



**MONUMENT TOWN COUNCIL
REGULAR MEETING AGENDA
MONDAY, AUGUST 19, 2024 – 6:30 PM**

Monument Town Hall - Council Chambers
645 Beacon Lite Road - Monument, CO 80132

Participate Via Microsoft Teams: <https://www.townofmonument.org/260/Town-Council>

1. Call to Order, Pledge of Allegiance, Roll Call:

2. Disclosures of Conflicts of Interest:

- a. Disclosures of Potential Conflicts of Interest - *(Bob Cole)*
- b. Vote on Excluding Council Members With Potential Conflicts of Interest From Consideration, Discussion and Voting on Identified Matters - *(Bob Cole)*

3. Approval of the Consent Agenda:

- a. Agenda - August 19 , 2024
- b. Special Meeting Minutes - July 31, 2024
- c. Meeting Minutes - August 5, 2024
- d. Invoices Over \$25K

4. Oath of Office:

- a. Sgt. Levoit - *(Chief Regan)*

5. Council Report(s):

- a. Councilmember Kronick - PPACG
- b. Councilmembers Abbott and Kronick - Event Report

6. Ordinance(s): *Public Hearing(s) Required*

- a. Ordinance No. 11-2024 - An Ordinance Approving the 2024 Comcast Franchise Agreement with the Town of Monument - *(Bob Cole)*
- b. Ordinance No. 16-2024 - An Ordinance Submitting to the Eligible Electors Voting in the Town's Regular Election, to Be Held November 5, 2024, a Ballot Issue Concerning the Imposition of a Lodging Tax, and Contingent Upon Elector Approval, Amending the Monument Municipal Code to Provide for the Same - *(Bob Cole)*
- c. Ordinance No. 17-2024 - An Ordinance Submitting to the Registered Electors of the Town of Monument the Question of Whether the Home Rule Charter should be Amended Regarding the Town Manager Residency - *(Bob Cole)*

7. Resolution(s):

- a. Resolution No. 48-2024 - A Resolution Approving a Contract with Smart Systems for Technology and Audio-Visual Upgrades to the Town Council Chambers - *(Will Williams)*

8. Discussion Item(s):

a. Position Updates - (*Madeline VanDenHoek*)

9. Public Comment(s) For Items Not on the Agenda: *Individuals attending in person may raise their hand to indicate their desire to comment. Individuals attending via Teams may "raise their hand" digitally to comment via connected devices. Please lower your hand when finished with your comments. Comments are limited to 3 minutes.*

10. Future Agenda Item Authorization(s):

11. Council Comment(s):

12. Executive Session(s):

a. Executive Session Pursuant to §24-6-402(4)(b), C.R.S. for a Conference with the Town Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions Regarding Qualifications for Office - (*Bob Cole*)

13. Adjournment:

**MONUMENT TOWN COUNCIL
SPECIAL MEETING MINUTES**

Wednesday July 31, 2024 – 7:00 PM

Monument Town Hall – 645 Beacon Lite Rd., Monument CO 80132

Hybrid Meeting – Remote Participation Via Teams

- 1. Call to Order, Pledge of Allegiance, Roll Call:** Mayor LaKind called to order the special meeting of the Monument Town Council and led those assembled in the Pledge of Allegiance. Proper notice of the special meeting was posted for more than 24 hours in the designated posting locations. The following Council members were present for the meeting:

TOWN COUNCIL	TOWN STAFF
PRESENT: Mayor Mitch LaKind Mayor Pro Tem Steve King Councilmember Sana Abbott Councilmember Laura Kronick Councilmember Jim Romanello Councilmember Marco Fiorito	Madeline VanDenHoek, Acting Town Manager Patrick Regan, Acting Town Manager Mike Foreman, Town Manger Tina Erickson, Town Clerk Bob Cole, Town Attorney Thomas Tharnish, Director of Public Works Will Williams, Director of IT
ATTENDED REMOTELY: Councilmember Kenneth Kimple	
ABSENT WITH PRIOR NOTICE:	
ABSENT WITHOUT PRIOR NOTICE:	

2. Disclosures of Conflicts of Interest:

- a. Disclosures of Potential Conflicts of Interest
- b. Vote on Excluding Council Members with Potential Conflicts of Interest from Consideration, Discussions and Voting on Identified Matters.
 - None submitted.

3. Executive Session:

- a. Fiorito moved to enter executive session pursuant to section 24-6-402 (4)(e) C.R.S. to determine positions relative to matters that may be subject to negotiation, developing strategy for negotiations, and instructing negotiators. Kronick seconded the motion. Roll call vote was taken motion passed 6 to 0.
 - *Kimple present unable to participate due to technical difficulties.*
 - b. Romanello moved to enter executive session pursuant to section 24-6-402 (4)(f), C.R.S. regarding personnel matters involving the Town Manager, who has been notified of the executive session. Kronick seconded the motion. Roll call vote was taken motion passed 6 to 0.
 - *Kimple present unable to participate due to technical difficulties.*
 - c. Kronick moved to enter executive session pursuant to section 24-6-402(4)(b) C.R.S. for a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions regarding personnel matters. Romanello seconded the motion. Roll call vote was taken motion passed 6 to 0.
 - *Kimple present unable to participate due to technical difficulties.*
- *The Council entered executive session at 7:10 pm.*
 - *The Council exited executive session at 10:26 pm.*
 - *The Council resumed the special meeting at 10:28pm.*

4. Resolution(s):

- a. Resolution No. 46-2024 – A Resolution Approving Employment Separation Release and Settlement Agreement. King made a motion to approve Resolution No. 46-2024. Romanello seconded the motion. Roll call vote was taken, the motion passed 7 to 0.

5. Public Comment:

- a. None Received.

6. Adjournment:

- a. Romanello moved to adjourn the meeting, the motion passed unanimously, the meeting was adjourned at 10:32 pm.

Respectfully Submitted,

Tina Erickson, Town Clerk

**MONUMENT TOWN COUNCIL
REGULAR MEETING MINUTES**

Monday, August 5, 2024 – 6:30 PM

Monument Town Hall – 645 Beacon Lite Rd., Monument CO 80132

Hybrid Meeting – Remote Participation Via Teams

- 1. Call to Order, Pledge of Allegiance, Roll Call:** Mayor LaKind called to order the regular meeting of the Monument Town Council and led those assembled in the Pledge of Allegiance. Proper notice of the meeting was posted for more than 24 hours in the designated posting locations. The following Council members were present for the meeting:

TOWN COUNCIL	TOWN STAFF
PRESENT: Mayor Mitch LaKind Mayor Pro Tem Steve King Councilmember Sana Abbott Councilmember Laura Kronick Councilmember Kenneth Kimple -arrived @ 6:33pm Councilmember Jim Romanello	Madeline VanDenHoek, Acting Town Manager Patrick Regan, Acting Town Manager Tina Erickson, Town Clerk Bob Cole, Town Attorney Will Williams, Director of IT Dan Ungerleider, Director of Planning Thomas Tharnish, Director of Public Works
ATTENDED REMOTELY:	Steve Murray, Sr. Town Accountant
ABSENT WITH PRIOR NOTICE: Councilmember Marco Fiorito	Laura Hogan, Director of Administration
ABSENT WITHOUT PRIOR NOTICE:	

2. Disclosures of Conflicts of Interest:

- a. Disclosures of Potential Conflicts of Interest
- b. Vote on Excluding Council Members with Potential Conflicts of Interest from Consideration, Discussions and Voting on Identified Matters.
 - None submitted.

3. Approval of the Consent Agenda:

- a. Agenda – August 5, 2024.
- b. Special Meeting Minutes- July 09, 2024
- c. Meeting Minutes – July 15, 2024
- d. Resolution No. 43-2024 – A Resolution Approving Updates to the Town of Monument Open Records Request Policy.
- e. Resolution No. 44-2024 – A Resolution for the Town Council to Approve the Purchase and Installation of New 3-Phase Transformer to Well #12.
- f. Resolution No. 45-2024 – A Resolution for the Town Council to Approve the Purchase of One (1) Patrol Sport Utility Vehicle (SUV) for the Monument Police Department.

King moved to approve the consent agenda as presented. Abbott seconded the motion. Roll call vote was taken, and the motion passed 5 to 0.

4. Presentation(s):

- a. Murray presented the draft of 2025 Budget. The council provided questions regarding impact fees, how long it will take to complete a study. The Council directed finance to find the money, to start moving forward with impact fee study. LaKind questioned how the police department is planning to split the 2F funds and the general fund. Kimple stated his concerns with the Loop and NDS

projects along with JCP development, questioned tree replacement, he would like the voters to be able to vote if councilmembers are to be paid. Abbott and Kronick proposed questions about ADA compliance with HR ADA transition plan and sidewalks.

5. Ordinance(s):

- a. Ordinance No.15-2024 - An Ordinance Calling for the November 5, 2024, Town Regular Election to be Conducted as a Coordinated Election; Appointing the Town Clerk as the Designated Election Official and Authorizing the Town Clerk to Enter Into an Intergovernmental Agreement with the El Paso County Clerk and Recorder for Conducting the Election, and Designating the Town Council Offices Subject to the 2024 and 2026 Regular Town Election. Cole presented Ordinance No. 15-2024 as included in the council packet. The Council, Cole and Hogan engaged in a lengthy discussion explaining the terms and vacancy. LaKind opened the public hearing, the following citizen: Ryan LeVier spoke. LaKind closed the public hearing. Kronick moved to approve Ordinance No. 15-2024. Romanello seconded the motion. Roll call vote was taken, and the motion passed 6 to 0.

6. Resolution(s):

- a. PUBLIC HEARING on Resolution No. 25-2024 - A Resolution Approving a Final Plat for Monument Lake Beachfront Filing No. 1. Ungerleider presented Resolution No. 25-2024 as included in the council packet. King proposed the question on the access easement that is displayed. LaKind opened the public hearing, none were received. LaKind closed the public hearing. Romanello moved to approve Resolution No. 25-2024. Kimple seconded the motion. Roll call vote was taken, and the motion passed 6 to 0.
- b. Resolution No. 28-2024 - A Resolution to Determine the Vendor Supporting Technology and Audio-Visual Upgrades to the Town Council Chambers. Williams presented Resolution No. 28-2024 as included in the council packet. Abbott moved to continue Resolution No. 28-2024. King seconded the motion. Roll call vote was taken, and the motion passed 6 to 0.
- c. Resolution No. 40-2024 – A Resolution Authorizing Acting Pay for Co-Acting Town Managers. LaKind presented Resolution No. 40-2024 as included in the council packet. LaKind suggested that the Council overrides the employee manual which states a 5% compensation, to a fixed 10% above current salary while acting. Modifications in Section 2 to include “in addition to their regular compensation the Police Chief and Director of Parks and Community Partnership shall each receive additional 10% of their regular compensation as acting pay.” Kronick moved to approve Resolution No. 40-2024. Romanello seconded the motion. Roll call vote was taken, and the motion passed 6 to 0.
- d. Resolution No. 47-2024 – A Resolution Appointing the Interim Town Manager. Cole presented Resolution No. 47-2024 as included in the council packet. The council gave appreciation to VanDenHoek and Regan for stepping in to the positions. LaKind recommended VanDenHoek be appointed, Council was all in favor. Regan and Tharnish spoke in favor of VanDenHoek being Interim Town Manager. VanDenHoek accepted the appointment offer. The Council discussed pay range and decided on a salary range of \$175,000.00. Kronick moved to approve Resolution No. 47-2024 to appoint VanDenHoek as Interim Town Manager. Romanello seconded the motion. Roll call vote was taken, and the motion passed 6 to 0.

7. Discussion Item(s):

- a. Murray presented the lodging tax, included in the council packet. The council directed staff to draft an ordinance for the August 19th meeting.
- b. Kimple led the discussion for school resource officers for D-38, Regan clarified that D-38 schools are not within town limits, and they are handled by the Sheriff's office. LaKind will reach out to the school board for a conversation.
- c. Romanello led the discussion, referring a question to the voters to amend the home rule charter, council and staff were not in agreement.
- d. King led the discussion to Referring a question to the voters to amend section 7.1 of the Home Rule Charter, to include entire town limits and 80132 zip code for the residency requirements for the Town Manager.

8. Public Comment for Items Not on the Agenda:

- a. Janet Ladowski- spoke on the council compensation.
- b. Tharnish- spoke on the emergency interconnect with a neighboring water district to restore the well water.
- c. Portia Hermann- thanked the Acting Town Managers for all they have done for staff.

9. Council Authorization Items: The Council authorized the following:

- a. Romanello- Finance Director/ HR/ Town Manager position discussion items for August 19, 2024.
- b. Kimple- performance appraisals when changing positions. Questioned if it is best to wait for a retreat and photography to be done.
- c. Erickson presented dates for CivicPlus training for the Board portal- email will be sent to all council members for scheduling.
- d. King- Town Code changes regarding impervious surfaces and detention services and for a discussion for September 16, 2024.

10. Council Comments:

- a. None.

11. Adjournment:

- a. LaKind Moved to adjourn the meeting, the motion passed unanimously, the meeting was adjourned at 9:00 pm.

Respectfully Submitted,

Tina Erickson, Town Clerk

Statement of Account

Collins Cole Flynn Winn & Ulmer, PLLC
165 S. Union Blvd, Suite 785
Lakewood, CO 80228

Town of Monument
 645 Beacon Lite Road
 Monument, Colorado 80132

Date: 08/09/2024

Matter: Town of Monument-General-20028-0001

Responsible Attorney: Affinity TBA

Date	Activity	Due Date	Invoice Amount	Payments	Credit	Balance
Invoice #6600	Balance: \$37,617.00					
08/09/2024	Invoice #6600	09/09/2024	\$37,617.00			\$37,617.00
Totals:			\$37,617.00	\$0.00	\$0.00	\$37,617.00

Matter: Town of Monument-Water-20028-0002

Responsible Attorney: Robert Cole

Date	Activity	Due Date	Invoice Amount	Payments	Credit	Balance
Invoice #6600	Balance: \$615.00					
08/09/2024	Invoice #6600	09/09/2024	\$615.00			\$615.00
Totals:			\$615.00	\$0.00	\$0.00	\$615.00
Totals for all Client Matters:			\$38,232.00	\$0.00	\$0.00	\$38,232.00

Councilmember Kronick Committee Report for Council meeting August 19, 2024

Pikes Peak Area Council of Governments (PPACG)

Area Agency on Aging (AAA)

Regional Advisory Council (RAC) -- [member](#)

Strategic Review Subcommittee (SRS) -- [Chair](#)

The RAC of the AAA consists of laypersons and service providers who represent the interests of older adults in the AAA Planning and Service Area of El Paso, Park, and Teller counties, and advocate on their behalf. State and Federal funds allocated for use by the AAA are apportioned to service providers through a bid process overseen by the AAA. Contracts are prepared and executed July 1st of the current year. In 2024, three new providers were awarded: Carepool (medical rides to facilities in the greater Denver area from El Paso); Brothers Redevelopment (installation of grab bars, small home chores), and Colorado Springs Fire Department (high level case management addressing homelessness).

Presentation from “Family Caregiver” and announcements about changing leadership. The organization is stand alone and focuses on aging and caregiving in conjunction with families needing related services.

Update from the PPAAA Director, Jody Barker

- This is the 50th Anniversary of the Older American’s Act (OAA)
- The OAA is being rewritten (no significant updates since 1988)
- New rules to be adopted by October 1, 2025
 - Modernization of language to procedures
 - Reauthorization of the Act
 - This is the tail end of the five year contract with the state
- Legislation is looking at funding
 - Reduction in nutrition funding
 - Increase in caregiving funding
 - There is an attempt to trim federal budgets
 - Overall funding is not keeping pace with community needs (\$2.5M shortfall)
 - Overall budget is \$5.5-\$6M
- There is a chance there may be a need to allocate funding that was unused by providers and/or turned back for various reasons (provider change in direction, inability to complete activities, etc.). When this happens, AAA staff and the RAC reallocate resources to assure the funding is being properly used in the most efficient and effective manner.

ACTION: Jody’s focus is legislative outreach and has requested stories from residents/ individuals who have received and/or needed support and how they have or have not been met; he will be supplying accompanying data along with the stories at the legislative session/s to demonstrate continuing needs and make substantiated request/s for additional funding. Anyone who would like to relate their experiences can submit same to Jody Barker at: jbarker@ppacg.org. Feel free to pass this on to anyone who may have experience/s to share.

Town Benefit/s

See narrative in the report submitted May 20, 2024.

Councilmembers Abbott and Kronick Event Report

for Council meeting August 5, 2024

State of the City July 23, 2024 (sponsored by the Denver Metro Chamber of Commerce)

Denver Convention Center, Bluebird Ballroom (can serve 4,600 sit down diners and is not the largest of the ballrooms at the Center)

Councilmember Abbott invited Councilmember Kronick to attend the event as “facilitators,” although we weren’t exactly sure what was involved. Following are the questions and comments received from the respective groups we monitored:

ABBOTT (PCL Construction)

KRONICK (Slalom Consulting)

Q1: Economic Competitiveness – Education, transportation, housing, and availability of jobs all impact a community’s economic development opportunities. What are the biggest challenges to economic competitiveness to your community?

ABBOTT

- Lack of transportation in some areas where there is affordable housing and where the jobs reside.
- Inability to buy a house but expensive unit housing.
- Job pay not able to support housing and family.
- Quality education in Aurora schools, many teachers leaving districts, residents cannot afford more than public schooling.
- Inability to retire in current home to smaller home due to cost of housing and interest rates.
- Issue of raised property taxes forcing middle income to take on an additional 400.00 payment they may not be able to afford.
- Higher cost of living making it hard to have family and work
- Small businesses impacted and unable to keep up, causing them to fail.

KRONICK

- Housing costs
- Property costs
- Cost of living
- “Home grown” education
- Graduates leaving the state for better opportunities
- Regulatory environment not compatible with needs of development
- Transportation inconsistent (urban, suburban, rural)
- Housing needs different in outlying areas (Eagle Valley)
- Goal definition – housing (make condos “sexy”) change mindset of “single family” goal to “ownership”
- Licensing and permitting – make it “better” in line with progress
- Reduce the amount of time to get building permits
- Education growth – absorption of quantity of students
- Mindset shift – entertain creative solutions outside of “home”
- Health care costs
- Child care costs and loss of ability to work that affects income
- Defect legislation – needs to be done but the legal lobby is stopping it – goals/objective (\$\$) are competing

- Lease renewals (annual) make it prohibitive to plan and save for “ownership”

Q2: Housing – What do you think is the biggest challenge with providing housing? Do you see state and local government making progress on this issue?

ABBOTT

- Bring back ownership of housing (condos)
- Expensive apartments that city employees cannot afford
- Slow progress
- Not meeting needs of minimum wage workers
- Politician not understanding needs
- Progress very slow and not helping middle class.

KRONICK

- Define “providing housing”
- Subsidize “for rental housing” (ownership)
- Current policy drives subsidies for rental rather than ownership
- Incentive for “retirees” who are downsizing
- There is a disincentive to come to Colorado
- Generally, the government is not doing enough
- Reduce regulatory restrictions
- There are unintended consequences to rentals
- Explore creative solutions (3-D printed homes, tiny homes, etc.)
- Income to housing costs at the start is larger today than it was “ago”

Q3: Sustainability – Do you feel like your community has struck a good balance between reaching their sustainability goals and affordable implementation? If yes, can you give an example? If not what could be better?

ABBOTT

- Not enough collaboration between community and leaders on this topic
- Water resources are in issue for many
- Long term plans with the ability to afford future costs need to be considered
- More engagement with local councils

KRONICK

- NO – building deficiency, energy efficiency, reusable water sources
- Retro \$\$
- Global offset versus sustainability
- Less aggressive approaches needed
- Longer runways
- Balance between stakeholder and ultimate goal
- Increase civic engagement
- Convince legislators to think more innovatively
- INNOVATE OUT OF THE ISSUES RATHER THAN REGULATING OUT OF THEM
- Collaborate instead of responding to a disaster
- Private/public partnerships

MEMORANDUM

August 9, 2024

VIA EMAIL

TO: Town Council
Town of Monument

FROM: Robert G. Cole and Javon Quarles



RE: **Comcast Franchise Agreement - Ordinance No. 11-2024 - Updated August 2024**

The proposed ordinance grants a new franchise to Comcast, who is a long-time provider of cable services within the Town. Ordinance No. 11 - 2024 ("2024 Comcast Franchise Agreement") will replace the previous franchise agreement that was granted via Ordinance 06-2012. The previous franchise agreement expired on March 20, 2021, but the Town and Comcast continued to operate under its terms.

In an effort to replace the previous franchise agreement, the 2024 Comcast Franchise Agreement was originally presented to Town Council at the June 3rd, 2024 meeting, along with a memo explaining the transaction. Following presentation, Town Council gave direction to increase the construction bond amount, which was originally set at \$20,000 and to ensure that the costs of creating and reviewing the 2024 Franchise Agreement would be paid by Comcast. The remaining portion of this memo will summarize the 2024 Comcast Franchise Agreement, including the updates mentioned above.

Summary of New Franchise Agreement:

Below we have included highlights of the most relevant terms of the 2024 Comcast Franchise Agreement, including the updates:

1. *Term (Section 2.3)* – The franchise shall be granted for a period of twenty (20) years.
2. *Competitive Equity (Section 2.6)* – If a new video service provider enters the market, the Town must allow Comcast to operate under the same terms granted to the competing provider.
3. *Franchise Fee (Section 3.1/3.2)* – The Franchise Fee is equal to three percent (3%) of Comcast's gross revenues and shall be due to the Town on a quarterly basis.
4. *Reimbursement of Expenses, as updated (Section 3.14)* – Comcast shall reimburse the Town

for all costs and expenses incurred by the Town in processing, reviewing, and negotiating the 2024 Comcast Franchise Agreement.

5. *Letter of Credit, as updated (Section 5.3)* – Upon submission of a claim by the Town of a breach of the Agreement, the Town may demand, and Comcast must provide a letter of credit in the amount of \$50,000 until the uncured breach has been resolved. The funds from letter of credit may only be withdrawn after following the procedure for remedying violations, as specified in Section 12.1 of the 2024 Franchise Agreement. The procedure includes a notice and cure period. The funds from this letter of credit may be used to pay sums due under the Franchise, to reimburse costs borne by the Town to correct Franchise violations, to pay for damages assessed against Comcast, or failure to comply with customer service standards. Section 9.6 of the Agreement requires Comcast, at its own cost and expense, to restore any disturbance in a Right-of-Way. In other words, the letter of credit may be used to cover any of Comcast's construction and maintenance costs related to work in a Right-of-Way, should Comcast fail to pay them.
6. *Records Required (Section 7.3)* – Comcast shall be required to maintain and upon request by the Town, furnish records related to all equipment and facilities located within a right-of-way, copies of all FCC filings, and logs related to the cable service provides.
7. *Remedying Violations (Section 12)* – Provides a process for remedying violations, including a thirty (30) day cure period, an obligation to meet with the Town to discuss options for remedy if such violation is not cured within the initial cure period, and an option for the Town to revoke the Franchise altogether.

Recommended Motion

If the Town Council wishes to proceed as recommended, the following is a suggested motion:

I move to approve Ordinance No. 11 - 2024, an Ordinance Granting Comcast Cable Franchise Rights Within the Town of Monument, Colorado.

An alternative motion could be stated as follows:

I move to reject approval of Ordinance No. 11 - 2024, an Ordinance Granting Comcast Cable Franchise Rights Within the Town of Monument, Colorado and to proceed as follows: **[Define how the Town should proceed.]**

TOWN OF MONUMENT

ORDINANCE NO. 11-2024

AN ORDINANCE APPROVING THE 2024 COMCAST FRANCHISE AGREEMENT WITH THE TOWN OF MONUMENT

WHEREAS, the Town of Monument (“Town”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Town’s Home Rule Charter approved by the electors on November 8, 2022 (“Charter”); and

WHEREAS, in the course of its normal course of business, the Town grants franchises to various entities, including public utilities; and

WHEREAS, the granting of franchises within the Town’s boundaries is a matter of local concern; and

WHEREAS, Article XIII of the Charter and Chapter 5.70 (Utility Franchises) of the Town’s Municipal Code (“Code”) governs the granting of utility franchises within the Town; and

WHEREAS, the Town Council of the Town (“Town Council”) previously granted Comcast a franchise via Ordinance 06-2012; and

WHEREAS, the franchise granted under Ordinance 06-2012 have expired and the Town Council desires to grant Comcast a new franchise, under the terms and conditions set forth in the Comcast Franchise Agreement, attached here as Exhibit A and incorporated herein by this reference; and

WHEREAS, this Ordinance was introduced by title, considered at public hearing, and voted upon at the regular meeting of the Town Council on August 19th, 2024.

THE TOWN COUNCIL OF THE TOWN OF MONUMENT, COLORADO, ORDAINS:

Section 1. Incorporation. The recitals set forth above are incorporated and ordained as if set forth in this section in full.

Section 2. Approval of the Franchise Agreement. The Town Council hereby approves the Comcast Franchise Agreement, attached here as Exhibit A.

Section 3. Publication. Pursuant to Subsection 6.5, 3. of the Town of Monument Home Rule Charter and Subsection 2.04.030, G. of the Monument Municipal Code, upon approval this Ordinance shall be published on the Town's official website in full for not less than ten (10) days.

Section 4. Authentication and Filing. Upon passage this Ordinance shall be authenticated by the Mayor and Town Clerk and maintained by the Town Clerk in such form as is sufficient to assure reasonable access by the public. Failure to authenticate any ordinance shall not invalidate it or suspend its operation.

Section 5. Effective Date. This Ordinance shall become effective and be in full force and effect ten (10) days after final publication.

Section 6. Severability. If any portion of this Ordinance or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the ordinance which can be given effect without the invalid portion or application, provided such remaining portions or applications are not determined by the court to be inoperable.

INTRODUCED, PASSED, and ADOPTED/REJECTED, by the Town Council of the Town of Monument, Colorado this 19th day of August, 2024 by a vote of ___ for and ___ against.

TOWN OF MONUMENT, COLORADO

By: _____
Mitch LaKind, Mayor

Attest:

Tina Erickson, Town Clerk

**COMCAST OF
COLORADO/PENNSYLVANIA/WEST
VIRGINIA, LLC
AND
TOWN OF MONUMENT,
COLORADO**

FRANCHISE AGREEMENT

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**COMCAST OF COLORADO/PENNSYLVANIA/WEST VIRGINIA, LLC AND
TOWN OF MONUMENT, COLORADO**

FRANCHISE AGREEMENT

SECTION 1. DEFINITIONS

For the purposes of this Franchise Agreement, 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 "Abandons the Cable System" means:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise Agreement to 15% or more of the Subscribers within the Franchise Area for four (4) consecutive days, unless the Town authorizes a longer interruption of service; or

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

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

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

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

1.13 "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 "Colorado Communications and Utility Alliance" or "CCUA" means the non-profit entity formed by franchising authorities and/or local governments in Colorado or its successor entity, whose purpose is, among other things, to communicate with regard to franchising matters collectively and cooperatively.

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

1.16 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for

residential occupancy. Buildings with more than one set of facilities for cooking, separate bathrooms, eating facilities, living areas, and entrances shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

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

1.18 "EITF" means the Emerging Issues Task Force.

1.19 "EAS" means an emergency alert system in compliance with FCC standards.

1.20 "FASB" means the Financial Accounting Standards Board.

1.21 "FCC" means the Federal Communications Commission.

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

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

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

1.25 "GAAP" means generally accepted accounting principles.

1.26 "Grantee" means Comcast of Colorado/Pennsylvania/West Virginia, LLC, a Delaware limited liability company or its lawful successor, transferee or assignee.

1.27 "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 Service within the Franchise Area. Gross Revenues include, by way of illustration and not limitation:

- monthly fees for Cable Service, regardless of whether such Cable Service are provided to residential or commercial customers, including revenues derived from the provision of all Cable Service (including but not limited to pay or Premium Cable Service, digital Cable Service, pay-per-view, pay-per-event and video-on-demand Cable Service);
- installation, reconnection, downgrade, upgrade or similar charges associated

with changes in Subscriber Cable Service levels;

- fees paid to Grantee for Channels designated for commercial/Leased Access Channel use and shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Service revenue as a percentage of total Subscriber revenues within the Franchise Area;
- revenues from program guides;
- FCC Regulatory Fees; and
- commissions from home shopping Channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area.

(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 and Comcast Spotlight, or their successors associated with sales of advertising on the Cable System within the Franchise Area 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 Service revenue as a percentage of total Subscriber revenues within the Franchise Area;
- 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 Service and non-Cable Service, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Town. The Town reserves its right to review and to challenge Grantee's calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.26 in order to meet the standards required by governing accounting principles as promulgated and defined by the FASB, EITF and/or the SEC.

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

1.28 "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.

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

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

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

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

1.33 "Residential Subscriber" means any Person who receives Cable Service delivered

to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.34 "Right-of-Way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Franchise Area: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, curbs, gutter, culverts or other drainage structures and similar public property and areas.

1.35 "School" means all State-accredited K-12 public and private schools.

1.36 "SEC" means the U.S. Securities and Exchange Commission.

1.37 "State" means the State of Colorado.

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

1.39 "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)).

1.40 "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)).

1.41 "Town" is the Town of Monument, Colorado, a home-rule municipality organized under the laws of the State of Colorado.

1.42 "Town Charter" means the Home Rule Charter of the Town, as adopted by the Town Council on April 8, 2022, approved by voters on November 2, 2022, as it may be amended from time to time.

1.43 "Town Code" means the Municipal Code of the Town, as it may be amended from time.

1.44 "Town Council" means the Monument Town Council, or its successor, the governing body of the Town of Monument, Colorado.

1.45 "Town Street Maintenance Ordinance" means the provisions of Chapter 12.04 of the Monument Municipal Code as amended from time to time.

1.46 "Transfer" means:

(A) relative to the Grantee, conveyance by any method of 51% or greater ownership interest in Grantee.

(B) relative to the Cable System or this Franchise Agreement, conveyance by any method, except (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation.

1.47 "Transferee" means a person who takes by Transfer.

1.48 "Video Service Provider" or "VSP" means any entity using the public Right-of-Way to provide multiple video programming services to Subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides Cable Service, multi-Channel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

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 Franchise Area 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 Agreement.

(B) Nothing in this Franchise Agreement shall be deemed to waive the lawful requirements of any generally applicable Town ordinance existing as of the Effective Date, as defined in subsection 1.16.

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the Town, and the ordinances and regulations 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 Agreement 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 Agreement. Notwithstanding any other provision of this Franchise Agreement, 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 Agreement, either now or in the future.

(D) This Franchise Agreement 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 Agreement, 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 Agreement.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise Agreement 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 Franchise Area 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 Agreement including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise Agreement 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 Agreement does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise Agreement is not a bar to the provision of non-Cable Service, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise Agreement 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 Franchise Area 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 Franchise Area. Grantee, through this Franchise Agreement, 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 Agreement to be paid for these valuable rights throughout the term of the Franchise Agreement.

(B) Grantee must follow Town established nondiscriminatory requirements for placement of Cable System facilities in Right-of-Way, including all requirements of the Town Street Maintenance Ordinance applicable to 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 portion of the Cable System 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 Agreement granted hereunder shall be twenty (20) years, commencing upon the Effective Date of the Franchise Agreement, unless the Franchise Agreement is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act, or is extended by mutual agreement of the Town and Grantee.

2.4 Franchise Agreement Nonexclusive

This Franchise Agreement 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 Agreement 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 Agreement. Any conflict between the provisions of this Franchise Agreement 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) Purposes. The Grantee and the Town acknowledge that there is increasing competition in the video marketplace among Cable Operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to Town residents; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, State and local venues. To foster an environment where video service providers using the public Right-of-Way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to Town residents; promote local communications infrastructure investments and economic opportunities in the Franchise Area; and provide flexibility in the event of subsequent changes in the law, the Grantee and the Town have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

(B) New Video Service Provider. Notwithstanding any other provision of this Franchise Agreement or any other provision of law, if any VSP (i) enters into any agreement with the Town to provide video services to Subscribers in the Franchise Area, or (ii) otherwise begins to provide video services to Subscribers in the Franchise Area (with or without entering into an agreement with the Town), the Town, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to Subscribers in the Franchise Area under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the Town shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the Town.

(C) If there is no written agreement or other authorization between the new VSP and the Town, the Grantee and the Town shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to Subscribers in the Franchise Area.

(D) Subsequent Change in Law. If there is a change in federal, State or local law that provides for a new or alternative form of authorization for a VSP to provide video services to Subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Town may request from or impose on a VSP providing video services to Subscribers in the Franchise Area, the Town agrees that, notwithstanding any other provision of law, upon Grantee's written request the Town shall: (i) permit the Grantee to provide video services to Subscribers in the Franchise Area on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Franchise Agreement to comply with the changed law; or (iii) modify this Franchise Agreement to ensure competitive equity between the Grantee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to Subscribers in the Franchise Area. The Town and the Grantee shall implement the provisions of this Section within sixty (60) days after the Grantee submits a written request to the Town. Notwithstanding any provision of law that imposes a time or other limitation on the Grantee's ability to take advantage of the changed law's provisions, the Grantee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

(E) Effect on This Franchise Agreement. Any agreement, authorization, right or determination to provide video services to Subscribers in the Franchise Area under Sections 2.6(B), 2.6(C) or 2.6(D) shall supersede this Franchise Agreement, and the Grantee, at its option, may terminate this Franchise Agreement or portions thereof, upon written notice to the Town, without penalty or damages.

2.7 Familiarity with Franchise Agreement

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 Agreement 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 Agreement 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 Agreement, the Grantee: (1) acknowledges and accepts the Town's legal right to issue and enforce the Franchise Agreement; (2) accepts and agrees to comply with each and every provision of this Franchise Agreement subject to Applicable Law; and (3) agrees that the Franchise Agreement 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 Agreement and in consideration of permission to use the Town's Right-of-Way, Grantee shall, after the Effective Date and within sixty (60) days after the activation of the first Subscriber, pay as a Franchise Fee to the Town, for Cable Service provided throughout the duration of and consistent with this Franchise Agreement, an amount equal to three percent (3%) of Grantee's Gross Revenues. Since the Town has granted other Franchise Agreement(s) to other wireline Cable Service provider(s), Grantee shall not be required to pay more than the Franchise Fee rate imposed by the other Franchise Agreement(s).

3.2 Payments

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

3.3 Acceptance of Payment and Recomputation

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

3.4 Quarterly Franchise Fee Reports

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

3.5 Annual Franchise Fee Reports

Upon thirty (30) day's written notice from the Town, Grantee shall, within sixty (60) days after the end of each year, furnish to the Town a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

3.6 Franchise Fees Subject to Audit

Upon reasonable prior written notice, at Town's expense and no more than once annually, during normal business hours at Grantee's principal business office located at 8000 E. Iliff Ave., Denver, CO 80231, the Town shall have the right to inspect the Grantee's financial records used to calculate the Town's Franchise Fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

3.7 Late Payments

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

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of five percent (5%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the Town.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the Town through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall 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 (subject to the other provisions contained in this Franchise Agreement), to the extent consistent with Applicable Law.

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 Agreement, the Town is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise Agreement 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 Cable Operators in the Franchise Area are paying the same Franchise Fee amount.

3.11 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 Agreement 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.

3.12 Financial Records

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

3.13 Payment on Termination

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

3.14 Reimbursement of Expenses

In accordance with Section 5.70.030 of the Town Code, Grantee shall reimburse the Town for all costs and expenses incurred by the Town in processing, reviewing, negotiating or considering Grantee's application for this franchise, or its renewal, sale or transfer, including, but not limited to, Town staff time and expenses, expert and consulting fees and studies, legal fees, publication costs, public hearings and elections (the "Town Costs"). All Town Costs shall be reimbursed by the applicant, regardless of whether an application is granted. Grantee shall also pay any applicable deposits or fees, as specified in the then-current Town fee schedule. The franchise granted pursuant to Section 2 of this Franchise Agreement shall be of no force or effect unless and until the Town Costs and applicable fees, as specified in this paragraph, have been paid in full.

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 Agreement in the public interest.

(B) Nothing in this Franchise Agreement 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 Service shall be subject to regulation by the Town to the full extent authorized by applicable federal, State and local laws.

4.3 Rate Discrimination

(A) 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 Service, 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 Franchise Area. Grantee shall offer the same Cable Service 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:

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

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

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

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

4.4 Filing of Rates and Charges

Grantee shall, upon thirty (30) day's written notice from the Town, provide a complete schedule of applicable rates and charges for Cable Service provided under this Franchise Agreement. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

4.5 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Service 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 Agreement Amendment Procedure

Either party may at any time seek an amendment of this Franchise Agreement 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 Agreement. 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 Agreement, 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 Service; application of new technologies; Cable System performance; Cable Service provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise Agreement; judicial and FCC rulings; line extension policies; Cable Service reliability; Cable Service outages; and the Town or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise Agreement.

(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 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise Agreement by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise Agreement 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, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Service in the Franchise Area 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. When the condition beyond the control of Grantee ceases, Grantee shall resume performance of its obligations as soon as reasonably possible, which timing shall take into consideration the frequency, predictability and magnitude of the condition beyond the control of Grantee.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise Agreement, 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

The Grantee shall indemnify, defend and hold harmless the Town, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Town shall give the Grantee written notice of its obligation to indemnify and defend the Town within ten (10) business days of receipt of a claim or action pursuant to this Section. Grantee shall not be

obligated to indemnify the Town to the extent of the Town's negligence or willful misconduct.

If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the Town and the counsel selected by Grantee to represent the Town, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the Town in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and Town desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then Town shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. The Town's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, fees for the Town Attorney and any outside attorneys necessary to the Town's defense and shall also include the reasonable value of any services rendered by any employees of the Town or its agents.

5.2 Insurance

Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Town certificates of insurance designating the Town and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of Two Million Dollars (\$2,000,000.00) for bodily injury or death to any one person, and Two Million Dollars (\$2,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and Two Million Dollars (\$2,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Town. The Grantee shall provide workers' compensation coverage in accordance with Applicable Law. The Grantee shall indemnify and hold harmless the Town from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.

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 (or cause an applicable Cable Operator to 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 fifty thousand dollars (\$50,000)..

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained at fifty thousand dollars (\$50,000) 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 12.1 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

The Town hereby adopts, and Grantee shall comply with, the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2 Subscriber Privacy

The Grantee shall comply with all applicable federal and State privacy laws,

including Section 631 of the Cable Act and regulations adopted pursuant thereto.

6.3 Subscriber Bills

Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Grantee may, in its sole discretion, consolidate costs on Subscriber bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

SECTION 7. BOOKS AND RECORDS

7.1 Books and Records

Throughout the term of this Franchise Agreement, the Grantee agrees that the Town may review the Grantee's books and records that are maintained in the ordinary course of business in the Franchise Area to monitor Grantee's compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Grantee, at the Grantee's business office located at 8000 E. Iliff Ave., Denver, CO 80231, during normal business hours, and without unreasonably interfering with Grantee's business operations. All such documents that may be the subject of an inspection by the Town shall be retained by the Grantee for a minimum period of three (3) years.

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 Agreement, complying with the Colorado Open Records Act (C.R.S. 24-72-201 et seq.), or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the Town receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the Town shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the Town for all reasonable costs and attorney's fees incurred in any legal proceedings pursued under this Section.

7.3 Records Required

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

(1) A complete set of digital as-builts, drawings, plans, and maps showing the horizontal location of all Cable System equipment and facilities in the Right-of-Way but excluding detail on proprietary electronics contained therein and Subscriber drops, shall be provided within ninety (90) days following initial construction and installation of the Cable System and following any additions or modifications. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the Town's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the Town. These maps shall be certified as accurate by an appropriate representative of the Grantee;

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

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

(4) A list of Cable Service, 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 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 Franchise Area. 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.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide or enable the provision of at least the following initial broad

categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, weather and information.

8.2 Deletion or Reduction of Broad Programming Categories

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

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Service provided by Grantee on the Effective Date of this Franchise Agreement shall be deemed the mix and quality of Cable Service required under this Franchise Agreement 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 Agreement, 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 Abandons the Cable System without prior approval of the Manager, or without just cause, in addition to any other remedy provided by this Franchise Agreement or Applicable Law, the Town may, at its option, operate the Cable System itself; designate another Cable Operator to operate the Cable System until such time as Grantee restores service under conditions acceptable to the Town or until the Franchise Agreement is revoked and a new franchisee is selected by the Town; or obtain an injunction requiring the Grantee to continue operations. If the Town exercises any of these options, the Grantee shall reimburse the Town or its designee for all reasonable costs, expenses and damages incurred.

8.6 Services for the Disabled

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

SECTION 9. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

9.1 Permits and General Obligations

The Grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Right-of-way and the rights and reasonable convenience of property owners who own property that adjoins any such Right-of-Way.

9.2 Right-of-Way Meetings

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

9.3 Joint Trenching/Boring

(A) 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.

(B) To the extent it is technically and economically feasible, Grantee shall joint trench or share bores or cuts and work with other providers (such as, but not limited to, other telecommunications, gas, and electric companies), licensees, permittees, grantees, and the Town (collectively, the "Trench Users"), so as to reduce the number of Rights-of-Way cuts within the Franchise Area, and shall provide advance notice of the opening of a trench to the Trench Users. Each Trench User installing, upgrading or repairing facilities in the same trench will pay their own costs for their facilities and will pay a pro-rata share of the cost of the trenching based on the number of Trench Users installing, upgrading or repairing facilities in the trench. No Trench User's installation of its facilities shall unreasonably interfere with the Grantee's Facilities or unreasonably delay the commencement or completion of the Grantee's construction project.

9.4 Conditions of Street Occupancy

If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall,

upon reasonable advance written notice from the Town (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Right-of-Way for the purpose of defraying the cost of any of the foregoing, the Town shall notify Grantee of such funding and make available such funds to the Grantee.

9.5 Relocation at request of Third Party

The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Town to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

9.6 Restoration of Right-of-Way

If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Right-of-Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Right-of-Way existing immediately prior to the disturbance.

9.7 Safety Requirements

The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and State regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

9.8 Trimming of Trees and Shrubbery

The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

9.9 Aerial and Underground Construction

At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and

distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

9.10 Burial Standards

(A) 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 eighteen (18) inches.
- Trunk lines shall be buried at a minimum depth of thirty-six (36) inches.
- Fiber Optic cable shall be buried at a minimum depth of thirty-six (36) inches.

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

(B) 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.

9.11 Undergrounding and Beautification Projects

In the event all users of the Right-of-Way relocate aerial facilities underground as

part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Right- of-Way.

9.12 Removal of Discontinued Facilities

Whenever Grantee intends to discontinue using any portion of the Cable System within the Rights-of-Way, Grantee shall submit for Grantor's approval a complete description of the portion of the Cable System and the date on which Grantee intends to discontinue using that portion of the Cable System. Grantee may remove that portion of the Cable System or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such portion of the Cable System remain in place, Grantor may require Grantee to remove that portion of the Cable System from the Rights-of-Way or modify that portion of the Cable System to protect the public health, public welfare, or public safety. Grantor may require Grantee to perform a combination of modification and removal of that portion of the Cable System. Grantee shall complete such removal or modification in accordance with a schedule mutually agreed upon in writing by Grantee and Grantor but not to exceed twelve (12) months. Until such time as Grantee removes or modifies that portion of the Cable System as directed by Grantor, or until the rights to and responsibility for that portion of the Cable System are accepted by another Person having authority to construct and maintain such portion of the Cable System, Grantee shall be responsible for all necessary repairs and relocations of that portion of the Cable System, as well as maintenance of the Rights-of-Way, in the same manner and degree as if that portion of the Cable System were in active use, and Grantee shall retain all liability for such portion of the Cable System. If Grantee abandons the Cable System or any portion thereof, Grantor may choose to use such portion of the Cable System for any purpose whatsoever, including providing Cable Service.

SECTION 10. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

10.1 Subscriber Network

(A) The Cable System shall deliver no less than one hundred ten (110) Channels of video programming services to Subscribers.

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

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

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

(F) Grantee shall comply with the requirements of the Town Street Maintenance Ordinance, except that Grantee shall not be required to obtain an excavation permit when connecting or disconnecting Subscribers between the distribution plant in the Rights-of-Way and the Subscriber's residence when such work does not require cuts to the Right of Way and disturbs no more than 20 feet of the Right-of-Way.

10.2 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 Agreement, 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.

10.3 Emergency Alert Capability

Grantee shall provide an operating EAS throughout the term of this Franchise Agreement.

10.4 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.

10.5 Cable System Performance Testing

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

- 1) All tests required by the FCC;

2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise Agreement; and

3) All other tests as otherwise specified in this Franchise Agreement.

(B) At a minimum, Grantee's tests shall include:

1) Cumulative leakage index testing of any new construction;

2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;

3) Tests in response to Subscriber complaints;

4) Periodic monitoring tests, at intervals not to exceed six (6) months of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and

5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(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 Town upon reasonable request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise Agreement, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the Town upon request.

(E) Grantee shall be required to promptly take such corrective measures as are necessary to fully correct any performance deficiencies identified by the testing in this Sec. 10.5 and to prevent their recurrence, as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise Agreement. Sites shall be re-tested following correction.

SECTION 11. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

11.1 Service Availability

(A) In General. Nothing in this Franchise Agreement requires Grantee to build to all areas of the Franchise Area. Grantee retains the discretion to determine the scope, location, and timing of the design and construction of its network, as well as the windows during which Residential Subscribers may enroll for services, so long as such decisions are

consistent with this Section. Grantee, at its sole discretion, may determine separately defined geographic areas within the Franchise Area where its System will be deployed, services will be offered, or facilities will be upgraded.

However, except as otherwise provided herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the Franchise Area where Grantee's system has been deployed and the location can be connected with a standard installation consisting of a 150- foot drop. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Except as otherwise provided herein, Grantee shall provide such service:

- 1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.
- 2) At a non-discriminatory installation charge for a standard installation, consisting of a 150-foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to the Town;
- 3) At non-discriminatory monthly rates for Residential Subscribers.

(B) Service to Multiple Dwelling Units. Consistent with this Section 11.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Service offered to other Dwelling Units in the Franchise Area 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 Service beyond the point of demarcation at a Multiple Dwelling Unit.

(C) Subscriber Charges for Extensions of Service. The Grantee may, at Grantee's discretion, extend the Cable System to Subscriber(s) in the Franchise Area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, in the event Grantee decides to extend the Cable System, the Grantee will contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of unserved residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any non-standard installation charges to extend the Cable System from the tap to the residence.

11.2 Connection of Public Facilities

(A) Grantee shall, at no cost to the Town, provide one outlet of Basic Service to all Town owned and occupied buildings, Schools, public libraries located within the Franchise Area where Grantee provides Cable Service, so long as these facilities are already served or are located within 150 feet from the distribution point on the Cable System from which cable service can be provided to these facilities. Such obligation to provide free Cable Service shall not extend to the following Town buildings: Town of Monument maintenance buildings, Town of Monument water or sewer department 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 Basic Service provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such Cable 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 Cable 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. The complimentary Cable Service provided for in this Section shall not apply to qualifying locations that receive complimentary Cable Service pursuant to a Franchise Agreement between the Town and another Cable Service provider.

(B) Grantee reserves whatever rights it has under Applicable Law to deduct the value of the complementary Cable 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 consistent with Section 1.26(A), but without regard to any further limitations set forth in Section 1.26(B), and the manner in which the value of the complimentary Cable Services is calculated. Subject to Applicable Law, should Grantee elect to offset complimentary Cable 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 12. FRANCHISE VIOLATIONS

12.1 Procedure for Remedying Franchise Agreement Violations

(A) If the Town reasonably believes that Grantee has failed to perform any obligation under this Franchise Agreement 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 Manager shall set a meeting to investigate said issues or the existence of the alleged default. The Town Manager 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 Manager determines that a default exists, the Town Manager shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the Town Manager shall determine. In the event Grantee does not cure within such time to the Town Manager's reasonable satisfaction, the Town may:

- 1) Withdraw an amount from the letter of credit as monetary damages;
- 2) Recommend the revocation of this Franchise pursuant to the procedures in subsection 12.2; or,
- 3) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the Town, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

12.2 Revocation

(A) In addition to revocation in accordance with other provisions of this Franchise Agreement, the Town may revoke this Franchise Agreement and rescind all rights and

privileges associated with this Franchise Agreement in the following circumstances, each of which represents a material breach of this Franchise Agreement:

- 1) If Grantee fails to perform any material obligation under this Franchise Agreement or under any other agreement, ordinance or document regarding the Town and Grantee;
- 2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;
- 3) If Grantee attempts to evade any material provision of this Franchise Agreement or to practice any fraud or deceit upon the Town or Subscribers; or
- 4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;
- 5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise Agreement.

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

(C) Any proceeding for forfeiture or termination of this Franchise Agreement shall be conducted by the Town Council and open to the public. Grantee shall be afforded at least thirty (30) days prior written notice of such proceeding.

1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. An audio recording shall be made of the proceeding and available to the Parties at the Town's cost. Either Party, at their own cost, may have made a contemporaneous transcription or a transcription of the audio recording. The Town Council shall hear any Persons interested in the revocation, and shall allow Grantee and the Town Manager, in particular, an opportunity to state their positions on the matter.

2) Within ninety (90) days after the hearing, the Town Hearing Officer shall determine whether to revoke the Franchise Agreement and declare that the Franchise Agreement is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Town Hearing Officer determines are reasonable under the circumstances. If the Town Hearing Officer determines that the Franchise Agreement is to be revoked, the Town Hearing Officer shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee.

3) Grantee shall be bound by the Town Hearing Officer's decision unless it

appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision. Grantee shall be entitled to such relief as the Court may deem appropriate.

12.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise Agreement is terminated or revoked after completion of all processes available under this Franchise Agreement and federal law, the Town shall have the right to require Grantee to remove all or any portion of the Cable System utilized exclusively for the provision of Cable Services from all Rights-of-Way and public property within the Town and may, subject to Applicable Law:

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

2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 12.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the Town may order the removal of all or any portion of Grantee's Cable System within the Franchise Area as determined by the Town. In removing its Cable System from the Franchise Area, Grantee shall comply with all provisions of Section 9 of this Franchise Agreement, which shall remain in full force and effect, and, at its own expense, shall leave all Right-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of the Cable System and without affecting any other utilities. The indemnification, letter of credit and insurance provisions in Section 5 of this Franchise Agreement shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 12.3 (B) to the Town's satisfaction, after written notice to Grantee, the Town may cause the work to be done and Grantee shall reimburse the Town for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the Town may recover the costs through the letter of credit provided by the Grantee.

12.4 Purchase of Cable System

(A) If at any time this Franchise Agreement 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 Agreement 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 Agreement 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 Granter's Cable System.

12.5 Receivership and Foreclosure

(A) At the option of the Town, subject to Applicable Law, this Franchise Agreement 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

(B) 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 Agreement and have remedied all defaults under the Franchise Agreement. 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 Agreement. If there is a foreclosure or other involuntary sale of the whole or any part of the Cable System, 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 Agreement shall be revoked thirty (30) days after service of such notice, unless:

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

2) The Transferee has covenanted and agreed with the Town to assume and be

bound by all of the terms and conditions of this Franchise Agreement.

12.6 No Monetary Recourse Against the Town

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

12.7 Alternative Remedies

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

SECTION 13. FRANCHISE RENEWAL AND TRANSFER

13.1 Renewal

(A) The Town and Grantee agree that any proceedings undertaken by the Town that relate to the renewal of the Franchise Agreement 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 Agreement term. Notwithstanding anything to the contrary set forth herein, Grantee and Town agree that at any time during the term of the then current Franchise Agreement, 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 Agreement and the Town may grant a renewal thereof. Grantee and Town consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise Agreement expire without a mutually agreed upon renewed Franchise Agreement and Grantee and Town are engaged in an informal or formal renewal process, the Franchise Agreement shall continue on a month-to-month basis subject

to Applicable Law, with the same terms and conditions as provided in the Franchise Agreement, and the Grantee and Town shall continue to comply with all obligations and duties under the Franchise Agreement.

13.2 Transfer of Ownership or Control

Neither the Grantee nor any other Person may Transfer the Cable System or the Franchise Agreement without the prior written consent of the Town, which consent shall not be unreasonably withheld or delayed. No Transfer of control of the Grantee shall take place without the prior written consent of the Town, which consent shall not be unreasonably withheld or delayed. Within thirty (30) days of receiving a request for consent, the Town shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the Transferee. If the Town has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

SECTION 14. SEVERABILITY

If any Section, subsection, paragraph, term or provision of this Franchise Agreement 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 Agreement, all of which will remain in full force and effect for the term of the Franchise Agreement.

SECTION 15. MISCELLANEOUS PROVISIONS

15.1 Preferential or Discriminatory Practices Prohibited

In connection with the performance of work under this Franchise Agreement, 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, or any other status protected by Federal or State law; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise Agreement, 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.

15.2 Notices

Throughout the term of the Franchise Agreement, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the Town or the

Grantee by written notice at any time. At the Effective Date of this Franchise Agreement:

Grantee's address shall be:

COMCAST OF COLORADO/PENNSYLVANIA/WEST VIRGINIA, LLC
8000 E. Iliff Ave.
Denver, CO 80231

The Town's address shall be:

TOWN OF MONUMENT, COLORADO
Attn: Town Manager
645 Beacon Lite Road
Monument, CO 80132

15.3 Descriptive Headings

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

15.4 Binding Effect

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

15.5 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.

15.6 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.

15.7 Reasonableness of Consent or Approval

Whenever under this Franchise Agreement "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.

15.8 Entire Agreement

This Franchise Agreement 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 Agreement is signed in the name of the Town of Monument, Colorado this 19th day of August, 2024.

TOWN:

TOWN OF MONUMENT, COLORADO, a home rule municipal corporation

By: _____

Name: Mitch LaKind

Title: Mayor

Date: _____

GRANTEE:

**COMCAST OF
COLORADO/PENNSYLVANIA/WEST
VIRGINIA, LLC,**
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

CERTIFICATE OF PUBLICATION

I, the duly qualified and Town Clerk of the Town of Monument, Colorado, do hereby certify the foregoing Ordinance No.11-2024 was approved by the Town Council of the Town of Monument at its regular meeting held on the 19th day of August, 2024, and was published on _____, 2024, on the Town's official website for not less than ten (10) days, as shown on the Attached Exhibit A.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Monument, Colorado, this ____ day of August, 2024.

Tina Erickson, Town Clerk

(S E A L)

Exhibit A to Certificate of Publication
/Screenshot showing date and time of website publication/

MEMORANDUM

August 9, 2024

TO: Town Council
Town of Monument

FROM: Bob Cole, Town Attorney



RE: **Lodging Tax Ordinance No. 16-2024**

SUMMARY

Attached is Ordinance No. 16-2024 proposing a lodging tax. This Ordinance reflects revisions discussed by the Town Council through the August 5, 2024, meeting. To be on the ballot for the November 2024 election the Ordinance must be adopted at the August 19, 2024, meeting, or a special meeting held no later than August 26, 2024. A primary point of discussion at the August 19th Town Council Meeting should be the restrictions on use of revenues listed in the Ordinance.

DISCUSSION

Ordinance No. 16-2024 calls for a ballot question to be included at the November 5, 2024, Town election to seek voter approval for a lodging tax, to commence on January 1, 2025. The proposed tax rate is 5%, which is estimated to generate \$220,000 in revenue in the first year. The ballot title would allow the revenues to be collected and spent without regard to TABOR's revenue limitations. Ordinance No. 16-2024 also calls for the addition of a new Chapter 3.14 to the Monument Municipal Code to implement the lodging tax, if the tax is approved by the voters. Administration of the lodging tax and self-collection of the Town's sales tax will be included in proposed amendments to Chapters 3 and 5 of the Municipal Code, which will be presented to the Town Council for consideration prior to the November election.

One of the primary considerations for the Town Council is the use of revenues, which appears in Section 3, the ballot title in Section 5, and Section 3.14.030 in Exhibit A. Based on previous Town Council discussions we have

included “Town owned parks.” I have also added “lodging tax administration, collection, and compliance” as a permitted use of lodging tax revenue, so these costs would not have to be funded from the general fund. Previous drafts also included using lodging tax revenue for tourism related purposes. Because we have heard no support for that purpose, it was removed. Another purpose raised in the discussions was ADA compliance work. That use is not listed in the attached Ordinance because I did not perceive general Town Council support.

CONCLUSION

The August 19, 2024, meeting is the last regular meeting at which the Town Council can place the lodging tax proposal on the ballot for the November 5, 2024, regular Town election. If Town Council desires to modify the use of lodging tax revenues as listed in the Ordinance, or any other provisions of the Ordinance, the modifications should be included in a motion to approve the Ordinance.

TOWN OF MONUMENT

ORDINANCE NO. 16-2024

**AN ORDINANCE SUBMITTING TO THE ELIGIBLE
ELECTORS VOTING IN THE TOWN'S REGULAR
ELECTION, TO BE HELD NOVEMBER 5, 2024, A
BALLOT ISSUE CONCERNING THE IMPOSITION
OF A LODGING TAX, AND CONTINGENT UPON
ELECTOR APPROVAL, AMENDING THE
MONUMENT MUNICIPAL CODE TO PROVIDE FOR
THE SAME.**

WHEREAS, the Town of Monument ("Town") is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Town's Home Rule Charter approved by the electors on November 8, 2022 ("Charter"); and

WHEREAS, the Members of the Town Council ("Council") have been duly elected and qualified; and

WHEREAS, Article X, Section 20, of the Colorado Constitution ("TABOR") authorizes the Town to submit ballot issues proposing new taxes to its eligible electors at the state general election, which next occurs on November 5, 2024 ("Election"); and

WHEREAS, the Charter, Section 4.2 calls for the Town's regular municipal election to be held in November of each even-numbered year on the date to coincide with the election date of the El Paso County coordinated election, which next occurs on November 5, 2024 ("Election"); and

WHEREAS, the Council hereby determines that both the Town's interest and the public interest and necessity require that the Town impose a lodging tax at the rate of five percent (5%) of the purchase price for lodging within the Town and be allowed to collect, retain and spend all revenues generated from such lodging tax; and

WHEREAS, contingent on approval of the lodging tax by the Town's eligible electors at the Election, the interest of the Town and the public interest and necessity require that the Town Municipal Code be amended to provide for the imposition, collection, and enforcement of the lodging tax; and

WHEREAS, this Ordinance was introduced by title, considered at public hearing, and voted upon at the regular meeting of the Town Council on August 19, 2024.

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

Section 1. Incorporation. The recitals set forth above are incorporated and ordained as if set forth in this section in full.

Section 2. Lodging Tax Imposed. Subject to voter approval as provided in Section 5 of this Ordinance, there is hereby imposed a lodging tax of five percent (5%) of the purchase price for lodging within the Town.

Section 3. Use of Revenues. The revenues derived from the lodging tax shall be used for:

- (a) Town owned parks; and
- (b) Lodging tax administration, collection, and compliance.

Section 4. Duration. The lodging tax shall commence for collection purposes beginning January 1, 2025, and continue until repealed by ordinance.

Section 5. Election and Ballot Title. Before the tax provided in this Ordinance shall become effective, it shall be submitted to and receive the approval of a majority of the eligible electors of the Town voting thereon at the Election. The ballot title for the lodging tax shall be in substantially the following form:

BALLOT ISSUE NO. 1;

SHALL TOWN OF MONUMENT TAXES BE INCREASED \$220,000.00 ANNUALLY, BY A LODGING TAX IN THE AMOUNT OF FIVE PERCENT (5%) OF THE PURCHASE PRICE FOR LODGING WITHIN THE TOWN, COMMENCING JANUARY 1, 2025, AND CONTINUING UNTIL REPEALED BY ORDINANCE, IN CONFORMANCE WITH ORDINANCE NO. 16-2024; THE REVENUE FROM SUCH TAX TO BE USED EXCLUSIVELY TO PAY FOR:

- TOWN OWNED PARKS; AND
- LODGING TAX ADMINISTRATION, COLLECTION, AND COMPLIANCE.

SUCH LODGING TAX REVENUES AND THE EARNINGS FROM THE INVESTMENT OF SUCH REVENUES TO BE COLLECTED, RETAINED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE WITHOUT CONTRACTUAL, STATUTORY OR CONSTITUTIONAL LIMITATION OR CONDITION, INCLUDING LOCAL INTERGOVERNMENTAL AGREEMENTS, ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

YES _____

NO _____

Section 6. Codification. To implement the lodging tax provided herein, the Monument Municipal Code is amended with the adoption of the provisions of Exhibit A, attached hereto and incorporated herein, contingent upon approval of the lodging tax by the eligible electors of the Town at the Election and effective upon the certification of the results of the Election indicating that Ballot Issue No. 1 was approved.

Section 7. Publication. Pursuant to Subsection 6.5, 3. of the Town of Monument Home Rule Charter and Subsection 2.04.030, G. of the Monument Municipal Code, upon approval this Ordinance shall be published on the Town's official website in full for not less than ten (10) days.

Section 8. Authentication and Filing. Upon passage this Ordinance shall be authenticated by the Mayor and Town Clerk and maintained by the Town Clerk in such form as is sufficient to assure reasonable access by the public. Failure to authenticate any ordinance shall not invalidate it or suspend its operation.

Section 9. Effective Date. This Ordinance shall become effective and be in full force and effect ten (10) days after final publication.

Section 10. Severability. If any portion of this Ordinance or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the ordinance which can be given effect without the invalid portion or application, provided such remaining portions or applications are not determined by the court to be inoperable.

INTRODUCED, **PASSED, and ADOPTED/REJECTED**, by the Town Council of the Town of Monument, Colorado this 19th day of August, 2024 by a vote of ___ for and _____ against.

TOWN OF MONUMENT, COLORADO

By: _____
Mitch LaKind, Mayor

Attest:

Tina Erickson, Town Clerk

EXHIBIT A

Chapter 3.14 – LODGING TAX

3.14.010 – Definitions.

The words, terms and phrases, used in this Chapter, shall have the meanings ascribed to them from Section 3.12.030.

3.14.010 – Tax levied.

Beginning January 1, 2025, there is levied a lodging tax of five percent (5%) on the sale of taxable lodging which shall be paid, collected, and remitted to the Town. The lodging tax shall be in addition to the Town sales and use taxes.

3.14.020 – Exemptions.

The following lodging transactions are exempt from taxation:

- A. All lodging provided to the United States Government, the State of Colorado, and their departments or institutions and political subdivisions in their governmental capacities only, including the Town;
- B. All lodging provided to charitable organizations;
- C. All lodging provided to persons which the Town is prohibited from taxing under the Constitution or laws of the United States or Colorado Constitution; and
- D. All sales of lodging provided to any natural person for a period of thirty (30) consecutive days or more.

3.14.030 – Use of tax.

Lodging tax revenue shall be used by the Town for the following purposes:

- A. Town owned parks; and
- B. Lodging tax administration, collection, and compliance.

3.14.040 – License required.

- A. It shall be unlawful for any person to engage in the business of providing lodging without first having obtained a license as required under Chapter

5.12, which license shall be granted by the Finance Director and shall be in force and effect until revoked.

- B. Every lodging business shall have a separate business license for each establishment located in the Town as required under 5.12.010.
- C. Any sales or purchases of an existing lodging business in the Town, are subject to the provisions of Section 3.12.290 except for Section 3.12.290 (c).

3.14.050 – Exception to licensing requirement.

- A. No license shall be required for any person engaged exclusively in the business of providing lodging which is exempt from taxation.
- B. No business license shall be required for marketplace facilitators of lodging who do not have a physical presence in the Town, however they will be provided a Town specific lodging license number for record keeping and tracking of the sales, use and lodging taxes required to be paid in the Town's electronic remittance system.

3.14.060 – Revocation of license.

The Finance Director, after giving reasonable notice and after full hearing, may revoke the license of any person found by the Finance Director to have violated any provision of this Chapter. A finding and order of the Finance Director revoking a license may be reviewed by the Town Municipal Court, upon application of the aggrieved party. The procedure of the review shall be in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

3.14.070 - Procedures, Administration and Enforcement

The procedures, administration and enforcement of the lodging tax shall be governed under Sections 3.12.250-3.12.440 of this Chapter.

3.14.150 - Right to Amend Chapter.

The Town Council shall have the right to amend or repeal the provisions of this Chapter, including all provisions regarding collection, administration, use and enforcement of the lodging tax, except that the amount of the tax and activities subject to the tax as approved by the voters on November 5, 2024, shall not be increased, expanded or broadened without additional voter approval.

CERTIFICATE OF PUBLICATION

I, the duly qualified and Town Clerk of the Town of Monument, Colorado, do hereby certify the foregoing Ordinance No. 16-2024 was approved by the Town Council of the Town of Monument at its regular meeting held on the 19th day of August, 2024, and was published on _____, 2024, on the Town's official website for not less than ten (10) days, as shown on the Attached Exhibit A.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Monument, Colorado, this _____ day of _____, 2024.

Tina Erickson, Town Clerk

(S E A L)

Exhibit A to Certificate of Publication
[Screenshot showing date and time of website publication]

MEMORANDUM

August 10, 2024

TO: Town Council
Town of Monument

FROM: Bob Cole, Town Attorney



RE: **Town Manager Residency; Ordinance No. 17-2024**

SUMMARY

Attached is Ordinance No. 17-2024 proposing a Charter amendment to expand the area within which the Town Manager must reside to also include any area within the 80132 zip code. To be on the ballot for the November 2024 election the Ordinance must be adopted at the August 19, 2024, meeting, or a special meeting held no later than August 26, 2024.

DISCUSSION

Ordinance No. 17-2024 calls for a ballot question to be included at the November 5, 2024, Town election to seek voter approval of an amendment to Section 7.1 of the Town's Home Rule Charter to expand the area within which the Town Manager must reside to also include any area within the 80132 zip code. Section 2 of Ordinance No. 17-2024 contains the language for the Charter amendment and Section 3 contains the language of the ballot title. In addition to the Town's usual publication of ordinances on its website, section 4 adds an additional requirement necessary for Charter amendments of publishing the Ordinance 1 time in a newspaper of general circulation within the Town.

CONCLUSION

The August 19, 2024, meeting is the last regular meeting at which the Town Council can place the Town Manager residency Charter amendment proposal on the ballot for the November 5, 2024, regular Town election.

TOWN OF MONUMENT

ORDINANCE NO. 17-2024

**AN ORDINANCE SUBMITTING TO THE
REGISTERED ELECTORS OF THE TOWN OF
MONUMENT THE QUESTION OF WHETHER THE
HOME RULE CHARTER SHOULD BE AMENDED
REGARDING TOWN MANAGER RESIDENCY.**

WHEREAS, the Town of Monument (“Town”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Town’s Home Rule Charter approved by the electors on November 8, 2022 (“Charter”); and

WHEREAS, Section 14.7 of the Charter provides that the Charter may be amended in the manner provided by Article XX of the Colorado Constitution at any regular election or special election called for such purpose upon questions submitted to the electors by a majority of the Town Council; and

WHEREAS, Article XX, Section 9 of the Colorado Constitution provides that statutory provisions shall govern the amendment of a municipal home rule charter, that a charter amendment may be initiated by ordinance, and that amendments of a charter must be approved by a majority of the registered electors of the municipality; and

WHEREAS, Section 31-2-210, C.R.S. sets forth the statutory procedures for amending a municipal home rule charter; and

WHEREAS, Section 7.1 of the Charter provides in part that the Town Manager shall reside within the boundaries of the Town; and

WHEREAS, the Town Council wishes to continue to require that the Town Manager reside in close proximity of the Town but propose to the Town electors that the Charter be amended to expand the area of residency to also include any area within the 80132 zip code; and

WHEREAS, this Ordinance was introduced by title, considered at public hearing, and voted upon at the regular meeting of the Town Council on August 19, 2024.

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

Section 1. Incorporation. The recitals set forth above are incorporated and ordained as if set forth in this section in full.

Section 2. Town Charter Amendment. Pursuant to Section 31-2-210(4), C.R.S., notice is hereby given to registered electors of the Town of Monument that the following proposed amendment to Section 7.1 of the Town of Monument Home Rule Charter, will be submitted to the registered electors at the Town regular election to be held November 5, 2024 (“Election”), by adding the capitalized and double-underlined words:

Sec. 7.1 - Appointment and Qualifications of Town Manager.

The Town Council shall hire a Town Manager who shall be the chief administrative officer of the Town and who shall serve at the pleasure of the Town Council. The Town Manager shall be chosen by the Town Council on the basis of executive and administrative qualifications with particular emphasis on experience and training with respect to the duties of the office and shall have the minimum qualifications, if any, as may be set by the Town Council by ordinance. No person holding or who has held a Town elective office shall be hired as Town Manager during or within one (1) year after the termination of the term of such elected official. The Town Manager shall reside within the boundaries of the Town OR WITHIN THE AREA WITHIN THE 80132 U.S. POSTAL SERVICE ZIP CODE. The Town Manager shall obtain residency within six (6) months of the commencement of employment.

Section 3. Ballot Title. The official ballot for the Election shall contain the following ballot title which shall also be the designation and submission clause for the question (the “Ballot Question”):

Shall the Town of Monument home rule charter be amended, as set forth in ordinance no. 17-2024, to expand the area within which the Town manager must reside to include the area within the 80132 U.S. Postal Service zip code, as an alternative to the current requirement that the Town manager must reside within the boundaries of the Town?

Section 4. Publication. Pursuant to Subsection 6.5, 3. of the Town of Monument Home Rule Charter and Subsection 2.04.030, G. of the Monument Municipal Code, upon approval this Ordinance shall be published on the Town's official website in full for not less than ten (10) days. Also, pursuant to Sections 31-2-210(4), and 31-2-203(2), C.R.S., within thirty (30) days of adoption this Ordinance shall also be published one time in one newspaper of general circulation within the Town.

Section 5. Authentication and Filing. Upon passage this Ordinance shall be authenticated by the Mayor and Town Clerk and maintained by the Town Clerk in such form as is sufficient to assure reasonable access by the public. Failure to authenticate any ordinance shall not invalidate it or suspend its operation.

Section 6. Effective Date. This Ordinance shall become effective and be in full force and effect ten (10) days after final publication.

Section 7. Severability. If any portion of this Ordinance or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the ordinance which can be given effect without the invalid portion or application, provided such remaining portions or applications are not determined by the court to be inoperable.

INTRODUCED, **PASSED, and ADOPTED/REJECTED**, by the Town Council of the Town of Monument, Colorado this 19th day of August, 2024 by a vote of ___ for and _____ against.

TOWN OF MONUMENT, COLORADO

By: _____
Mitch LaKind, Mayor

Attest:

Tina Erickson, Town Clerk

CERTIFICATE OF PUBLICATION

I, the duly qualified and Town Clerk of the Town of Monument, Colorado, do hereby certify the foregoing Ordinance No. __-2024 was approved by the Town Council of the Town of Monument at its regular meeting held on the 19th day of August, 2024, and was published on _____, 2024, on the Town's official website for not less than ten (10) days, as shown on the Attached Exhibit A.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Monument, Colorado, this _____ day of _____, 2024.

Tina Erickson, Town Clerk

(S E A L)

Exhibit A to Certificate of Publication
[Screenshot showing date and time of website publication]

TOWN OF MONUMENT

RESOLUTION NO. 48-2024

A RESOLUTION APPROVING A CONTRACT WITH SMART SYSTEMS FOR TECHNOLOGY AND AUDIO-VISUAL UPGRADES TO THE TOWN COUNCIL CHAMBERS

WHEREAS, the Town of Monument (“Town”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Town’s Home Rule Charter approved by the electors on November 8, 2022 (“Charter”); and

WHEREAS, the Town has determined that upgrading the 7-year-old technology in the Town Council Chambers, including computer systems, audio/visual systems, and ADA compliance initiative, in in the best interest of its citizens and taxpayers: and

WHEREAS, the Town’s Contract and Procurement Policy requires approval to expend \$25,000 or more and the form of contracts for procurement of goods and services; and

WHEREAS, an Internal Committee of 5 has considered all submitted proposals and determined Smart Systems is the lowest and/ or best bidder to execute the RFP requirements based on the evaluation and selection criteria contained in the Contract and Procurement Policy and the solicitation of Services: and

WHEREAS, the Town Council has reviewed the contract attached hereto and incorporated herein as Exhibit A (“Contract”) for obtaining the Services from the Contractor and desires to approve the Contract and authorize its execution and funding.

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

Section 1. Incorporation. The recitals set forth above are incorporated and resolved as if set forth in the section in full.

Section 2. Selection of Contractor. The Contractor is selected as the lowest and/ or best bidder to provide the Services based on the evaluation and selection criteria contained in the contract and Procurement Policy and the solicitation for the Services.

Section 3. Approval of Contract. The Contract, in the form attached hereto and incorporated herein as Exhibit A, is approved, and with additional minor, non-substantive changes as may be approved by the Town Attorney. The Mayor and Town Manager are authorized to execute the Contract, the Town Attorney is authorized to sign the Contract indicating it is approved as to form, and the Town Clerk is authorized to attest such signatures.

Section 4. Authorization of Expenditure. The expenditure of funds provided in the Contract for the goods and services identified in the Contract is not to exceed \$143,909.07 is approved.

Section 5. Effective Date. This Resolution shall become effective and be in full force and effect immediately upon approval.

Section 6. Severability. If any portion of this Resolution or the application thereof shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications which can be given effect without the invalid portion or application, provided such remaining portions or applications are not determined by the court to be inoperable.

PASSED AND RESOLVED by the Town Council of the Town of Monument, El Paso County, Colorado, this 19th day of August 2024, by a vote of __ for and __ against.

TOWN OF MONUMENT, COLORADO

By: _____
Mitch LaKind, Mayor

Attest:

Tina Erickson, Town Clerk

Exhibit A

**SERVICES AGREEMENT
BETWEEN**

**TOWN OF MONUMENT
and
SMART HOME SYSTEMS, INC.**

THIS SERVICES AGREEMENT (“Agreement”) is made and entered into the most recent day and year set forth below by and between the **TOWN OF MONUMENT**, a home-rule municipality organized under the laws of the State of Colorado (“Town”), whose mailing address 645 Beacon Lite Road, Monument, CO 80132, and **SMART HOME SYSTEMS, INC. DBA SMART SYSTEMS**, a Colorado corporation (“Smart Systems”), whose mailing address is 2335 S. Ellis St. Lakewood, CO 80228. The Town and Smart Systems are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the Parties as follows:

1. Scope of Services. Smart Systems agrees to provide audio, video and conferencing technology installation services, as further described in the Smart Home System Proposal #251, attached hereto as **Exhibit B** and incorporated herein by this reference (“Proposal”). All provisions of **Exhibit B**, including without limitation any terms and conditions included therein, shall be subject to the provisions of this Agreement. In the event of a conflict or inconsistency between a provision in the body of this Agreement and a provision in **Exhibit B** or any other exhibit or schedule attached hereto, the provision in the body of this Agreement shall control.

2. Time of Commencement and Completion of Services. The services to be performed pursuant to this Agreement shall be initiated no later than 8/21/24 and completed no later than 11/15/24. Any modifications to such deadlines must be agreed upon in writing by the Parties prior to the applicable deadline.

3. Early Termination by Town. Notwithstanding the time periods contained herein, the Town may terminate this Agreement at any time without cause by providing written notice of termination to Smart Systems. Such notice shall be delivered at least three (3) days prior to the termination date contained in said notice unless otherwise agreed in writing by the Parties. In the event of any such early termination by the Town, Smart Systems shall be paid for services rendered prior to the date of termination, subject only to the satisfactory performance of Smart Systems’ obligations under this Agreement. Smart Systems understands and agrees that such payment shall be Smart Systems’ sole right and remedy for such termination.

4. Compensation. In consideration of the services to be performed pursuant to this Agreement, the Town agrees to pay Smart Systems the amounts set forth in **Exhibit B**. The Town shall provide no benefits to Smart Systems other than the compensation stated above.

5. Qualifications on Obligations to Pay. No partial payment made by the Town shall be considered final acceptance or approval of that part of the Agreement paid for or shall relieve Smart Systems of any of its obligations under this Agreement. Notwithstanding any other terms of this Agreement, the Town may withhold any payment (whether a progress payment or final payment) to Smart Systems if any one or more of the following conditions exists:

(a) Smart Systems is in default of any of its obligations under this Agreement.

(b) Any part of such payment is attributable to services that are not performed in accordance with the terms of this Agreement and its associated exhibit(s). The Town will pay for any portion of the services performed in conformance with this Agreement and its associated exhibit(s).

(c) Smart Systems has failed to make payments promptly to any third-party used to perform any portion of the services hereunder, subject to Paragraph 8, for which the Town has made payments to Smart Systems.

6. Town Representative. The Town designates Mr. Will Williams, Town IT Director as its project representative (the "Town Representative") who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the Agreement. All requests for contract interpretations, change orders, and other clarification or instruction shall be directed to the Town Representative.

7. Independent Smart Systems. Smart Systems agrees that the services to be performed by Smart Systems are those of an independent contractor and not of an employee of the Town. **Smart Systems is obligated to pay federal and state income tax on any moneys earned pursuant to this Agreement. Neither Smart Systems nor its employees, if any, are entitled to workers' compensation benefits from the Town for the performance of the services described in this Agreement.**

8. Assignment. Smart Systems shall neither assign any responsibilities nor delegate any duties arising under this Agreement to a third party without the prior written consent of the Town, which may be granted or denied in Town's sole discretion.

9. Standard of Care. Smart Systems shall perform the services hereunder at or above the standard of care of those in its profession or industry providing similar services in the Town's local area; provided, however, that in the event the standard of care is higher in the local area where Smart Systems' office primarily responsible for providing the services is

located, then the standard of care applicable to the local area where Smart Systems' office is located shall be applicable to such services.

10. Accuracy of Work. Smart Systems represents, covenants, and agrees that its work will be accurate and free from any material errors. Smart Systems shall correct any errors or deficiencies in Smart Systems' services of which it becomes aware promptly and without additional compensation unless such corrective action is directly attributable to errors or deficiencies in information furnished by the Town. The Town's approval of Smart Systems' services shall not diminish or release Smart Systems' duties or obligations hereunder, since the Town is ultimately relying upon Smart Systems' skill and knowledge to perform the Agreement. The obligations contained in this Section 10 shall survive for a period of one (1) year following termination or expiration of this Agreement.

11. Duty to Warn. Smart Systems agrees to call to the Town's attention errors in any drawings, plans, sketches, instructions, information, requirements, procedures, and other data supplied to Smart Systems by the Town or a third-party that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a material way. However, Smart Systems shall not independently verify the validity, completeness, or accuracy of such information unless otherwise expressly engaged to do so by the Town. Nothing shall detract from this obligation unless Smart Systems advises the Town in writing that such data may be unsuitable, improper, or inaccurate and the Town nevertheless confirms in writing that it wishes Smart Systems to proceed according to such data as originally given.

12. Insurance.

(a) During the term of this Agreement, Smart Systems shall purchase and maintain, at its own cost and expense, the following:

(i) Workers' compensation insurance for its employees, if any, as required by Colorado law with limits of at least \$500,000 per injury or illness an employee suffers as a result of providing the services hereunder, with a \$500,000 aggregate per occurrence.

(ii) Employer's liability insurance with limits of at least \$500,000 per employee/accident and \$1,000,000 aggregate.

(iii) Commercial general liability insurance covering, without limitation, premises operations, products-completed operations, contractual liability insuring the obligations assumed by Smart Systems under this Agreement, personal and advertising injury, and broad form property damage, with limits of at least \$2,000,000 per occurrence for bodily injury, death or damage to property; \$2,000,000 per occurrence for personal and advertising injury; \$2,000,000 products-completed operations; and \$2,000,000 general aggregate; and

(iv) Automobile liability insurance covering all owned, hired and non-owned vehicles used in the performance of Smart Systems' services under this Agreement

with a limit of at least \$2,000,000 combined per accident for bodily injury and property damage; and

(b) The insurance required herein may be satisfied through any combination of primary and excess/umbrella liability policies.

(c) The Town, the Town Representative, and the Town's directors, officers, and employees, shall be endorsed as "Additional Insureds" under the (i) commercial general liability insurance policy for both ongoing and completed services for a period of one (1) year; and (ii) automobile liability policy.

(d) The Contractor shall provide a waiver of subrogation endorsement, or its equivalent, under the (i) workers' compensation; (ii) commercial general liability; and (iii) automobile liability insurance policies in favor of the Town, its directors, officers, agents, and employees.

(e) All liability insurance policies required herein shall provide that the coverage is primary and non-contributory to other insurance available to the Town and its directors, officers, agents, and employees. Any insurance maintained by the Town and its directors, officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.

13. Warranties and Guarantees. Smart Systems hereby represents, warrants and guarantees to the Town all workmanship, equipment and materials paid for by the Town pursuant to this Agreement for a period of one (1) year following the date of purchase by Smart Systems. Such warranty and guarantee shall be construed to include, but is not limited to, representations that all workmanship, equipment and materials are of good quality, free from any defects or irregularities, and in strict conformity with any and all specifications provided to Smart Systems by the Town. If any defect in workmanship, equipment or materials arises, Smart Systems shall remedy or otherwise correct such defect without cost to the Town within such reasonable period of time as specified by the Town in writing. If Smart Systems fails to repair such defect within such period of time specified by the Town, the Town may repair such defect or contract for such repairs at the expense of Smart Systems. The obligations contained in this Section 13 shall survive the termination or expiration of this Agreement.

14. Compliance with Laws. Smart Systems is obligated to familiarize itself and comply with all laws applicable to the performance of the Agreement, including without limitation all state and local licensing and registration requirements.

15. Acceptance Not Waiver. The Town's approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the Town under this Agreement.

16. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either Party should fail or refuse to perform according to the terms of this Agreement, such Party may be declared in default.

17. Remedies. In the event a Party declares a default by the other Party, such defaulting Party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. If the non-defaulting Party commences legal or equitable actions against the defaulting Party, the defaulting Party shall be liable to the non-defaulting Party for the non-defaulting Party's reasonable attorney fees and costs incurred because of the default.

18. Indemnification; No Waiver of Liability or Immunity. Smart Systems agrees to indemnify, defend, and hold harmless the Town and its officers, directors, employees, agents, and attorneys from any and all damages and liabilities arising from Smart Systems' performance of the Agreement. As part of this obligation, Smart Systems shall compensate the Town for the time, if any, spent by its legal counsel in connection with such claims or actions. Smart Systems' obligations under this Section 18 shall be to the fullest extent permitted by law and shall survive termination or expiration of this Agreement. **Notwithstanding any other provision contained in this Agreement, including but not limited to Exhibit B, the Town does not agree to defend, indemnify, or hold harmless Smart Systems or waive or limit Smart Systems' liability (either by type of liability or amount).** The Town is relying on and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, defenses, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to the Town or its officers or employees.

19. Binding Effect. This writing constitutes the entire agreement between the Parties and shall be binding upon the Parties, their officers, employees, agents and assigns and shall inure to the benefit of the Parties' respective survivors, heirs, personal representatives, successors and permitted assigns.

20. Amendment. No amendment or modification of this Agreement shall be binding upon the Parties unless the same is in writing and approved by a duly authorized representative of each Party.

21. Law; Venue. The laws of the State of Colorado shall govern the construction, interpretation, execution, and enforcement of this Agreement. Venue for any dispute between the Parties arising out of or relating to this Agreement shall be in the State of Colorado District Court for El Paso County.

22. Severability. In the event any term or condition of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

23. Taxes. The Town is a governmental entity and is therefore exempt from state and local sales and use tax. The Town will not pay for or reimburse any sales or use tax that may not directly be imposed against the Town. Smart Systems shall use the Town's sales tax exemption for the purchase of any and all products and equipment on behalf of the Town.

24. Notices. All notices which are required, or which may be given under this Agreement shall be effective when mailed via registered or certified mail, postage prepaid and sent to the address first set forth above.

25. Counterparts, Electronic Signatures and Electronic Records. This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101, *et seq.*, C.R.S.

26. No Third-Party Beneficiaries. The Parties to this Agreement do not intend to benefit any person not a party to this Agreement. No person or entity, other than the Parties to this Agreement, shall have any right, legal or equitable, to enforce any provision of this Agreement.

27. Section Headings. The section headings in this Agreement have been inserted for convenience of reference only and shall not affect the meaning or interpretation of any part of this Agreement.

28. Not Construed Against Drafter. Each Party acknowledges that it has had an adequate opportunity to review each and every provision contained in this Agreement, including the opportunity to consult with legal counsel. Based on the foregoing, no provision of this Agreement shall be construed against either Party by reason of such Party being deemed to have drafted such provision.

[Signature Pages Follow]

TOWN:

TOWN OF MONUMENT, a home-rule
municipality organized under the laws of the
State of Colorado

By: _____
Name: Madeline VanDenHoek
Title: Interim Town Manager
Date: _____

SMART SYSTEMS:

**SMART HOME SYSTEMS, INC., DBA
SMART SYSTEMS**, a Colorado corporation

By: _____
Name: _____
Title: _____
Date: _____



Audio-Technica Mics w/ i5 Nameplates - RFP for Town of Monument

A PROPOSAL FOR

Will Williams

Town of Monument
ithelp@tomgov.org

645 Beacon Lite Road
Monument, CO 80132

PREPARED BY JOHN YOUNG

Project Description

A properly designed Town Council Chamber conference system not only includes excellent audio quality and content distribution, it also accounts for some of the common annoyances experienced by the participants and attendees, both local and virtual. By leveraging Q-SYS's ACPR (Automatic Camera Preset Recall) technology, this system design eliminates the awkward camera movement when changing from one speaker to the next and empowers the meeting coordinator (Town Clerk) to manage all pertinent aspects of the meeting. Watch the short video below to see how this system design dramatically increase the professionalism of your meetings.

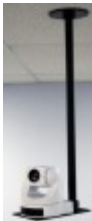
Try watching this video on www.youtube.com

Areas & Items

Town Council Chamber Room

This system design has been engineered to work with Civic Plus. This scalable and future ready/upgradable system design delivers a State-Of-The-Art solution that will satisfy your Town Council Chamber needs today, and for many years to come. **Voting procedures in the council chamber** will be performed on the Mayor/Council Member's PC via the CivicPlus App. We will reuse the existing wall-mounted equipment rack to house the Council Chamber electronics.

Items	Sell Price	Qty	Total
 QSC Q-SYS NV-32-H (Core Capable) 4K60 4:4:4 Network Video Endpoint for the Q-SYS Ecosystem, software configurable as Encoder or Decoder. 3 HDMI 2.0 Inputs, 2 HDMI 2.0 Outputs, on-board AV Bridging. Supports optional stand-alone Q-SYS Core Mode" operation for audio DSP with local video switching (no encoding or decoding) and AV Bridging.		x1	\$5,269.00 Combined Price
 COOLM 48V 2A Power Supply AC 100-240V to DC 48V 2A Power Supply Adapter 48V 96W Charger Interface 5.5 x 2.5mm for PoE Switch or PoE Injector with Power Cord		x1	
 QSC Q-SYS SLDAN-16-P Q-SYS Software-based Dante 16x16 Channel License, Perpetual.		x1	
 QSC SLQUD-8N-P Q-SYS Core 8 Flex, Core Nano, NV-32-H (Core Capable). UCI Deployment Software License, Perpetual.		x1	
 QSC SLQSE-8N-P Q-SYS Core 8 Flex, Core Nano, NV-32-H (Core Capable). Scripting Engine Software License, Perpetual.		x1	
 QSC Q-SYS TSC-101-G3 Q-SYS 10.1 PoE Touch Screen Controller for In-Wall Mounting. Color - Black only		x1	\$3,635.00 Combined Price
 QSC TSC-710t-G3 Table top mounting accessory for TSC-70-G3 and TSC-101-G3. <i>For Tabletop Mounting.</i>		x1	

Items		Sell Price	Qty	Total
	QSC Q-SYS NC-20x60 20x Optical Zoom 60 Horizontal Field of View, PTZ Network Camera, PoE, with HDMI and SDI output. Includes PTZ-WMB1 wall mount bracket. <i>Two (2) cameras for Dias and two (2) cameras for seating area and podium. (Cameras work in tandem for ACPR switching)</i>		x4	\$23,120.00 Combined Price
	 Custom CAM-MT-PEN Pendant Mount for Conference Cameras, with above-grid structural supports/tie-ins		x4	
	QSC Q-SYS SPA-Qf 60x2 2-ch, 60W/ch Q-SYS network audio Amplifier, Lo-Z, FlexIO, with Mic/line Input, 100-240v	\$1,420.00	x1	\$1,420.00
	Wattbox WB-800-IPVM-12 WattBox 800 Series 12 Outlet Rack Mount IP Controllable Power Conditioner	\$951.93	x1	\$951.93
	Ubiquiti USW-Pro-24-POE Ubiquiti: UniFi Switch 10 Gigabit 24-Port <i>400W POE Budget</i>		x1	\$927.00 Combined Price
	Hana Wireless HW-SFP-T Hana: SFP 10/100/1000 RJ-45 Copper <i>Uplink to rack</i>		x1	
	Audio Technica ATND8677A Audio Technica ATND8677A Microphone Desk Stand with Dante Network Output (AES67 compatible)		x14	\$10,976.37 Combined Price
	Audio Technica U859QL Cardioid Condenser Microphone		x14	
	Monoprice 41038 Monoprice Cat6 PoE Ethernet Patch Cable - 600V_ Shielded RJ45_ Solid_ 550MHz_ STP (U/FTP)_ 24AWG_ 20ft_ Black		x6	
	Monoprice 41037 Monoprice Cat6 PoE Ethernet Patch Cable - 600V_ Shielded RJ45_ Solid_ 550MHz_ STP (U/FTP)_ 24AWG_ 14ft_ Black		x7	

Items	Sell Price	Qty	Total
 Audio Technica ATND1061DAN Beamforming Ceiling Array Microphone <i>For participants/seating area</i>	\$2,980.00	x1	\$2,980.00
 i5LED Icon Innovation COB 1.8mm 20.25" X 7.09" Custom LED Name Plate		x7	\$15,969.43 Combined Price
 i5 Control System Control system for custom name plates		x1	
 i5 Installation Installation/Programming		x1	
 Monoprice 41038 Monoprice Cat6 PoE Ethernet Patch Cable - 600V_ Shielded RJ45_ Solid_ 550MHz_ STP (U/FTP)_ 24AWG_ 20ft_ Black		x3	
 Monoprice 41037 Monoprice Cat6 PoE Ethernet Patch Cable - 600V_ Shielded RJ45_ Solid_ 550MHz_ STP (U/FTP)_ 24AWG_ 14ft_ Black		x4	
 i5 Icon Innovation COB 1.8mm 20.25" X 7.09" Custom Countdown Clock	\$1,300.00	x1	\$1,300.00
 Lenovo 4Y40R38905 KBD_BO Lenovo Num Keypad <i>For countdown clock</i>	\$59.99	x1	\$59.99
 Binary B-USB3-AB-4M Binary USB 3.0 A (Male) to B (Male) 4m (13.12 ft.)	\$24.49	x1	\$24.49
 Halokny HK-W-10103 USB 3.0 Wall Plate, White	\$15.99	x1	\$15.99

Items		Sell Price	Qty	Total	
	Pro Video	VECASTER 4K			
	Instruments				
	VeCASTER 4K HDMI To H264 multirate IPTV encoder 4K video distribution over LAN. Allows the Mayor and Council Members to view the room video content on their PCs in any HTML5 compatible web browser. The video stream will also be viewable on the two (2) 65" Sony Pro Room Displays and participant mobile devices for ADA Vision Impaired compliance.		\$1,495.00	x1	\$1,495.00
	Sony	FW65BZ30L			
	65" BRAVIA 4K HDR PROFESSIONAL DISPLAY - Black HTML5 Compliant for IP video distribution over LAN, Q-SYS Compliant for system control.		\$1,455.00	x2	\$2,910.00
	EZCast	QuattroPod Mini			
	Wireless HDMI Transmitter and Receiver 4K, Streaming Media Video/Audio Extender 5G Kit for Laptop, Camera, Cable Box, Netflix, PS5, Phone, Projector, HDTV 165FT For wireless presentations, includes one (1) receiver and two (2) compact transmitters		\$499.99	x1	\$499.99
	Listen	LCS-120-01-D			
	Technologies				
	Wi-Fi\RF Base (Dante) System Includes One (1) LW-100P-02 LE 2 Channel (mono) Wi-Fi Server One (1) LW-202 LE Venue Awareness Kit One (1) LT-803-072-P1 Stationary 3-Channel Transmitter Package (72 MHz) One (1) LPT-A107-B Dual RCA to Dual RCA Cable 6.6 ft. (2 M) Two (2) LR-3200-072 Basic DSP Receiver (72 MHz) Two (2) LA-401 Universal Ear Speaker Two (2) LA-430 Intelligent Ear Phone/Neck Loop Lanyard One (1) LA-423 4 Port USB Charger Additional RF receivers with ear speakers available at additional cost.		\$2,605.00	x1	\$2,605.00
	Listen	LR3200072			
	Technologies				
	Basic DSP RF Receiver 72 MHz Additional DSP Receiver w/ Universal Ear Speaker and Neck Loop to expand ADA compliance to 75 seat occupancy,			x1	\$259.00
			Combined Price		
	Listen	LA-401			
	Technologies				
	Universal Ear Speaker			x1	
	Listen	LA-430			
	Technologies				
	Intelligent Earphone/Neck Loop Lanyard			x1	

Items		Sell Price	Qty	Total
	Labor CAT6 Plenum CAT6 Plenum cable run <i>Uplink from rack switch to dais switch</i>	\$250.00	x1	\$250.00
	CUSTOM CAT5E-S CAT5-E Shielded Cable Run, Includes Shielded RJ-45-M Connectors <i>For Cameras, Ceiling Mic, Mic Receivers, and TV's - Plenum Rated</i>	\$200.00	x14	\$2,800.00
	Labor CAT5E Cable Run Up to 75' Run - Plenum Rated	\$175.00	x10	\$1,750.00
	Binary B-USB3-AB-4M Binary USB 3.0 A (Male) to B (Male) 4m (13.12 ft.)	\$24.49	x1	\$24.49
	Labor Misc Parts Includes all cables, connectors, and brackets.	\$450.00	x1	\$450.00
	Labor Q-SYS Programming, Deployment, and Testing Includes: Configuring Q-SYS control (CORE) and controlled system devices, DANTE Mic Audio Streams, Camera Presets, and User Interfaces (UI) for Dais touchscreen, Timeclock, and Mobile devices. Tax Exempt	\$5,000.00	x1	\$5,000.00
	Labor Installation	\$185.00	x30	\$5,550.00

Town Council Chamber Room Total : \$90,242.68

Mobile Solution

Voting procedures on the mobile system will be performed on the Mayor/Council Member's Smart Device (iPhone, Android, Tablet) via CivicPlus App. Q-SYS UCI Viewer App will be used for Mobile Solution system control.

Items	Sell Price	Qty	Total
 QSC Q-SYS NV-32-H (Core Capable) 4K60 4:4:4 Network Video Endpoint for the Q-SYS Ecosystem, software configurable as Encoder or Decoder. 3 HDMI 2.0 Inputs, 2 HDMI 2.0 Outputs, on-board AV Bridging. Supports optional stand-alone Q-SYS Core Mode" operation for audio DSP with local video switching (no encoding or decoding) and AV Bridging.		x1	\$5,269.00 Combined Price
 COOLM 48V 2A Power Supply AC 100-240V to DC 48V 2A Power Supply Adapter 48V 96W Charger Interface 5.5 x 2.5mm for PoE Switch or PoE Injector with Power Cord		x1	
 QSC Q-SYS SLDAN-16-P Q-SYS Software-based Dante 16x16 Channel License, Perpetual.		x1	
 QSC SLQUD-8N-P Q-SYS Core 8 Flex, Core Nano, NV-32-H (Core Capable). UCI Deployment Software License, Perpetual.		x1	
 QSC SLQSE-8N-P Q-SYS Core 8 Flex, Core Nano, NV-32-H (Core Capable). Scripting Engine Software License, Perpetual.		x1	
 Audio Technica ESW-T4107/925C15 ESW DESK STAND TX W/925C15 <i>For Mobile Solution</i>		x14	\$19,982.00 Combined Price
 Audio Technica ESW-R4180DAN ESW 8CH MICROPHONE RECEVIER DANTE		x2	
 Audio Technica ESW-CHG5 ESW 4-BAY CHARGING STATION <i>Charging base stations for up to 16 ESW Series wireless microphones, POE powered & managed.</i>		x2	
 RouterBox RBx100 RBx Managed Network Router, 5 Multi-Gig Ports, Configurable	\$700.00	x1	\$700.00

Items		Sell Price	Qty	Total
	RouterBox RBx-RP-1U-FLAT RouterBox 1U Rack Mount Plate, Flat	\$29.99	x1	\$29.99
	Ubiquiti US-8-150W 8 +2 port, Layer 2 PoE switch with a fanless cooling system. (8) GbE PoE+ ports, (2) 1G SFP ports, 130W total PoE availability	\$299.00	x2	\$598.00
	RACKIDEA RI-UB8RMBA Rack mount brackets for UniFi US-8-150W	\$39.99	x1	\$39.99
	Hana Wireless HW-SFP-T Hana: SFP 10/100/1000 RJ-45 Copper <i>Uplink to TOM LAN and Downlink to Dais and TV case switches</i>	\$28.00	x3	\$84.00
	Ubiquiti U6-IW Ubiquiti Networks UniFi U6 In-Wall Dual-Band Wi-Fi Access Point & 4-Port PoE Compliant ...	\$225.00	x1	\$225.00
	Sound Town STMR-A10X8UW Lightweight ABS rack case offers 8U vertical and 10U top spaces	\$549.99	x1	\$549.99
	Wattbox WB-800-IPVM-12 WattBox 800 Series 12 Outlet Rack Mount IP Controllable Power Conditioner	\$951.93	x1	\$951.93
	Grace Technologies PP11R2K3RF0 Programming Port, USB Type A-A Cable - USB 2.0, Cat5e, GFCI Outlet <i>NET Uplink Port and convenience outlet</i>	\$425.00	x1	\$425.00
	Custom FC-DTV-Lift-55 Flight Case w/ Dual 55" TV Lift, Electric, Portable <i>Includes 50' retractable 15A power cord, surge protector, weatherproof electronics enclosure w/ cooling fan, and quick-port connection module for peripheral devices.</i>	\$3,750.00	x1	\$3,750.00
	Sony FW55BZ30L 55" BRAVIA 4K HDR PROFESSIONAL DISPLAY - Black <i>HTML5 Compliant for IP video distribution over LAN, Q-SYS Compliant for system control.</i>	\$1,170.00	x2	\$2,340.00

Items		Sell Price	Qty	Total
	QSC Q-SYS NL-SB42 3.5" Two-way network soundbar, PoE/PoE+ powered. Includes hanging hardware.	\$770.00	x2	\$1,540.00
	Grace Technologies PR2B2RX ETHERNET INTERFACE HOUSING <i>NET Downlink Port</i>	\$277.00	x1	\$277.00
	QSC Q-SYS NC-12x80 12x Optical Zoom 80 Horizontal Field of View, PTZ Network Camera, PoE, with HDMI and SDI output. Includes PTZ-WMB1 wall mount bracket <i>For Mayor and Council Members (1) and Participants (1)</i>	\$4,625.00	x1	\$4,625.00
	Custom CAM-MT-POLE Pendant Mount for Conference Camera	\$225.00	x1	\$225.00
	Binary B-USB3-AB-4M Binary USB 3.0 A (Male) to B (Male) 4m (13.12 ft.)	\$24.49	x1	\$24.49
	Labor Misc Parts Includes interconnect cables, plates, connectors, and brackets.	\$450.00	x1	\$450.00
	Labor Network Configuration	\$350.00	x1	\$350.00
	Labor Q-SYS Programming, Deployment, and Testing Includes: Configuring Q-SYS control (CORE) and controlled system devices, DANTE Mic Audio Streams, Camera Presets, and User Interfaces (UI) for Dais touchscreen, Timeclock, and Mobile devices. Tax Exempt	\$2,500.00	x1	\$2,500.00
	Labor Installation	\$185.00	x18	\$3,330.00

Mobile Solution Total : \$48,266.39

Performance Plan

- 1. Response & Resolution Timelines: Response time within 4 hours (8am-8pm MST/MDT)
- 2. Remote troubleshooting
- 3. Expedited on-site service calls
- 4. Routine maintenance and firmware upgrades
- 5. One (1) scheduled maintenance service call per year

Items		Sell Price	Qty	Total
	Labor Silver Performance Plan - Annual	\$1,800.00	x3	\$5,400.00
	3 Year - Priority Service Contract for Council Chamber and Mobile Solution electronics. Includes remote support (Q-SYS Reflect) for Council Chamber and Mobile Solution AV components and Mobile Solution router and network components.			
	Tax Exempt			

Performance Plan Total : \$5,400.00

Financial Summary

Parts	\$118,879.07
Parts Total	\$118,879.07
Labor Total	\$25,030.00
Subtotal	\$143,909.07
Proposal Total	\$143,909.07

Project Terms

1. Service

1. Smart Home Systems, Inc, dba Smart Systems, Hereafter "Smart Systems" will provide the equipment and personnel required to complete your project to the specifications & descriptions agreed upon in the sales proposal document, attached hereto.
2. All labor, work, and materials listed in Project Proposal and all subsequent Change Orders shall be completed by or supplied by Smart Systems and its contractors.
3. The costs associated with any related work or materials, including, but not limited to electrical, drywall, painting, and casework, are not included unless specifically documented in the proposal.
4. Smart Systems will dispose of all boxes and packing at the client's written request, however, the Client accepts a minimum 30% restocking fee for any equipment exchanged or returned without complete, original manufacturer's shipping materials and an additional 20% restocking fee for non-stock or special ordered products in their original packaging.
5. The attached proposal is valid for thirty (30) days from when it is sent to the client. If this proposal expires prior to being accepted by the client, Smart Systems reserves the right to adjust product pricing.
6. Any Comcast, Cox, CenturyLink, Dish Network, DirecTV, or any other provider's internet, video, audio, phone, or any other services connectivity issues that arise are not covered under the scope of this project unless specifically listed in the project proposal. The time required to resolve these issues will be billed to the client separately from the primary project by Smart Systems.

1.a Silver Performance Plan - 3 Year Term

Includes:

1. Response & Resolution Timelines:
 - Response time within 4 hours (8am-8pm MST/MDT)
2. Remote troubleshooting
3. Expedited on-site service calls
4. Routine maintenance and firmware upgrades
5. One (1) scheduled maintenance service call per year

2. Time

1. With respect to the completion of services, time is of the essence. If Smart Systems is delayed at any time in the progress of the work by client change orders, fire, labor disputes, acts of God, or any other causes beyond Smart Systems' control, the completion schedule for the work or affected parts of the work shall be extended by the same amount of time caused by the delay.
2. After receiving a signed contract, Smart Systems will contact the Client to confirm an installation date. At this time, the Client shall commit to a date upon which Smart Systems shall execute the installation work. The Client agrees to have all necessary work areas, furniture, equipment, and/or personnel ready for the installation by the installation date. If the Client does not have all necessary furniture, equipment, and/or personnel ready, or if the work area is not properly prepared for the installation by the installation date, or if the client must change the installation date for any reason, the client is liable for payment of any costs incurred by Smart Systems in connection with changes from the original agreed-upon installation date. Smart Systems will bill the client based on the labor time scheduled for the installation in man-hours. This billing is due upon receipt and does not constitute payment towards this contract.
3. Smart Systems will make sure that the specifications for your home are consistent with the agreed-upon design. During the course of a project, the client, contractor, or interior designer may request changes and/or modifications. Should Change Orders such as this occur please be advised that all Change Order requests require the following:

3. Project Changes

1. The Client may order changes, additions, or modifications without invalidating the contract subject to this Change Order Procedure.
2. Requests for partial or temporary installations will be honored if at all possible, however, to be completed these requests may incur additional labor charges, additional parts, and equipment charges, and will be subject to the following Change Order Procedure:
 - a. The request for changes, additions, or modifications will be done electronically in a Proposal Revision. The client must digitally accept the revised proposal for the requested changes to be added to the project.
 - b. The Client will be notified in writing by Smart Systems of any additional charges and changes in project timelines that will result from the Change Order.
- c. Payment for changes made to the Proposal is due upon acceptance and does not constitute payment towards this contract.

4. Intellectual Property

1. Unless otherwise specified in writing, the network configuration(s) script(s), and coding of Client's network router(s) and/or network switch(es) is the sole proprietary intellectual property of Smart Systems. The Client is permitted to use said configuration(s), script(s), and coding as long as Smart Systems manages the client's network. Should the client opt to take-over and/or transfer their network management to another party, the client may submit a request in writing and at additional cost for Smart Systems to remove the portions of the client's configuration(s) script(s) and coding that contains the intellectual property of Smart Systems and secure VPN connections that could create vulnerabilities to Smart Systems' servers and/or other networks managed by Smart Systems. The client acknowledges that by requesting Smart Systems to perform the above-referenced actions, the client's network may lose functionality as a result of removing Smart Systems' proprietary configuration(s), script(s), and coding.

5. Payment

- 1. Upon acceptance of this contract, your deposit payment of 60% (\$83,105.40) is due. Equipment will not be ordered until the deposit payment has been received.
- 2. ~~After the pre-wire is satisfactorily completed, and at least 4 weeks prior to equipment installation, when all equipment needed for the trim is ordered, a payment of \$0.00 is due.~~
- 3. ~~Upon delivery of the substantial percentage of equipment, a payment of \$0.00 is due.~~
- 4. At project completion, your final payment for the project balance is due. ~~Shipping charges and any applicable local and/or State sales tax that is not shown above will be added to your final Balance/Invoice.~~ Project Completion is defined here as the point in time when all of your equipment has been delivered, installed, configured and/or programmed. Final trouble-shooting, programming, system tuning, and client training may continue beyond this date. The client will assume possession and responsibility for the equipment, less punch list items, on the Date of Issuance. All warranties for products listed in the contract will begin on the Date of Issuance.
- 5. Time is of the essence. Failure of the Client to make any scheduled payment when due will result in the delay of Installation services, as Smart Systems will not schedule any services until each payment is received. Failure of Client to make any payment, including the final payment due upon Substantial Completion, or within five days after a payment due date shall constitute a default by the client and shall entitle Smart Systems to discontinue service and restrict system use and/or access by the client and/or client's agents without further notice. Smart Systems may, in addition to other remedies, impose an APR of 5% on any overdue payments, partial payments, or unpaid balances thereof.
- 6. Quote pricing is based on payment by cash or check. Add 2.9% for credit card transactions.

By accepting this Proposal, I also accept the above-referenced Project Terms.

TOWN OF MONUMENT

SMART SYSTEMS

Accepted By (Print Name): _____

Accepted By (Print Name): _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____