



Town of Johnstown

TOWN COUNCIL REGULAR MEETING

450 S. Parish, Johnstown, CO

Wednesday, January 03, 2024 at 7:00 PM

MISSION STATEMENT: Enhancing the quality of life of our residents, businesses, and visitors through community focused leadership.

AGENDA

CALL TO ORDER

Pledge of Allegiance

ROLL CALL

AGENDA APPROVAL

PUBLIC COMMENT

Members of the audience are invited to speak at the Council meeting. Public Comment is reserved for citizen comments on items not contained on the Public Hearing portion of the agenda. Citizen comments are limited to three (3) minutes per speaker. When several people wish to speak on the same position on a given item, they are requested to select a spokesperson to state that position.

CONSENT AGENDA

The Consent Agenda is a group of routine matters to be acted on with a single motion and vote. Council or staff may request an item be removed from the Consent Agenda and placed on the Regular Agenda for discussion.

- [1.](#) December 18, 2023 Meeting Minutes
- [2.](#) Ordinance 2023-264: An Ordinance Submitting To The Registered Electors Of The Town Of Johnstown At The General Municipal Election To Be Held On April 2, 2024, A Charter Amendment Conforming The Limits On Allowing Persons With Felony Convictions To Hold Council Office To Those Set Forth In The Colorado Constitution
- [3.](#) Ordinance 2023-265: An Ordinance Submitting To The Registered Electors Of The Town Of Johnstown At The General Municipal Election To Be Held On April 2, 2024, A Charter Amendment Setting Forth The Source Of The Population Count For Councilmember Residency Qualifications And Providing For The Election Of Councilmembers From Three Electoral Districts Rather Than From Two Districts And Four Wards
- [4.](#) Ordinance 2023-266, an Ordinance Approving the Grant of a Cable Franchise to TDS Broadband Service, LLC, and Approving a Cable Franchise Agreement Between TDS Broadcast Service, LLC and the Town of Johnstown, Colorado
- [5.](#) Resolution Number 2024-01 A Resolution Designating the Public Place for Posting Notices Pursuant to C.R.S. Section 24-6-402(2)(c)

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- [6.](#) Resolution 2024-02 Updating and Adopting the 2024 Three Mile Plan
- [7.](#) Resolution 2024-03 Adopting the Town of Johnstown Strategic Plan
- [8.](#) December 2023 List of Bills

TOWN MANAGER REPORT

TOWN ATTORNEY REPORT

NEW BUSINESS

- [9.](#) Resolution 2024-04: Approving the Purchase and Sale Agreement By and Between the Town of Johnstown And TF Johnstown Farms, L.P. for the Purchase of Real Property Known as Lot 1 of Johnstown Farms Filing No. 1 Third Amendment

COUNCIL REPORTS AND COMMENTS

MAYOR'S COMMENTS

INFORMATIONAL ITEMS

- [10.](#) Informational Items

ADJOURN

AMERICANS WITH DISABILITIES ACT NOTICE

In accordance with the Americans with Disabilities Act and other applicable laws, persons who need accommodation in order to attend or participate in this meeting should contact Town Hall at 970-587-4664 no later than 48 hours before the meeting in order to request such assistance.

De conformidad con la Ley de Discapacitados Estadounidenses y otras leyes vigentes, los individuos que necesitan adaptaciones funcionales para asistir o participar en esta reunión deberán comunicarse con la Municipalidad marcando el 970 587- 4664 a lo más tardar 48 horas antes de dicha reunión para solicitarla.



Town of Johnstown

TOWN COUNCIL REGULAR MEETING

450 S. Parish, Johnstown, CO

Monday, December 18, 2023 at 7:00 PM

MINUTES

CALL TO ORDER

Mayor Mellon called the meeting to order at 7:00 pm and led the Pledge of Allegiance.

Pledge of Allegiance

ROLL CALL

Present:

Councilmember Berg
Councilmember Molinar
Councilmember Morris
Councilmember Paranto
Councilmember Young
Mayor Mellon

Absent:

Councilmember Dominguez

AGENDA APPROVAL

Councilmember Molinar move to approve the agenda.

Councilmember Berg seconded and the motion passed.

PUBLIC COMMENT

There was no public comment.

CONSENT AGENDA

Councilmember Paranto to approve the consent agenda.

Councilmember Young seconded and the motion passed.

1. November 27, 2023 Meeting Minutes
2. December 4 2023 Meeting Minutes
3. Consider Resolution 2023-061 Finding substantial compliance for initiating annexation proceedings and setting a public hearing for Town Council on February 5, 2024.
4. Resolution No. 2023-62 Authorizing a Mail Ballot Election for the Town of Johnstown's Regular Municipal Election Scheduled on April 2, 2024
5. Resolution 2023-63 Amending the Town of Johnstown Fee Schedule

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6. Intergovernmental Agreement - Town of Johnstown and Little Thompson Water District
7. Contract Award to Mark Young Construction
8. Contribution Agreement Mountain View West Master Association
9. November 2023 Financial Statements

TOWN MANAGER REPORT

Matt LeCerf, Town Manager, noted Police Chief, Brian Phillips, will be retiring from the organization and send him all the best in his future endeavors.

Council spoke to the accomplishments Chief Phillips has done in his time with the Town. Chief Phillips expressed appreciation to the support from Council.

Mr. LeCerf noted the final phases of the Charlotte Street project.

TOWN ATTORNEY REPORT

There was no Town Attorney report.

NEW BUSINESS

10. Consider Adopting the Town of Johnstown Strategic Plan

Mitzi McCoy, Deputy Town Manager spoke to the Strategic Plan. Ms. McCoy noted the areas in the plan that were updated related to Council's input at a prior Work Session. These areas included additions to the Safe & Welcoming Community goal section and the narrative in Natural and Built Environment.

Council noted the goals are representative of what Council has asked for, and will provide good bench marks for evaluating.

Councilmember Morris moved to adopt the Town of Johnstown Strategic Plan as presented

Councilmember Berg second and the motion passed.

PUBLIC HEARING

11. Ordinance 2023-264: An Ordinance Submitting To The Registered Electors Of The Town Of Johnstown At The General Municipal Election To Be Held On April 2, 2024, A Charter Amendment Conforming The Limits On Allowing Persons With Felony Convictions To Hold Council Office To Those Set Forth In The Colorado Constitution

Mayor Mellon opened the public hearing.

Avi Rocklin, Town Attorney, referenced prior discussion at the last Council meeting, noting Colorado Constitution provides that with very limited exceptions, those that have served and completed a felony sentence are entitled to hold public office. The Town's Charter does conflict with this, and this item would send this item to the ballot conforming the Home Rule Charter as to what is required in the Constitution.

Mayor Mellon opened public comment for those opposed or in favor of this item, of which there was none.

Mayor Mellon closed the public hearing.

Councilmember Berg moved to approve Ordinance No. 2023-264 upon first reading.

Councilmember Paranto seconded and the motion passed.

12. Ordinance 2023-265: An Ordinance Submitting To The Registered Electors Of The Town Of Johnstown At The General Municipal Election To Be Held On April 2, 2024, A Charter Amendment Setting Forth The Source Of The Population Count For Councilmember Residency

Qualifications And Providing For The Election Of Councilmembers From Three Electoral Districts Rather Than From Two Districts And Four Wards

Mayor Mellon opened the public hearing.

Ms. Rocklin noted the past discussion with Council, stating this item would send to the electors a proposal of a charter amendment to provide clarity as to when the population count reaches 20,000 based on the US Census. It also simplifies the process rather than having two districts and four wards, this proposal would be elected from three districts, with two councilmembers serving alternating terms per district.

Mayor Mellon opened public comment for those opposed or in favor of this item, of which there was none.

Mayor Mellon closed the public hearing.

Councilmember Morris moved to approve Ordinance No. 2023-265 upon first reading.

Councilmember Young seconded and the motion passed.

13. Ordinance 2023-266, An Ordinance Approving the Grant of a Cable Franchise to TDS Broadband Service, LLC, and Approving a Cable Franchise Agreement Between TDS Broadcast Service, LLC and the Town of Johnstown, Colorado

Mayor Mellon opened the public hearing.

Ms. McCoy presented this item, noting the franchise agreement with TDS is for a for ten-year term.

Council asked for clarification on streaming options from TDS for meetings. Ms. McCoy noted the agreement notes grant funding the Town can apply for.

Mayor Mellon opened public comment for those opposed or in favor of this item, of which there was none.

Mayor Mellon closed the public hearing.

Councilmember Paranto moved to approve Ordinance No. 2023-266, an ordinance approving the grant of a cable franchise to TDS Broadband Service, LLC, and approving a cable franchise agreement between TDS Broadcast Service, LLC and the Town of Johnstown on first reading.

Councilmember Molinar seconded and the motion passed.

COUNCIL REPORTS AND COMMENTS

Councilmember Berg noted landscaping updates on the Veteran's Memorial. It was noted there were 221 wreaths laid on the veteran's graves in the Johnstown Cemetery.

Councilmember Young noted the sale of Letford bricks through the Historical Society website.

Councilmember Morris expressed holiday greetings to all.

Councilmember Morris moved to require for employment the next Planning Director be required to live in the Town of Johnstown .

Council asked for clarification on requirements for employees in a certain position living in Town limits. Ms. Rocklin noted it was with Council's authority to require.

Councilmember Young seconded and the motion failed 3-3.

NO VOTES: Molinar, Paranto, Mellon

YES VOTES: Berg, Young, Morris.

MAYOR'S COMMENTS

Mayor Mellon expressed thanks to staff for their work this year, and Council's work with each other.

The Lacewood Street residents in Thompson River Ranch were applauded for their holiday decorations and community pride.

Mayor Mellon noted an attorney representing Councilmember Dominguez has been in contact and requested virtual attendance for the remainder of her term. Council noted requesting the attorney provide information by Friday December 15, 2023. It was noted the attorney requested additional time. Council requested a date certain, and the counsel for Councilmember Dominguez has not responded.

Councilmember Berg moved to excuse for failure to attend the November 20, 2023 Town Council meeting and find that such absence would not be found against her for the purpose of attendance requirements in compliance with Ordinance No. 2023-254.

Councilmember Young seconded and the motion passed.

Mayor Mellon called Council's attention to a letter from the Town Attorney noting fee services for 2024.

INFORMATIONAL ITEMS

14. Informational Items

Informational items were included in the packet.

EXECUTIVE SESSION

15. An executive session to discuss the purchase of real property pursuant to C.R.S. Section 24-6-402(4)(a).

Councilmember Berg moved to recess into an executive session to discuss the purchase of real property pursuant to C.R.S. Section 24-6-402(4)(a) and an executive session to discuss matters subject to negotiations and to instruct negotiators pursuant to C.R.S. Section 24-6-402(4)(e) regarding Project Solstice.

Councilmember Young seconded and the motion passed.

Council reconvened from the Executive Session and Mayor Mellon noted no topics were discussed other than those mentioned and only instructions for negotiations were given.

16. An executive session to discuss matters subject to negotiations and to instruct negotiators pursuant to C.R.S. Section 24-6-402(4)(e) regarding Project Solstice.

ADJOURN

Mayor Mellon adjourned the December 18, 2023 Council meeting at 8:23 p.m.

Troy D. Mellon, Mayor

Hannah Hill, Town Clerk



Town of Johnstown

TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS

AGENDA DATE: January 3, 2024

SUBJECT: Ordinance 2023-264: An Ordinance Submitting To The Registered Electors Of The Town Of Johnstown At The General Municipal Election To Be Held On April 2, 2024, A Charter Amendment Conforming The Limits On Allowing Persons With Felony Convictions To Hold Council Office To Those Set Forth In The Colorado Constitution

ACTION PROPOSED: Consider Approval of Ordinance 2023-264 on Second Reading

ATTACHMENTS: 1. Ordinance 2023-264

PRESENTED BY: Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

Council approved Ordinance 2023-264 on first reading on December 18, 2023.

Proposed for Council’s review and consideration is an ordinance that would authorize a ballot measure at the April 2, 2024 election. This ballot measure would propose a modification to individuals running for elected office in the Town of Johnstown to be compliant with the qualifications outline in the Colorado Constitution. If the ballot were to be approved by the voters, it would amend our Home Rule Charter (HRC).

Based on recent court cases, there is a high probability that our current HRC which identifies that an individual convicted of any felony does not qualify to run for office is not legal. In an effort to be compliant both legally and with the Colorado Constitution the following modification to the HRC is proposed.

FROM

No person who has been convicted of a felony or a willful violation of this Charter shall be qualified to serve as Mayor or Councilmember.

TO

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No person prohibited by the Colorado Constitution from serving in public office or who has been convicted of a willful violation of this Charter shall be qualified to serve as Mayor or Councilmember.

LEGAL ADVICE:

The Town Attorney drafted the Ordinance based on feedback from Town Council.

FINANCIAL ADVICE:

NA

RECOMMENDED ACTION: Approve Ordinance 2023-264 upon second reading.

Reviewed and Approved for Presentation,



Town Manager

TOWN OF JOHNSTOWN, COLORADO
ORDINANCE NO. 2023-264

An Ordinance Submitting To The Registered Electors Of The Town Of Johnstown At The General Municipal Election To Be Held On April 2, 2024, A Charter Amendment Conforming The Limits On Allowing Persons With Felony Convictions To Hold Council Office To Those Set Forth In The Colorado Constitution

WHEREAS, the Town of Johnstown, Colorado (“Town”) is a municipal corporation duly organized and existing under its Home Rule Charter (“Charter”) adopted pursuant to Article XX of the Constitution of the State of Colorado; and

WHEREAS, the Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, Section 2.3.D of Article 2 of the Charter disqualifies a person convicted of a felony from serving as the Mayor or a Councilmember; and

WHEREAS, the U.S. Court of Appeals for the Tenth Circuit and the Colorado Supreme Court have determined that the right to seek and hold public office is a fundamental civil right under federal and state law; and

WHEREAS, under Colorado law, individuals lose the rights to vote and run for public office during their incarceration for a felony conviction, and upon completion of a sentence, rights of citizenship, such as the right to run for public office, are restored; and

WHEREAS, Colorado Constitution Article XII, Section 4, provides a permanent exception to the restoration of rights where the underlying felony conviction was for: (i) embezzlement of public monies; (ii) bribery; (iii) perjury; (iv) solicitation of bribery; or (v) subornation of perjury; and

WHEREAS, broad and permanent disqualifications from office for any felony conviction, like that included in the Charter, have been subject to criticism and legal attack in recent years; and

WHEREAS, the City of Aurora recently lost a lawsuit challenging its broad disqualification provision based on the conflicting provision in the Colorado Constitution; and

WHEREAS, the Town Council desires to amend the Charter to address the legal issue posed by the current overbroad disqualification of those with any felony conviction from running for or serving on the Town Council; and

WHEREAS, the Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of the public health, welfare, peace, safety and property and that this Ordinance is in the best interests of the citizens of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:

Section 1. The Town Council hereby submits and refers to the registered electors of the Town a proposed amendment to Article 2 of the Charter to amend Section 2.3.D, to read in its entirety as follows:

ARTICE 2 – TOWN COUNCIL

Section 2.3. - Mayor and Councilmembers – Qualifications

...

D. No person prohibited by the Colorado Constitution from serving in public office or who has been convicted of a willful violation of this Charter shall be qualified to serve as Mayor or Councilmember.

Section 2. The question of amending the Charter for the purposes stated herein shall be submitted to the registered electors of the Town in substantially the following form:

SHALL SECTION 2.3.D OF ARTICLE 2 OF THE JOHNSTOWN HOME RULE CHARTER, DISQUALIFYING A PERSON CONVICTED OF A FELONY FROM SERVING ON THE TOWN COUNCIL, BE AMENDED TO CONFORM THE CHARTER TO THE COLORADO CONSTITUTION, WHICH SPECIFIES THE FELONIES RESULTING IN DISQUALIFICATION FROM SERVING IN PUBLIC OFFICE (CURRENTLY INCLUDING EMBEZZLEMENT OF PUBLIC MONIES, BRIBERY, PERJURY, SOLICITATION OF BRIBERY AND SUBORNATION OF PERJURY)?

___ YES

___ NO

Section 3. The election shall be a general municipal election conducted by mail ballot on April 2, 2024. Pursuant to Section 6.4 of Article 6 of the Charter, the Town Clerk is hereby authorized to be in charge of all activities and duties related to the election. In addition, the officers and employees of the Town are hereby authorized and directed to take all necessary and appropriate action to effectuate the provisions of this Ordinance.

Section 4. If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

Section 5. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the

Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Charter. Copies of the entire Ordinance are available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this 18 day of December, 2023.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: Hannah Hill
Hannah Hill, Town Clerk



By: Troy D. Mellon
Troy D. Mellon, Mayor

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this _____ day of _____, 2024.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor



Town of Johnstown

TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS

AGENDA DATE: January 3, 2024

SUBJECT: Ordinance 2023-265: An Ordinance Submitting To The Registered Electors Of The Town Of Johnstown At The General Municipal Election To Be Held On April 2, 2024, A Charter Amendment Setting Forth The Source Of The Population Count For Councilmember Residency Qualifications And Providing For The Election Of Councilmembers From Three Electoral Districts Rather Than From Two Districts And Four Wards

ACTION PROPOSED: Consider Approval of Ordinance 2023-265 on Second Reading

ATTACHMENTS: 1. Ordinance 2023-265

PRESENTED BY: Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

Council approved Ordinance 2023-265 on first reading on December 18, 2023.

Proposed for Council’s review and consideration is an ordinance that would authorize a ballot measure at the April 2, 2024 election. This ballot measure would propose to clarify and adjust two issues within the Johnstown Home Rule Charter (HRC).

First, currently in the Home Rule Charter, the Town is required to establish a new method for election of Councilmembers upon the Town’s population reaching 20,000. There is no clarity within the HRC about which source is to be used to determine the Town’s population. The ballot measure would clarify that the decennial census conducted every ten (10) years by the U.S. Census shall be the metric from which to determine the Town’s official population and subsequently determine if the election method for Councilmembers will change.

Second, upon reaching the population of 20,000, the HRC requires Councilmembers are to be elected in two districts and four wards. In an effort to provide a cleaner method to elect Councilmembers, the ballot measure would change this method. Instead councilmembers would be elected from three electoral districts – 2 from each district. In either case of the election of Councilmembers for the Town of Johnstown, the Mayor will continue to be elected at-large.

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The adjustments presented provide clarity to the HRC and will help eliminate any confusion on issues related to means and methods for conducting elections. If approved, the HRC would change:

FROM

The Town Council shall consist of six (6) Councilmembers nominated and elected from the Town at large, and a Mayor, who shall be nominated and elected from the Town at large. The Town Council may enact by ordinance for the nomination and election of six (6) Councilmembers from wards and districts; provided, however, the Mayor shall be elected at large. If and/or when the population of the Town reaches twenty thousand (20,000), the Town Council shall provide by ordinance, to be effective at the next general municipal election, for the election of six (6) Councilmembers to be nominated and elected by wards and districts, and a Mayor, who shall be nominated and elected from the Town at large.

TO

The Town Council shall consist of six (6) Councilmembers nominated and elected from the Town at large, and a Mayor, who shall be nominated and elected from the Town at large. When the population of the Town reaches or exceeds twenty thousand (20,000) based on a decennial census conducted by the U.S. Census Bureau, the Town Council shall provide by ordinance, to be effective at the next general municipal election, for the election of six (6) Councilmembers to be nominated and elected from three districts, with two (2) Councilmembers serving from each district, and a Mayor, who shall be nominated and elected from the Town at large.

LEGAL ADVICE:

The Town Attorney drafted the Ordinance based on feedback from Town Council.

FINANCIAL ADVICE:

NA

RECOMMENDED ACTION: Approve Ordinance 2023-265 upon second reading.

Reviewed and Approved for Presentation,



Town Manager

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**TOWN OF JOHNSTOWN, COLORADO
ORDINANCE NO. 2023-265**

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE TOWN OF JOHNSTOWN AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON APRIL 2, 2024, A CHARTER AMENDMENT SETTING FORTH THE SOURCE OF THE POPULATION COUNT FOR COUNCILMEMBER RESIDENCY QUALIFICATIONS AND PROVIDING FOR THE ELECTION OF COUNCILMEMBERS FROM THREE ELECTORAL DISTRICTS RATHER THAN FROM TWO DISTRICTS AND FOUR WARDS

WHEREAS, the Town of Johnstown, Colorado (“Town”) is a municipal corporation duly organized and existing under its Home Rule Charter (“Charter”) adopted pursuant to Article XX of the Constitution of the State of Colorado; and

WHEREAS, the Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, Section 2.1.B of Article 2 of the Charter provides that “when the population of the Town reaches twenty thousand (20,000), the Town Council shall provide by ordinance . . . for the election of six (6) Councilmembers to be nominated and elected by wards and districts;” and

WHEREAS, the Town Council desires to clarify that the proper method for determining the population count shall be based on a decennial census conducted by the U.S. Census Bureau; and

WHEREAS, to provide a more straightforward electoral process, the Town Council also seeks to modify Section 2.1.B of Article 2 of the Charter to provide that, when the population reaches or exceeds twenty thousand (20,000), councilmembers would be elected from three electoral districts rather than from two districts and four wards; and

WHEREAS, the Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of the public health, welfare, peace, safety and property and that this Ordinance is in the best interests of the citizens of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:

Section 1. The Town Council hereby submits and refers to the registered electors of the Town a proposed amendment to Article 2 of the Charter to amend Section 2.1.B, to read in its entirety as follows:

ARTICE 2 – TOWN COUNCIL

Section 2.1. - Town Council.

...

B. The Town Council shall consist of six (6) Councilmembers nominated and elected from the Town at large, and a Mayor, who shall be nominated and elected from the Town at large. When the population of the Town reaches or exceeds twenty thousand (20,000) based on a decennial census conducted by the U.S. Census Bureau, the Town Council shall provide by ordinance, to be effective at the next general municipal election, for the election of six (6) Councilmembers to be nominated and elected from three districts, with two (2) Councilmembers serving from each district, and a Mayor, who shall be nominated and elected from the Town at large.

Section 2. The question of amending the Charter for the purposes stated herein shall be submitted to the registered electors of the Town in substantially the following form:

SHALL SECTION 2.1.B OF ARTICLE 2 OF THE JOHNSTOWN HOME RULE CHARTER BE AMENDED TO PROVIDE: (I) THAT THE POPULATION COUNT FOR THE PURPOSE OF DETERMINING COUNCILMEMBER RESIDENCY QUALIFICATIONS SHALL BE BASED ON A DECENNIAL CENSUS CONDUCTED BY THE U.S. CENSUS BUREAU AND (II) FOR THE ELECTION OF COUNCILMEMBERS FROM THREE ELECTORAL DISTRICTS RATHER THAN FROM TWO ELECTORAL DISTRICTS AND FOUR ELECTORAL WARDS?

___ YES

___ NO

Section 3. The election shall be a general municipal election conducted by mail ballot on April 2, 2024. Pursuant to Section 6.4 of Article 6 of the Charter, the Town Clerk is hereby authorized to be in charge of all activities and duties related to the election. In addition, the officers and employees of the Town are hereby authorized and directed to take all necessary and appropriate action to effectuate the provisions of this Ordinance.

Section 4. If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

Section 5. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Charter. Copies of the entire Ordinance are available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this 18 day of December, 2023.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: Hannah Hill
Hannah Hill, Town Clerk



By: Troy D. Mellon
Troy D. Mellon, Mayor

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2024.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor



TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS

AGENDA DATE: January 3, 2024

SUBJECT: Consideration and Public Hearing for Ordinance 2023-266, an Ordinance Approving the Grant of a Cable Franchise to TDS Broadband Service, LLC, and Approving a Cable Franchise Agreement Between TDS Broadcast Service, LLC and the Town of Johnstown, Colorado

ATTACHMENTS:

1. Ordinance 2023-266
2. Cable Franchise Agreement
3. Attorney-Client Privileged Memorandum

PRESENTED BY: Mitzi McCoy, Deputy Town Manager

AGENDA ITEM DESCRIPTION:

Council approved Ordinance 2023-266 on first reading on December 18, 2023.

Enclosed for review and consideration is a Cable Franchise Agreement between the Town of Johnstown and TDS Broadband Service, LLC. This agreement will allow TDS to continue to provide cable services to the residents and businesses in the Town of Johnstown. This agreement is intended to be a 10-year agreement that begins on January 1, 2024. This franchise agreement includes a 5% franchise fee. Additional details can be found in the Attorney Client Privileged Memorandum.

LEGAL ADVICE:

Ordinance was prepared by the Town Attorney.

FINANCIAL ADVICE:

NA

RECOMMENDED ACTION: Approve Ordinance 2023-266 on second reading.

Reviewed and Approved for Presentation,



Town Manager

The Community That Cares

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**TOWN OF JOHNSTOWN, COLORADO
ORDINANCE NO. 2023-266**

**AN ORDINANCE APPROVING THE GRANT OF A CABLE FRANCHISE TO
TDS BROADBAND SERVICE, LLC, AND APPROVING A CABLE FRANCHISE
AGREEMENT BETWEEN TDS BROADCAST SERVICE, LLC, AND THE TOWN
OF JOHNSTOWN, COLORADO**

WHEREAS, pursuant to the Charter of the Town of Johnstown (the “Charter”), the Municipal Code for the Town of Johnstown (the “Code), and the authority granted to home-rule municipalities under the Colorado Constitution, the Town of Johnstown (the “Town”) may enter into franchise agreements and adopt and amend ordinances;

WHEREAS, the Town is authorized generally pursuant to Article XX of the Colorado Constitution, as well as C.R.S § 31-15-702, to regulate and manage the use, maintenance, and repair of public streets, roads, sidewalks, and public places under its jurisdiction;

WHEREAS, the Town previously granted a non-exclusive franchise for the construction, maintenance, and operation of a cable television system within the Town to Baja Broadband, LLC;

WHEREAS, TDS Broadband Service LLC, known locally as TDS (“TDS”) is the successor in interest to Baja Broadband, LLC;

WHEREAS, TDS is agreeable to continue providing cable television service in the Town;

WHEREAS, TDS seeks a new cable television franchise, and a proposed new Cable Franchise Agreement acceptable to both the Town and TDS has been prepared (the “Agreement”), a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference;

WHEREAS, the Town has reviewed performance under the prior franchise and the quality of service during the prior franchise term, has identified the future cable-related needs and interests of the Town and its citizens, has considered the financial, technical, and legal qualifications of TDS, and has determined that TDS plans for operating and maintaining its Cable Systems are adequate, in a full public proceeding affording due process to all parties;

WHEREAS, the public has had adequate notice and opportunity to comment on TDS’s proposal to provide cable television service within the Town;

WHEREAS, the Town has a legitimate and necessary regulatory role in ensuring the availability of cable communications service, and reliability of cable systems in its jurisdiction, the availability of local programming and quality customer service;

WHEREAS, diversity in cable service programming is an important policy goals and TDS’s cable system should offer a wide range of programming services;

WHEREAS, the Town Council for the Town of Johnstown (the “Council”) has considered this Ordinance authorizing the cable television system franchise and the Agreement;

WHEREAS, the Council hereby finds that the public has had adequate notice and opportunity to comment upon the proposed cable television system franchise and the Agreement;

WHEREAS, the Council hereby finds that it serves the public interest of the citizens of the Town to grant a cable television franchise to TDS pursuant to the terms of the Agreement;

WHEREAS, the Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:

Section 1. Grant of Franchise. The Town of Johnstown hereby grants to TDS Broadband Service LLC, effective January 1, 2024, a nonexclusive Cable Franchise subject to the terms and conditions set forth in the attached Cable Franchise Agreement between TDS Broadband Service, LLC, and the Town of Johnstown, Colorado.

Section 2. Franchise Agreement. The Town of Johnstown hereby approves and adopts the attached Cable Franchise Agreement between TDS Broadband Service, LLC, and the Town of Johnstown, Colorado. The Cable Franchise Agreement shall be available for public inspection during normal business hours from the Town Clerk at the offices of the Town of Johnstown, Colorado.

Section 3. Severability. If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

Section 4. Publication; Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published, and posted as required by the Home Rule Charter of the Town of Johnstown, Colorado (“Charter”) and the adoption, posting and

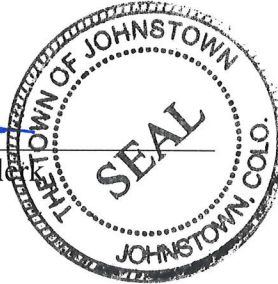
publication shall be authenticated by the signature of the Mayor and the Town Clerk. This ordinance shall become effective upon final passage as provided by the Charter. Copies of the entire Ordinance are available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this 18 day of December, 2023.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

Hannah Hill
Hannah Hill, Town Clerk



Troy D. Mellon
Troy D. Mellon, Mayor

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this ___ day of _____, 2024.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

Hannah Hill, Town Clerk

Troy D. Mellon, Mayor

EXHIBIT A
TDS BROADBAND SERVICE LLC AND
THE TOWN OF JOHNSTOWN, COLORADO
CABLE FRANCHISE AGREEMENT



**TDS BROADBAND SERVICE LLC
AND
TOWN OF JOHNSTOWN, COLORADO**

CABLE FRANCHISE AGREEMENT

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**TDS BROADBAND SERVICE LLC
AND
TOWN OF JOHNSTOWN, 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 “Access Programming” means the creation and distribution of video programming and other services and signals where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 “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.

1.3 “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.

1.4 “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.

1.5 “Bad Debt” means amounts lawfully 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.

1.6 “Basic Service” is the lowest priced Tier of Video Programming which includes, at a minimum, all Broadcast Channels, the Channel(s) required by this Franchise for Public, Educational, or Governmental Access use, and any additional Video Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.7 “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.

1.8 “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.

1.9 “Cable Act” means the Title VI of the Communications Act of 1934, as amended.

1.10 “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.

1.11 “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.

1.12 “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 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) of the Cable Act (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.

1.13 “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).

1.14 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.15 “Designated Access Provider” means the entity or entities designated now or in the future by the Town to manage or co-manage Access Channel and facilities. The Town may be a Designated Access Provider.

1.16 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.17 “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.

1.18 “Effective Date” means January 1, 2024.

1.19 “Expanded Basic Service” means the Tier of optional Cable Services Video Programming services which is the level of Cable Service received by most Subscribers above Basic Service and does not include Premium Services.

1.20 “FCC” means the Federal Communications Commission or its lawful successor.

1.21 “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.

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

1.23 “Franchise Area” means the area within the jurisdictional boundaries of the Town of Johnstown, Colorado.

1.24 “Franchise Fee” means that fee payable to the Town described in subsection 3.1.

1.25 “Grantee” means TDS Broadband Service LLC, or its lawful successors, transferees or assignees, as transferees and assignees of this Franchise.

1.26 “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 Subscribers or Commercial Subscribers, including revenues derived from the provision of all Cable Services (including but not limited Premium Services and digital 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 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;
- Franchise Fees;

- 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”) 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 but not limited to Public, Educational and Governmental (PEG) Fees;
- launch fees and marketing co-op 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 the allocation methodology set forth in Section 3.5 of this Franchise. 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 as provided in Section 3.6.

1.27 “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.

1.28 “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, in accordance with Section 612 of the Cable Act (47 U.S.C. 532).

1.29 “Manager” means the Town Manager of the Town or designee.

1.30 “Person” means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.31 “Premium Service” means Video 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.

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

1.33 “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 and located within the Town: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, and easements. The term does not include any parkland, trails or open space.

1.34 “Standard Installation” means the connection of Cable Service to a Subscriber’s premises with a drop of one hundred twenty-five (125) feet or less from the Grantee’s existing distribution system.

1.35 “State” means the State of Colorado.

1.36 “Subscriber” means any Person who or which elects to subscribe to 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.

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

1.38 “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)).

1.39 “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)).

1.40 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.41 “Town” is the Town of Johnstown, Colorado, a home rule municipality and body politic and corporate under the laws of the State of Colorado.

1.42 “Town Council” means the Johnstown Town Council, or its successor, the governing body of Johnstown, Colorado.

1.43 “Two-Way” means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.44 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

1.45 “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(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*, Entitled “Franchise Fee Summary Report Form”.
- 2) *Exhibit B*, Entitled “Customer Service Standards”.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The Town hereby grants to Grantee a nonexclusive 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.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable Town ordinance existing as of the Effective Date, as defined in Section 1.18.

(C) Each 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 enacted pursuant thereto. The Charter 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, including additional compensation conditions for use of the Right-of-Way, should Grantee provide service other than Cable Service.

(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 ordinances and laws of the Town;

(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 or prohibit the provision by Grantee of Telecommunications Service, or the construction, operation or maintenance of Telecommunications facilities. 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.

2.2 Use of Right-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 Right-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 Right-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 Right-of-Way through joint trenching and other arrangements.

2.3 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 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 Town 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 reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to utilize the Rights-of-Way in order to provide Cable Services within the Town. If the Town grants such an additional franchise

or other similar lawful authorization that permits a new entrant to utilize the Rights-of-Way for Cable Services containing material terms and conditions that differ from Grantee's material obligations under this Franchise, or declines to require such franchise or other similar lawful authorization where it has the legal authority to do so, then the parties agree that the obligations in this Franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; complimentary services; insurance; build-out requirements; security instruments; Public, Education and Government Access Channel and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; 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.

(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 Town regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive Cable Services franchise or similar lawful authorization 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) 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 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 Cable 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 or similar lawful authorization issued to the other provider of Cable Services.

(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 under its franchise or similar lawful authorization with the Town.

(F) Notwithstanding any provision to the contrary, at any time that a wireline-based entity with facilities used to deliver Cable Services located in the Town's Rights of Way makes available for purchase by Subscribers Cable Services within the Franchise Area without a franchise or other similar lawful authorization that permits a new entrant to utilize the Rights of Way granted by the Town, then:

- (1) Grantee may negotiate with the Town to seek Franchise modifications as per Section 2.6(B)-(D) 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 and Grantee shall be deemed to have timely invoked the renewal process under Section 626 of the Cable Act (47 U.S.C. 546); 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 (47 U.S.C. 545).

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 Town'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; (3) agrees that it will not oppose the Town's intervening, to the extent that the Town is legally entitled to do so, in any legal or regulatory proceeding affecting the Cable System; and (4) 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 Right-of-Way, Grantee shall within sixty (60) days of the Effective Date of this agreement 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 of Grantee's Gross Revenues and the computation of the payment amount. Such report shall be substantially comparable in form and substance to Exhibit A attached hereto.

3.5 Allocation of Revenues From Bundled Packages of Service

(A) In accordance with GAAP, if Cable Services subject to the Franchise Fee required by this Franchise are provided to Subscribers in conjunction with non-Cable Services and the total cost of the bundle reflects a discount from the aggregate retail prices of the services contained therein, the Franchise Fee shall be applied to the retail price of the Cable Services in the bundle reduced by no more than a proportionate share of the overall discount. The allocations shall be done for each separate bundled package of Cable Services and non-Cable Services offered to Subscribers. To the extent a bundled package, or an element in a bundled package, is changed in a way that alters the allocation methodology described herein, Grantee shall provide written notice to the Town of the new methodology within ninety (90) days of such change.

(B) By way of illustrative example of the formula described above, if Cable Service A is sold separately at a price of \$40 per month, Non-Cable Service B is sold separately at a price of \$40 per month, and Non-Cable Service C is sold separately at a price of \$40 per month, but the three services when purchased together are sold for a single aggregate price of \$100 per month, the amount of the \$100 per month collected by Grantee from each Subscriber purchasing the bundle which is to be included under Gross Revenues under this Franchise (i.e., the amount attributable to Cable Service) shall be \$33.33 per month. As a second example, if Cable Service A is sold separately at a price of \$50 per month, Non-Cable Service B is sold separately at a price of \$63 per month, and Non-Cable Service C is sold separately at a price of \$74 per month, but the three services when purchased together are sold for a single aggregate price of \$150 per month, the amount of the \$150 per month collected by Grantee from each Subscriber purchasing the

bundle which is to be included under Gross Revenues under this Franchise (i.e., the amount attributable to Cable Service) shall be \$40.11 per month.

(C) Grantee reserves the right to change the allocation methodologies set forth in Subsection 3.5(A) 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 will explain and document the required changes to the Town as part of any audit or review of franchise fee payments, and any such changes shall be subject to 3.5(D) below.

(D) 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.

3.6 Audit

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 1.26 and Section 3.5, 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 Subscriber 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, unless the Grantee has been notified of an audit/franchise fee review, in which case all records must be retained until the audit/review is complete.

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 on the underpayment at the prime rate as listed in the Wall Street Journal, 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 pay to the Town compensation equivalent to the compensation paid to the Town by other similarly situated users of the Town 's Right-of-Way for Grantee's use of the Town's Right-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues.

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 lawfully permitted to collect an amount in excess of five percent (5%) of Gross Revenues, then the is Franchise may be amended unilaterally by the Town to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the Town hereunder provided that Grantee has received at least ninety (90) days prior written notice from the Town of such amendment, so long as all entities providing Cable Service in the Town pursuant to a franchise or similar lawful authorization granted by the Town are paying the same Franchise Fee amount.

3.11 Additional Commitments

The Access Contribution pursuant to Section 9.2, as well as 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 customer service standards and build out obligations shall not be offset against Franchise Fees. Furthermore, the Grantor 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.

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 twenty-one (21) days of the Town's advance written 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 any 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 its sole discretion, including without limitation, the Colorado Communications and Utility Alliance.

(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. 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.

4.4 Publication of Services, Rates and Charges

(A) Throughout the term of this Franchise, Grantee shall maintain online a complete list of Services (including Channel line-ups) and a schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to maintain online a schedule of 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, 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 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.

4.8 Performance Evaluations

(A) The Town 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 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 maintained in the ordinary course of business as the Town may reasonably require to perform the evaluation.

4.9 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 legislation or final court order.

(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 nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the Town without regard to the neighborhood or income level of the Subscriber.

4.10 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, power outages, telephone network outages, local and national declared emergencies, including health emergencies, 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.

(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 the 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 two million dollars (\$2,000,000.00) per occurrence and four million dollars (\$4,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 04 13 or its equivalent and include severability of interests. Such insurance shall name the Town, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. 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 combined single limits of two million dollars (\$2,000,000.00) each occurrence 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. The policy shall contain a severability of interests provision.

(3) Employer's Liability: Two million dollars (\$2,000,000.00).

(4) Workers Compensation Insurance: In accordance with State law requirements.

(5) Excess Liability or Umbrella Coverage: Five million dollars (\$5,000,000.00).

(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.

(C) The Town shall be designated as an additional insured or endorsed on all Grantee's insurance policies. Grantee's insurance coverage shall be primary insurance with respect to the Town, its officers, officials, employees and agents. Any insurance maintained by the Town shall be in excess of TDS's insurance and shall not contribute to it.

5.3 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 twenty-five thousand dollars (\$25,000.00).

(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 twenty-five thousand dollars (\$25,000) until the allegations of the uncured breach have been resolved.

(C) As an alternative to the provision of a Letter of Credit to the Town as set forth in Subsections 5.3 (A) and (B) above, if the Town is a member of CCUA, and if Grantee provides a Letter of Credit to CCUA in an amount agreed to between Grantee and CCUA for the benefit of its members, in order to collectively address claims reference in 5.3 (A), Grantee shall not be required to provide a separate Letter of Credit to the Town.

(D) 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.

(E) 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.

(F) 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 in its sole discretion, acting by ordinance. 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 B. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise or with Applicable Law.

6.2 Subscriber Privacy

The Grantee shall comply with all applicable federal, state, and local privacy laws, including Section 631 of the Cable Act (47 U.S.C. 551) and regulations adopted pursuant thereto.

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 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. BOOKS 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 the Town with access to such copies within thirty (30) days of the transmittal of such request. Such access may be provided by electronic means at the discretion of Grantee. If Grantee elects to provide access to physical copies of requested books and records and 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 to the Town electronically 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 thirty (30) days' written request, made no more than once every twelve (12) months, 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; and

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

(3) 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 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);

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

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

(D) A copy or hyperlink of the most recent annual financial report required by law to be filed by the Grantee with the SEC or other federal or state governmental 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 Service Interruption Report

(A) Grantee shall keep accurate and comprehensive records of any escalated Subscriber complaints received by Grantee regarding the operation of the Cable System in the Town, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These records shall maintained for three (3) years and be made available to the Town upon request.

(B) Within thirty (30) days of a written request, where the Town has reason to believe there is an ongoing problem of widespread or repeated service interruptions or other service call issues, Grantee shall provide the Town a report containing the following information from the preceding quarter:

(1) A summary of service calls, identifying the number and nature of the requests and their disposition. For the purposes of this Section, "service calls" means an in person visit to a Subscriber premise or some other part of the Cable System to investigate, test, repair or evaluate any concern with the quality of the Cable Services provided by Grantee, in response to a report or request of any Person If Grantee is not able to provide such service call information reflecting requests within the Town, it may provide the information on a regional basis, together with a description of the complete boundaries of the region.

(2) A log of all service interruptions affecting three or more subscribers lasting more than 24 hours during the previous quarter.

7.7 Failure to Report

The failure or neglect of Grantee to comply with the requirements of this Section 7 (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 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.

8.2 Elimination of Broad Programming Categories

(A) Except where the elimination of a category of Video Programming is not within Grantee's control, Grantee shall not completely eliminate or so limit as to effectively completely eliminate any of the broad categories of programming enumerated in Section 8.1 without first requesting the written consent of the Town, such consent not to be unreasonably withheld.

(B) In the event that the Town makes an adverse determination with respect to a request to eliminate any of the broad categories of programming enumerated in Section 8.1, such determination shall be in writing, along with a concise statement of the reasons therefore. In the event the Town fails to make a determination within sixty (60) days after a receipt from Grantee, Grantee shall have the right to eliminate the broad category of programming as requested.

(C) For purposes of this Section 8.2, the elimination of a broad category of programming will be deemed not to be within Grantee's control where it is occasioned by the interruption of cessation of a Channel's operations due to a technical or other equipment failure not directly caused by Grantee or the refusal of the vendor of a Channel to extend or renew an expiring agreement for the carriage of such Channel.

(D) 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 and they are in compliance with Grantee's terms of services, residential service agreement or other such

provisions. 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 Designated Access Providers

The Town shall have the sole and exclusive responsibility for identifying the Designated Access Provider, including itself for Access purposes, to control and manage the use of Access Facilities provided by Grantee under this Franchise. As used in this Section, such "Access Facilities" includes the services, facilities, equipment, technical components and/or financial support provided under this Franchise, which is used or useable by and for Public Access, Educational Access, and Government Access ("PEG" or "PEG Access").

9.2 Support for Access Costs

In recognition of the Grantor's demonstration of its community needs and interests related to the startup of an online Access Programming operation, Grantee agrees to provide an Access Contribution of twenty thousand (\$20,000) dollars ("Access Contribution") to the Grantor. One-third of the first ten thousand (\$10,000) dollars of the Access Contribution shall be delivered within one hundred twenty (120) days of written request made after January 1, 2024. The remaining two-thirds of the first ten thousand (\$10,000) dollars shall be made in equal installments and due no later than the anniversary date of the first payment. The second ten thousand (\$10,000) dollars of the Access Contribution may be requested by Grantor on or after three (3) years from the date of the request for the first Access Contribution, and shall be delivered in three (3) equal installments, consistent with the manner in which the first ten thousand (\$10,000) Access Contribution was

made. Grantee shall be entitled to recover the Grant in any manner consistent with Applicable Law.

9.3 Access Support Not Franchise Fees

Grantee agrees that support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to the Town. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise and federal law. Upon sixty (60) days' advance written request by Grantee, made no more than once per calendar year, the Town shall provide Grantee with documentation showing expenditures for capital costs related to PEG Access during the previous fiscal year.

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

Upon receipt of at least one week's advance written notice, Grantee will attend and participate in meetings of the Town 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 and comply with all federal, State, and local laws and regulations.

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 Town construction codes, including, without limitation, the International Building Code and other building codes, the International Fire Code, the International 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 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. Grantee will maintain membership in good standing with the organization designated by the State to coordinate underground equipment locations and installations.

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

Except in the case of an emergency involving public safety or an outage, 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 the general ordinances, resolutions, regulations or rules of the Town or applicable State or federal law require all above-ground utilities to relocate facilities underground, 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 all 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 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. Grantee shall not erect or authorize or permit others to erect any poles within the streets or Rights-of-Way of the Town for operation of its Cable System.

(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.

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 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:

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.

Feeder lines shall be buried at a minimum depth of twenty-four (24) inches.

Trunk lines shall be buried at a minimum depth of twenty-four (24) inches.

Fiber Optic cable shall be buried at a minimum depth of twenty-four (24) 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, 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 Town's Customer Service Standards, as the same may be amended from time to time by the Town Council acting by ordinance or resolution.

10.20 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 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 thirty (30) 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 Reimbursement of Grantee Costs

Grantee specifically reserves any rights it may have under Applicable Law for reimbursement of costs related to undergrounding or relocation of the Cable System and nothing herein shall be construed as a waiver of such rights.

10.24 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 may require that the costs associated with the removal or relocation be paid by the benefited party, and Grantee may require a reasonable deposit of the estimated payment in advance.

10.25 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.

10.26 Reservation of Town 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.

10.27 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.

10.28 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.

10.29 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.

10.30 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 an HFC 860 MHz Cable System. and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall be capable of delivering no less than two hundred (200) 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 are retransmitted in those same formats.

(C) 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.

(D) 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.

11.2 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.

11.3 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.

11.4 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), and State 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.

11.5 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 Subscribers 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 Franchise Area for a period of at least one (1) year, and individual Subscriber complaints

from the Franchise Area for a period of at least three (3) years, and make such information available to the Grantor at Grantee's office 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.

11.6 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. Events that may lead to a requirement for additional testing include three (3) or more citizen and/or Grantor complaints related to the reliability or technical quality of the Cable System and/or Cable Service over a ninety (90) day period, two (2) or more outages affecting at least four (4) Subscribers over a thirty (30) day period, or comparable issues impacting reliability and technical quality issues. 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, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

12.1 Service Availability

(A) In General. Except as otherwise provided herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the Town where such Person meets the requirement for Standard Installation. 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.

- (2) At a non-discriminatory installation charge for a Standard Installation, with additional charges for installations other than 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 thirty (30) 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 thirty (30) 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 thirty (30). 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.

12.2 Connection of Public Facilities

(A) Grantee shall, at no cost to the Town, provide one outlet of Expanded Basic Service to all Town owned and occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are already served or the interconnection point on these facilities is located within 150 feet from the distribution point on the Cable System, from which Cable Service can be provided to these facilities. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of Town buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (e.g., golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Expanded Basic Service provided in accordance with this subsection may be used to distribute Expanded Basic Service throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets of Expanded Basic Service shall not be located in public waiting areas or used to entertain the public nor shall they be used in a way that might violate copyright laws. The outlets may only be used

for lawful purposes. The Expanded Basic Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld. Grantee is not required to provide free reception equipment for any complimentary account provided pursuant to this subsection. Grantee does not waive any rights under applicable law regarding complimentary service. Should Grantee elect to begin offsetting the value of complimentary service against Franchise Fees, Grantee shall first provide Town with ninety (90) days' prior written notice.

(B) The Town acknowledges that the provision of one outlet of Expanded Basic Service to all Town owned and occupied buildings that are not schools and public libraries may be terminated by Grantee if a competitive cable operator with a franchise granted by the Town does not have a comparable franchise obligation. Additionally, Grantee reserves whatever rights it has under Applicable Law to deduct the value of the complimentary Expanded Basic Service it provides to Town owned and occupied buildings from its payment of Franchise Fees. The Town likewise reserves all rights it has under Applicable Law to assert the maximum calculation of Gross Revenues permitted under Section 1.26 of this Franchise and the manner in which the value of the complimentary Expanded Basic Service is calculated. Subject to Applicable Law, should Grantee elect to offset complimentary Expanded Basic Services provided to Town owned and occupied buildings against Franchise Fees, Grantee shall first provide the Town with ninety (90) days' prior written notice. To the extent that the parties are engaged in good faith negotiations to determine the amount of an offset, if any, and such negotiations extend past ninety (90) days, no such offset shall be taken until the parties reach agreement or alternatively, until the matter is resolved through other legal means.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Procedure for Remediating 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 may seek any remedy available to it pursuant to Applicable Law, including revocation of the Franchise.

13.2 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.

13.3 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.

13.4 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.

13.5 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 Grantees' obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

13.6 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.

13.7 What Constitutes Abandonment

The Town shall be entitled to exercise its options in subsection 13.6 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.

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 (47 U.S.C. 546).

(C) Should the Franchise expire without a mutually agreed upon renewed Franchise 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 until final Town action is taken to renew or terminate the Franchise pursuant to this Franchise and Applicable Law.

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 or 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 and/or by Applicable Law. The Town and the Grantee may by mutual agreement, at any time, extend the one hundred twenty (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 will 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 Reservation of Rights

Notwithstanding any other provision of this Franchise, Grantee reserves the right to challenge provisions of any ordinance, rule, regulation, or other enactment of the Town that conflicts with its contractual rights under this Franchise, either now or in the future.

16.3 Notices

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

TDS BROADBAND SERVICE, LLC
525 Junction Road
Madison, Wisconsin 53717
Attn: Legal Department

The Town 's address shall be:

Town of Johnstown
P.O. Box 609
450 S. Parish Avenue
Johnstown, CO 80534
Attn: Town Manager

16.4 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.

16.5 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.

16.6 Binding Effect

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

16.7 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.

16.8 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.

16.9 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.

16.10 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.

IN WITNESS WHEREOF, this Franchise is signed in the name of the Johnstown, Colorado this ___ day of _____, 202_.

ATTEST:

JOHNSTOWN, COLORADO:

Town Clerk

Mayor Troy Mellon

Accepted and approved this _____ day of _____, 202_.

TDS BROADBAND SERVICE LLC

DocuSigned by:
By: Andrew Petersen 12/21/2023 | 3:48 PM CST
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Its: Senior Vice President – Corporate Affairs

EXHIBIT A:
FRANCHISE FEE SUMMARY REPORT FORM

CITY OF JOHNSTOWN, COLORADO

Summary of Gross Revenue Calculation Subject to Franchise Fees

Period From: _____ **to** _____

REVENUE LINE ITEMS	MONTH	MONTH	MONTH	TOTAL
Basic Cable Service				
Installation Charges				
Disconnection Charges				
Bulk Revenue				
Expanded Basic Service				
Premium Service				
Other Cable Service				
Pay per View				
Guide Revenue				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Digital Services				
Inside Wiring				
Other Revenue				
Equipment Rental				
Processing Fees				
Late Fees				
FCC Regulatory Fees				
Broadcast Channel Fees				
Regional Sports Channel Fees				
TOTAL Gross Revenues				
From all Cable Services				
Fee Calculations (5%)				
FRANCHISE FEE OWED				

Nothing in this Report Form is intended to modify the definition of Gross Revenues in Section 1.25 of this Franchise.

EXHIBIT B

CUSTOMER SERVICE STANDARDS

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 Johnstown.

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).

"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.

"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 Johnstown, Colorado.

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

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

III. CUSTOMER SERVICE

A. Courtesy

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

B. Accessibility

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

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

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

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

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

4. If a customer service telephone call is answered with a recorded message providing the customer with various menu options to address the customer’s concern, the recorded message must provide the customer the option to connect to and speak with a CSR within sixty (60) seconds of the commencement of the recording. During Normal Business Hours, a Cable Operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to technical service/repair and billing/service inquiry lines are answered by a customer service representative within thirty (30) seconds or less from the time a customer chooses a menu option to speak directly with a CSR or chooses a menu option that pursuant to the automated voice message, leads to a direct connection with a CSR. Under normal operating conditions, this thirty (30) second telephone answer time requirement standard shall be met no less than ninety (90) percent of the time measured quarterly.

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

C. Responsiveness

1. Guaranteed Seven-Day Residential Installation

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

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

2. Residential Installation and Service Appointments

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

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

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

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

3. Residential Service Interruptions

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

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

c. Records of Complaints.

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

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

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

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

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

4. TV Reception

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

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

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

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

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

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

5. Problem Resolution

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

6. Billing, Credits, and Refunds

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

b. A Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the customer's account. The administrative fee must reflect the average costs incurred by

the Cable Operator in attempting to collect the past due payment in accordance with applicable law. If the customer's service bill is not paid within forty-five (45) days of the beginning date of the applicable service period, the Cable Operator may perform a "soft" disconnect of the customer's service. If a customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the customer's service, provided it has provided two (2) weeks notice to the customer that such disconnection may result.

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

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

7. Treatment of Property

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

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

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

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

i. For pedestal installation or similar major construction, seven (7) days.

ii. For routine maintenance, such as adding or dropping service, tree trimming and the like, reasonable notice given the circumstances. Unless a

Franchise Agreement has a different requirement, reasonable notice shall require, at a minimum, prior notice to a property owner or tenant, before entry is made onto that person's property.

iii. For emergency work a Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Door hangars must describe the issue and provide contact information where the property owner or tenant can receive more information about the emergency work.

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

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

D. Services for Customers with Disabilities

1. For any customer with a disability, a Cable Operator shall deliver and pick up equipment at customers' homes at no charge unless the malfunction was caused by the actions of the customer. In the case of malfunctioning equipment, the technician shall provide replacement equipment, hook it up and ensure that it is working properly, and shall return the defective equipment to the Cable Operator.

2. A Cable Operator shall provide either TTY, TDD, TYY, VRS service or other similar service that are in compliance with the Americans With Disabilities Act and other applicable law, with trained operators who can provide every type of assistance rendered by the Cable Operator's customer service representatives for any hearing-impaired customer at no charge.

3. A Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Section III.D.4) customers.

4. Any customer with a disability may request the special services described above by providing a Cable Operator with a letter from the customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

E. Cable Services Information

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

- a. Products and services offered by the Cable Operator, including its channel lineup;
- b. The Cable Operator's complete range of service options and the prices for these services;

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

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

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

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

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

5. A Cable Operator shall provide customers with written notification of any change in rates for nondiscretionary cable services, and for service tier changes that result in a deletion of programming from a customer's service tier, at least thirty (30) days before the effective date of change. For purposes of this section, "nondiscretionary" means the subscribed tier and any other Cable Services that a customer has subscribed to, at the time the change in rates are announced by the Cable Operator.

6. All officers, agents, and employees of the Cable Operator or its contractors or subcontractors who are in personal contact with customers and/or when working on public property, shall wear on their outer clothing identification cards bearing their name and photograph and identifying them as representatives of the Cable Operator. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually identified to the public as working for the Cable Operator. Whenever a Cable Operator work crew is in personal contact with customers or public employees, a supervisor must be able to communicate clearly with the customer or public employee. Every vehicle of a subcontractor or

contractor shall be labeled with the name of the contractor and further identified as contracting or subcontracting for the Cable Operator.

7. Each CSR, technician or employee of the Cable Operator in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed. A written estimate of the charges shall be provided to the customer before the actual work is performed.

F. Customer Privacy

1. Cable Customer Privacy. In addition to complying with the requirements in this subsection, a Cable Operator shall fully comply with all obligations under 47 U.S.C. Section 551.

2. Collection and Use of Personally Identifiable Information.

a. 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.

b. 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.

c. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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. A 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 (\$50,000) 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; and/or

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; and/or

c. Reverse any decision of the Cable Operator in the matter and/or

d. Grant a specific solution as determined by the Franchising Authority; and/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.



Town of Johnstown

TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS

AGENDA DATE: January 3, 2024

SUBJECT: Resolution Number 2024-01 A Resolution Designating the Public Place for Posting Notices Pursuant to C.R.S. Section 24-6-402(2)(c)

ACTION PROPOSED: Consider Resolution No. 2024-01

ATTACHMENTS: 1. Resolution 2024-01

PRESENTED BY: Hannah Hill, Town Clerk


AGENDA ITEM DESCRIPTION: Colorado Revised Statutes (C.R.S) 24-6-402(c) (Meetings-Open to Public) states in part: Any meeting at which the adoption of any proposed policy, position, resolution, regulation or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to holding the meeting. The public place for posting such notice shall be designated annually at the local public body’s first regular meeting of each calendar year. The Town website at Johnstown.colorado.gov has been designated for posting notices.

LEGAL ADVICE:
The resolution was drafted by the Town Attorney.

FINANCIAL ADVICE: N/A

RECOMMENDED ACTION: Approve Resolution No. 2024-01 designating the Public Place for Posting Notices.

Reviewed and Approved for Presentation,



Town Manager

The Community That Cares

www.TownofJohnstown.com

**TOWN OF JOHNSTOWN, COLORADO
RESOLUTION NO. 2024-01**

**RESOLUTION DESIGNATING THE PUBLIC PLACES FOR
POSTING NOTICES PURSUANT TO C.R.S. § 24-6-402(2)(c)**

WHEREAS, the Town of Johnstown, Colorado (the “Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

WHEREAS, the Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, Section 24-6-402(2)(c), C.R.S., requires that the Town Council annually, at its first regular meeting of the calendar year, designate the public places for posting notices of meetings; and

WHEREAS, Section 24-6-402(2)(c), C.R.S., further requires that the notices be published at least twenty-four (24) hours prior to a meeting; and

WHEREAS, consistent with state law, the Town Council hereby desires to designate the Town’s website as the location to post notices of Town Council meetings.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT the following public places are designated for posting notices of Town Council meetings:

- 1. The Town’s website: johnstown.colorado.gov.

PASSED, SIGNED, APPROVED, AND ADOPTED this ___ day of _____, 2024.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor



Town of Johnstown

TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS

AGENDA DATE: January 4, 2023

SUBJECT: Resolution 2024-02 Adopting the 2023 Three Mile Plan

ACTION PROPOSED: Consideration of Resolution 2023-02 Updating and Adopting the 2023 Three Mile Plan

ATTACHMENTS:

1. Resolution 2024-02
2. 2024 Three Mile Plan & Future Land Use Plan

PRESENTED BY: Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

Colorado Revised Statutes require an annual approval of a municipal Three Mile Plan, for the purposes of evaluating and considering annexations. Johnstown’s 2024 Three Mile Plan is a simple description that references the current Johnstown Area Comprehensive Plan and other Town plans as providing that policy guidance.

LEGAL ADVICE:

The Town Attorney drafted the Resolution.

FINANCIAL ADVICE:

NA

RECOMMENDED ACTION: Approve Resolution No. 2024-02, accepting 2024 Three Mile Plan.

Reviewed and Approved for Presentation,

Town Manager

The Community That Cares

johnstown.colorado.gov

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO 80534 | F: 970.587.0141

**TOWN OF JOHNSTOWN, COLORADO
RESOLUTION NO. 2024-02**

ADOPTING THE 2024 THREE MILE PLAN

WHEREAS, the Town of Johnstown, Colorado (the “Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

WHEREAS, the Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, Section 31-12-105(1)(e), C.R.S., provides that, for purposes of annexation, each municipality shall prepare a plan for the geographic area within three miles in any direction from the municipality’s borders generally describing the proposed location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the municipality and the proposed land uses for the area (“Three-Mile Plan”); and

WHEREAS, to comply with the statutory directive, the Town Council desires to adopt the 2024 Three-Mile Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT the 2024 Three-Mile Plan, attached hereto and incorporated herein by reference as Exhibit A, is hereby approved and adopted.

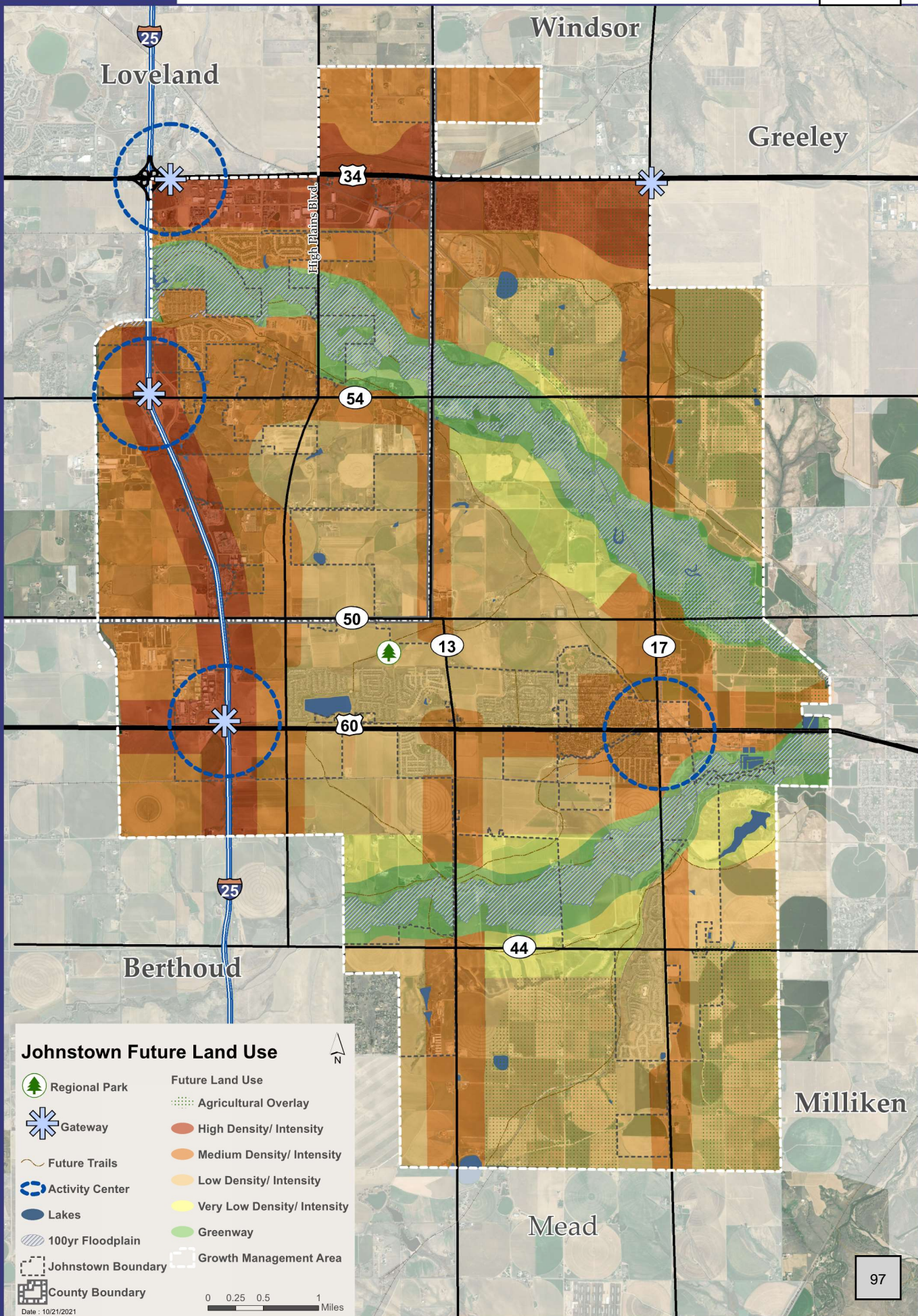
PASSED, SIGNED, APPROVED, AND ADOPTED THIS ____ day of January, 2024.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor





Town of Johnstown

TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS

AGENDA DATE: January 3, 2024

SUBJECT: Resolution 2024-03, Adopting the Town of Johnstown Strategic Plan

ATTACHMENTS: 1. Resolution 2024-03
2. Strategic Plan

PRESENTED BY: Mitzi McCoy, Deputy Town Manager

AGENDA ITEM DESCRIPTION:

Attached for your review and consideration is Resolution 2024-03, Adopting the Town of Johnstown Strategic Plan. The purpose of this resolution is to create an official record of the adoption of the Town of Johnstown Strategic Plan and maintain consistency with our policies. The plan was previously adopted by the Town Council at the Town Council Meeting on December 18, 2023.

LEGAL ADVICE:

The Town Attorney provided the resolution presented for consideration.

FINANCIAL ADVICE:

NA

RECOMMENDED ACTION: Approve Resolution 2024-03.

Reviewed and Approved for Presentation,

Town Manager

The Community That Cares

johnstown.colorado.gov

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO 80534 | F: 970.587.0141

**TOWN OF JOHNSTOWN, COLORADO
RESOLUTION NO. 2024-03**

**RESOLUTION ADOPTING
TOWN OF JOHSTOWN STRATEGIC PLAN**

WHEREAS, the Town of Johnstown, Colorado (“Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

WHEREAS, the Town Council is the governing body of the Town and is vested with authority to administer the affairs of the Town; and

WHEREAS, on December 18, 2023, Mitzi McCoy, the Deputy Town Manager, presented the Town of Johnstown Strategic Plan to the Town Council; and

WHEREAS, the Town of Johnstown Strategic Plan would serve as a comprehensive roadmap to enable the Town to work toward the community’s goals, improve Town services and enhance the quality of life for the Town’s residents; and

WHEREAS, based on a review of the Town of Johnstown Strategic Plan, Ms. McCoy’s presentation and the recommendation of Town staff, the Town Council desires to adopt the Town of Johnstown Strategic Plan; and

WHEREAS, the Town Council finds that this Resolution is in the best interests of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT:

Section 1. The Town Council hereby adopts the Town of Johnstown Strategic Plan attached hereto and incorporated herein by reference as Exhibit A.

Section 2. This Resolution shall be effective upon adoption.

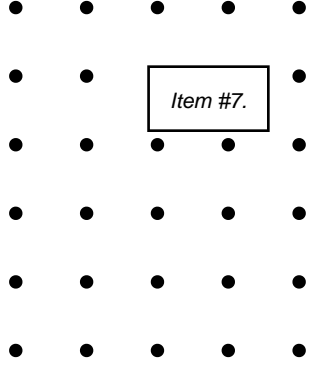
PASSED, SIGNED, APPROVED, AND ADOPTED this ___ day of _____, 2024.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor



TOWN OF JOHNSTOWN

STRATEGIC PLAN

2023 - 2032



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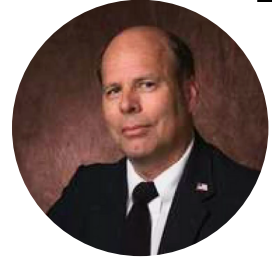
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MESSAGE FROM THE MAYOR



This ten-year Strategic Plan serves as a comprehensive roadmap, intended to accurately mirror the priorities of Johnstown residents and local businesses. Although the strategic actions primarily rest with the Municipality, their success hinges on forging meaningful partnerships with organizations in the community, advisory committees, and an unwavering commitment to working together for the betterment of the community.

We are grateful to the residents who took the time to participate in our community survey and outreach events, and we appreciate the insightful conversations our team had with stakeholders. The collaborative essence of this Strategic Plan is a culmination of perspectives shared by residents, businesses, community groups, staff, management, and Council members who actively engaged in the process.

We would like to thank our residents, businesses, community members, committees, and staff for your active engagement in, and commitment to, the development of this Strategic Plan. Your passion for our community and its future is genuinely inspiring, and your unwavering commitment to preserving what is invaluable is truly impressive.

We invite you to explore this plan, hoping that you connect with it, and encourage you to join us in the upcoming endeavors. While we may face challenges on the journey, the satisfaction derived from the progress will undoubtedly be rewarding.



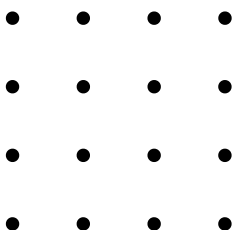
Creating Positive Outcomes

A well-executed strategic plan serves as a roadmap that enables us to work toward our goals, improve services, and enhance the quality of life for our constituents.



The purpose of a strategic plan:

- Create a Shared Vision among stakeholders within our community and organization: This consensus is critical for alignment and moving forward effectively.
- Increase Efficiency and Effectiveness: By setting clear goals and strategies, we can allocate resources more efficiently and achieve better outcomes.
- Ensure Common Goals: Engaging both internal and external stakeholders ensures that a wide range of perspectives and needs are considered, leading to a more comprehensive and robust plan.
- Identifies Improvement Opportunities: Strategic planning involves a thorough examination of current practices, identifying strengths and weaknesses, and uncovering opportunities for improvement. This data-driven approach helps us make informed decisions.
- Define Identity and Services: Through strategic planning, we can define our identity by clarifying our mission, vision, and values. We can also specify the services we intend to provide.
- Service Delivery: Determining how best to provide services is a critical aspect of strategic planning. This may involve evaluating different service delivery models, considering technology advancements, and optimizing resource allocation.



Mission

Enhancing the quality of life of our residents, businesses, and visitors through community focused leadership.



Vision

Johnstown will be/will be known for connecting community with opportunity.

Guiding Principals

Service Excellence

We put our community at the center of everything we do. We are dedicated to delivering the best outcomes for our community.

Teamwork

We have a “One-Town, One Team” approach that promotes collaboration.

Communication

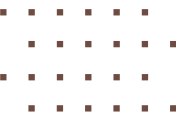
We invite participation and exchange reliable information.

Integrity

We do the right thing and hold ourselves accountable.

Innovation

We foster creativity that challenges constraints and drives progress.



Strategic Pillars

J
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Organizational Excellence
& Public Trust



Safe & Welcoming
Community



Healthy & Resilient
Economy



Natural & Built
Environment



Quality Infrastructure &
Facilities



Organizational Excellence & Public Trust

We support and empower a team that builds public confidence through transparency, integrity, service innovation, and fiscal responsibility. Our team ensures our values are aligned with continuing to move the organization in a positive direction as we work together with the community.

Goal: Strengthen public trust and confidence

Strategies:

- Provide value to our customers by balancing efficiency and cost management with innovation and customer convenience.
- Seek out customer service enhancement opportunities.
- Maintain Records Management program that is compliant and sustainable.
- Maintain financial sustainability.
- Pursue and maintain accreditations and certifications.
- Strengthen election process through development and implementation of processes and software.

Goal: Engage, inform and involve the community.

Strategies:

- Increase positive engagement and interaction with members of the public.
- Identify and develop a consistent brand for the Town.
- Continue to develop and expand communication programming.
- Work to improve ease of use and accessibility of material.

Goal: Be an employer of choice that attracts dedicated team members, passionate about Johnstown.

Strategies:

- Invest in an organizational culture that values development, creative problem solving, and service.
- Improve organizational capabilities and effectiveness through leadership, professional development, organizational literacy, and employee engagement.
- Develop and implement recruiting strategies, increasing diversity, and succession planning.



Safe & Welcoming Community

The Town is committed to creating a safe, friendly, and connected experience for residents and visitors. We value the role that Johnstown's unique charm and character play in our community.

Goal: Provide and maintain public safety services and awareness in our community.

Strategies:

- Deliver the highest level of police services to ensure that residents feel safe and secure.
- Provide comprehensive municipal safety services.
- Collaborate with regional partners in response and education.
- Engage the community in safety preparedness.
- Develop resiliency plans and establish a local emergency management program for continuity of operations.

Goal: Partner in creating more community based, community service, and action opportunities.

Strategies:

- Provide volunteer resources to the community.
- Work with regional partners to develop or implement programming.
- Develop a needs study for community services such as arts, culture, recreation, and educational opportunities.

Goal: Create arts and culture opportunities that connect the community.

Strategies:

- Create community events.
- Promote community-wide art initiatives.
- Honor our agricultural heritage and work to celebrate Johnstown's history.

Goal: Grow an open, inclusive environment where all residents have the opportunity to flourish.

Strategies:

- Conduct an independent DEI study to identify growth areas.
- Implement DEI growth suggestions.
- Provide reasonable accommodations to non-english speaking residents.



Healthy & Resilient Economy

We are committed to a sustainable and growing business community, skilled workforce, and regional cooperation. Our healthy economy provides residents and visitors access to goods, services, and jobs.

Goal: Invest in the development of a vibrant and interconnected downtown.

Strategies:

- Create a visitor experience.
- Develop a Downtown Master Plan.
- Complete a financial improvement study for the the downtown to determine financing mechanisms that can support the vision of the downtown.
- Assist with the creation of an improvement district.
- Drive development to expand the downtown corridor.

Goal: Drive projects and initiatives that promote Johnstown as a premier destination for business.

Strategies:

- Maintain a strong business retention and expansion program.
- Develop a business attraction strategy that focuses on attracting quality employers to the area.
- Identify and drive future development areas that can provide opportunities for employment, flex, and industrial space.
- Develop and implement marketing strategies that encourage the best uses and users of activity areas including commercial and employment centers.

Goal: Cultivate local and regional partnerships that ensure the long term success and growth of Northern Colorado.

Strategies:

- Partner with regional entities that support local development.
- Focus on economic development by maintaining partnerships with local, regional, and state partners.



Healthy & Resilient Economy

We are committed to a sustainable and growing business community, skilled workforce, and regional cooperation. Our healthy economy provides residents and visitors access to goods, services, and jobs.

Goal: Support the local labor market and work with partners to grow diverse employment opportunities.

Strategies:

- Cultivate partnerships with school districts and county agencies to develop a local talent force.
- Connect Johnstown employers with local talent force.
- Create strong partnerships with post-secondary institutions to create local learning opportunities.



Natural & Built Environment

We create amazing community spaces by balancing and blending Johnstown's agricultural heritage, natural environment, and innovative development.

Goal: Invest in, enhance, and conserve our parks, open spaces, agricultural areas, and natural environment.

Strategies:

- Acquire and dedicate land for open space and trails.
- Prioritize, expand, and maintain park and recreational amenities.
- Development of new parks and gathering spaces that serve the entire Johnstown community.
- Develop programs and partnerships that prioritize sustainability.

Goal: Expect and encourage community centered design.

Strategies:

- Create and maintain neighborhoods and activity centers with high standards of site and architectural design.
- Create a cohesive community through connectivity.
- Implement the Town-wide wayfinding sign plan.
- Guide growth in the community through appropriate annexation, zoning, planning, and land use development.

Goal: Support a broad range of housing options.

Strategies:

- Perform a Housing Needs Study and create policy as necessary.
- Preserve, stabilize, and enhance all neighborhoods.
- Determine different funding methods for affordable and attainable housing.



Quality Infrastructure & Facilities

We provide essential services to the community by investing in, operating, and maintaining, quality facilities and infrastructure.

Goal: Establish and maintain levels of service.

Strategies:

- Perform a condition assessment of assets and infrastructure.
- Collaborate with Council to identify programs and desired level of service.
- Meet or exceed all State and Federal standards for water, sewer, and storm water.

Goal: Ensure future viability of infrastructure and facilities.

Strategies:






- Create, update, and administer infrastructure plans and studies that prioritize resiliency and stability.
- Dedicate resources to build and deploy a comprehensive fiber network that will serve the entire community.
- Expect high-quality infrastructure construction.

Goal: Repair and maintain existing infrastructure, facilities, and equipment.






Strategies:

- Develop and implement Maintenance Programs to improve and extend the life of existing public assets.
- Implement replacement programs.
- Improve accuracy of Mapping System to assist with maintaining and replacing infrastructure.






Short-Term (Up to 3 Yrs)

					Strategy
					Identify and develop a consistent brand for the Town.
					Work to develop ease of use and accessibility of material.
					Strengthen election process through development and implementation of processes and software.
					Develop and implement recruiting and retention strategies, increasing diversity, and succession planning.
					Acquire and dedicate land for open space and trails.
					Prioritize, expand and maintain park and recreational amenities.
					Perform a Housing Needs Study and create policy as necessary.
					Determine different funding methods for affordable and attainable housing.
					Develop a Downtown Master Plan.
					Complete a financial improvement study for the downtown to determine financing mechanisms that can support the vision of downtown.
					Assist with the creation of such improvement district.
					Work with regional partners to develop or implement programming.
					Develop a needs study for community services such as arts, culture, recreation and educational opportunities.
					Promote community wide art initiatives.
					Conduct an independent DEI study to identify growth areas.
					Implement DEI growth suggestions.
					Provide reasonable accommodations to non-english speaking residents.
					Perform a condition assessment of assets and infrastructure.
					Dedicate resources to build and deploy a comprehensive fiber network that will serve the entire community.
					Develop and implement Maintenance Programs to improve and extend the life of existing public assets.






Mid-Term (4 - 6 Yrs)

					Strategy
					Development of new parks and gathering spaces that serve the entire Johnstown community.
					Develop programs and partnerships that prioritize sustainability.
					Develop a business attraction strategy that focuses on attracting quality employers to the area.
					Identify and drive future development areas that can provide opportunities for employment, flex, and industrial space.
					Develop and implement marketing strategies that encourage the best uses and users of activity areas including commercial and industrial centers.
					Collaborate with regional partners in response and education.
					Provide volunteer resources to the community.
					Implement Replacement Programs.

Long-Term (7+ Yrs)

					Strategy
					Create a cohesive community through connectivity.
					Implement the Town-wide wayfinding sign plan.
					Create strong partnerships with post-secondary institutions to create local learning opportunities.

Constant Focus

					Strategy
					Increase positive engagement and interaction with members of the public.
					Continue to develop and expand communication programming.
					Provide value to our customers by balancing efficiency and cost management with innovation and customer convenience.
					Seek out customer service enhancement opportunities.
					Maintain Records Management program that is compliant and sustainable.
					Maintain financial sustainability.
					Pursue and maintain accreditations and certifications.
					Invest in an organizational culture that values employee development, creative problem solving, and service.
					Improve organizational capabilities and effectiveness through leadership, professional development, organizational literacy, and employee engagement.
					Create and maintain neighborhoods and activity centers with high standards of site and architectural design.
					Guide growth in the community through appropriate annexation, zoning, planning and land use development.
					Preserve, stabilize, and enhance all neighborhoods.
					Create a visitor experience.
					Drive development to expand the downtown corridor.
					Maintain a strong business retention and expansion program.
					Partner with regional entities that support local development.
					Focus on economic development by maintaining partnerships with existing local, regional and state partners.
					Cultivate partnerships with school districts and county agencies to develop a local talent force.
					Connect Johnstown employers with local talent force.
					Deliver the highest level of police services to ensure residents feel safe and secure.
					Provide comprehensive municipal safety services.

Constant Focus

					Strategy
					Engage the community in safety preparedness.
					Create community events.
					Collaborate with Council to identify programs and desired levels of service.
					Honor our agricultural heritage and work to celebrate Johnstown's history.
					Meet or exceed all State and Federal standards for water, sewer, and storm water.
					Create, update, and administer infrastructure plans and studies that prioritize resilience and scalability.
					Expect high-quality infrastructure and construction.
					Develop resiliency plans and establish a local emergency management program for continuity of operations.
					Improve accuracy of Mapping System to assist with maintaining and replacing infrastructure.

Town of Johnstown
List of Bills - November 21, 2023 - December 19, 2023

<u>Vendor</u>	<u>Description</u>	<u>Dept</u>	<u>Amount</u>
2534 Retail Phase 1, LLC	Reimbursement of sales tax	ADM	76,392.81
4990 Ronald Reagan LLC	Police substation lease	PD	1,519.75
Abraham and Christine Living Trust	Easement	ADM	725.00
AC/DC Electric	Equipment maintenance	PW	1,596.00
Ace Hardware	Supplies	PW	2,879.73
Ace Hardware	Facade grant	ADM	10,000.00
Ad Light Group	Wayfinding signs	ADM	96,088.76
Adamson Police Products	Uniforms	PD	47.65
AJ'S Backflow Testing LLC	Backflow testing	PW	500.00
All Copy Products, Inc	Copier supplies	ADM/PD	244.38
All Dry Services of Denver	YMCA repairs	PW	124,410.70
All Terrain Landscaping	Christmas lights	PW	6,150.00
Aqua Backflow, Inc.	Backflow testing	PW	400.00
Aqua Engineering	Central expansion project	PW	180,297.10
Arapahoe Rental	Equipment rental	PW	271.56
Arrowhead Scientific Inc.	Lab supplies	PW	821.82
Asphalt Specialties Co., Inc.	Pavement maintenance	PW	542,242.53
Avalis Wayfinding Solutions, Inc	Supplies	ADM	238.22
Baudville	Supplies	ADM	649.00
Benesch	Colorado Blvd/Hillsboro projects	PW	75,773.36
BHA Design Incorporated	I25/SH60 project	PW	917.50
Big Thompson & Platte River Ditch Co	Water assessment	PW	1,595.63
Bludot Technologies Inc.	ED CRM	ADM	1,365.00
BlueWater Engineering Ltd	Water treatment plant project	PW	8,876.25
Bobcat of the Rockies	Equipment maintenance	PW	213.94
BPS Tactical, Inc.	Safety equipment	PD	16,352.00
Brightly Software Inc	Software	ADM	21,426.95
Browns Hill Engineering & Controls	SCADA	PW	4,729.83
Burns & McDonnell Engineering Co Inc.	Water treatment plant project	PW	47,807.69
Card Services	Training/travel/supplies	ALL	14,446.41
Caselle, Inc	Software	ADM	19,733.00
Central Weld County Water District	Interconnect	PW	3,597.84
CenturyLink	Phone/internet	PW	1,639.42
Cintas	Mat supplies/service	ALL	1,570.37
City of Loveland	Location rental	PD	400.00
Civil Resources	Raw water line project	PW	29,926.00
CMC Tire	Supplies	PW	2,771.56
Colorado Analytical Labs	Lab testing	PW	1,184.00
Colorado Greenbelt Management	Snow removal	PW	1,170.00
Colorado Materials, Inc.	Playground mulch	PW	1,481.00
Colorado Paving Inc	Charlotte Steet project	PW	931,313.52
Community Center Refund	Community Center deposit refunds	ADM	760.00
Connell Resources, Inc.	North Interceptor	PW	1,051,683.95
Consolidated Hillsborough Ditch Co	Water legal	PW	13,297.51
Consolidated Home Supply Ditch &	Water legal	PW	3,111.40
Core & Main	Hydrant meters	PW	3,400.00

<u>Vendor</u>	<u>Description</u>	<u>Dept</u>	<u>Amount</u>
Coren Printing, Inc	Supplies	PD	321.00
Crescent Moon Catering	Holiday party	ADM	2,024.00
D2C Architects	PD design	PD	62,042.89
DBC Irrigation Supply	Supplies	PW	16,900.40
Deere & Company	Equipment	PW	19,990.70
Denali Water Solutions LLC	Sludge removal	PW	4,178.89
Denver Industrial Sales & Services Co	Supplies	PW	188.03
DES Pipeline Maintenance, LLC	Maintenance	PW	3,375.00
Desotec US LLC	Chemicals	PW	92,567.20
Ditesco LLC	Little Thompson Trail project	PW	7,190.38
DPC Industries Inc	Chemicals	PW	24,454.90
Duck Donuts	Holiday party	ADM	25.00
DXP Enterprises Inc	Equipment maintenance	PW	223.15
E-470 Public Highway Authority	Training	PD	26.95
eAnalytics Laboratory	Lab testing	PW	280.00
Employee Reimbursement	Supplies	ADM	198.57
Envirotech Services, Inc	Chemicals	PW	15,789.47
Felsburg Holt & Ullevig Inc	Billback - Engineering services	ADM	12,407.50
Ferguson Waterworks	Water meters	PW	10,308.39
Firestone Complete Auto Care	Vehicle repairs	PD	649.97
First Class Security Systems	Fire system monitoring	PW	267.60
First National Bank	Custodial fees	ADM	959.20
Front Range Fire Protection	Fire safety	ADM	1,965.96
Frontier Fertilizer & Chemical	Chemicals	PW	66.65
Frontier Precision	Software	PW	250.00
Frontier Self Storage	Storage	PW	580.00
Glenn A. Jones Library	Library support	ADM	103,786.43
Grainger, Inc.	Supplies	PW	3,189.12
Greeley Lock and Key	Equipment maintenance	PW	3,161.00
Green Valley Turf Co	Equipment maintenance	PW	75.60
Ground Engineering Consultants, Inc.	Central expansion project	PW	16,752.50
Hach Company	Lab supplies	PW	1,317.56
Helton & Williamsen, P.C.	Water Legal	ADM	15,982.97
Herc Rentals	Equipment rental	PW	11,723.56
Hydrant Meter Deposit Refund	Hydrant meter deposit refunds	PW	6,878.37
IMEG Corp	Engineering services	ADM	2,125.00
IMEG Corp	Billback - Engineering services	ADM	76,009.50
Infosend, Inc.	Newsletter/utility bills	ADM	4,393.06
Insight North America LLC	Investment services	ADM	2,858.18
ION Developer LLC	Permit refund	ADM	209.28
J&D Creations	Uniforms	PW	1,355.76
J&S Contractors Supply Co.	Supplies	PW	3,078.04
Jim Ginley Consulting	Professional services	ADM	3,960.48
John Deere Financial	Equipment maintenance	PW	1,854.91
John Sauer Sr, LLC	Easement	ADM	31,940.00
Johnstown Barber Shop	Holiday party	ADM	25.00
J-U-B Engineers, Inc.	SH60 waterline	ADM	3,224.80
J-U-B Engineers, Inc.	Billback - Engineering services	ADM	2,781.60

<u>Vendor</u>	<u>Description</u>	<u>Dept</u>	<u>Amount</u>
Kangaroo Express of Longmont, Inc	Lab testing	PW	330.00
Kinsco, LLC	Uniforms	PD	658.45
Kissinger & Fellman P.C.	Legal services	ADM	874.50
L G Everist Inc	Supplies	PW	1,883.66
Language Line Services Inc.	Translation service	PD	349.32
Larimer County Sales Tax Administrator	Use Tax - Reimbursement	ADM	33,686.64
Law Office of Avi Rocklin LLC	Legal services	ADM	14,115.00
Lawson Products Inc	Hydrants	PW	1,151.00
Lazar, Michael	Municipal Court Judge	ADM	2,250.00
Loveland Barricade LLC	Equipment maintenance	PW	11,165.00
Loveland Ready-Mix Concrete	Equipment maintenance	PW	2,471.03
Lowe's	Supplies	PW	1,158.21
Mares Auto Inc.	Vehicle repairs	PW	435.53
Mary's Mountain Cookies	Reimbursement of sales tax	ADM	534.45
McGeady Becher P.C.	Billback - Legal services	ADM	235.33
Medicine for Business & Industry LLC	Lab testing	ADM	351.78
Michael Baker International	Branding & Wayfinding project	ADM	53,000.00
Microbac Laboratories Inc	Lab testing	PW	612.00
Mike's Camera	Equipment	PD	5,553.13
Mile High Elevator LLC	Elevator maintenance	PW	210.00
Mile High Shooting Accessories	Supplies	PD	1,973.69
Milliken Johnstown Electric	Equipment maintenance	PW	1,613.76
Moltz Construction Inc.	Low Point expansion project	PW	839,645.51
Moltz Construction Inc.	Central expansion project	PW	3,390,603.36
Motorola Solutions, Inc.	Vehicle upfit	PD	41,125.77
Mountain States Pipe & Supply	Water meters	PW	31,182.73
Nalco Company LLC	Chemicals	PW	11,851.54
Napa Auto Parts, Inc	Vehicle supplies	PD/PW	644.23
Newco Inc	Equipment maintenance	PW	128.70
O.J. Watson Company Inc	Supplies	PW	2,280.38
Oakwood Homes	Appraisal	ADM	1,500.00
Office Depot Business Credit	Supplies	ADM	1,367.58
Ohlson Lavoie Corporation	Pool feasibility study	PW	18,105.72
Original Equipment Auto Glass	Vehicle maintenance	PW	1,239.96
Otak	Little Thompson Trail project	PW	593.57
Parallel Custom Audio	Johnstown Jingle Event audio	ADM	500.00
Paul's Plumbing & Heating	Equipment maintenance	PW	36,320.39
Pioneer	Equipment maintenance	PW	1,533.01
Pitney Bowes Bank Inc Purcahse Power	Postage	ADM	687.44
Pitney Bowes Inc	Supplies	ADM	391.86
Poudre Valley REA	Utilities	PW	22,781.61
Quality of Life & Safety Designs LLC	Fire safety	ADM	25.00
RD3	YMCA repairs	PW	7,319.20
Redi Services, LLC	Portolet	PW	2,000.00
REGION 8 Enviro, LLC	Chemicals	PW	2,605.00
Rhinehart Oil Co., Inc.	Fuel	PW	14,704.66
RTC Manufacturing Inc	Equipment maintenance	PW	5,760.00
SAFEBuilt LLC Lockbox # 88135	Inspection services	PW	25,000.00

<u>Vendor</u>	<u>Description</u>	<u>Dept</u>	<u>Amount</u>
Sam's Club MC/SYNCB	Supplies	ADM	665.17
Santiagos Restaurant	Holiday party	ADM	25.00
Simon Construction	Pavement maintenance	PW	477,323.24
SMH West, LLC	South Tank WDS	PW	81,459.85
Survival Armor	Supplies	PD	1,052.61
TDS (430 S. Parish)	Phone/internet	ALL	5,605.04
Terracon Consultants, Inc.	Charlotte Street project	PW	15,055.00
The Home Depot/GECE	Supplies	PW	2,032.10
The Jamar Company	Equipment maintenance	PW	1,490.31
The Tree Guys LLC	Tree removal	PW	5,000.00
Thompson Ranch Development	Reimbursement of sales tax	ADM	52,776.30
Tier One Networking, LLC	Computer equipment	ADM	30,390.00
TimberLAN	IT services	ALL	10,698.00
Timberline Mechanical Systems & Box 8806	YMCA repairs	ADM	8,203.17
T-Mobile	Cell phones	PD	83.15
Traffic Signal Controls Inc	Safety signals	PW	38,920.00
Trinity SCS, Inc.	Equipment maintenance	PW	290.40
U.S. Postal Service	Postage	ADM	118.00
UC Health Medical Group	PO box fee	PD	643.40
United Power, Inc	Utilities	PW	1,532.64
USA Bluebook	Supplies	PW	3,112.52
Utility Notification Center of Colorado	Locates	PW	638.55
Utility Refund	Utility refunds	ADM	1,711.96
Vance Brothers, Inc	Equipment maintenance	PW	7,116.00
Verizon Connect	Phone/internet	PW	478.50
Verizon Wireless	Phone/internet	ALL	4,866.33
Waste Connections of Colorado Inc.	Trash services	PW	252,679.88
Weld County Clerk & Recorder	Recording costs	ADM	600.00
Weld County Dept of Public	Lab services	PW	596.50
Whiteside's	Uniforms	PW	189.98
Wickham Tractor Co.	Vehicle maintenance	PW	1,454.70
Xcel Energy	Utilities	PW	65,170.35
Xcite Audiovisuals LLC	Council Chambers maintenance	ADM	2,069.60
YMCA of Northern Colorado	Monthly support	ADM	41,666.67
Yost Cleaning	Monthly cleaning service	PW	6,725.32
			<u>9,596,883.60</u>



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE:	January 3, 2024
SUBJECT:	Resolution 2024-04: Approving the Purchase and Sale Agreement By and Between the Town of Johnstown And TF Johnstown Farms, L.P. for the Purchase of Real Property Known as Lot 1 of Johnstown Farms Filing No. 1 Third Amendment
ACTION PROPOSED:	Consideration of Resolution 2024-04 Authorizing the Purchase of Real Property
ATTACHMENTS:	<ol style="list-style-type: none">1. Resolution 2024-042. Purchase and Sale Agreement
PRESENTED BY:	Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

Enclosed for your review and consideration is Resolution 2024-04. This resolution will approve and authorize the Purchase and Sale Agreement to acquire Lot 1 of Johnstown Farms Filing No. 1 Third Amendment owned by TF Johnstown Farm, L.P. The agreed purchase price for the land is \$225,000. The property consists of 1.744 acres and will ultimately be developed to house the Planning and Engineering Departments respectively, creating a single source for development in the Town of Johnstown. The facility's construction will enable for the departments to grow as necessary and will have space and programming to accommodate this long-term need. Closing on the land is expected sometime in the month of January.

The documents presented authorize the Town Manager to complete and execute all necessary documents for the purchase. As a note, the document presented has been provided to the Seller, but given the holidays has not responded back with any changes or completion of the information necessary on Page 7 of the document. Accordingly, we are requesting the ability of Staff to make any minor changes to the document provided they do not substantially change the document.

LEGAL ADVICE:

The Community That Cares

johnstown.colorado.gov

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO 80534 | F: 970.587.0141

The Town Attorney drafted the Resolution and the Purchase and Sale Agreement.

FINANCIAL ADVICE:

Funds in the building fund are appropriated for meeting the needs of this facility, but only at \$500,000. This would not accommodate the construction of the facility.

RECOMMENDED ACTION: Approve Resolution No. 2024-04 authorizing the Purchase and Sale Agreement.

SUGGESTED MOTIONS:

For Approval: I move to approve Resolution 2024-04 as presented and authorize the Town Manager to administratively approve the Purchase and Sale Agreement, if changes are necessary.

For Denial: I move to deny Resolution 2024-04 as presented.

Reviewed and Approved for Presentation,



Town Manager

**TOWN OF JOHNSTOWN, COLORADO
RESOLUTION NO. 2024-04**

**RESOLUTION APPROVING THE PURCHASE AND SALE AGREEMENT BY
AND BETWEEN THE TOWN OF JOHNSTOWN AND TF JOHNSTOWN
FARMS, L.P. FOR THE PURCHASE OF REAL PROPERTY KNOWN AS LOT 1
OF JOHNSTOWN FARMS FILING NO. 1 THIRD AMENDMENT**

WHEREAS, the Town of Johnstown, Colorado (the “Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

WHEREAS, the Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, TF Johnstown Farms, L.P., a Delaware limited partnership (“Owner”), is the owner of real property known as Lot 1 of Johnstown Farms Filing No. 1 Third Amendment, Town of Johnstown, County of Weld, State of Colorado, and by legal description as “LOT 1 JOHNSTOWN FARMS FG #1 3RD AMD,” consisting of approximately 1.744 acres (“Property”); and

WHEREAS, the Town has determined that the acquisition of the Property will serve a public purpose by allowing the expansion of Town office space and thus desires to purchase the Property; and

WHEREAS, the Owner desires to sell the Property to the Town; and

WHEREAS, the Purchase and Sale Agreement, attached hereto and incorporated herein by reference as Exhibit A, contains terms and conditions related to the purchase and sale of the Property, including payment by the Town to the Owner of an agreed upon purchase price of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) and other miscellaneous closing costs; and

WHEREAS, the Town has funds in the General Fund that may be used to purchase the Property; and

WHEREAS, the Town Council finds and determines that the terms and conditions of the Purchase and Sale Agreement are reasonable and promote the public health, safety, prosperity, security and general welfare of the Town; and

WHEREAS, the Town Council finds that adoption of this Resolution is in the best interests of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT:

Section 1: The Purchase and Sale Agreement, attached hereto as Exhibit A, is hereby approved, and the Town Manager is authorized to execute the same.

Section 2: The Town Manager is authorized to take all steps necessary to carry out the terms of the Purchase and Sale Agreement, including the execution of all documents necessary or required for closing. The Town Attorney is authorized to make such modifications, if any, to the Purchase and Sale Agreement as are advisable to assure clarity, consistency and protection of the Town’s interests.

Section 3: This Resolution shall be effective upon adoption.

PASSED, SIGNED, APPROVED, AND ADOPTED THIS ____ day of January, 2024.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor

PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** (this “**Agreement**”) is made as of January ___, 2024 (the “**Effective Date**”), by and between TF Johnstown Farms, L.P., a Delaware limited partnership (“**Seller**”), and the Town of Johnstown, a Colorado home rule municipality (“**Purchaser**”).

RECITALS

A. Seller is the owner of real property known as Lot 1, Johnstown Farms Filing No. 1 Third Amendment, Town of Johnstown, County of Weld, State of Colorado, and by legal description as “LOT 1 JOHNSTOWN FARMS FG #1 3RD AMD,” consisting of approximately 1.744 acres, being more fully described on **Exhibit A** attached hereto and incorporated herein by reference (“**Property**”).

B. As used in this Agreement, the Property includes the real property, together with all of Seller’s right, title and interest in and to: (i) all reversions, remainders, easements, rights-of-way and appurtenances appertaining to or otherwise benefiting or used in connection with the Property; (ii) all of Seller’s right, title and interest in and to any streets abutting or adjoining the Property; and (iii) all existing improvements, structures and fixtures, if any, placed, constructed, installed or located on the Property, including all plants, trees, landscaping and other appurtenances, if any, located upon, over or under the Property.

C. Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase the Property from Seller, upon and subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

PURCHASE AND SALE OF THE PROPERTY

1.1 **Recitals.** The Recitals are incorporated into the Agreement as if fully set forth herein.

1.2 **Purchase.** Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, all of the Property, subject to and upon the terms and conditions set forth in this Agreement.

1.3 **Purchase Price.** The total purchase price (the “**Purchase Price**”) for the Property will be Two Hundred Twenty Five Thousand Dollars (\$225,000.00) payable in accordance with the following terms and conditions:

- (a) Deposit.

(i) No later than five (5) business days after the Effective Date, Purchaser will deliver to Land Title Guaranty Company (the “**Title Company**”) an earnest money deposit of \$5,000.00 (together with all interest earned thereon, the “**Deposit**”).

(ii) The Title Company will deposit the Deposit in one or more federally insured interest-bearing accounts and hold the Deposit pursuant to the terms and provisions hereof. The Deposit will be applied to the Purchase Price at the closing of the purchase contemplated hereby (“**Closing**”). In the event that this Agreement is terminated or the acquisition contemplated hereunder is not closed for any reason other than Purchaser’s default hereunder, the Deposit will be promptly returned to Purchaser.

(b) Balance. The balance of the Purchase Price, subject to prorations and adjustments in accordance with Article 88, will be paid to Seller by Purchaser at Closing by wire transfer of immediately available funds to the Title Company, for further payment to Seller.

ARTICLE 2 TITLE

2.1 **Title Commitment.** Within seven (7) days of the Effective Date, Seller shall procure and deliver a current commitment for an owner’s title insurance policy for the Property (the “**Title Commitment**”), in an amount equal to the Purchase Price, to Purchaser. The Title Commitment shall contain owner’s extended coverage, committing to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics’ liens, (5) gap period (period between the effective date and time of the commitment to the date and time the deed is recorded) and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

2.2 **Status of Title at Closing.** At Closing, Seller will convey to Purchaser title to the Property by special warranty deed free and clear of monetary liens and encumbrances of record, but subject to all other matters of record shown in the Title Commitment (the “**Permitted Encumbrances**”).

ARTICLE 3 CONTINGENCY PERIOD

3.1 **Contingency Period.** Purchaser will have ten (10) days following the Effective date (the “**Contingency Period**”) within which to complete Purchaser’s investigation of the Property and to obtain all required approvals for Purchaser’s purchase of the Property. All inspection fees and other expenses of any kind incurred by Purchaser relating to the inspection of the Property will be Purchaser’s sole responsibility. Purchaser will promptly repair, at its expense, any damage to the Property caused by Purchaser or its agents in conducting its inspection of the Property. Purchaser will coordinate its physical inspections of the Property with Seller prior to entry on the Property, and Seller shall permit Purchaser, its contractors and agents, to enter the Property at reasonable times to conduct physical inspections.

3.2 **Termination.** If, on or before the expiration of the Contingency Period, Purchaser delivers to Seller written notice setting forth Purchaser's election to terminate this Agreement, in Purchaser's sole and absolute discretion, then this Agreement will terminate, the Deposit will be returned promptly to Purchaser and both parties will be relieved from any further liability hereunder. If Purchaser does not terminate this Agreement as described in the preceding sentence, then this Agreement will remain in full force and effect in accordance with its terms.

ARTICLE 4

SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Seller represents, warrants and covenants to Purchaser as set forth below in this Article 4 as of the Effective Date and as of Closing under this Agreement.

4.1 **Authority.** Seller has the full right and authority to enter into this Agreement and consummate the transaction contemplated by this Agreement. All requisite entity action has been taken by Seller in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby. The person signing this Agreement on behalf of Seller is authorized to do so.

4.2 **No Consents; Binding Obligations.** No third party approval or consent is required for Seller to enter into this Agreement or to consummate the transaction contemplated hereby. This Agreement and all documents required hereby to be executed by Seller are and will be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.

4.3 **No Third-Party Interests.** Seller has not granted to any party any option, contract or other right to a purchase the Property, or any portion thereof or any interest therein.

4.4 **Non foreign Person.** Seller is not a foreign person, corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code or Income Tax Regulations).

ARTICLE 5

PURCHASER'S REPRESENTATIONS AND WARRANTIES

Purchaser represents and warrants to Seller as set forth below in this Article 5 as of the Effective Date and as of Closing under this Agreement.

5.1 **Authority.** Purchaser has, or will have prior to the expiration of the Contingency Period, the full right and authority to enter into this Agreement and consummate the transaction contemplated by this Agreement. All requisite action has been taken, or will be taken prior to the expiration of the Contingency Period, by Purchaser in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby. Each of the persons signing this Agreement on behalf of Purchaser is authorized to do so.

5.2 **No Consents; Binding Obligations.** No third party approval or consent is required for Purchaser to enter into this Agreement or to consummate the transaction contemplated hereby. This Agreement and all documents required hereby to be executed by Purchaser are and will be

valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms, subject to Purchaser obtaining the required consents prior to the expiration of the Contingency Period.

ARTICLE 6 CASUALTY

6.1 **Risk of Casualty.** The risk of casualty loss to the Property will remain with Seller prior to Closing. In the event that the Property is damaged by fire, flood or other casualty prior to Closing, then Purchaser may elect, at its sole option, either (i) to terminate this Agreement and recover its Deposit, in which case both Seller and Purchaser will be released from further responsibility hereunder, or (ii) to waive its right to terminate this Agreement and to consummate the transaction contemplated hereby, in which case Seller will assign to Purchaser all of Seller's right to receive the insurance proceeds, if any, payable as a result of such casualty damage, but not exceeding the Purchase Price, and Purchaser will be entitled to an abatement of the Purchase Price in an amount equal to the applicable insurance deductibles.

ARTICLE 7 CLOSING

7.1 **Time and Procedures.** Closing under this Agreement (“**Closing**”) will take place on a date designated by Purchaser by written notice to Seller, which will be no earlier than three (3) days following the expiration of the Contingency Period and no later than thirty (30) days following the expiration of the Contingency Period, or as otherwise agreed by the parties in writing. Closing will be conducted by delivery of all documents and funds to the Title Company for delivery, disbursement or recording by the Title Company, as applicable, in accordance with the terms of this Agreement. The parties may issue supplemental instructions to the Title Company to accomplish Closing, provided that such instructions are consistent with the terms of this Agreement or are otherwise approved by both parties.

7.2 **Delivery at Closing.** At Closing the following will occur:

(a) **Deed.** Seller will deliver to Purchaser a duly executed and acknowledged special warranty deed for the Property conveying title to the Property, subject only to the Permitted Encumbrances;

(b) **Payment.** Purchaser will pay to Seller the Purchase Price by wire transfer of funds as provided in Section 1.3, subject to the adjustments described in Article 8.

(c) **Possession.** Possession of the Property will be delivered to Purchaser.

(d) **Non-Foreign Certificate.** Seller will execute and deliver to Purchaser and the Title Company an affidavit that Seller is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code.

(e) **Miscellaneous Documents.** Each of Seller and Purchaser will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all conveyances, assignments and all other instruments and documents as may be required

by the Title Commitment, or reasonably requested by the other party or the Title Company in order to complete the transaction herein provided and to carry out the intent and purposes of this Agreement in a manner consistent with the terms of this Agreement.

ARTICLE 8 PRORATIONS AND CLOSING EXPENSES

8.1 **Closing Adjustments.** The cash due at Closing pursuant to Section **Error! Reference source not found.** will be subject to adjustment as of Closing in accordance with the following provisions:

(a) Property taxes will be prorated at Closing based on the most recent information available, with the proration to be final and not subject to any post-closing adjustment.

(b) Purchaser will pay the fee for recording Seller's deed, one-half of the Title Company's closing fee, any endorsements to the title insurance policy requested by Purchaser, its attorney's fees and costs, all transfer taxes, and all other closing costs not paid by Seller as set forth in Section 8.1(c).

(c) Seller will pay its attorney's fees and costs, the premium for the title insurance policy based on the Title Commitment, one-half of the Title Company's closing fee, and any costs required to deliver title to the Property subject only to the Permitted Encumbrances.

8.2 **Settlement Statement.** At Closing, Seller and Purchaser will execute a Closing settlement statement to reflect the credits, prorations, and adjustments contemplated by or specifically provided for in this Agreement.

ARTICLE 9 REMEDIES

9.1 **Breach by Seller.** Time is of the essence of Seller's obligations hereunder. If Seller fails to comply with any of its obligations hereunder which are required to be performed at or prior to Closing, and such failure continues for three (3) business days after delivery of written notice thereof from Purchaser to Seller, Purchaser, at Purchaser's option, will be entitled to: (i) terminate this Agreement and obtain the prompt refund of the Deposit, whereupon both parties will be discharged from all duties and performance hereunder; or (ii) treat this Agreement as being in full force and effect and to seek specific performance. The foregoing provisions of this Section 9.1 will not affect Purchaser's right to recover its attorney's fees from Seller under the provisions of Section 9.3.

9.2 **Breach by Purchaser.** Time is of the essence of Purchaser's obligations hereunder. If Purchaser fails to comply with any of its obligations hereunder which are required to be performed at or prior to Closing, and such failure continues for three (3) business days after delivery of written notice thereof from Seller to Purchaser, Seller, as its sole and exclusive remedy, will be entitled to terminate this Agreement and have the Deposit paid to Seller as liquidated damages. PURCHASER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL OR

EXTREMELY DIFFICULT TO FIX SELLER'S ACTUAL DAMAGES IN THE EVENT PURCHASER FAILS TO PURCHASE THE PROPERTY IN ACCORDANCE HEREWITH. THEREFORE PURCHASER AND SELLER AGREE A SUM EQUAL TO THE DEPOSIT REPRESENTS ALL SELLER'S COST WITH RESPECT TO THIS TRANSACTION, THE LOSS OF OTHER OPPORTUNITIES TO SELLER AND THE PROPERTY TAX AND INTEREST BURDEN OF CARRYING THE PROPERTY DURING THE PERIOD THE PROPERTY IS KEPT OFF THE MARKET AS A RESULT OF THIS AGREEMENT. SELLER AGREES TO ACCEPT THE SUM OF THE DEPOSIT MADE TO THAT DATE HEREUNDER AS ITS SOLE REMEDY IN FULL SATISFACTION OF SELLER'S DAMAGES. IT IS THE INTENT OF THE PARTIES THAT THE AMOUNT OF THE DEPOSIT MADE TO THAT DATE WILL BE THE FULL AGREED LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY PURCHASER AND ALL OTHER CLAIMS TO DAMAGES OR OTHER REMEDIES ARE EXPRESSLY WAIVED BY SELLER. SELLER HEREBY WAIVES THE PROVISIONS OF ANY STATUTES WHICH ARE INCONSISTENT WITH THE INTENT OF PURCHASER AND SELLER AS SET FORTH HEREIN. The foregoing provisions of this Section 9.2 will not affect Seller's right to recover its attorney's fees from Purchaser under the provisions of Section 9.3

9.3 **Attorney's Fees.** Notwithstanding any contrary provision contained in this Agreement (including the provisions of Sections 9.1 and 9.2), in the event of any litigation or legal action arising out of this Agreement, to the extent permitted by law, the court will award the prevailing party its reasonable costs and expenses incurred in connection with such litigation or legal action, including, without limitation, its reasonable attorney's fees and costs.

ARTICLE 10 GENERAL PROVISIONS

10.1 **Brokers.** Seller and Purchaser each hereby represent and warrant to the other that their only contact with the other or with the Property has been made without the assistance of any broker or other third party. Each of Seller and Purchaser will save and hold the other party free, clear and harmless from any claim, cost or expense, including reasonable attorney's fees, for or in connection with any claims for commissions or compensation claimed or asserted by or through each respective party in connection with the transaction contemplated herein.

10.2 **Entire Agreement.** No change or modification of this Agreement will be valid unless the same is in writing and signed by the parties hereto. No waiver of any of the provisions of this Agreement will be valid unless in writing and signed by the party against whom it is sought to be enforced. This Agreement contains the entire agreement between the parties relating to the purchase and sale of the Property. All prior negotiations between the parties are merged in this Agreement; and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the parties other than as herein set forth.

10.3 **Survival.** All of the parties' representations, warranties, covenants and agreements hereunder, to the extent not fully performed or discharged by or through Closing, will not be deemed merged into any instrument delivered at Closing and will remain fully enforceable thereafter.

10.4 **Dates.** If any date set forth in this Agreement for the delivery of any document or the happening of any event (such as, for example, the expiration of the Contingency Period or the Closing Date) should, under the terms hereof, fall on a weekend or holiday, then such date will be automatically extended to the next succeeding weekday that is not a holiday.

10.5 **Governing Law and Venue.** This Agreement will be construed and enforced in accordance with the laws of the State of Colorado and venue for any action shall be in the County of Weld, State of Colorado.

10.6 **Notices.** Any notice required or permitted to be sent pursuant to this Agreement must be in writing and will be deemed given, sent, delivered and received upon the earlier of: (i) when personally or actually delivered; or (ii) by e-mail upon confirmation of receipt by the intended recipient; or (iii) one (1) business day after being deposited with a commercial overnight courier and sent by overnight delivery for next business day delivery, with all required charges prepaid, and addressed:

If to Seller:

TF JOHNSTOWN FARMS, L.P.
 Attention: _____
 591 West Putnam Avenue
 Greenwich, CT 06830
 Email: _____

If to Purchaser:

TOWN OF JOHNSTOWN
 Attention: Town Manager
 450 South Parish
 P. O. Box 609
 Johnstown, CO 80534
 Email: mlecerf@johnstownco.gov

Any address fixed pursuant to the foregoing may be changed by the addressee by notice given pursuant to this Section 10.6.

10.7 **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

10.8 **Counterparts.** This Agreement may be executed in multiple counterparts, all of which, together, will be deemed one and the same original document.

10.9 **Headings.** The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective as of the Effective Date.

SELLER:

TF JOHNSTOWN FARMS, L.P.

By: _____

Name: _____

Title: _____

STATE OF _____)

)ss

COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 202__, by _____ as the _____ of TF JOHNSTOWN FARMS, L.P.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

PURCHASER:

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____

Hannah Hill, Town Clerk

By: _____

Troy D. Mellon, Mayor

EXHIBIT A
to
PURCHASE AND SALE AGREEMENT
DESCRIPTION OF THE PROPERTY

**YMCA of Northern Colorado
Johnstown Community YMCA
Summary Operating Statement
Month Ending November 30, 2023**

Revenue	Preschool		Operations		Consolidated	
	Month	YTD	Month	YTD	Month	YTD
Financial Assistance	(1,796)	(55,502)	(1,358)	(28,577)	(3,154)	(84,079)
Contracts & Grants	-	70,732	2,000	10,460	2,000	81,192
Preschool Fees	79,000	644,489	-	-	79,000	644,489
Membership		-	121,996	1,427,385	121,996	1,427,385
Health & Wellness		-	77,432	221,244	77,432	221,244
Childwatch Fees		-	-	-	-	-
Merchandise Sales		-	8	398	8	398
Other Income		-	4,417	57,905	4,417	57,905
Total Revenue	77,204	659,719	204,495	1,688,815	281,699	2,348,534
Expense						
Salaries & Wages	37,638	454,082	76,011	1,023,306	113,649	1,477,388
Employee Benefits	2,368	30,969	3,303	38,124	5,671	69,093
Payroll Taxes	3,918	45,204	8,125	97,557	12,043	142,761
Contract Services	-	-	3,565	38,487	3,565	38,487
Supplies	-	38	4,616	50,545	4,616	50,583
Telephone	120	1,280	1,210	17,252	1,330	18,532
Occupancy & Insurance	650	7,020	72,261	535,054	72,911	542,074
Equipment	-	-	1,288	12,055	1,288	12,055
Employee/Volunteer Costs	259	3,955	-	9,352	259	13,307
Program Costs	573	29,895	2,489	16,443	3,062	46,338
Administrative Costs	-	1,975	-	7,708	-	9,683
Merchandise Costs	-	-	-	986	-	986
Total Expense	45,526	574,418	172,868	1,846,869	218,394	2,421,287
Net Outcome	31,678	85,301	31,627	(158,054)	63,305	(72,754)
	15.3%		YMCA Administrative Fee		(33,414)	(370,457)
			YMCA Investment		29,891	(443,211)
			YMCA Cost Recovery		41,667	458,337
			Cost Recovery Variance		71,558	15,126

**YMCA of Northern Colorado
Johnstown Community YMCA
Summary Operating Statement
Month Ending October 31, 2023**

Revenue	Preschool		Operations		Consolidated	
	Month	YTD	Month	YTD	Month	YTD
Financial Assistance	(1,796)	(53,706)	(1,353)	(27,219)	(3,149)	(80,925)
Contracts & Grants	-	70,732	-	8,460	-	79,192
Preschool Fees	23,537	565,489	-	-	23,537	565,489
Membership	-	-	128,647	1,305,389	128,647	1,305,389
Health & Wellness	-	-	13,961	143,812	13,961	143,812
Childwatch Fees	-	-	-	-	-	-
Merchandise Sales	-	-	5	390	5	390
Other Income	-	-	6,960	53,488	6,960	53,488
Total Revenue	21,741	582,515	148,220	1,484,320	169,961	2,066,835
Expense						
Salaries & Wages	37,739	416,444	112,096	947,295	149,835	1,363,739
Employee Benefits	2,354	28,601	3,221	34,821	5,575	63,422
Payroll Taxes	2,953	41,286	8,577	89,432	11,530	130,718
Contract Services	-	-	109	34,922	109	34,922
Supplies	-	38	4,831	45,929	4,831	45,967
Telephone	120	1,160	1,250	16,042	1,370	17,202
Occupancy & Insurance	663	6,370	32,275	462,793	32,938	469,163
Equipment	-	-	1,274	10,767	1,274	10,767
Employee/Volunteer Costs	47	3,696	106	9,352	153	13,048
Program Costs	6,609	29,322	1,693	13,954	8,302	43,276
Administrative Costs	-	1,975	37	7,708	37	9,683
Merchandise Costs	-	-	5	986	5	986
Total Expense	50,485	528,892	165,474	1,674,001	215,959	2,202,893
Net Outcome	(28,744)	53,623	(17,254)	(189,681)	(45,998)	(136,059)
	15.3%		YMCA Administrative Fee		(33,042)	(337,043)
			YMCA Investment		(79,040)	(473,101)
			YMCA Cost Recovery		41,667	416,670
			Cost Recovery Variance		(37,373)	(56,431)