

Town of Keystone
Town Council Regular Meeting
March 26, 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. PROCLAMATION

A. PROCLAMATION RECOGNIZING KEVIN LINEHAN'S SERVICE TO THE TOWN OF
KEYSTONE

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 2024-03, An Ordinance of the Town Council of the Town of Keystone, Colorado, Regulating the Licensing of the Distribution and Sale of Alcoholic Beverages
2. Ordinance 2024-04, An Ordinance of the Town Council of the Town of Keystone, Colorado, Regulating the Licensing of the Distribution and Sale of Tobacco Products
3. Ordinance 2024-05, An Ordinance of the Town Council of the Town of Keystone, Colorado, Adopting By Reference the Summit County Land Use Development Code Published by Summit County, Colorado, As Such Existed on May 1, 2024, Subject to Requirements, Revisions, And Amendments As Provided By This Ordinance And Declaring An Emergency

B. RESOLUTIONS -- NONE

C. MEETING MINUTES – March 12, 2024, regular meeting

D. EXCUSED ABSENCES -- NONE

V. CONTINUED BUSINESS

A. CONSIDERATION OF ORDINANCES (SECOND READING/PUBLIC HEARING) –

1. Ordinance 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

2. Ordinance 20204-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 with the Town and Make Reasonable and Lawful Use of the Town Rights-Of Way for such Purposes.

B. RESOLUTIONS -- NONE

C. OTHER -- NONE

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. Section 24-6-402(4)(b) and C.R.S. Section 24-6-402(4)(e)(I) to receive legal advice concerning a negotiation of the extension of an intergovernmental agreement with Summit County on transition services as well as to determine positions relative to the negotiation of the transition services intergovernmental agreement with Summit County, develop strategies for such negotiations, and instruct negotiators accordingly. Additionally, to receive legal advice concerning an employment agreement with the Town Manager and to determine positions relative to an employment agreement with the Town Manager that is be subject to negotiations, develop strategies for such negotiations, and instruct negotiators accordingly.

XII. ADJOURNMENT

PROCLAMATION

TOWN OF KEYSTONE, COLORADO - A PROCLAMATION OF THE MAYOR AND TOWN COUNCIL

RECOGNIZING KEVIN LINEHAN'S SERVICE TO THE TOWN OF KEYSTONE

Whereas, The Citizens of the Town of Keystone, Colorado, have been blessed with the remarkable leadership and dedication of Kevin Linehan; and

Whereas, Kevin Linehan has demonstrated unwavering commitment and exemplary service in successfully organizing and overseeing three distinct elections for the Town of Keystone, Colorado; and

Whereas, Kevin Linehan's tireless efforts, steadfast integrity, and exceptional organizational skills have ensured the smooth execution of each electoral process, thereby upholding the principles of democracy and civic engagement; and

Whereas, through his leadership, Kevin Linehan has fostered an atmosphere of transparency, fairness, and inclusivity, allowing the voices of the community to be heard and respected; and

Whereas, Kevin Linehan's passion for public service and his selfless dedication to the betterment of Keystone, Colorado, serve as a shining example for all residents to follow.

—NOW, THEREFORE, BE IT PROCLAIMED—

That the Mayor and the Town Council of Keystone, Colorado, do hereby honor and recognize Kevin Linehan for his outstanding service and invaluable contributions to the Town of Keystone and our community. Further, we hereby commend Kevin Linehan for his exemplary leadership, commendable professionalism, and unwavering commitment to democratic ideals.

Issued this _____ day of _____, 2024

By: _____

Kenneth D. Riley, Mayor

Attest:

By: _____

Town Clerk

TOWN OF KEYSTONE, COLORADO

STAFF REPORT

TO: Mayor & Town Councilmembers

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

DATE: March 26, 2024

SUBJECT: First Reading of Ordinance 2024-O-03
An Ordinance of the Town Council of The Town of Keystone, Colorado,
Regulating the Licensing of the Distribution and Sale of Alcoholic
Beverages

Executive Summary:

On March 26 and April 9, 2024, the Town Council will be asked to consider Ordinance 2024-O-03 on first and second readings, respectively, to regulate the licensing of the distribution and sale of alcoholic beverages within the Town. This ordinance would establish the Keystone Town Council as the Liquor Licensing Authority and establish a Town Liquor Code for the licensing of the distribution and sale of alcoholic beverages.

Recommendation:

Staff recommends that the Town Council approve Ordinance 2024-O-03 on first reading, which will cause the Ordinance to be scheduled for second reading and public hearing on April 9, 2024.

Background:

At the Town Council Work Session on March 12, 2024, the Keystone Town Council expressed a desire to transition the regulation of licensing for the distribution and sale of alcoholic beverages from Summit County to the Town of Keystone by early May. Pursuant to § 31-15-501, C.R.S., municipalities have the power to license, regulate, and tax businesses within the limits of the Town. Additionally, pursuant to Title 44, Articles 3 and 4, C.R.S., the Town has authority to designate the Town Council as the local licensing authority.

The purpose of the regulations is to require a Town issued liquor license for any individual or business selling alcoholic beverages within the Town of Keystone, to establish a Town Liquor code regulating the distribution of sale and alcoholic beverages, and to govern all proceedings before the Liquor Licensing Authority of the Town, which is designated as the Town Council. These regulations also authorize the Town Clerk to administratively

review and approve applications for renewals of any previously approved liquor license under the following circumstances:

- a. The applicant has timely and properly submitted a complete license renewal application and tendered all required fees in accordance with these regulations and the provisions of Title 44 C.R.S.;
- b. The applicant's license is in good standing with the Town and the State, and no violation of law has occurred during the previous year;
- c. To the knowledge of the Town Clerk, there is no pending or proposed criminal or legal investigation or charges against the applicant or the licensed premises; and
- d. There is no other information known by the Town Clerk that would cause the Town Clerk, in the Town Clerk's reasonable belief, to believe that some violation of applicable law has occurred or that the license should not be renewed.

The Town Clerk is still authorized, at their discretion, to refer any licensing decision to the Liquor Licensing Authority (Town Council), if for any reason they believe the matter should be presented to the Authority. All new liquor licenses will be referred to the Authority for approval.

Ordinance 2024-O-03 outlines the transition process, indicating that existing Liquor Licenses issued to businesses within the Town of Keystone by the Summit County Clerk and Recorder's license will be recognized as valid licenses for the Town of Keystone until their annual renewal date. At that time, businesses distributing or selling alcoholic beverages will need to apply for a renewal license with the Town of Keystone.

The ordinance outlines the license requirements, process for renewals, including the application procedure, issuance of a license, and reasons for denial of a license.

Alternatives:

Town Council can choose to amend the regulations or choose not to adopt the regulations.

Financial Considerations:

Town Staff time will be needed to administer the license; however, that time may be recovered in the license fee.

Previous Council Actions:

This matter was previously discussed at a Town Council work session on March 12, 2024.

Next Steps:

N/A

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-03 on first reading and set a second reading and public hearing for April 09, 2024.

Attachments:

Ordinance 2024-O-03 An Ordinance of the Town Council of The Town of Keystone, Colorado, Regulating the Licensing of the Distribution and Sale of Alcoholic Beverages

**TOWN OF KEYSTONE
ORDINANCE NO. 2024-O-03**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF
KEYSTONE, COLORADO, REGULATING THE LICENSING OF THE
DISTRIBUTION AND SALE OF ALCOHOLIC BEVERAGES**

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

WHEREAS, pursuant to § 31-15-501, C.R.S., municipalities have the power to license, regulate, and tax businesses within the limits of the Town; and

WHEREAS, pursuant to Title 44, Articles 3 and 4, C.R.S., the Town has the authority to establish a local liquor licensing authority; and

WHEREAS, Town Council desires to designate the Town Council as the local liquor licensing authority; and

WHEREAS, Town Council adopts regulations for the licensing of the distribution and sale of alcoholic beverages.

**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 adopts the following regulations, Town Liquor Code, for the licensing of the distribution and sale of alcoholic beverages.

LIQUOR LICENSE REGULATIONS

A. Applicability of provisions.

In addition to any other rules or laws which may be applicable, these regulations, hereinafter referred to as “Town Liquor Code,” shall govern all proceedings before the Liquor Licensing Authority of the Town. Unless superseded by these regulations, the provisions of Sections 44-3-101 *et seq.* and 44-4-101 *et seq.*, C.R.S., shall apply to fermented malt and alcoholic beverage licenses. As used in the Town Liquor Code, the term Town license means a license or permit issued pursuant to the Town Liquor Code. The term Town license shall include temporary permits.

B. Designation of Town Council as Liquor Licensing Authority; duties of Town Clerk.

- (a) The Liquor and Fermented Malt Beverage Licensing Authority for the Town is the Town Council and shall be known as the "Liquor Licensing Authority" or "Authority."
- (b) The Town Clerk shall assist the Liquor Licensing Authority by receiving all applications, coordinating with other Town officers and departments when relevant, scheduling public hearings required and exercising his or her discretion in forwarding renewals, change of ownership, change of officers, directors and stockholders, change of trade name, modification of premises, special event permits and change of manager matters to the Liquor Licensing Authority.
- (c) With the exception of issuing new licenses the Town Clerk is hereby vested with authority to administratively review and approve applications for liquor license.
 - (1) Renewals. The Town Clerk is authorized to administratively review and approve an application for the renewal of any previously approved liquor license where, after reasonable investigation by the Town Clerk and consultation by the Town Clerk with other appropriate administrative and law enforcement personnel, all of the following circumstances are found to exist:
 - a. The applicant has timely and properly submitted a complete license renewal application and tendered all required fees in accordance with this Chapter and the provisions of Title 44 C.R.S;
 - b. The applicant's license is in good standing with the Town and the State, and no violation of law has occurred during the previous year;
 - c. To the knowledge of the Town Clerk, there is no pending or proposed criminal or legal investigation or charges against the applicant or the licensed premises; and
 - d. There is no other information known by the Town Clerk that would cause the Town Clerk, in the Town Clerk's reasonable belief, to believe that some violation of applicable law has occurred or that the license should not be renewed.
 - (2) Notwithstanding any authority delegated to the Town Clerk for the administrative approval of applications under this Section, the Town Clerk may, at the Town Clerk's discretion, refer any licensing decision authorized herein to the Authority if, in the Town Clerk's opinion, the matter should be presented to the Authority.

C. Liquor license required.

No person shall sell alcohol beverages at retail within the Town except pursuant to and in compliance with these regulations, the state liquor laws and a currently valid Town license. All previously issued Town licenses must be renewed annually upon proper application and payment of licensing and application fees.

D. Conditions of issuance.

It shall be deemed a condition of the issuance of every Town license that the licensee shall comply with the terms of these regulations, including but not limited to these regulations and the state liquor laws.

E. License display required.

Once a temporary or permanent Town license is issued, it shall be unlawful for the licensee to fail to display said license in a prominent location within the licensed premises.

F. Filing of application; fees.

- (a) All applications for liquor and fermented malt beverage licenses, including new, renewal, change of location or ownership licenses, a transfer of ownership, change of location, and license merger and conversion pursuant to Section 44-3-410(1)(b), C.R.S., modification of premises, special event, retail establishment, and festival permits shall be filed with the Town Clerk. All applications shall be made under oath, on forms provided by the Town.
- (b) The following shall be filed:
 - (1) A state license application form, which shall be filled out and completed in all material details. Incomplete application forms shall be rejected.
 - (2) A local license application form, if provided by the Town, which shall be filled out and completed in all material details. Incomplete application forms shall be rejected.
 - (3) If the applicant is a corporation, copies of the articles of incorporation, certificate of incorporation and corporate minutes showing current officers, directors and shareholders. In the case of a foreign corporation, the applicant shall also provide the name and address of the registered agent and proof of qualification to do business in the State. If the applicant is a limited liability company, copies of the articles of organization and operating agreement, and a list of managers and members. If the applicant is a partnership, a copy of the partnership agreement.
 - (4) A description of the kind of business and the nature of the proposed establishment.
 - (5) The name and address of the person managing or in charge of the establishment after the license has been issued, a copy of the management agreement, if any, and the names of other liquor or fermented malt beverage establishments managed by that person.
 - (6) Evidence showing that the proposed location will not violate any Town zoning laws.
 - (7) Evidence showing all financial interests in the proposed license including, but not limited to, copies of documents governing the contract for purchase, promissory notes, shares of stock, mortgages, leases, insurance binders,

- recorded and unrecorded security interests and assignments of any of the above.
- (8) For new license applications only, a survey of the adult residents of the Town inquiring whether they favor or do not favor approval of the application. The Town Clerk shall maintain survey forms for use by applicants. The completed survey must be submitted with the application, and no entry or signature on such survey shall be dated earlier than thirty (30) days prior to the date of the application.
 - (9) An application fee payable to the Town. Town application fees shall be set out in an administrative fee schedule available in the office of the Town Clerk. The application fee shall be collected to cover the costs of the preliminary investigation made by the Town, administrative checks, publication and posting costs and other necessary and incidental expenses.
 - (10) An application fee payable to the State Department of Revenue. The amount shall be as provided by the State Licensing Authority.
 - (11) A license fee payable to the Town. Town license fees shall be as set out in Sections 44-3-505, C.R.S.
 - (12) A license fee payable to the State Department of Revenue. The amount shall be as provided by the Sections 44-4-107 and 44-3-501, C.R.S.
 - (13) For a transfer of ownership, change of location and license merger and conversion pursuant to Section 44-3-410(1)(b), C.R.S., evidence showing that at least twenty percent (20%) of the licensee's gross annual income derived from total sales during the prior twelve (12) months at the drugstore premises is from the sale of food items, as defined by the State Licensing Authority by rule.

G. Application and hearing procedure.

Upon receipt of a complete application, the Town Clerk shall notify the Liquor Licensing Authority at its next meeting of the filing of the application, set a hearing date and give notice of the hearing according to the requirements of Section 44-3-311, C.R.S. This procedure shall apply to hearings concerning applications for new licenses and applications for a change of location.

H. Preliminary investigation; findings.

- (a) The Town Clerk shall, on behalf of the Liquor Licensing Authority, investigate the following:
 - (1) Whether any of the prohibitions contained in Section 44-3-301(12) or 44-3-313, C.R.S., apply to the applicant.
 - (2) The number and type of outlets of a nature similar to the applicant's within one (1) mile in any direction of the proposed location.

- (b) The Town Clerk shall request that law enforcement, on behalf of the Liquor Licensing Authority, investigate the following:
 - (1) All pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.
 - (2) Any financial interests, including notes, mortgages, leases, etc., in other licenses.
 - (3) The applicant's criminal records, if any, including all partners, principals or stockholders holding over ten percent (10%) of the outstanding and issued stock.
 - (4) Other matters as the Liquor Licensing Authority shall direct.
- (c) A written report setting out the results of the investigations performed by the Town Clerk and law enforcement shall be prepared and mailed by certified mail, return receipt requested by the Town Clerk to the applicant and, upon request, to other interested parties, as defined by Section 44-3-311(5)(a) or 44-3-312(a), C.R.S., not less than five (5) days prior to the date of the hearing upon the application. The original report may be filed as a public record in the Town Clerk's office.

I. Authority determinations.

- (a) Appeals. The Authority shall determine all appeals of administrative applications, matters for which a hearing is required pursuant to the Town Liquor Code or the state liquor laws, and all matters not authorized to be determined administratively.
- (b) Public notice. The Authority shall cause to be posted and published public notice of any hearing as required by the state liquor laws.
- (c) Investigation. At least five (5) days prior to the hearing, the Town Clerk shall send a letter to the applicant, by certified mail, enumerating the results of any and all investigations performed by the Town Clerk. The letter shall be available for public inspection at least five (5) days prior to the hearing.
- (d) Authority powers. The Authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records necessary to the determination of any hearing which the Authority is authorized to conduct. It shall be unlawful for any person to fail to comply with any subpoena issued by the Authority in the proper conduct of its hearings. The Municipal Court shall enforce the subpoenas of the Authority.
- (e) Deliberations. The Authority may continue any hearing from time to time as may be required to gather necessary facts and evidence and to permit witnesses to testify. Before entering any decision on any matter before it, the Authority shall consider the facts and evidence adduced as a result of the investigation, evidence and testimony and, when applicable, the desires of the inhabitants of the neighborhood, the reasonable requirements of the neighborhood for the type of license for which application has been made, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.

- (f) Decisions. The Authority shall render its decision no later than thirty (30) days following the conclusion of a public hearing.
- (g) The Town Clerk shall send a written copy of the Authority's decision and the reasons for the decision, by certified mail, to the applicant at the address shown on the application, and to any other party in interest upon written request.

J. Suspension, revocation and fines.

- (a) The Authority shall have the power upon its own motion or upon complaint, and in accordance with the state liquor laws, to:
 - (1) Summarily suspend any Town license for a period not to exceed the maximum suspension period allowed by state law.
 - (2) Upon notice to the licensee and hearing, suspend any Town license for a period not to exceed the maximum suspension period allowed by state law.
 - (4) Upon notice to the licensee and hearing, revoke the license.
 - (3) Accept payment of a fine in lieu of suspension.
- (b) Whenever the Authority or the Town Clerk receives a written complaint charging any person with a violation of the state liquor laws or the Town Liquor Code, the Authority shall cause an investigation to be made to determine the veracity of the charge. After investigating the charge and determining the probable truth of the charge, the Authority shall issue a written notice to show cause directed to such person. The notice to show cause shall be served personally or by certified mail to the licensee at the address contained in the license or to such other person at the person's residence or principal place of business. The notice shall direct the person to appear at a certain place and at a time designated, which date shall be not earlier than ten (10) days after mailing, to show cause, if any, why the Town license should not be suspended or revoked or the person found in violation of the state liquor laws or Town Liquor Code. The notice shall further contain information generally describing the alleged charge.

K. License renewals.

- (a) All applications for renewal of fermented malt beverage, malt, vinous and spirituous liquor licenses shall be on forms provided by the State Licensing Authority and the Liquor Licensing Authority and must be submitted in duplicate to the Town Clerk not less than forty-five (45) days prior to the license expiration date, together with the required license fees and renewal application fee.
- (b) Upon receiving the renewal application, the Town Clerk shall assemble the file of the applicant, which file shall contain all of the various Town departments' records regarding the applicant or the premises dating back for a period of at least one (1) year. Unless there is evidence to the contrary, whether contained in the applicant's file or otherwise, it will be presumed that the occupied premises complies with the

provisions of the statutes and applicable regulations, that the character of the applicant continues to be satisfactory and that such license, if granted, continues to meet the reasonable requirements of the neighborhood and the desires of the inhabitants. If these presumptions apply, the application for renewal shall be placed on the consent calendar.

- (c) If there is evidence that the presumptions given in Subsection (b) above do not apply, the Town Clerk shall immediately notify the licensee in writing of the objections to approving the renewal application and that a public hearing will be held not less than ten (10) nor more than thirty (30) days after the date of such notice to determine if there is cause to deny the renewal application. The hearing shall be held only after notice of the hearing has been conspicuously posted on the premises for a period of ten (10) days. The hearing shall be conducted in the same manner as provided for hearings on revocation or suspension of the type of license involved.
- (d) A late renewal application may be filed with the State Licensing Authority and Liquor Licensing Authority pursuant to Section 44-3-302(2)(a) and in compliance with all requirements therein. No application for renewal will be accepted more than ninety (90) days after expiration of licensee's permanent annual license. A licensee who files a late renewal application may continue to operate until final actions have been taken on the application.
- (e) An application for a reissued license may be filed with the State Licensing Authority and Liquor Licensing Authority pursuant to Section 44-3-302(2)(d) and in compliance with all requirements therein. No application for a reissued license will be accepted more than one hundred eighty days after expiration of a licensee's permanent annual license.

L. Change of location.

- (a) Before the location of a licensee is changed, the licensee shall submit an application, on forms provided by the State Licensing Authority and the Town, to the Town Clerk for such change. An application fee, as provided in Paragraph F of these regulations, shall accompany the application.
- (b) All applications for a change in the location of a licensee shall be filed with the Town Clerk and shall be subject to requirements for a new liquor license, except that the character of the applicant shall not be considered.
- (c) The scheduling and notice of the hearing on a change of location shall be as provided in Section 44-3-311, C.R.S.

M. Change of ownership.

- (a) All applicants for the issuance of a license by reason of transfer of ownership of the business or of possession of the licensed premises pursuant to 44-3-303(1)(c) shall file, with the Town Clerk, an application on forms provided by the State Licensing

Authority and by the Town. The application form shall be accompanied by application fees and license fees as provided in Paragraph F of these regulations.

- (b) The Town Clerk shall request that law enforcement conduct an investigation of the character of the applicant, including, when applicable, the principals, partners, officers, directors and shareholders holding over ten percent (10%) of the issued and outstanding stock.
- (c) Upon review of the report from law enforcement and the requirements of Section 44-3-307, C.R.S., and 1 CCR 203-2, rule 47-302, the Liquor Licensing Authority may approve the application for transfer of ownership without hearing.
- (d) If after review of the report from the law enforcement and the requirements of Section 44-3-307, C.R.S., and 1 CCR 203-2, rule 47-302, the Liquor Licensing Authority determines it is warranted, it shall hold a public hearing after notice of the hearing pursuant to Section 44-3-303(1)(c)(III), C.R.S. The Liquor Licensing Authority shall consider only the requirements of Section 44-3-307, C.R.S., and 1 CCR 203-2, rule 47-302, and the applicant shall not be required to submit information, except as it concerns those requirements.
- (e) A temporary permit may be issued to an applicant pending approval by the Liquor Licensing Authority of a change in ownership pursuant to Section 44-3-303(5), C.R.S.

N. Optional premises license.

Pursuant to Section 44-3-310, C.R.S., the Town adopts the following standards for issuance of an optional premises license and, upon meeting such standards by an applicant, authorizes the issuance of such license.

- (1) The application for an optional premises license shall include all the requirements of Paragraph F above.
- (2) The application for an optional premises license shall include a legal description of the premises on which liquor is to be served.
- (3) Number of optional premises. The Authority, in its discretion, may restrict the number of optional premises which any one (1) licensee may have. Any licensee requesting approval of more than one (1) optional premises shall:
 - a. Explain the reason for each optional premises requested.
 - b. Demonstrate how the optional premises relate to each other from an operational standpoint.
 - c. Demonstrate the need for each optional premises in relationship to the outdoor sports and recreational facility and its guests.
 - d. Demonstrate that the optional premises will not adversely affect the neighborhood in which it is located.
- (4) Submittal requirements. Each initial application and annual renewal application for an optional premises shall be accompanied by:
 - a. An application fee, plus the local and state license fees.

- b. A map or other drawing illustrating the outdoor sports or recreational facility boundaries and the approximate location of each optional premise requested.
 - c. A description of the approximate area within which the optional premises shall be located.
 - d. A description of the method which shall be used to identify the boundaries of and to control the optional premises when it is in use. For example, the applicant may describe the types of signs, fencing or other notices or barriers to be used in order to control the optional premises.
 - e. A description of the provisions which have been made for storing alcohol beverages in a secured area, on or off the optional premises, for the future use of the optional premises.
- (5) Advance notification. No alcohol beverages may be served at optional premises without the licensee providing written notice to the State and the Authority forty-eight (48) hours in advance, stating the specific days and hours on which the optional premises are to be used.

O. Suspension, revocation and fines.

- (a) The Authority shall have the power upon its own motion or upon complaint, and in accordance with the state liquor laws, to:
- (1) Summarily suspend any Town license for a period not to exceed the maximum suspension period allowed by state law.
 - (2) Upon notice to the licensee and hearing, suspend any Town license for a period not to exceed the maximum suspension period allowed by state law.
 - (4) Upon notice to the licensee and hearing, revoke the license.
 - (3) Accept payment of a fine in lieu of suspension.
- (b) Whenever the Authority or the Town Clerk receives a written complaint charging any person with a violation of the state liquor laws or the Town Liquor Code, the Authority shall cause an investigation to be made to determine the veracity of the charge. After investigating the charge and determining the probable truth of the charge, the Authority shall issue a written notice to show cause directed to such person. The notice to show cause shall be served personally or by certified mail to the licensee at the address contained in the license or to such other person at the person's residence or principal place of business. The notice shall direct the person to appear at a certain place and at a time designated, which date shall be not earlier than ten (10) days after mailing, to show cause, if any, why the Town license should not be suspended or revoked or the person found in violation of the state liquor laws or Town Liquor Code. The notice shall further contain information generally describing the alleged charge.

T. Alcoholic beverage tastings.

Tastings shall be permitted pursuant to Section 44-3-301(10), C.R.S. as may be amended, and conducted subject to the enumerated limitations therein.

U. Retail establishment permit.

The Liquor Licensing Authority is authorized to issue a retail establishment permit to a person operating a retail establishment that offers complimentary alcohol beverages for consumption only on the premises pursuant to Section 44-3-424, C.R.S., and subject to the requirements and limitations set forth therein. The application for a retail establishment permit shall include all the requirements of Paragraph F of these Regulations. The Liquor Licensing Authority may reject the application for a retail establishment permit if the applicant fails to establish that the applicant is able to offer complimentary alcohol beverages without violating Section 44-3-424, C.R.S., or creating a public safety risk to the neighborhood.

V. Festival permit.

The Liquor Licensing Authority is authorized to issue a festival permit to a person listed in Section 44-3-404(9), C.R.S., pursuant to Section 44-3-404, C.R.S., and subject to the requirements and limitations set forth therein. The application for a festival permit shall include all the requirements of Paragraph F of these regulations. If a licensee is applying for both a festival permit and a special event liquor permit issued under Article 5 of Title 44, C.R.S., the licensee need not apply for a festival permit from the Liquor Licensing Authority.

W. Communal outdoor dining areas.

- (a) Pursuant to C.R.S, § 44-3-912, two (2) or more liquor licensees may apply to the Town for approval of a permit to attach to a Communal Outdoor Dining Area (CODA).
- (b) An application for a permit to attach to a Communal Outdoor Dining Area shall be filed with the Town using the same form and attachments filed with the State for a CODA permit. The application must be accompanied by the local application fee as set forth in. the Town Fee Schedule.
- (c) An application that proposes to attach to a CODA temporarily located wholly or partially within a Town street, sidewalk or trail must be accompanied by a separate and approved Special Event Permit application (and associated application fee).
- (d) To be approved, an applicant must be within one thousand (1,000) feet of the proposed or established communal outdoor dining area. This distance shall be computed by direct measurement, using a route of direct pedestrian access, from the

nearest property line of the land used for the communal outdoor dining area to the nearest portion of the building where the permanent licensed premises is located.

- (e) It is unlawful for an applicant who has obtained a permit to attach to a CODA pursuant to this Section to commence operating within the CODA without first obtaining the necessary attendant approval to modify its licensed premises to include the CODA area. All applications required in association with this Code Section may be filed and processed concurrently, while each remains subject to its own review and approval process and respective application fee.
- (f) If a violation of this Article III or of the State Liquor Code or Rules occurs within a CODA and the licensee responsible for the violation can be identified, that licensee is subject to discipline as set forth in CRS S 443-601. If the licensee responsible for the violation cannot be identified, each attached licensee is deemed jointly responsible and subject to discipline for the violation.

Y. Effective date.

These regulations shall become effective as of May 9, 2024, and enforceable on and after that date. Any businesses in the Town holding a Summit County liquor and fermented malt beverage license will be transferred to the Town of Keystone without the assessment of a fee and the retailer will be required to follow these regulations.

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 Coucilmembers

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

DATE: March 26, 2024

SUBJECT: First Reading of Ordinance 2024-O-04
An Ordinance of the Town Council of The Town of Keystone, Colorado,
Regulating the Licensing of the Distribution and Sale of Tobacco
Products

Executive Summary:

On March 26 and April 9, 2024, the Town Council will be asked to consider Ordinance 2024-O-04 on first and second readings, respectively, to regulate the licensing of the distribution and sale of tobacco products within the Town. This ordinance would authorize the designated licensing administrator (the Town Clerk's Office) to administer licenses for the distribution and sale of tobacco products.

Recommendation:

Staff recommends that the Town Council approve Ordinance 2024-O-04 on first reading, which will cause the Ordinance to be scheduled for second reading and public hearing on April 9, 2024.

Background:

At the Town Council Work Session on March 12, 2024, the Keystone Town Council expressed a desire to transition the regulation of licensing for the distribution and sale of tobacco products from Summit County to the Town of Keystone by early May. To transition these services, the Town of Keystone needs to adopt their own licensing regulations for the distribution and sale of tobacco products.

The purpose of the regulations is to require a "tobacco product retailer" to be licensed. A *Tobacco product retailer* is defined in the regulations as "any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco products." Tobacco products includes cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, nicotine product, mints, hand gels, and vapes. The regulations require that tobacco products cannot be sold to any person younger than the minimum legal sales age – under Colorado law, the minimum legal sale age is twenty-one years of age.

Ordinance 2024-O-04 outlines the transition process, indicating that existing Tobacco Licenses issued to businesses within the Town of Keystone by the Summit County Clerk and Recorder's license will be recognized as valid licenses for the Town of Keystone until their annual renewal date. At that time, businesses distributing or selling tobacco products will need to apply for a renewal license with the Town of Keystone.

The ordinance outlines the license requirements, process for renewals, including the application procedure, issuance of a tobacco product license, and reasons for denial of a tobacco product license. Reasons for denial of a tobacco product license include:

- (a) The information presented in the application is incomplete, inaccurate or false;
- (b) The applicant seeks authorization for a license at a location where these regulations prohibit the issuance of a license; [For example, a license may not be issued for a retailer within five hundred (500) feet of school.]
- (c) The applicant seeks a License for a location that is not appropriately zoned for the use;
- (d) The applicant seeks authorization for a license and the applicant's current license is suspended or revoked;
- (e) The applicant is not qualified to hold the requested license under the provisions of these regulations; [For example, a licensee must be at least twenty-one years of age.]
- (f) The applicant and/or retail location is not in compliance with all Town, state or federal laws;
- (g) The applicant is indebted to, or obligated in any manner to the Town for unpaid taxes, liens or other monies;
- (h) The payment of the licensing fee in the full amount chargeable for such license does not accompany such License application; or
- (i) The applicant's previous license issued under this section has been revoked in the past two (2) years.

Alternatives:

Town Council can choose to amend the regulations or choose not to adopt the regulations.

Financial Considerations:

Town Staff time will be needed to administer the license; however, that time may be recovered in the license fee.

Previous Council Actions:

This matter was previously discussed at a Town Council work session on March 12, 2024.

Next Steps:

The Town Council will need to adopt a fee schedule through a resolution that includes the costs for tobacco licensing.

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-04 on first reading and set a second reading and public hearing for April 09, 2024.

Attachments:

Ordinance 2024-O-04 An Ordinance of the Town Council of The Town of Keystone, Colorado, Regulating the Licensing of the Distribution and Sale of Tobacco Products

**TOWN OF KEYSTONE
ORDINANCE NO. 2024-O-04**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE,
COLORADO, REGULATING THE LICENSING OF THE DISTRIBUTION AND
SALE OF TOBACCO PRODUCTS**

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

WHEREAS, Smoking rates in the U.S. have declined substantially since the Surgeon General's 1964 report, from 42 percent to now about 18 percent; however, it remains one of the biggest public health problems in the United States as almost 500,000 Americans still die prematurely each year from diseases related to cigarette smoking. This makes up 85% of deaths from lung cancer. In Colorado, like most other states, it is the number one cause of preventable death, and accounts for 5, 100 deaths a year; and

WHEREAS, 90% of adult smokers started smoking before the age of 18 and each day more than 3,000 adolescents in the U.S. try their first cigarette; and

WHEREAS, youth use of e-cigarettes and similar products is associated with future cigarette use; and

WHEREAS, since 2014, after decades of effective anti-smoking campaigns and decreasing smoking rates in the U.S., there has been a surprising upturn in youth tobacco use; and

WHEREAS, over 225 U.S. localities and the states of California and Hawaii have enacted into law regulations prohibiting the sale of tobacco products to individuals under the age of 21 and research has shown such regulations are effective in decreasing high school tobacco use by up to 50%; and

WHEREAS, research has shown that teens purchase cigarettes from their peers and that 90% of the "social sources" (friends and family) of tobacco for the 12-18 year olds are 18-21 year olds. It has also been shown that youth typically do not make the effort to travel to neighboring localities if the age has increased to 21 in their city; and

WHEREAS, Colorado law, pursuant to C.R.S. § 29-30-101, provides that home rule municipalities may regulate the sale of cigarettes, tobacco products, or nicotine products to minors; and

WHEREAS, the Town Council finds that this ordinance regulating the distribution and sale of tobacco products furthers and is necessary for the promotion of public health, safety, and welfare.

**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 adopts the following regulations, Town Tobacco Code, for the licensing of the distribution and sale of tobacco products.

TOBACCO LICENSE REGULATIONS

A. Purpose and applicability.

- (a) The purpose of these regulations is to establish License requirements for tobacco product retailers and to set forth the requirements for the sale of tobacco products to persons under twenty-one (21) years of age to protect the health, safety and welfare of individuals in Town, to encourage responsible tobacco product retailing and to reduce illegal sales of said products in Keystone, Colorado.
- (b) These regulations apply to tobacco product retailers, as defined herein.

B. Definitions.

The following words and phrases, as used in these regulations, shall have the following meanings:

Accessory means any product that is intended or reasonably expected to be used with or for the human consumption of a tobacco product; does not contain tobacco and is not made or derived from tobacco; and meets either of the following: (1) is not intended or reasonably expected to affect or alter the performance, composition, constituents, or characteristics of a tobacco product; or (2) is intended or reasonably expected to affect or maintain the performance, composition, Constituents, or characteristics of a tobacco product but (a) solely controls moisture and/or temperature of a stored tobacco product; or (b) solely provides an external heat source to initiate but not maintain combustion of a tobacco product. Accessory includes, but is not limited to, carrying cases, lanyards and holsters.

Cigarette means any product that contains tobacco or nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

- (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

- (2) Tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by consumers as a cigarette; or
- (3) Roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (1) above.
- (4) The term includes all "roll-your-own," i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

Component or part means any software or assembly of materials intended or reasonably expected:

- (1) To alter or affect the tobacco product's performance, composition, or characteristics; or
- (2) To be used with or for the human consumption of a tobacco product or electronic smoking device. Component or part excludes anything that is an accessory, and includes, but is not limited to e-liquids, cartridges, certain batteries, heating coils, programmable software and flavorings for electronic smoking device.

Electronic smoking device means any product containing or delivering nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. Electronic smoking device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco cessation product or for other medically approved or certified purposes.

Hearing Officer means the person appointed by the Town Manager.

Licensee means the owner or holder of a Tobacco Product Retailer License.

License refers to the tobacco product retailer license.

Licensing administrator means the person(s) within the Town government designated with responsibilities by the Town Manager for license issuance, renewal and collection of fees.

Minimum legal sales age means twenty-one (21) years of age or older.

Mobile vending means any sales other than at a fixed location.

Person means natural person, a joint venture, joint-stock company, partnership, association, firm, club, company, corporation, business, trust or organization, or the manager, lessee, agent, servant, officer or employee of any of them.

Self-service display means the open display or storage of tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

Tobacco product means:

- (1) Any product which contains, is made or derived from tobacco or used to deliver nicotine, synthetic nicotine or other substances intended for human consumption, whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, nicotine product, mints, hand gels; and
- (2) An electronic smoking device;
- (3) Notwithstanding any provision of subsections (1) and (2) above to the contrary, "tobacco product" includes any component, part, accessory or associated tobacco paraphernalia of a tobacco product whether or not sold separately.
- (4) The term "tobacco product" does not include:
 - (i) Any product that contains marijuana; and
 - (ii) Any product made from or derived from tobacco and approved by the Food and Drug Administration (FDA) for use in connection with cessation of smoking.

Tobacco product retail location or *retail location* means any premises where tobacco products are sold or distributed to a consumer including, but not limited to, hookah bar, lounge or cafe, any grounds occupied by a retailer, any store, stand, outlet, vehicle, cart, location, or vending machine.

Tobacco product retailer means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco products.

Tobacco retailing shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco products sold, offered for sale, exchanged, or offered for exchange.

Tobacco product retailing means the selling, offering for sale, or exchanging for any form of consideration a tobacco product.

Tobacco paraphernalia means any item designed for or reasonably expected to be used for the consumption, use or preparation of tobacco products.

Vending machine shall mean any mechanical, electrical, or electronic self-service device which, upon insertion of money, tokens, or any other form of payment dispenses product.

C. Minimum legal sales age.

Tobacco products shall not be sold to any person younger than the minimum legal sales age.

D. License requirements and prohibitions.

(a) Tobacco product retailer license required.

(1) It shall be unlawful for any person to act as a tobacco product retailer in the Town unless he or she has obtained a license and maintains the same in full force and effect pursuant to these regulations for each location where tobacco product retailing occurs.

(2) No license shall be issued to authorize tobacco product retailing anywhere other than at a fixed location that is designated in the License application and approved by the Licensing Administrator. Tobacco product retailing by persons on foot, from vehicles or through mobile vending is prohibited.

(3) Tobacco product retailing without a valid license is a violation.

(b) Display of license. Each License shall be prominently displayed in a publicly visible location at the licensed tobacco product retail location.

(c) Display of minimum legal sales age requirements. The requirement of the minimum legal sale age for the purchase of tobacco retail product shall be prominently displayed in the entrance (or other clearly visible location) of the tobacco product retail location.

(d) Other prohibitions.

(1) A tobacco product retail location may only have one active License at one time. Every license is separate and distinct and specific to a designated location. The license cannot be assigned, delegated, sold, inherited or otherwise transferred between persons or transferred to a different location, except as provided in

these regulations. No licensee shall exercise the privileges of any other license or delegate the privileges of its own license.

- (2) A person or entity may not apply for a License for a two-year period after a License has been revoked.
- (3) No license shall be issued to any person under twenty-one (21) years of age.

E. Conditions of the tobacco product retail license.

The following conditions shall apply to the Licensee:

- (a) Minimum age for persons handling tobacco products. No person who is younger than eighteen years of age shall, while employed at a tobacco product retail location, sell, stock, retrieve, or otherwise handle tobacco products or tobacco paraphernalia.
- (b) Prohibition of self-service displays. Licensees shall stock and display all tobacco products and tobacco paraphernalia in a manner so as to make all such products inaccessible to customers without the assistance of a retail clerk, thereby requiring a direct face-to-face exchange of the tobacco product or tobacco paraphernalia from an employee of the business to the customer except in an adult-only establishment.
- (c) Requirements of positive identification. No person engaged in tobacco product retailing shall sell or transfer a tobacco product to another person who appears to be under the age of forty (40) years without first examining the government-issued identification of the recipient to confirm that the recipient is at least the minimum legal sales age.
- (d) No licenses within five hundred (500) feet of schools. No Licenses shall be issued to retailers located within five hundred (500) feet from any public or parochial school as determined by the licensing administrator. This restriction shall not apply to an existing retail location within five hundred (500) feet of a school as of the effective date of the ordinance from which these regulations derive.

F. Application procedure.

- (a) An application for a license shall be submitted and signed by an individual authorized by the person or entity making application for the license. It is the responsibility of each applicant and/or Licensee to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of said license. No applicant and/or licensee may rely on the issuance of a license as a determination by the Town that the proprietor has complied with all applicable tobacco retailing laws.

- (b) All applications shall be submitted on a form supplied by the licensing administrator.
- (c) A licensed tobacco product retailer shall inform the licensing administrator in writing of any change in the information submitted on an application for a license within thirty (30) business days of a change.
- (d) All license applications shall be accompanied by the payment in full of all fees as required.

G. Issuance of a tobacco product license.

Upon the receipt of a completed application for a License as required by these regulations, the licensing administrator shall sign and issue a license within thirty (30) days which period may be extended by the licensing administrator for good cause unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- (a) The information presented in the application is incomplete, inaccurate or false;
- (b) The applicant seeks authorization for a license at a location where these regulations prohibit the issuance of a license;
- (c) The applicant seeks a License for a location that is not appropriately zoned for the use;
- (d) The applicant seeks authorization for a license and the applicant's current license is suspended or revoked;
- (e) The applicant is not qualified to hold the requested license under the provisions of these regulations;
- (f) The applicant and/or retail location is not in compliance with all Town, state or federal laws;
- (g) The applicant is indebted to, or obligated in any manner to the Town for unpaid taxes, liens or other monies;
- (h) The payment of the licensing fee in the full amount chargeable for such license does not accompany such License application; or
- (i) The applicant's previous license issued under this section has been revoked in the past two (2) years.

H. Denial of tobacco product license.

- (a) If the Licensing Administrator denies the issuance of the license, the Licensing Administrator shall notify the applicant in writing by regular mail postage prepaid on the address shown in the application. The notice shall include the grounds for denial. Notice is deemed to have been properly given upon mailing.
- (b) An applicant has the right to appeal the Licensing Administrator's denial of an application to the Hearing Officer that shall be appointed by the Town Manager. Such an appeal shall be initiated by filing a written request with the Licensing Administrator within twenty (20) days of the date of the notice of denial of the issuance of a license.
- (c) The applicant's failure to timely appeal the decision of the Licensing Administrator is a waiver of the applicant's right to contest the denial of the issuance of the license.
- (d) The appeal, including any right to further appeals, shall be conducted and controlled by the provisions of Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The standard of proof at such appeal shall be a preponderance of the evidence and the burden of proof shall be upon the applicant. The licensee's failure to timely appeal the decision is a waiver of the licensee's right to contest the suspension or revocation of the license.

I. License term, renewal and expiration.

- (a) Term. All Licenses issued under this Code shall be for the period of one (1) year from the date of issuance.
- (b) Renewal of license. A licensee shall apply for the renewal of the license and submit the renewal license fee no later than thirty (30) days prior to expiration of the existing term. The Licensing Administrator shall renew the license prior to the end of the term, provided that the renewal application and fee were timely submitted, and the Licensing Administrator is not aware of any fact that would have prevented issuance of the original license or issuance of the renewal.
- (c) Expiration of license. A license that is not timely renewed shall expire at the end of its term. The failure to timely obtain a renewal of a license requires submission of a new application. There shall be no sale of any tobacco products after the license expiration date and before the new License is issued.

J. License non-transferable.

- (a) A license shall not be transferred from one (1) person to another or from one location to another.
- (b) When a license has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or

partner to obtain a new license for the remainder of the term of that license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the term of the license.

K. Fee for license.

- (a) The fee to issue or to renew a License shall be pursuant to a Town Council resolution, which may be changed from time to time. The fee shall be calculated so as to recover the direct and indirect costs of administration and enforcement of these regulations, including, for example, issuing a license, administering the License program, retailer education and training, retailer inspection, community outreach and education, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by these regulations. Fees are nonrefundable except as may be required by law.
- (b) The amount of fees charged by the Town pursuant to this Section shall be reviewed and, if necessary, adjusted to reflect the direct and indirect costs incurred by the Town in connection with the adoption, administration and enforcement of these regulations.

L. Compliance monitoring.

- (a) Compliance monitoring of these regulations shall be by the Law enforcement. The Law enforcement shall have discretion to consider previous compliance check history or prior violations of a licensee in determining how frequently to conduct compliance checks of the licensee with respect to individual licensees.
- (b) The Law enforcement may inspect each tobacco product retailer two (2) times per License term.
- (c) Compliance checks shall be conducted by the Law enforcement, including the use of decoys, so as to allow the Law enforcement to determine, at a minimum, if the tobacco product retailer is conducting business in a manner that complies with laws regulating access to tobacco products. When the Law enforcement deems appropriate, the compliance checks shall determine compliance with other laws applicable to tobacco products.
- (d) All licensed premises must be open to inspection by law enforcement or other authorized Town official during regular business hours. The Town may conduct compliance checks by engaging with persons over the age of fifteen (15) but less than twenty-one (21) years to enter a Licensed premises to attempt to purchase Tobacco Products.
- (e) Prior written consent is required for any minor who participates in a compliance check. Under-aged individuals participating in compliance checks will be supervised by law enforcement or other designated personnel and will not be guilty of illegal

possession or illegal procurement when those items are obtained as a part of the compliance check. The Town shall not enforce any law establishing a minimum age for tobacco product purchases or possession against an individual who otherwise might be in violation of such law because of the individual's age (hereinafter "underage operative") if the potential violation occurs when:

- (1) The underage operative is participating in an inspection supervised by a peace officer, code enforcement official, or the Department designated by the Town to monitor compliance with these regulations;
 - (2) The underage operative is acting as an agent of an individual, Department or group designated by the Town to monitor compliance with these regulations; or
 - (3) The underage operative is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the Summit County health department, Colorado Department of Public Health and Environment or the Colorado Department of Revenue].
- (f) All licensed locations with compliance or inspection violations may be re-checked by the Police Department for compliance within forty-five (45) days of a violation.
- (g) Nothing in this paragraph shall create a right of action in any licensee or other person against the town or its agents.

M. Suspension or revocation of license.

- (a) The following shall be grounds for suspension or revocation of the licensee's license:
- (1) A violation by a licensee or licensee's officers, agents, or employees of any of the provisions of these regulations, or any laws of the United States, the State of Colorado or ordinances of the Town relating to the sale of tobacco products to persons under the minimum legal sales age, or the storage or display of cigarettes or tobacco products.
 - (2) Violations of any conditions imposed by the Licensing Administrator or Hearing Officer in connection with the issuance or renewal of a license.
 - (3) Failure to pay State or local taxes that are related to the operation of the business associated with the license.
 - (4) Loss of right to possession of the licensed premises.
 - (5) Fraud, misrepresentation, or a false statement of material fact contained in the original or renewal license application;

- (b) The Town Manager shall appoint a Hearing Officer to hear all actions relating to the suspension or revocation of licenses pursuant to these regulations. The Hearing Officer shall have the authority to suspend, revoke, or impose remedial sanctions for violations.
- (c) The Licensing Administrator shall commence suspension or revocation proceedings by petitioning the Hearings Officer to issue an order to the licensee to show cause why the licensee's license(s) should not be suspended or revoked. The Hearing Officer shall issue such an order to show cause if the petition demonstrates that probable cause exists to determine that one or more grounds exist pursuant to subsection (a) to suspend or revoke the licensee's license. The order to show cause shall set the matter for a public hearing before the Hearing Officer.
- (d) Notice of the order to show cause order and hearing date shall be mailed to licensee by regular mail, postage prepaid, at the address shown on the license no later than thirty (30) days prior to the hearing date. Notice is deemed to have been properly given upon mailing.
- (e) In determining whether a License should be suspended or revoked, and in determining whether to impose conditions in the event of a suspension, the Hearing Officer shall consider the following factors:
 - (1) The nature and circumstances of the violation;
 - (2) Corrective action, if any taken by the licensee;
 - (3) Prior violations, if any by the licensee;
 - (4) The likelihood of recurrence of the violation;
 - (5) Whether the violation was willful; and
 - (6) Previous sanctions, if any, imposed on the licensee.

N. Penalties and fines.

- (a) Licensees: penalties and fines. In addition to any other penalty authorized by law, and if the Hearing Officer determines based on a preponderance of the evidence, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of these regulations, or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law relating to the sale of tobacco products to minors including but not limited to C.R.S. sections 18-13-121 and 44-7-103, the Hearing Officer may consider a fine pursuant to the Town's general penalty and/or suspension or revocation of the license.

- (b) In addition to any revocation proceedings pursuant to Paragraph M, violations of these regulations may be subject to the penalties as set forth by resolution adopted by the Town Council. Each separate act in violation of these regulations, and each and every day or portion thereof during which any separate act in violation of these regulations is committed, continued, or permitted, shall be deemed a separate offense.

- (c) After the effective date of the ordinance from which these regulations derive, it shall be unlawful for any tobacco product retailer to sell a tobacco product without a license as mandated under these regulations, or with a suspended or revoked license. A retailer whose license has been suspended or revoked:
 - (1) Shall not display tobacco products in public view during the timeframe in which the license is suspended or revoked; and

 - (2) Shall not display advertisements relating to tobacco products that promote the sale or distribution of such products from the location that could lead a reasonable person to believe that such products can be obtained from that location.

O. Enforcement.

- (a) The remedies provided by these regulations are cumulative and in addition to any other remedies available at law or in equity. In addition to other remedies provided by these regulations or by other law, any violation of these regulations may be remedied by a civil action brought by the Town Attorney, including but not limited to nuisance abatement proceedings and injunctive relief.
- (b) Causing, permitting, aiding, abetting, or concealing a violation of any provision of these regulations shall cause the offender to be subject to the penalties set forth herein.

P. No rights in license.

Every license issued under these regulations confers only a limited and conditional privilege subject to the requirements, conditions, limitations and qualifications of these regulations. The license does not confer a property right of any kind. The license and privilege created by the license may be further regulated, limited or completely extinguished at the discretion of Town Council or the electorate of the Town, as provided in these regulations, without any compensation to the licensee. Nothing contained in these regulations grants to any licensee any vested right to continue operating under the provisions of these regulations as they existed at the time the license was approved or issued, and every license shall be subject to any ordinance or prohibition adopted after the license was approved or issued.

Q. Effective date.

These regulations shall become effective as of May 9, 2024, and enforceable on and after that date. Any tobacco product retailer without a license after the effective date will be in violation of these regulations. Any tobacco product retailer in the Town holding a Summit County tobacco product retailer license will be transferred to the Town of Keystone without the assessment of a fee and the tobacco product retailer will be required to follow these regulations.

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
Lindsay Hirsh, Community Development Director

FROM: Jennifer Madsen, Town Attorney

DATE: March 26, 2024

SUBJECT: [FIRST READING] Ordinance 2024-O-05, An Ordinance Of The Town Council Of The Town Of Keystone, Colorado, Adopting By Reference The Summit County Land Use And Development Code Published By Summit County, Colorado, As Such Code Existed On May 1, 2024, Subject To Requirements, Revisions, And Amendments As Provided By This Ordinance And Declaring An Emergency

Executive Summary:

For purposes of conducting planning and zoning services, Ordinance 2024-O-05 adopts by reference the Summit County Land Use and Development Code. Adoption of the Summit County Land Use and Development Code is the most efficient manner to provide for land use and development regulations.

Recommendation:

Staff recommend that the Council approve Ordinance 2024-O-05 on first reading.

Background:

In order to provide land development services in the Town, Town Council needs to adopt a land use and development code. The most efficient way to adopt a land development code is through adoption by reference of the Summit County Land Use and Development Code.

With an adoption by reference, the Town adopts the Summit Code and may make amendments or deletions to the code. Ordinance 2024-O-05 is an adoption by reference with amendments and deletions.

Colorado law provides that for an ordinance to be adopted by reference. The ordinance must first be introduced at a Town Council meeting and then a public hearing is scheduled for approval of the ordinance. In between the introduction of the ordinance and the public hearing, notice of the hearing must be published in Summit Daily at least 15 days before the hearing and at least 8 days before the hearing. With these deadlines, the ordinance needed to be introduced at this last meeting in March in order to be adopted by April.

In between this first readings and second readings of the ordinance, there may be amendments to the ordinance language. Any substantive amendments to the ordinance language and will be highlighted in a staff report for the public hearing.

Alternatives:

Town Council may provide alternative direction on the adoption of a land use code.

Financial Considerations:

There is no financial consideration.

Previous Council Actions:

Town Council discussed the adoption of the Summit County Land Use and Development Code at the work session on March 12, 2024.

Next Steps:

If approved, the second reading and public hearing will be scheduled for April 23, 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-05, An Ordinance Of The Town Council Of The Town Of Keystone, Colorado, Adopting By Reference The Summit County Land Use And Development Code Published By Summit County, Colorado, As Such Code Existed On May 1, 2024, Subject To Requirements, Revisions, And Amendments As Provided By This Ordinance And Declaring An Emergency.

**TOWN OF KEYSTONE
ORDINANCE NO. 2024-O-05**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF
KEYSTONE, COLORADO, ADOPTING BY REFERENCE THE SUMMIT
COUNTY LAND USE AND DEVELOPMENT CODE PUBLISHED BY
SUMMIT COUNTY, COLORADO, AS SUCH CODE EXISTED ON MAY
1, 2024, SUBJECT TO REQUIREMENTS, REVISIONS, AND
AMENDMENTS AS PROVIDED BY THIS ORDINANCE
AND DECLARING AN EMERGENCY**

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

WHEREAS, Section 6.7 of the Keystone Home Rule Charter and Section 31-16-202, C.R.S., as amended, permits the adoption by reference of codes upon notice and hearing as provided in Section 31-16-203, C.R.S.; and

WHEREAS, the land that was eventually incorporated into the new Town of Keystone was located in and governed by Summit County, Colorado; and

WHEREAS, Summit County enacted and published the *Summit County Land Use and Development Code* which operated as the land development code for what would eventually become the Town of Keystone; and

WHEREAS, the Town Council for the Town of Keystone is obligated to adopt laws to plan for and regulate property within the Town and to provide for the orderly use of land and protection of the environment; and

WHEREAS, in order to best transition from the regulation of land development by Summit County to regulation by the Town of Keystone, the Town Council finds it is in the best interest of the Town to adopt by reference the *Summit County Land Use and Development Code*, subject to such amendments and revisions deemed necessary to properly and appropriately apply the adopted code to property within the Town of Keystone; and

WHEREAS, the Town Council held a public hearing, preceded by proper notice, to consider adoption by reference of the *Summit County Land Use and Development Code*; and

WHEREAS, the required copies of the *Summit County Land Use and Development Code* were made available during normal business hours at the Keystone Town Hall, 1628 Saints John Road, Keystone, Colorado, 80435, for review and inspection by the public upon request; and

WHEREAS, the Town Council determined, based on the evidence and testimony presented at the public hearing, that the *Summit County Land Use and Development Code*, as such code existed on May 1, 2024, and as amended by this Ordinance, will further the health, safety and welfare of the inhabitants of the Town and adoption as an emergency ordinance with regulations effective on May 9, 2024 is for the best interests of the immediate preservation of public peace, health and safety of the community and its citizens.

**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. Adoption by Reference. The *Summit County Land Use and Development Code*, as such code existed on May 1, 2024, (the “County Code”) is hereby adopted by reference as the Town of Keystone Land Use Code, subject to the following requirements and amendments:

GENERAL AMENDMENTS TO COUNTY CODE:

- All references in the County Code to “Summit County” shall be amended to read “Town of Keystone.”
- All references to the “Board of County Commissioners” or “BOCC,” shall be amended to read “Town Council,” or “Council.”
- All references to “County Commission,” or “County Commissioners,” or other reference referring by the context as a reference to the Board of County Commissioners shall be amended to read in all instances as “Town Council,” “Town Councilmembers.”
- All references to the “Countywide Planning Commission” or “Basin Planning Commission” shall be amended to read “Planning Commission.”
- All references to the “Summit County Land Use and Development Code” or other description or title referring to such code shall be amended to refer to the “Town of Keystone Land Use and Development Code.”
- All references to the “Summit County Countywide Comprehensive Plan” shall be amended to read “Master Plan.”
- All references to Summit County’s “Planning Director” shall be amended to read and refer to the Town of Keystone’s “Community Development Director.”

- All references to Summit County's basin or subbasin master plans shall be amended to refer to the "Snake River Master Plan."
- All references to County Manager shall be amended to refer to the "Town Manager."
- All references to Colorado state law within the County Code shall be retained where such reference is applicable to Colorado home rule municipalities and, where the reference is limited in application to Colorado county government only, the reference is amended to reflect Colorado Constitutional or statutory law governing municipalities, to the extent such law exists.

CHAPTER 1. INTRODUCTORY PROCEDURES

- Section 1000 titled "Title" is deleted in its entirety and replaced with the following:

1000: - Title.

These regulations may be referred to as the "Town of Keystone Land Use Code," "Land Use Code," or "LUC." The Land Use Code shall be codified by reference as part of the Town of Keystone Municipal Code and may also be published as a stand-alone volume.

- Section 1050 titled "Authority" is deleted in its entirety and replaced with the following:

The authority supporting the laws, rules, regulations, and policies contained in the Town of Keystone Land Use and Development Code is provided by Article XX of the Colorado Constitution and by other provisions of the Colorado Revised Statutes which pertain to the subject matter of the laws, rules, regulations, and policies. Where a direct conflict exists between state law and any provision of this Land Use and Development Code concerning a matter of local interest or a matter of mixed state and local interest, this Land Use and Development Code shall govern to the extent permitted by law.

- Section 1151 titled "Lands" is deleted in its entirety and replaced with the following:

1151: - Applicability, Exemptions, and Limitations.

A. The Land Use Code is applicable to the following described property:

1. Property located within the legal boundaries of the Town of Keystone regardless of ownership;

2. Property proposed for annexation to the Town of Keystone except to the extent specifically provided by any annexation agreement enacted by ordinance; and
 3. Property located outside of the legal boundaries of the Town of Keystone and described in a Town-approved intergovernmental agreement that requires application of this Land Use Code.
- B. Pursuant to the Town's home rule authority conferred by Article XX of the Colorado Constitution, C.R.S §§ 31-23-226, 31-23-309, and other applicable law, and notwithstanding any other provision of this Land Use Code to the contrary, the provisions of Article 23 of Title 31, C.R.S., shall not apply when such provisions conflict with any provision of this Land Use Code, the Town Charter, ordinances, resolutions, or other policy of the Town of Keystone. Without limiting the foregoing, the following provisions of Article 23 of Title 31, C.R.S., shall apply as indicated below:
1. C.R.S. § 31-23-106. Either the Mayor or Mayor pro tem may acknowledge a plat.
 2. C.R.S. §§ 31-23-203, 31-23-204, and 31-23-205 shall not apply within the Town of Keystone. All matters pertaining to any Town planning commission (including, but not limited to size, membership, residency, alternate membership, authority, duties, terms, removal of members, vacancies, meetings, selection of leadership and officials, staffing, financing, and travel) shall be determined by the Town Council.
 3. C.R.S. §§ 31-23-206, 31-23-207, and 31-23-208 may be used as a guide for the Town, but shall not constitute law, concerning the preparation and processing of a master plan.
 4. C.R.S. § 31-23-209 shall not apply to the Town of Keystone. Any processes or procedures commonly known as "location and extent" or which exempt owners (including school districts, special and metropolitan districts, and other statutorily recognized governmental or quasi-governmental agencies) from the application of the Town's local land use regulation and processes are not applicable to property within

the Town of Keystone.

5. C.R.S. § 31-23-214, concerning subdivision and subdivision regulations, may be used as a guide for the Town, but shall not constitute law, in the processing of subdivision plats and plans.
6. C.R.S. § 31-23-215 shall not apply to the Town of Keystone, provided that the Town may at its election provide notice of major activities.
7. C.R.S. § 31-23-305, concerning changes in zoning and the right of protest shall not apply to the Town of Keystone.
8. C.R.S. §§ 31-23-307 concerning a board of adjustment shall not apply within the Town of Keystone. The Town Council shall determine the need, composition, authority, duties, procedures, appeals, voting requirements, and other matters associated with a board of adjustment.

C. Exemption for Town Property Authorized. The Land Use Code or a particular provision of the Land Use Code shall not apply to a specific use or specific proposal for use of Town-owned or Town-leased property if a majority of the entire Town Council¹ grants an exemption *by resolution* based upon a finding that the public interest is best served, the efficient expenditure of taxpayer funds is advanced, or an emergency condition exists for which the application of this Chapter will impede the Town's ability to serve the Town's residents. The Board's consideration and approval of an exemption shall be an administrative decision and shall not require notice or public hearing prior to approval of the resolution granting an exemption.

D. Limitations. The Land Use Code is not intended to modify, abrogate, amend or annul a vested property right lawfully established in accordance with federal or state law prior to the effective date of this Zoning Code subject to the terms and conditions of any agreement or approval pertaining to such vested right and subject to obligations to compensate owners as may be required by federal or state law.

- Section 1152 titled "Development" is deleted and replaced with the following:

¹ Required vote is a majority of all Board members in office at the time of the vote. For example, for a seven (7) member Board of Trustees, the required vote shall be four (4) votes. The required vote is not a majority of a quorum present as commonly applied to most actions of the Town Board.

1152: - Development

All development, as defined in Chapter 15, in the Town of Keystone shall proceed in accordance with this Code unless exempted, omitted, or otherwise provided herein.

- Section 1201 titled “Relationship to other laws” is deleted in its entirety.
- Section 1202 titled “Relationship to Covenants” is deleted in its entirety and replaced with the following:

1202: - Private Covenants.

The applicability and application of the Land Use Code shall not be affected or altered in any way by privately imposed covenants or private contracts to which the Town is not a party that seek to govern or control the use of property. Rights afforded to private parties by such private covenants and contracts shall remain private rights subject to enforcement by the parties to the covenants or contracts according to their terms. No private covenant or contract to which the Town is not a party may alter, amend, reduce, waive, or negate the application, applicability, and requirement of the Land Use Code and approvals of the Town except to the extent permitted by law.

Nevertheless, the Town may determine that a purpose, element, or an aspect of a private covenant will advance the interests of the Town. For example, a private covenant or an easement created by covenant which protects the floodplain and floodway may reasonably advance a Town goal or policy, may ensure that development meets the requirements of this Land Use Code, or may ensure that a development complies with a condition of development approval. For that reason, the Town may, through the provisions of the Land Use Code or through conditions of development approval, recognize, incorporate, or require compliance with one or more provisions of a covenant or easement.

- Section 1300 titled “Continuation and Repeals” is deleted in its entirety.
- Section 1350, 1351, and 1352, titled “Construction and Interpretation” are deleted and replaced with the following:

1350: - Interpretation.

In the interpretation and application of the provisions of the Land Use Code, the following rules shall govern in addition to any common rules of statutory construction recognized by Colorado courts:

- A. The interpretation and application of the provisions of this Land Use Code shall be regarded as minimum requirements for the protection of the health, safety, and welfare of the public.
- B. Whenever the requirements of the Land Use Code are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, or other legislative actions by the Town Council, the more restrictive, or which impose higher standards or requirements, shall govern.
- C. Whenever restrictions imposed by the Land Use Code are either more or less restrictive than regulations adopted by any state or federal agency, the rules or regulations which are more restrictive, or which impose higher standards or requirements, shall govern.
- D. When a provision includes a list of specific items, that list is intended to be exclusive; the provision applies only to the listed items and not to others. But if the list starts with a phrase such as "at a minimum," "including," "such as," or "not limited to," the list illustrates the types of things the provision applies to and is not intended to be an exclusive list.
- E. The use of "may" or "should" means permissive, recommended, or advised but is not mandatory; the use of "shall," "must," or "will" means compliance is mandatory and not voluntary or permissive.
- F. If a term or phrase is subject to more than one reasonable interpretation, the more stringent or restrictive interpretation is intended.
- G. If two or more provisions of the Land Use Code or other applicable law conflict, the more stringent or restrictive provision shall govern or control.
- H. Words in the present tense include the future unless the context clearly indicates the future tense.

- I. Words referencing a singular number include the plural and words referencing a plural number include the singular unless the context clearly indicates the contrary.
 - J. If any section, subsection, paragraph, clause, phrase, or provision of this Chapter shall be adjudged invalid or held to be unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected in whole or in part, other than the provision adjudged to be invalid or unconstitutional.
- Section 1400 titled “Enactment,” and subsection 1401 titled “Effective Date,” and subsection 1402 titled “Location of Certified Copy” are deleted in their entirety.
 - Section 1450 titled “Code Amendments” and subsections 1401 through and including 1456 are deleted.
 - Section 1500 titled “Status of Previous Approvals” is deleted in its entirety.

CHAPTER 2. MASTER PLAN PROCEDURES

- Chapter 2, entitled “Master Plan Procedures” is deleted in its entirety and such chapter reserved for future use.

CHAPTER 3. ZONING REGULATIONS

- Section 3100 titled “Applicability” is deleted in its entirety and replaced with the following:

3100: - APPLICABILITY

The Town of Keystone’s Zoning Regulations apply to the use of all public and private lands situated within the incorporated boundaries of the Town.

- Section 3202 (B)(4) is deleted in its entirety.
- Section 3202.05 titled “Wildfire Hazard Areas” is deleted in its entirety.
- The following sections or subsections are deleted in their entirety and all references contained within the Land Use Code to the following zoning districts are deleted:

3301.02 titled “CG (General Commercial).”

3301.03 titled “CN (Neighborhood Commercial).”

3301.04 titled “I-1 (Industrial).”

3301.05 titled “M-1 (Mining).”

3301.06 titled “MHP (Manufactured Home Park).”

3301.09 titled “RU (Rural Residential).”

3301.13 titled “R-3 (Single Family Residential).”

3301.14 titled “R-4 (Single Family Residential).”

3301.15 titled “R-6 (Single Family Residential).”

3301.16 titled “RC-40000 (Rural Community).”

3301.17 titled “BC (Backcountry).”

3302.02 titled “Wildlife Habitat Overlay District.”

- Section 3501 (E) and (F) are deleted in their entirety.
- Section 3503 (D) and (J) are deleted in their entirety.
- Section 3504.02 is deleted in its entirety.
- Section 3505.08 is deleted in its entirety.
- Section 3505.12 is deleted in its entirety.
- Section 3507.02 titled “Wind Energy Systems” is deleted in its entirety.
- Section 3507.03 titled “Hydroelectric Energy Systems” is deleted in its entirety.
- Section 3509 titled “Public Use Areas” is deleted in its entirety.
- Section 3512.07 titled “Radioactivity” is deleted in its entirety.
- Section 3513 titled “Manufactured Home Park Development Standards” is deleted

in its entirety.

- Section 3514 titled “Backcountry Zoning District Standards” is deleted in its entirety.
- Section 3515 titled “B-3 Zoning District” is deleted in its entirety.
- Section 3516 titled “RME Residential Mountain Estates” is deleted in its entirety.
- Section 3519 titled “SU-1 Special Use” is deleted in its entirety.
- Section 3521 titled “RC-5000 Rural Communities” is deleted in its entirety.
- Table 3-2 titled “Allowed Plant Materials” is deleted in its entirety.
- Section 3803 titled “Bed and Breakfasts” is deleted in its entirety.
- Section 3804.02 (D)(1) is amended to change the reference of “50 feet of property” to “300 feet of property.”
- Section 3807 titled “Special Events” is deleted in its entirety.
- Section 3808 titled “Dude Ranches and Resorts” is deleted in its entirety.
- Section 3812 titled “Mining and Milling” is deleted in its entirety.
- Section 3815.05 titled “Outdoor Storage in M-1 Zoning District” is deleted in its entirety.
- Section 3818 titled “Sludge Disposal” is deleted in its entirety.
- Section 3819 titled “Recreational Vehicle Use in RC Zoning Districts” is deleted in its entirety.
- Section 3821.04 Delete all references to “Neighborhood Overlay Zone.”

CHAPTER 4. ZONING REGULATIONS/OVERLAY DISTRICTS

- Chapter 4, entitled “Zoning Regulations/Overlay Districts” is deleted in its entirety and such chapter reserved for future use.

CHAPTER 5. ROAD AND BRIDGE STANDARDS

- Only the general amendments to this Chapter.

CHAPTER 6. GRADING AND EXCAVATION REGULATIONS

- Chapter 6, entitled “Grading and Excavation Regulations” is deleted in its entirety and replaced with the following:

CHAPTER 6 - GRADING AND EXCAVATION REGULATIONS

6001 – Grading and Excavation

A. Generally. The grading and excavation of land within the Town of Keystone is, by its nature, generally contrary to the goals and objective of the Town in preserving the health, safety, and welfare of the public and the natural environment. The Town recognizes that there is a reasonable need for grading and excavation associated with the development of land. However, the Town desires to balance and limit to the greatest degree practicable the extent of such grading and excavation to best preserve and protect the Town’s environmental quality and character.

B. Permit Required.

A grading and excavation permit must be obtained prior to any person commencing any earth-disturbing activity, including but not limited to grading, excavating, clearing of timber, vegetation, revegetation, or landscaping activity, if the area of the activity is:

- (a) More than four hundred (400) square feet of total surface area whether or not areas of disturbance are contiguous;
- (b) An excavation or placement of earth greater than three (3) feet in height or depth from original ground levels, including test holes for percolation tests for the design of septic systems or soils tests for foundation/ structure designs; or
- (b) Final vegetation or revegetation of the entire surface of a septic or leach field system approved by the Summit County Department of Environmental Health, whether or not four hundred (400) square feet in area.

No permit shall be required for emergency work, as shall be defined by the regulations, or for activity covered by a valid building permit.

Work not requiring a permit shall nevertheless conform to the requirements of the regulations.

C. Permit Application.

1. Application for a grading and excavation permit shall be made in a form promulgated by the Planning Director and shall be accompanied by a plan and geotechnical report which reasonably details the extent and requirements for grading, excavation, reclamation, restoration, and revegetation. The Town Engineer may approve an application and issue a grading and excavation permit upon a finding that: (a) the application is complete; (b) all required financial guarantees are provided; (c) the plan, when completed, will reasonably restore the property described in the application in a manner that is compatible and consistent with the surrounding terrain and with adjacent properties, will reasonably prevent surface drainage to exceed historic surface flows (in terms of location, volume, quality, and duration), and will preserve the natural environment.
2. Plans and geotechnical reports shall be prepared by a Colorado licensed landscape architect and/or engineer unless the Town Engineer determines that such requirement is unreasonable given the nature and scope of the proposed disturbance. Applicants are encouraged to contact the Town Engineer in advance of application submittal to request a determination from the Town Engineer which items and requirements may be omitted from an application for a grading and excavation permit.

D. Financial Guarantee

1. Upon the Town Engineer's determination that unique site considerations exist, no permit application shall be approved unless the applicant shall have provided a financial guarantee of completion of grading and revegetation acceptable to the Town Engineer. Unique site considerations include: (a) hazardous conditions that are likely to occur as a result of incomplete or improper grading; (b) potential adverse effects on the surrounding environment, properties, or community as a result of incomplete or improper grading; (c) adverse geological or environmental impacts as a result of incomplete

or improper grading; or (d) proximity (customarily 150 feet or less) of the proposed site work to a lake, pond, river, stream, or permanent water body or historic drainageway.

2. The amount of the guarantee shall be calculated on the basis of one dollar and fifty cents (\$1.50) per square foot of disturbed area. Disturbed area means all adjacent and/or other associated areas of disturbance or uprooting of trees or vegetation resulting from the construction activity, including but not limited to new roads or parking areas; graded or run-over areas disturbed to provide materials, equipment or other storage needs; or any other, similar area determined by the Town Engineer to be disturbed.
3. In calculating the disturbed area, the Town Engineer shall exclude areas of completed construction, including but not limited to residences, garages, paved roads, sheds, patios, gazebos and decks. In the case of septic or leach field systems, the entire area of disturbance, including areas containing the installed system, shall be included.
4. The form of the financial guarantee shall be cash deposit or letter of credit issued by a bank licensed in the state of Colorado with an office in Summit County or the Denver metropolitan area. Letters of credit shall be in a form approved by the Town Attorney

E. Duration of Permit.

Any permit issued under this section 6001 shall expire twelve (12) months from the date of issue unless otherwise terminated by the Town. Permits may be extended for not greater than twelve (12) months upon a finding by the Town Engineer that the extension is warranted: (i) due to circumstances reasonably beyond the control of the permittee; and (ii) the permittee is diligently pursuing completion of all planned or required reclamation, final grading, and revegetation; and (iii) the financial guarantee required by this section shall remain effective and available to ensure completion of the plan.

CHAPTER 7. WATER QUALITY CONTROL REGULATIONS

- Chapter 7, entitled “Water Quality Control Regulations” is deleted in its entirety and replaced with the following:

Chapter 7 - WATER QUALITY CONTROL REGULATIONS.

7002 - Wetland Protection.

- (a) The Town incorporates into the Land Use Code the delineation of wetlands recognized and established by state and federal law. Although the mapping which delineates state or federal protected wetlands is readily available to the public, the Town shall use its best efforts to make available to the public information to assist in identification of protected wetlands.
- (b) The area of any land which is located within a delineated wetland shall be prohibited from development or improvement unless the proposed development or improvement is expressly authorized and permitted by the state or federal regulatory agency with jurisdiction over such wetland area. The Town shall only accept as evidence of state or federal authorization or permission a written declaration issued by the appropriate federal or state agency which identifies both the specific development or improvement proposed by the Owner or Applicant and which demonstrates a clear understanding of the extent and nature of such development or improvement.
- (c) Owners and applicants seeking development approval from the Town are encouraged to consult with the Town prior to the planning of any development or improvement in order to identify the extent of protected wetlands.

7003 - Floodway and Floodplain Protection.

- (a) The Town incorporates into the Land Use Code the delineation of floodway and floodplain recognized and established by state and federal law. Although the mapping which delineates state or federal protected floodway and floodplain is readily available to the public, the Town shall use its best efforts to make available to the public information to assist in identification of protected floodway and floodplain.

- (b) The area of any lot which is located within a delineated floodway or floodplain shall be prohibited from development or improvement unless the proposed development or improvement is expressly authorized and permitted by the state or federal regulatory agency with jurisdiction over such area. The Town shall only accept as evidence of state or federal authorization or permission a written declaration issued by the appropriate federal or state agency which identifies both the specific development or improvement proposed by the Owner or Applicant and which demonstrates a clear understanding of the extent and nature of such development or improvement.

- (c) Owners and applicants seeking development approval from the Town are encouraged to consult with the Town prior to the planning of any development or improvement in order to identify the extent of protected floodway or floodplain.

CHAPTER 8. SUBDIVISION REGULATIONS

- Section 8001.02 (G) is deleted in its entirety.
- Section 8002.01 (A)(1)(f) is deleted in its entirety.
- All references to “lot split on wells” shall be deleted.
- All references to “rural land use subdivisions” shall be deleted.
- Section 8101 (D) titled “Fuel Reduction/Forest Management Plans” is deleted in its entirety.
- Section 8109 titled “Subdivision Improvements Agreements” is deleted in its entirety.
- All references to Planning Director or Planning Department shall be “Review Authority.”
- Section 8401.03 titled “Lot Splits on Wells” is deleted in its entirety.
- Section 8402.01 (C) titled “Lot Splits on Wells” is deleted in its entirety.
- Section 8402.02 (A) titled “lot Splits on Wells Subdivision Exemption” is deleted in its entirety.

- Section 8420 through and including 8429.01 (pertaining to Rural Land Use) is deleted in its entirety.
- Table 8-1 titled "Required Certifications for Subdivision Plats" is deleted in its entirety.
- Section 8704 is deleted and replaced with the following:

8704: - Required Plat Certification Language

The following wording shall be used in plat certificates unless otherwise approved by the Planning Director.

A. Dedication

"Know all persons by these presents: That (printed name of owner), being the owner(s) of the land described as follows: (insert legal description of land being subdivided and include area in acres to two (2) decimal places) in the Town of Keystone, Colorado, under the name and style of (complete name of subdivision in capital letters) have laid out, platted, and subdivided same as shown on this plat, and by these presents does (do) hereby dedicate to the Town of Keystone, State of Colorado, the streets, roads, and other public areas as shown hereon, including but not limited to trails and open space, for use as such and hereby dedicate those portions of land labeled as utility easements to the Town of Keystone for use by the Town and by utility companies or other providers of utilities in the installation and maintenance of utility lines and facilities. It is understood that dedication of public rights-of-way for streets and roads does not necessarily result in acceptance of roads constructed therein for maintenance by the Town of Keystone.

In witness whereof, the said owner (printed name of owner) had caused his or her name to hereunto be subscribed this ___ day of _____, 20__."

B. Form of Notarial Certificate

"State of Colorado
County of Summit

The foregoing owner's certificate was acknowledged before me this ___ day of _____, 20__, by (name as follows):

- a. if by natural persons - insert name
- b. if by person acting in a representative official capacity, then insert the name of said person and said capacity
- c. if by officers of a corporation, then insert names of said officers, title of offices, and name of corporation

Witness my hand and official seal:
(Signature) (seal)
(printed name of notary)
Notary Public
My commission expires _____, 20__ (insert date of expiration)"

C. Surveyor's Certificate

"I (printed name of land surveyor), being a licensed land surveyor in the State of Colorado, do hereby certify that this plat and survey of (name of subdivision in capital letters) was made by me and under my supervision and that both are accurate to the best of my knowledge.

Dated this ___ day of _____, 20__.
Signature _____ (Seal)
Colorado Registration # _____"

D. Recorder's Acceptance

"This plat was accepted for filing in the office of the Summit County Clerk and Recorder on this ___ day of _____, 20__ and filed for record at _____ under reception number _____.

Signature _____ (Seal)
Summit County Clerk and Recorder"

E. Title Company Certificate

" _____ Title Company does hereby certify that it has examined the title to all lands as shown hereon and title to such lands is in the dedicator free and clear of all liens, taxes, and encumbrances, except as follows:
Dated this _____ day of _____, 20__.

Agent"

F. Keystone Town Council Approval for Plats Approved at a Town Council Meeting

"The Town Council of the Town of Keystone, Colorado, does hereby approve this [plat, condominium map, townhouse plat, subdivision exemption plat] at a meeting held on this ___ day of ___, 20__, and hereby accepts dedication of public rights-of-way, utility easements, and other public areas as shown hereon. Acceptance of public rights-of-way for streets or roads does not constitute acceptance for maintenance of roads constructed therein. The procedure for acceptance of roads for maintenance purposes shall be as stated in the Road &

Bridge Design and Construction Standards or such regulations as shall be adopted in lieu of the Road & Bridge Design and Construction Standards.

Mayor or Mayor pro tem "

G. Keystone Town Council Approval for Plats Approved via the Class 2 Administrative Review Process

"The Town Council of the Town of Keystone, Colorado, does hereby approve this [plat, condominium map, townhouse plat, duplex plat] and hereby accepts dedication of public rights-of-way, utility easements, and other public areas as shown hereon. Acceptance of public rights-of-way for streets or roads does not constitute acceptance from maintenance of roads constructed therein. The procedure for acceptance of roads for maintenance purposes shall be as stated in the Road & Bridge Design and Construction Standards or such regulations as shall be adopted in lieu of the Road & Bridge Design and construction Standards.

Mayor or Mayor pro tem

Date"

H. Treasurer's Certificate

"I the undersigned do hereby certify that the entire amount of taxes and assessments due and payable as of _____, ____ upon all parcels of real estate described on this plat are paid in full.

Dated this _____ day of _____, 20____.

Treasurer"

CHAPTER 9. SIGN REGULATIONS

- Section 9006 (B) and (D) are deleted.
- Delete reference in 9101 (A): "except for signage in the B-3 Zoning District, which has the sign regulations contained within the text of the B-3 Zoning District"

CHAPTER 10. AREAS AND ACTIVITIES OF STATE INTEREST

- Chapter 10, entitled "Areas and Activities of State Interest" is deleted in its entirety and reserved for the Town's future use for local regulation of areas and activities of state interest (a/k/a 1041 Regulations).

CHAPTER 11. COMMUNITY APPEARANCE, MAINTENANCE AND SAFETY

- Only the general amendments to this Chapter.

CHAPTER 12. DEVELOPMENT REVIEW PROCEDURES

- Only the general amendments to this Chapter.

CHAPTER 13. PUBLIC HEARINGS AND APPEALS

- Only the general amendments to this Chapter.

CHAPTER 14. ADMINISTRATION AND ENFORCEMENT

- Sections 14003 titled “Board of Adjustment” is deleted in its entirety.
- Section 14004.02 titled “Planning Commission Bylaws” is deleted in its entirety.
- Section 14101.02(F), (G), related to “merger” are deleted in their entirety.
- Section 14103.06 titled “Exceptions for Structures in the Backcountry Zoning District” is deleted in its entirety.

CHAPTER 15. DEFINITIONS

- Acronyms and Abbreviations, delete all references to:

B1	Business
BOCC	Board of County Commissioners
CG	General Commercial
CN	Neighborhood Commercial
I1	Industrial
M1	Mining
R-4	Single Family Residential
R-6	Single Family/Duplex Residential
RME	Residential Mountain Estates
RU	Rural Residential
- Table of Contents and Definitions, delete all references to:
 - Adult Arcade
 - Adult Bookstore, Adult Novelty Store or Adult Video Store
 - Adult Cabaret
 - Adult Motel
 - Adult Motion Picture Theater
 - Agricultural Operations

Agriculture
Air Contaminant
Airport
Amusement Facilities
Animal Feedlot
Animal Salesyard
Asphalt Plant
Automobile Body Work, Painting or Restoration
B-3
Barn
Basin Planning Commission
BOCC
Board of County Commissioners
Boarding/Rooming House
Breeding Farm
Bunkhouse or Hired Hand Quarters
Cattle
Cemetery
CG
CN
Concrete Batch Plant
Crematorium
Dredge Spoils
Dude Ranch
Extraction, Gravel, and Sand
Extraction, Mineral
Fairgrounds
Farm
Fraternal or Service Club
Fur Farm
Goat
Heap Leaching
Hired Hand Quarters
Hydroelectric Energy System
I1
Industry or Industrial
Lumberyard
M1
Manufactured Home Park
Middle School
Milling
Nordic Ski Hut
Nude Entertainment Establishments

Nudity
Packing and Outfitting
Penal Facilities
Power Plant
R4
R6
RME
RP
Regional Planning Commission
Retail Marijuana Cultivation Facility
Retail Marijuana Product Facility
Rooming house
RPC
RU
SU
Sanitary Landfill/Solid Waste Disposal
Sewage Treatment Plant
Sheep
Shooting Range
Silviculture
Sludge
Sludge Storage, Temporary
Specified Anatomical Areas
Specified Sexual Activities
Swine
Timber Harvest
Vat Leaching
Wild Game Ranch

CHAPTER 16

- Chapter 16, entitled “Bylaws” shall be deleted in its entirety and reserved for the Town’s future use.

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. Emergency Declared; Effective Date. The Town Council hereby legislatively declares that the passage of this Ordinance is necessary for the immediate

preservation of the public peace, health or safety. Absent passage of this Ordinance as an Emergency Ordinance, the Town risks the submission of applications for land use matters and other regulations without a land development code in place and there is no mechanism to process any land use applications without a land development code in place. Upon passage by a supermajority of Town Council members in office, as required by Section 6.6 of the Keystone Home Rule Charter (¾ of all members in office), this Ordinance shall take effect immediately and be enforced on May 9, 2024.

INTRODUCED, READ AND PASSED AS AN ORDINANCE, ON FIRST READING, AND SCHEDULED FOR PUBLIC HEARING ON APRIL 23, 2024, 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

I hereby certify that the above Ordinance was introduced to the Town Council of the Town of Keystone at its meeting of _____, 2024 and ordered published two times by title only in The Summit Daily newspaper on _____, 2024, and on _____, 2024, and in full on the Town web site.

ATTEST:

SEAL

By: Town Clerk or Deputy Town Clerk

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
Town Council Minutes
March 12, 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 Aaron Parmet, Councilmember Dan Sullivan, Councilmember Valerie Thisted, and Mayor Ken Riley.

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

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

Mayor Riley read the consent agenda into the record. Councilmember Thisted moved to approve the consent agenda as presented. Councilmember Parmet 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 2024-30 Opposing HB24-1152

Mayor Riley recognized Town Attorney Jennifer Madsen to introduce Resolution 2024-40 Opposing HB24-1152.

Councilmember Davis moved to approve Resolution 2024-30 Opposing HB24-1152. Councilmember Parmet seconded. The motion passed unanimously, and Resolution 2024-30 was adopted.

2. Resolution 2024-31 Adopting a Town Social Media Policy

Mayor Riley recognized Town Attorney Jennifer Madsen to introduce Resolution 2024-31 Adopting a Town Social Media Policy.

Council directed staff to work on additional edits to the policy to provide further clarification and return with an updated policy by the first meeting in May.

C. OTHER

1. Discussion of Process for Hiring Town Manager

Mayor Riley recognized interim Town Manager Gary Martinez to provide an update on the Town Manager candidate search. Martinez shared that the four finalists participated in interviews the previous week, and that Council would have the opportunity to discuss potential contract negotiations at this evening's executive session.

VI. PLANNING MATTERS -- NONE

VII. REPORT OF TOWN MANAGER AND STAFF

The Town Manager shared that additional updates about the status of the Town's financial accounts would be shared by the professional accounting firm at the next meeting.

VIII. REPORT OF MAYOR AND COUNCIL

Council directed staff to work on ordering name tags and business cards for Councilmembers and staff. Council discussed areas within Town limits with large potholes and directed staff to provide notice of these potholes to CDOT and Summit County.

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

Councilmember Keel moved to enter an 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. Councilmember Sullivan seconded. The motion passed unanimously, and the Council recessed into executive session.

The Executive Session concluded at 9:41 p.m.

XII. ADJOURNMENT

Seeing no further business, Mayor Riley adjourned the meeting at 4:41 p.m.

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 26, 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 [SECOND READING]

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 may request amendments to the Planning and Zoning ordinance.

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, and the Town Council approved Ordinance 2024-O-01 on first reading on March 12, 2024.

Next Steps:

If approved, the Community Development Director will work on accepting applications for the Planning Commission for consideration by the Town Council.

Suggested Motions:

To APPROVE:

I move to APPROVE 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

To DENY:

I move to DENY 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

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 26, 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 [SECOND READING]

Executive Summary:

On March 26, 2024, Town Council will be asked to consider Ordinance No. 2024-O-02 on second reading 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 second reading.

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.¹ 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 or at 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 (10) 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.

***UPDATE** – Since first reading, the Town and Comcast have negotiated a proposed “Side Letter” in which Comcast formally commits that should Keystone join the SCTC, Comcast agrees to “discuss, negotiate, and, ultimately, amend the Comcast-Town of Keystone Franchise Agreement approved on March 26, 2024, to reflect the Franchise Agreement renewal timing of the other SCTC communities and include any additional changes to the SCTC communities’ Franchise Agreements the Town finds beneficial and which are not in the newly approved Comcast-Town of Keystone Franchise.” A copy of the proposed Side Letter is attached to this staff report.*

¹ 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 (5%) cap on franchise fees.

- 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 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:

Town Council approved Ordinance No. 2024-O-02 on first reading on March 12, 2024.

Next Steps:

If approved, the franchise agreement will be executed by both parties and the Town will begin to receive franchise fee payments pursuant to the terms set forth in Section 3 of the agreement.

Suggested Motions:

TO APPROVE:

I move to APPROVE 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

TO DENY:

I move to DENY 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

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
- Proposed Side Letter Concerning Amending Keystone's Franchise Agreement with 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:

Interim Town Clerk

APPROVED AS TO FORM:

Town Attorney

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

CABLE FRANCHISE AGREEMENT

TABLE OF CONTENTS

CABLE FRANCHISE AGREEMENT	i
CABLE FRANCHISE AGREEMENT	1
SECTION 1. DEFINITIONS AND EXHIBITS	1
(A) DEFINITIONS	1
(B) EXHIBITS	6
SECTION 2. GRANT OF FRANCHISE	7
2.1 Grant	7
2.2 Use of Rights-of-Way	8
2.3 Effective Date and Term of Franchise	9
2.4 Franchise Nonexclusive	9
2.5 Police Powers	9
2.6 Competitive Equity	9
2.7 Familiarity with Franchise	11
2.8 Effect of Acceptance	11
SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS	11
3.1 Franchise Fee	11
3.2 Payments	11
3.3 Acceptance of Payment and Recomputation	11
3.4 Quarterly Franchise Fee Reports	11
3.5 Annual Franchise Fee Reports	12
3.6 Audits	12
3.7 Late Payments	12
3.8 Underpayments	12
3.9 Alternative Compensation	12
3.10 Maximum Legal Compensation	13
3.12 Tax Liability	15
3.13 Financial Records	15
3.14 Payment on Termination	15
SECTION 4. ADMINISTRATION AND REGULATION	15

4.1	Authority	15
4.2	Rates and Charges	15
4.3	Rate Discrimination.....	16
4.4	Filing of Rates and Charges.....	16
4.5	Cross Subsidization	16
4.6	Reserved Authority.....	17
4.8	Franchise Amendment Procedure.....	17
4.9	Performance Evaluations.....	17
4.10	Late Fees.....	18
4.11	Force Majeure.....	18
SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS		18
5.1	Indemnification.....	18
5.2	Insurance	20
5.3	Deductibles / Certificate of Insurance	20
5.4	Letter of Credit	21
SECTION 6. CUSTOMER SERVICE.....		22
6.1	Customer Service Standards.....	22
6.2	Subscriber Privacy.....	22
6.3	Subscriber Contracts.....	22
6.4	Advance Notice to the Town.....	22
6.5	Identification of Local Franchise Authority on Subscriber Bills.....	23
SECTION 7. REPORTS AND RECORDS.....		23
7.1	Open Records	23
7.2	Confidentiality.....	23
7.3	Records Required	24
7.4	Annual Reports.....	24
7.5	Copies of Federal and State Reports.....	25
7.6	Complaint File and Reports.....	25
7.7	Failure to Report.....	25
7.8	False Statements	25
SECTION 8. PROGRAMMING		26
8.1	Broad Programming Categories	26
8.2	Deletion or Reduction of Broad Programming Categories.....	26
8.3	Obscenity.....	26
8.4	Parental Control Device.....	27
8.5	Continuity of Service Mandatory	27

8.6	Services for the Disabled.....	27
SECTION 10.	GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION	28
10.1	Right to Construct.....	28
10.2	Right-of-Way Meetings.....	28
10.3	Joint Trenching/Boring Meetings.....	28
10.4	General Standard	28
10.5	Permits Required for Construction	28
10.6	Emergency Permits.....	29
10.7	Compliance with Applicable Codes	29
10.8	GIS Mapping	29
10.9	Minimal Interference	29
10.10	Prevent Injury/Safety.....	30
10.11	Hazardous Substances	30
10.12	Locates.....	30
10.13	Notice to Private Property Owners.....	31
10.14	Underground Construction and Use of Poles	31
10.15	Undergrounding of Multiple Dwelling Unit Drops	32
10.16	Burial Standards	32
10.17	Cable Drop Bonding.....	33
10.18	Prewiring	33
10.19	Repair and Restoration of Property	33
10.20	Acquisition of Facilities	33
10.21	Discontinuing Use/Abandonment of Cable System Facilities.....	34
10.22	Movement of Cable System Facilities for Town Purposes.....	34
10.23	Movement of Cable System Facilities for Other Franchise Holders	35
10.24	Temporary Changes for Other Permittees	35
10.25	Reservation of Town's Use of Right-of-Way	35
10.26	Tree Trimming.....	35
10.27	Inspection of Construction and Facilities	35
10.28	Stop Work.....	36
10.29	Work of Contractors and Subcontractors.....	36
SECTION 11.	CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING	36
11.1	Subscriber Network.....	36
11.2	Technology Assessment	37
11.3	Standby Power.....	37
11.4	Emergency Alert Capability	37
11.5	Technical Performance.....	38
11.6	Cable System Performance Testing.....	38

11.7	Additional Tests.....	38
SECTION 12. SERVICE AVAILABILITY		39
12.1	Service Availability	39
SECTION 13. FRANCHISE VIOLATIONS		40
13.1	Procedure for Remediating Franchise Violations	40
13.2	Revocation.....	41
13.3	Procedures in the Event of Termination or Revocation.....	42
13.4	Purchase of Cable System	43
13.5	Receivership and Foreclosure.....	43
13.6	No Monetary Recourse Against the Town	44
13.7	Alternative Remedies	44
13.8	Assessment of Monetary Damages.....	44
13.9	Effect of Abandonment	44
13.10	What Constitutes Abandonment.....	45
SECTION 14. FRANCHISE RENEWAL AND TRANSFER.....		45
14.1	Renewal	45
14.2	Transfer of Ownership or Control	46
SECTION 15. SEVERABILITY.....		47
SECTION 16. MISCELLANEOUS PROVISIONS		47
16.1	Preferential or Discriminatory Practices Prohibited	47
16.2	Notices.....	47
16.3	Descriptive Headings.....	48
16.4	Publication Costs to be Borne by Grantee	48
16.5	Binding Effect	48
16.6	No Joint Venture.....	48
16.7	Waiver	48
16.8	Reasonableness of Consent or Approval	48
16.9	Entire Agreement.....	49
16.10	Jurisdiction	49

EXHIBIT A: Customer Service Standards

EXHIBIT B: Report Form

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

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)

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 CCA 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 CCA 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 CCA.

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

<u>Type of Complaint</u>	<u>Number of Calls</u>
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
TOTAL	0

Compliments

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8000 East Iliff Avenue
Denver, CO 80202

March X, 2024

VIA ELECTRONIC MAIL

Mayor Kenneth Riley
Town of Keystone
1628 Saints John Road
Keystone, CO 80435

Re: Amending the Town of Keystone’s Franchise Agreement with Comcast

Mayor Riley,

The purpose of this letter agreement is to set forth commitments between Comcast of Colorado IX, LLC, (hereinafter, “Comcast”) and the Town of Keystone, Colorado (hereinafter, “Town”).

It is the mutual understanding of Comcast and the Town that the Town is interested in joining the Summit County Telecommunications Consortium (“SCTC”). The SCTC is a non-profit entity formed by the franchising authorities and/or local governments from the Towns of Breckenridge, Silverthorne, Frisco, Dillon, and Summit County, and whose purpose is to communicate regarding franchising matters collectively and cooperatively. The SCTC communities’ Franchise Agreements are nearing the end of their respective Terms, and Comcast will soon be in negotiations for Franchise Agreement renewals in each community.

Comcast and the Town have successfully negotiated a 10-year Franchise Agreement, which largely reflects Summit County’s current Agreement with Comcast. However, should the Town join the SCTC, Comcast and the Town agree to discuss, negotiate, and, ultimately, amend the Comcast-Town of Keystone Franchise Agreement approved on March 26, 2024, to reflect the Franchise Agreement renewal timing of the other SCTC communities and include any additional changes to the SCTC communities’ Franchise Agreements the Town finds beneficial and which are not in the newly approved Comcast-Town of Keystone Franchise.

The terms and conditions of this letter agreement are binding upon the Town and Comcast and their successors and assigns.

Comcast of Colorado IX, LLC

By: _____
Its: _____
Date: _____

Acknowledged and agreed to this ___ day of _____, 2024.

Town of Keystone, Colorado

By: _____

Its: _____

Date: _____

Acknowledged and agreed to this ___ day of _____, 2024.

cc: Ms. Jill Hassman
Ms. Jennifer Madsen



Comcast and Franchise Overview for Town of Keystone Town Council

Presented by
Andy Davis – Director, Government Affairs

March 26, 2024



COMCAST

Connectivity and Platforms

Content and Experiences

xfinity

COMCAST
BUSINESS

xfinity mobile

sky

NBCUniversal



NBC



peacock



sky sports

Technology Leader

Our Platforms



Xfinity Internet and xFi

*Speed. Coverage.
Control. Security.*



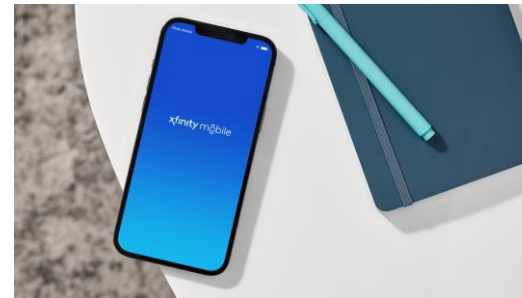
Xumo

*Integrated Streaming
Access in 4K*



X1 Video Platform

*Ultimate Entertainment
Experience.*



Mobile

*Network combining 5G
and millions of secure
WiFi hotspots.*



Home

*Connect, Protected
Home.*



Voice

*IP-enabled, digital quality
home phone.*

Technology Leader

Comcast Business

Comcast Business provides advanced communications solutions to help companies of all sizes be more productive and outmaneuver the competition.

Services

- Data – Ethernet, Business Internet, WiFi, SD-WAN
- Voice – Business Voice, ISDN PRI, SIP Trunks, VoiceEdge
- Managed Services – Connectivity, Security, Business Continuity
- Video – X1 for Business
- Cloud Solutions

Comcast Network

- Comcast offers national reach and capacity that scales up to 100 Gigabits per second (Gbps).
- Comcast owns and operates its network, which is completely separate from telco/carrier networks.



Comcast Business was named the Most Innovative Technology Company of the Year by the American Business Awards in 2021 and 2022

Internet» essentials

FROM COMCAST

Internet Essentials has connected more than 10 million low-income Americans – and over 650,000 in Colorado – to low-cost, high-speed Internet at home so that everyone can be ready for anything.



Low-Cost & Free Service: We provide low-cost, high-speed broadband to low-income households across our service area. Customers can choose between two speeds of service:

- 50/10 Mbps for \$9.95 + tax or
- 100/10 Mbps for \$29.95 + tax.



Equipment: Internet Essentials customers can purchase a new, heavily subsidized and discounted computer for less than \$150 through our partnership with Dell Technologies, Inc.



Awareness & Training: We work with a network of partners to offer free in-person, online, and printed digital literacy training materials and classes.

Franchise Renewal

Key Franchise Elements

- Under Federal Law, Town regulates video product only
- Permits Comcast to use public right of ways
- Franchise Fees – 5% of video-related gross revenues, capped by Federal Law
- Non-exclusive agreement
- 10-year term
- Customer Service Standards
- Construction standards
- Reporting requirements





Questions

Contact Info

Andy Davis

Director, Government Affairs

andy_davis@comcast.com

(720) 636-1526

