC DURATION.**

**THE HANDBOOK IS NOT ALL INCLUSIVE BUT IS INTENDED TO PROVIDE ME WITH A SUMMARY OF SOME OF THE TOWN'S GUIDELINES.**

**THIS EDITION REPLACES ALL PREVIOUSLY ISSUED HANDBOOKS. THE NEED MAY ARISE TO CHANGE THE GUIDELINES DESCRIBED IN THE HANDBOOK, EXCEPT FOR THE AT-WILL NATURE OF EMPLOYMENT. THE TOWN THEREFORE RESERVES THE RIGHT TO INTERPRET THEM OR TO CHANGE THEM WITHOUT PRIOR NOTICE.**

**NO REPRESENTATIVE OF THE TOWN OF KEYSTONE, OTHER THAN THE TOWN MANAGER AND TOWN COUNCIL, HAS THE AUTHORITY TO ENTER INTO AN AGREEMENT OF EMPLOYMENT FOR ANY SPECIFIED PERIOD AND SUCH AGREEMENT MUST BE IN WRITING, SIGNED BY THE TOWN MANAGER OR THE MAYOR AND MYSELF. I REPRESENT THAT I HAVE NOT ENTERED INTO A WRITTEN AGREEMENT WITH THE TOWN UNLESS AUTHORIZED BY THE TOWN COUNCIL OR TOWN MANAGER.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Employee Name

\_\_\_\_\_  
Date

Town of Keystone  
Town Council Regular Meeting  
Minutes  
February 27, 2024 at 7:00 p.m.  
1628 Sts John Rd  
Keystone, CO 80435

**I. CALL TO ORDER, ROLL CALL**

Mayor Riley called the meeting to order at 7:00 p.m. The roll being called it was found there were present and participating at that time the following members: Councilmember Gretchen Davis, Councilmember Sarah Keel, Councilmember Carol Kerr, Councilmember Dan Sullivan, Councilmember Valerie Thisted, and Mayor Ken Riley. The following member was found absent: Councilmember Aaron Parmet (excused).

**II. APPROVAL OF AGENDA**

The agenda was approved as presented.

**III. COMMUNICATIONS TO COUNCIL**

Mayor Riley opened the floor for public comment. Seeing no members of the public wishing to speak, Mayor Riley closed the public comment period.

**IV. CONSENT AGENDA**

**A. FIRST READING OF ORDINANCES -- NONE**

**B. RESOLUTIONS --NONE**

**C. MEETING MINUTES – February 13, 2024, Regular meeting, and February 20, 2024, Special meeting**

Mayor Riley read the consent agenda into the record. Councilmember Thisted moved to approve the consent agenda as presented. Councilmember Davis seconded. The motion passed unanimously, and the consent agenda was approved.

**V. CONTINUED BUSINESS**

**A. CONSIDERATION OF ORDINANCES (SECOND READING/PUBLIC HEARING) -  
- NONE**

**B. RESOLUTIONS**

**1. Resolution 2024-25 Approving Employer Opt-out of FAML I**

Mayor Riley recognized Town Attorney Jennifer Madsen to introduce Resolution 2024-25 Approving Employer Opt-Out of FAML I.

Councilmember Keel moved to approve Resolution 2024-25 Approving Employer Opt-Out of FAML I. Councilmember Davis seconded. The motion passed unanimously, and Resolution 2024-25 was adopted.

**2. Resolution 2024-26 Approving CRA Contract**

Mayor Riley introduced Resolution 2024-26 Approving CRA Contract.

Councilmember Sullivan moved to approve Resolution 2024-26 Approving CRA contract. Councilmember Davis seconded. The motion passed unanimously, and Resolution 2024-26 was adopted.

**3. Resolution 2024-27 Amendment to Accountant Contract**

Mayor Riley recognized Councilmember Sullivan and Town Attorney Jennifer Madsen to introduce Resolution 2024-27 Amendment to Accountant Contract.

Councilmember Sullivan moved to approve Resolution 2024-27. Councilmember Thisted seconded. The motion passed unanimously, and Resolution 2024-27 was adopted.

**C. OTHER**

**1. Discussion of Process for Hiring Town Manager**

The Town Council announced the four finalists for the Town Manager position, John Crone, Robert Evans, Ashley Macdonald, and James Mann. The Council will host an evening event open to the public for the evening of March 6, at 6:00 p.m. to meet the candidates. Formal interviews before the Council were scheduled to take place on March 7<sup>th</sup> during the day.

**VI. PLANNING MATTERS -- NONE**

**VII. REPORT OF TOWN MANAGER AND STAFF**

**VIII. REPORT OF MAYOR AND COUNCIL**

Mayor Riley reported that Councilmember Parmet's absence this evening should be excused, as he notified Council in advance. Mayor Riley indicated that moving forward Councilmembers should notify the Mayor of any upcoming absences and then absences may be approved on the consent agenda for a Town Council meeting.

**IX. OTHER MATTERS (Town Manager/Mayor/Councilmember may bring up items on other matters that are not on the agenda)**

Council directed interim Town Manager Gary Martinez to determine a list of countywide, regional, and statewide organizations for the Town of Keystone to identify members for.

Council identified a plan to transfer an e-mail communications list from the Keystone Incorporation Committee to the Town. Council directed staff to implement a public sign-in sheet for meetings, identify opportunities to promote the e-mail list, and to work on transitioning any necessary information from the Incorporate Keystone website.

Interim Town Manager Gary Martinez offered an update on the process for paying invoices with the Town's accounting firm.

**X. SCHEDULED MEETINGS**

**XI. EXECUTIVE SESSION**

**XII. ADJOURNMENT**

Seeing no further business, Mayor Riley adjourned the meeting at 8:15 p.m.

# TOWN OF KEYSTONE, COLORADO

## STAFF REPORT

TO: Mayor & Town Councilmembers

THROUGH: Gary Martinez, Interim Town Manager

FROM: Jennifer Madsen, Town Attorney

DATE: March 12, 2024

SUBJECT: Resolution 2024-30, Opposing House Bill 24-1152, Which Preempts Local Regulation Of Certain Land Use Planning

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### **Executive Summary:**

A new bill in the House, HB24-1152, which is titled “concerning increasing the number of Accessory Dwelling Units” (ADUs), encroaches on the traditional land use and zoning authority of home rule municipalities. As the bill is currently written, HB24-1152 will require many municipalities to amend local zoning requirements regardless of local needs. This bill is a significant overstep into local land use matters. This resolution expresses the Town’s concerns about the bill’s preemption of home rule and local control over land use planning and zoning as well as the Town’s opposition to the bill unless it is amended.

### **Recommendation:**

Staff recommends that the Town Council approve Resolution 2024-30, Opposing House Bill 24-1152, Which Preempts Local Regulation Of Certain Land Use Planning.

### **Background:**

House Bill 24-1152 imposes top-down residential zoning standards on municipalities with populations above 1,000 in Metropolitan Planning Organizations (MPOs) by making accessory dwelling units (ADUs) a “use by right” in single family zones. The bill would prohibit local governments from maintaining parking requirements, owner-occupancy rules, and ADU-specific design or dimension standards, among other limitations.

The Town of Keystone is not located in an MPO and therefore, the requirements of HB24-1152, if adopted, would not apply to Keystone. However, the reason to oppose the legislation is that it is the state’s attempt to take over and control matters that have historically been subject to local control. The Colorado Municipal League (CML) is strongly opposed to this legislation because the state is taking away local zoning control from municipalities. Here is CML’s statement expressing opposition to the bill: <https://www.cml.org/home/publications-news/resource-detail/cml-opposes-hb24-1152-unless-amended>.

Opposition to the bill does not mean that Keystone is not concerned with creating

affordable housing options in the Town. The resolution in opposition means that these decisions should be made by local governments rather than imposed by the state.

If approved, this resolution will be sent to CML and used in an effort to lobby against the passage of the bill.

**Alternatives:**

N/A

**Financial Considerations:**

None.

**Previous Council Actions:**

None.

**Next Steps:**

None.

**Suggested Motions:**

I move to APPROVE Resolution 2024-30, Opposing House Bill 24-1152, Which Preempts Local Regulation Of Certain Land Use Planning

I move to DENY Resolution 2024-30, Opposing House Bill 24-1152, Which Preempts Local Regulation Of Certain Land Use Planning

**Attachments:**

- Resolution 2024-30, Opposing House Bill 24-1152, Which Preempts Local Regulation Of Certain Land Use Planning

**TOWN OF KEYSTONE  
Summit County, Colorado**

**RESOLUTION 2024-30**

**A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO  
OPPOSING HOUSE BILL 24-1152, WHICH PREEMPTS LOCAL REGULATION OF  
CERTAIN LAND USE PLANNING**

WHEREAS, for a century, the State of Colorado has committed both in statute and in the state constitution to the local control of land use planning and zoning because local governments are closest to the land and to the people that occupy it; and

WHEREAS, House Bill 24-1152 would place a state mandate on local land use matters in certain jurisdictions and substitute the judgment of legislators and state regulators who lack the understanding needed to make the right decisions for our community; and

WHEREAS, for example, House Bill 24-1152's direct preemptions and excessive restrictions will undermine the efforts that many local governments have already undertaken to allow accessory dwelling units (ADUs) with reasonable requirements crafted respond to the needs to the local community after public engagement; and

WHEREAS, House Bill 24-1152 will limit the Town's ability to maintain reasonable zoning regulations to ensure a high quality of life and safety for our current and future residents.

**Now, Therefore, be it Resolved by the Town Council of the Town of Keystone, Colorado, that:**

Section 1. It is the Town of Keystone's position that municipalities are best suited to determine appropriate ADU zoning laws for their communities and that collaboration and cooperation – not top-down statewide mandates– are the solution to Colorado's affordable housing problem.

Section 2. The Town of Keystone opposes House Bill 24-1152 and strongly urges its legislators to vote NO on this legislation.

Section 3. Effective Date. This Resolution shall take effect upon its approval by the Town Council.

**ADOPTED by a vote of \_\_ in favor and \_\_ against, this \_\_\_\_ day of \_\_\_\_\_, 2024.**

By: \_\_\_\_\_  
Kenneth D. Riley, Mayor

ATTEST:

Approved as to Form:

By: \_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_  
Town Attorney



**TOWN OF KEYSTONE, COLORADO**

**STAFF REPORT**

TO: Mayor & Town Councilmembers  
THROUGH: Gary Martinez, Interim Town Manager  
FROM: Jennifer Madsen, Town Attorney  
DATE: March 12, 2024  
SUBJECT: Resolution 2024-31, Adopting a Social Media Policy

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**Executive Summary:**

In accordance with the Town's police power and consistent with First Amendment jurisprudence, this resolution establishes a policy for use of Town-established social media accounts.

At the February 27 meeting, Councilmember Thisted requested that Town Council consider adopting a social media policy.

**Recommendation:**

Staff recommends that the Town Council approve Resolution 2024-31 adopting a social media policy.

**Background:**

Consistent with best practices and the First Amendment, it is helpful to have protocols and requirements in place that are generally applicable to the organization relating to use of social media for official Town business, taking into account first amendment protections.

The Town Attorney will provide an overview of the policy at the March 12 meeting.

**Alternatives:**

N/A

**Financial Considerations:**

None.

**Previous Council Actions:**

None.

**Next Steps:**

None.

**Suggested Motions:**

I move to APPROVE Resolution 2024-31 Adopting a Social Media Policy

I move to DENY Resolution 2024-31 Adopting a Social Media Policy

**Attachments:**

- Resolution 2024-31 Adopting a Social Media Policy
- Social Media Policy

**TOWN OF KEYSTONE  
Summit County, Colorado**

**RESOLUTION 2024-31**

**A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO  
ADOPTING A SOCIAL MEDIA POLICY**

WHEREAS, the Town of Keystone (“Town”) is a home rule municipality governed by the Keystone Home Rule Charter; and

WHEREAS, the Town Council, as the legislative body, and pursuant to its home-rule and general police powers, is authorized to adopt policies that establish rules and guidelines governing the use of social media applicable to the organization; and

WHEREAS, the Town Council has reviewed and considered the attached Social Media Policy and finds that it will serve the main objective of providing guidance to Town Officials and members of the organization on their use of Social Media.

**Now, Therefore, be it Resolved by the Town Council of the Town of Keystone, Colorado, that:**

Section 1. The Town Council hereby adopts the Social Media Policy in the form attached to this resolution and incorporated herein by this reference.

Section 2. Effective Date. This Resolution shall take effect upon its approval by the Town Council.

**ADOPTED by a vote of \_\_ in favor and \_\_ against, this \_\_\_\_ day of \_\_\_\_\_, 2024.**

By: \_\_\_\_\_  
Kenneth D. Riley, Mayor

ATTEST:

Approved as to Form:

By: \_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_  
Town Attorney

# TOWN OF KEYSTONE, COLORADO

## SOCIAL MEDIA POLICY

### I. PURPOSE AND SCOPE:

The Town is committed to enhancing the traditional communication methods through the use of Social Media. This commitment primarily stems from public expectations and the capabilities of current technology.

Unless otherwise specifically noted, when the Town establishes a Town website or Social Media Account it does so to communicate to the public, to inform, and to relay official Town content. The Town, therefore, manages the Town Social Media Sites that it maintains for the following reasons:

- Posts on Town Social Media Sites appear to carry the approval of the Town and unauthorized posts on those sites can confuse people as to whether the Town endorses the post or if a specific post forms a position of the Town and whether it is the Town's official position.
- Town Social Media Sites are not intended to operate as a traditional open public forum as there are ample open forums for purposes of expressing opinions and views.

This policy addresses:

- A. A Town Official's permitted use of social media in that person's official capacity;
- B. Recommendations for Officials to ensure that their personal use of social media does not impermissibly bring their personal use within the purview of their official use and its requirements;
- C. Town-authorized use of social media by Town employees for business-related purposes; and
- D. Town employees' personal use of social media outside of work.
- E. In addition, this policy is intended to protect the rights of the public in their ability to access public forums, and to ensure that the Town can comply with its requirements under the laws and constitutions of the State of Colorado and the United States of America.

### II. DEFINITIONS:

**Business-related** means an Official's or employee's use of their Town e-mail address, position, title, or official capacity, any Official's personal use of social media that is reasonably related to engaging with constituents, communicating with the public on matters of the Town's concern or affairs, or carrying out the Official's official duties, or any employee's personal use of social media that is reasonably related to the employee's work activities, job duties, or affiliation with the Town.

**Emergency test** means any message that is conveyed in a specific context that poses "a clear and present danger" of directly causing certain specific, imminent, serious harm—such as

violence, incitement to imminent lawless action—which cannot be averted through any other means.

**Officials** mean all Town Elected and Appointed officials including all members of Town Council, or any other Boards, Committees and Commissions of the Town.

**Social Media** is internet and mobile-based applications, websites, and functions, other than email with a focus on immediacy, interactivity, user participation, and information sharing. These venues include social networking sites, forums, weblogs (blogs, vlogs, microblogs), online chat sites, and video/photo posting sites, or any other such similar output or format. Examples include Facebook, Instagram, Twitter, YouTube, and emerging new web-based platforms generally regarded as social media or having many of the same functions as those listed.

**Social Media Administrator** means the Town employee or employees expressly designed by the Town Manager whose job duties are to monitor, manage, supervise, or control any Social Media accounts established and maintained by the Town.

**Personal Information** means information that can be used to distinguish or trace an individual's identity, such as date and place of birth, personal addresses or telephone numbers, Social Security number, driver's license number, or records that contain genetic, medical, or psychological data or information. Personal information also includes personal financial information and other information maintained because of the employer-employee relationship, pursuant to Section 24-72-202 (4.5), C.R.S. For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the public from federal, state, or local government records.

**Personal Use** means an Official's use of social media that is unrelated to their duties as an elected or appointed official, or an employee's use of social media that the Town Manager has not authorized, or which is not business-related.

### III. OVERVIEW:

A. From time to time, the Town may authorize Town departments and employees to use Social Media as a communication channel for distributing information to the public, in addition to existing communication channels such as, the website, press releases, and official documents. The Town encourages the use of social media sites and tools to further the goals and vision of the Town and the missions of its departments, where appropriate. The most appropriate uses of Town Social Media accounts are for:

- (1) time-sensitive and emergency information;
- (2) citizen engagement, promotions,
- (3) public service announcements;
- (4) information on Town projects; and
- (5) as a tool to direct citizens and site users to the Town's official website.

B **Department Social Media Accounts – Town Manager Approval Required.** The Town Manager is responsible for leading the Town's Social Media efforts for official Town

business. The Social Media Administrator is responsible for developing and administering the Town's presence on a Social Media Account that is the Town's Official Social Media Account. Officials and employees shall not create a site or account or platform separate from the Town's Social Media accounts for or on behalf of the Town for official use, unless authorized by the Town Manager or designee. Town Departments shall not create social media accounts unless authorized by the Town Manager or designee. Employees shall not establish any social media accounts for or on behalf of their Department unless authorized to do so by their Department Director, after the Department Director has received authorization to do so by the Town Manager or designee. The Town Manager is the final decision-making authority for the approval or denial of any Social Media accounts and the use of such accounts by the Town.

- C. **Termination of Social Media Accounts.** The Town Manager or Social Media Administrator, may, at any time, and in their sole discretion, terminate any Town social media account established or created pursuant to this policy.
- D. **Town Authorized Accounts Are Town Property.** All social media accounts established and authorized by the Town are the property of the Town. Officials may not use Town Social Media accounts for purposes beyond those authorized in this policy.

#### IV. TOWN EMPLOYEE'S USE OF SOCIAL MEDIA:

##### A. Town-Authorized Use of Social Media by Employees.

- (1) **Requirements.** Employees engaged in Town-authorized use of social media shall abide by the following requirements:
  - a. Employees who are authorized to participate in business-related use of social media on behalf of the Town should always be aware that they represent the Town of Keystone in an official capacity and shall do so in a professional manner. All business-related social media use shall be meaningful, respectful interaction that promotes collaboration and sharing of information relevant to Town business.
  - b. Employees must identify themselves by name and position title and use their work e-mail address in registering for and participating in business-related social media websites or accounts.
  - c. All postings on social media on behalf of the Town, by any employee other than an approved administrator, must be preapproved by a Department Director or the Social Media Administrator and sent by employees authorized to post on Town social media accounts.
  - d. Employees must confine their use of Town social media accounts to the discussion of subject matter that relates to Town business and to their area of expertise.
  - e. Online statements shall be true, accurate, legal, and ethical. False and defamatory statements are not permitted, and employees making such statements may be subject to discipline.

- f. Employees shall not use ethnic slurs, profanity, personal insults, or engage in any conduct on Town or business-related social media accounts that would not be acceptable in the Town's workplace.
- g. Employees are prohibited from posting, using, or otherwise infringing upon material that is copyrighted or trademarked by third parties. In addition, employees are required to credit other authors for borrowed content and to protect the intellectual property of others.
- h. Employees may not mention vendors, suppliers, clients, citizens, co-workers, or other individuals without their prior consent.
- i. Content shared via official Town social media channels, as well as pages or accounts that these channels like or follow, should reflect the mission and values of the Town. Official Town accounts should refrain from posting content and liking or following users or pages that reflect personal interests or that may be in conflict with the Towns' mission or values.
- j. Official Town accounts that allow for engagement and interaction with and among followers should post a disclaimer similar to this: "Third-party posts on this wall do not imply endorsement of that content by the Town of Keystone and are not to be considered the opinion of the Town of Keystone.

**(2) Limitations.**

- a. **Open Records Act.** All business-related participation in social media by Town employees may be subject to the Colorado Open Records Act (C.R.S. § 24-72-101 et seq.), and employees do not have an expectation of privacy concerning their participation. The Town Manager or Social Media Administrator may monitor all business-related use of social media by employees, and may edit, correct, or remove any content that negatively impacts the mission, reputation, function, or professionalism of the Town, or that is deemed to violate any law, regulation, or Town policy, including this policy.
- b. **Confidentiality.** Employees shall not post, release, share, disclose or otherwise disseminate any of the following on social media:
  - i. Any employee's confidential, sensitive, or personally identifiable information that would violate such person's rights to privacy under applicable federal and state laws and regulations, such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA), or City policies;
  - ii. Any employees' protected health information;
  - iii. Any employees' personally identifiable or financial information;
  - iv. Another employee's personnel file or e-mail messages;

- v. The Town's proprietary or confidential information, any privileged Town attorney-client communications, or any other confidential information gained by reason of the employee's position with the Town;
- vi. Another Town employee's personnel file or e-mail messages;
- vii. Any confidential, personal, or sensitive information relating to Town Officials, employees, customers, or residents;
- viii. Any copyrighted or trademarked materials without permission of the owner;
- ix. Any proprietary or confidential information of the Town's vendors, utility customers, or contractual partners; or
- x. Any Town records or documents that are not disclosable or are protected against disclosure pursuant to the Colorado Open Records Act (C.R.S. §§ 24-72-200.1 to 206), the Colorado Criminal Justice Records Act (C.R.S. §§ 24-72-301 to 309), or other applicable law, regulation, or Town policy.

B. Employee's Personal Use of Social Media Outside of Work.

- (1) Employees are prohibited from accessing their social media accounts during work hours or by means of the Town's computers, Town-issued mobile devices, networks, and other IT resources and communications systems.
- (2) Employees who engage in personal use of social media outside of work or while off-duty may not:
  - a. Use a Town-issued email address to register on social networks, blogs, or other online tools utilized for personal use.
  - b. Create a link from their blog, website, or other social networking sites to the Town's website without identifying yourself as a Town employee.
  - c. Use the trademark, or logo of the Town or that of any Town department or program.
  - d. Speak as a representative of the Town, nor imply their speech has been endorsed, approved or connected to the Town. In cases where an employee's personal use of social media may be perceived as being on behalf of the Town, such as if an employee identifies oneself as a Town employee or is widely known to be a Town employee, an employee shall include a visible disclaimer on their social media account to inform other users that their opinions are their own and do not represent those of the Town of Keystone, such as "The postings on this site are my own and do not necessarily represent the Town of Keystone's positions, strategies or opinions."



- (3) Employees who engage in personal use of social media outside of work or while off-duty are encouraged not to:
  - a. Share, promote, advertise, discuss, or solicit the public to use or enroll in Town services and programs on their personal social media; or
  - b. Share, promote, advertise, or discuss Town job openings on their personal social media, without prior approval of the Social Media Administrator.
- (4) Employees may do the following when engaged in their personal use of social media, without prior approval of the Town Manager or Social Media Administrator:
  - a. Employees may list the Town as their employer, and may list their Town job title(s) on the employee's personal social media; and
  - b. Employees may share or link to Town-authorized social media posts about Town-sponsored events and festivals that are open to the public on the employee's personal social media.

D. Other Considerations For Employees Regarding Personal Use of Social Media.

Nothing in this policy shall be construed to prohibit or impair an employee from engaging in or exercising "protected concerted activities" under the National Labor Relations Act, or from documenting unsafe or hazardous working conditions and workplace safety issues, or to impede an employee's exercise of protected whistle-blower activities. Furthermore, nothing in this policy should be construed to prohibit or impair an employee from speaking on matters of legitimate public concern.

- E. The Town Manager shall have the final authority to interpret and enforce Section V of this policy and may make rules and regulations as necessary.

V. **TOWN OFFICIAL'S USE OF SOCIAL MEDIA:**

A. Official Use of Social Media.

- (1) Town Officials may suggest content for the Town's Social Media accounts. Content suggestions must be submitted to Social Media Administrator. The Town does not create, operate, or maintain social media accounts for the use of Officials.
- (2) **Official to Official Discussion.** In order to assure compliance with the Colorado Open Meetings Law (CRS § 24-6-402 *et seq.*), Officials shall refrain from engaging in discussions with more than one other Official through social media, including personal social media accounts, regarding Town matters, except as specifically permitted by C.R.S. 24-6-402, where the electronic mail does not relate to the merits or substance (discussion, debate or exchange of ideas) of pending legislation or other public business, including electronic mail communications but are sent by an Official for the purpose of forwarding information, or responding to a non-substantive inquiry from an individual who is not an Official or posing a question for later discussion by the Town Council or Town board or commission.

(3) **Campaigning or other Election Activities.**

- a. The Town does not create, operate, or maintain Social Media accounts for the use of town Officials for a campaign or other election activities ("Campaign Social Media Account"). A Campaign Social Media Account may not be operated in the Town Official's official capacity.
- b. To avoid a violation of the Fair Campaign Practices Act, Article 45, Title 1, C.R.S., Town Officials may not use a Town Social Media account to discuss a candidate for elected office, any political party, ballot proposal, or any organization seeking to defeat any candidate for elective office or ballot proposal.

(4) **Confidentiality.** Officials shall not post personal, confidential, or proprietary information about the Town, or Town employees, vendors, or affiliates that would violate such persons' rights to privacy under applicable federal and state laws and regulations, such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Town policies.

(5) Officials must identify themselves by name and position title when commenting on the Town Social Media accounts.

(6) **Additional Requirements.** Regular business of the Town Council, board, committee, or commission may be posted to a Town Social Media account without formal action of the Town Council, board, commission, or committee provided that posted documents are also available on the Town's website. In general, it is preferred that such a posting simply provides a link back to information and documents posted on the Town's website. "Regular business" is defined as the standard and routine activity of any council, board, committee, or commission, and generally includes agendas, minutes, presentation documents, and backup items created during the course of regular Council or Board or Commission proceedings.

B. Personal Use of Social Media.

(1) **Separate Accounts.** Any social media account established, operated, maintained, or used by an Official for personal use, including a Campaign Social Media Account, must be separate and distinct from any social media account established, operated, maintained, or used by an Official for official purposes.

(2) **How an Official presents the account.** When establishing or creating a social media account for personal use, an Official should not:

- a. Associate the account with their position as an Official by, for example, including their official title in the account description, or using a profile picture that shows the Official acting in their official capacity.
- b. Refer to or identify the account as "official," or direct constituents or others to it in a way that suggests that the account is an extension of such Official's office.

- c. Use the official trademark or Town logo, or that of any Town department or program.
  - d. Use a Town-issued email address to register on social media.
- (3) **How an Official uses the account.** When engaging in personal use of social media, an Official should not:
- a. Communicate information about their official duties, solicit information from constituents and the general public related to those duties, or make announcements about such Official's official responsibilities or actions.
  - b. Seek or encourage comments about what Town matters the Official should bring to the Council or Board or support, or to share any decisions the Official made as a public official.
  - c. Discuss items that will be or may be on the Council's or Board's/Commission's agenda, nor encourage public discussion on the Official's personal account or page.
  - d. Speak as a representative of the Town, nor imply their speech has been endorsed, approved or connected to the Town.
- (4) **Disclaimer Required.** An Officials' personal social media account should include a visible disclaimer that identifies the account's purpose is for personal use and state for example; "The postings on this site are my own and do not necessarily represent the Town of Keystone's positions, strategies or opinions."
- (5) **Additional Requirements for Campaign Social Media Accounts.**
- a. The Campaign Social Media Account should be identified as a Campaign Social Media Account. To identify the site as a campaign one, it is recommended that a disclaimer such as the example provided below is added to the intro or about section:

*This is my campaign Facebook account and is intended for my campaign messaging. This account is not affiliated with the Town of Keystone. The postings on this account are my own and do not reflect or represent the Town of Keystone' opinions or views. I reserve the right to remove any content on my page. I review posts and comments to this page, and I reserve the right to restrict any content.*
  - b. It is recommended that an Official deactivate or cease using the Campaign Social Media Account after the person is elected and is no longer campaigning.

**VII. EFFECTIVE DATE:**

This Policy shall be effective on March 12, 2024, the effective date of Resolution 2024-31, approving this Policy.

**VIII. APPROVAL:**

**Resolution No. 2024-31**

\_\_\_\_\_  
Kenneth D. Riley, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Town Clerk