

## 1. Meeting Materials

### Documents:

[AUGUST\\_19\\_2024\\_PACKET.PDF](#)  
[AUGUST\\_19\\_2024\\_AGENDA.PDF](#)



**AGENDA for a Regular Meeting**  
**of the Board of Trustees of the Town of Fairplay, Colorado**  
**Monday, August 19, 2024, at 6:00 P.M. in the**  
**Fairplay Town Hall Board Room, 901 Main Street, Fairplay, CO**  
[Join the TEAMS Meeting](#) (Meeting ID: 237 577 628 045 / Passcode: mjUk7V)

- I. **6:00 PM CALL TO ORDER & PLEDGE OF ALLEGIANCE**
- II. **APPROVAL OF AGENDA**
- III. **CONSENT AGENDA** *(This item is intended to streamline the Board Meeting grouping routine, non-controversial business. The public or the Board Members may ask that an item be removed from the Consent Agenda for individual consideration.)*
  - A. **APPROVAL OF MINUTES OF PRIOR REGULAR MEETING** – May 6, 2024.
  - B. **APPROVAL OF EXPENDITURES** – Paid bills for all Town funds from August 2, 2024, through August 15, 2024, in the amount of **\$235,362.61**.
- IV. **CITIZEN COMMENTS** *(This item allows for the public to sign up to address the Board on matters that are not on the agenda. Sign-up can be done prior to, or at the start of a meeting, on the required form.)*
- V. **PUBLIC HEARINGS**
  - A. **FIRST READING** – Should the Board of Trustees for the Town of Fairplay adopt Ordinance No. 7, Series of 2024, entitled “**AN ORDINANCE OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO GRANTING A FRANCHISE TO PUBLIC SERVICE COMPANY OF COLORADO FOR THE NON-EXCLUSIVE RIGHT TO PROVIDE, SELL, AND DELIVER GAS AND ELECTRICITY TO THE TOWN AND ITS RESIDENTS THROUGH THE NON-EXCLUSIVE REASONABLE USE OF TOWN STREETS, PUBLIC UTILITY EASEMENTS, AND OTHER TOWN PROPERTY.**”? *The Board will introduce an ordinance to grant a Franchise Agreement to Public Service Company of Colorado (Xcel Energy) and set the Second Reading and Public Hearing for September 16, 2024.*
  - B. **THIRD READING** – Should the Board of Trustees for the Town of Fairplay adopt Ordinance No. 6, Series of 2024, entitled “**AN ORDINANCE CREATING SECTION 7-2-200, WITHIN NUISANCES, OF THE FAIRPLAY MUNICIPAL CODE, ESTABLISHING PARKING LOT REGULATIONS.**”? *The Board will consider adopting Municipal Code language requiring repair and maintenance of public and private parking lots and declaring violations a nuisance.*
- VI. **NEW BUSINESS**
  - A. **TO BE CONTINUED TO SEPTEMBER 16, 2024** - Consideration of Request from ACL Real Estate, LLC, for an additional extension of 1-year Deferment of parking and landscape improvements for Highside Brewery located at 411 US Hwy 285. *The Board will consider a request from the owner of 411 US Hwy 285 for a subsequent 1-year deferment of required parking and landscape improvements.*
  - B. **Transmittal of Final Report** –University of Colorado Denver Urban and Regional Planning Program Mountain Studio 2013 Comprehensive Plan Assessment Findings and Recommendations.
- VII. **OLD BUSINESS**
  - A. Continued review of and discussion on proposed Employee Handbook update.
- VIII. **STAFF AND BOARD OF TRUSTEE REPORTS**
- IX. **ADJOURNMENT.**

**Upcoming Meetings / Important Dates**

|                                                                    |                    |
|--------------------------------------------------------------------|--------------------|
| TGIFairplay Free Concert – Split Window and Free Peaches/Ice Cream | August 23, 2024    |
| Labor Day – Town Offices Closed                                    | September 2, 2024  |
| Board of Trustees Regular Meeting - CANCELLED                      | September 2, 2024  |
| Board of Trustees Budget Work Session                              | September 9, 2024  |
| Board of Trustees Regular Meeting                                  | September 19, 2024 |
| 1 <sup>st</sup> Annual Fairplay Fall Fest                          | September 21, 2024 |

**MINUTES OF THE REGULAR MEETING OF THE  
FAIRPLAY BOARD OF TRUSTEES  
May 6, 2024**

**CALL TO ORDER**

A Regular Meeting of the Board of Trustees for the Town of Fairplay was called to order by Mayor Frank Just on Monday, May 6, 2024, at 6:00 p.m. in the Board Room located in the Fairplay Town Hall at 901 Main Street, having previously been posted in accordance with Colorado Open Meetings law.

**PLEDGE OF ALLEGIANCE AND ROLL CALL**

Mayor Just proceeded with the pledge of allegiance, followed by the roll call, which was answered by Mayor Frank Just, Mayor Pro Tem Lynn, and Trustees Ray Douglas, Erik Baum, and Josh Voorhis.

Staff in attendance were Town Administrator Janell Sciacca, Town Treasurer Jennie Danner, Chief of Police Jeff Worley, Grants Manager Tom Flannery, Building Officials Kyle Parag and Troy Dicker (online), Town Planner Scot Hunn (online), Town Engineer Deron Dirksen (online), IT Manager Mike Fisher (online), ORC Keith Chisholm, and Special Events Coordinator Julie Bullock.

**APPROVAL OF AGENDA**

**Motion #1** by Trustee Voorhis, seconded by Mayor Pro Tem Lynn, that the agenda be adopted as written. A roll call vote was taken: Douglas – aye, Baum – aye, Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

**CONSENT AGENDA**

- A. APPROVAL OF MINUTES OF REGULAR MEETING** – February 5, 2024.
- B. APPROVAL OF MINUTES OF REGULAR MEETING** – March 4, 2024.
- C. APPROVAL OF MINUTES OF REGULAR MEETING** – March 18, 2024.
- D. APPROVAL OF EXPENDITURES** – Paid bills for all Town funds from April 12, 2024, through May 2, 2024, in the amount of \$204,672.72.

**Motion #2** by Trustee Voorhis, seconded by Trustee Baum, that the Consent Agenda be approved with minutes as written and the expenditures as stated. A roll call vote was taken: Douglas – aye, Baum – aye, Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

**CITIZEN COMMENTS**

Scott Dodge, 1317 Meadow Drive, appeared representing Park County Law Enforcement Gives Back and invited the Town to participate in the June 26, 2024, Nate Carrigan Gold Tournament.

**PRESENTATIONS, PROCLAMATIONS AND UPDATES**

- A. Presentation of Burro Buster Scholarship.**  
Mayor Just invited Luke Lindberg to the dais and presented him with a Town of Fairplay Burro Buster Scholarship in the amount of \$2500 to go to furtherance of your education. Just announced the Town issued \$6,500 in Senior scholarships for 2024. Lindberg advised that he would be attending Lincoln Tech school for welding. He received a round of applause and thanked the Town for the funding.
- B. Introduction of Michael Schreiber, CDOT Region 2 North CEPD, and update on US285 bridge and widening project.**  
Schreiber was not in attendance, so no introduction was given, and no update made. Sciacca did remind everyone that the shift to the new bridge was still scheduled to take place on the Friday of Memorial Day weekend.
- C. Presentation from David Shipley, General Manager of Highline, regarding Broadband**  
David Shipley, Senior Vice President and Regional Manager of Highline, provided information on the history of the company since 1996 and the 800 square miles of South Park served. He noted Highline operates in 6 states -Colorado,

Nebraska, Kansas, Georgia, Texas and Michigan. Shipley announced that Highline has applied for and received around \$12M in funding. He advised that there was a great deal of Federal funding available with Colorado receiving close to \$1 billion for rural areas. He then reviewed current service options and then stated Highline is available to help the Town apply for some of the available funding. He advised it was not an easy process, but Highline would definitely be willing to partner with the Town. He advised that they would look to submit applications in 2025 with the hope of funding being received in 2026. Following discussion on funding criteria, and partnership responsibilities, Shipley stated he would work through Grant Manager Flannery when the time came. The Board thanked Shipley for appearing,

#### **PUBLIC HEARINGS**

**A. ARCHITECTURAL REVIEW COMMITTEE** – Consideration of application from Steve Glover for a Certificate of Appropriateness for renovations and an addition to the Single-Family home located at 724 Front Street.

Mayor Just introduced the matter and provided an overview of the Public Hearing format. He opened the hearing at 6:37 PM and Town Planner Hunn reviewed the Staff Report and recommendation for approval with one condition finding the application does meet the required criteria. Applicant Glover was in attendance and provided additional information on the proposed renovations stating the main purpose of the renovations was to bring the structure up to date. Glover stated he lived in at least 6 cities, and this was the first time he had to get a Certificate of Appropriateness and he felt it was a bit of overstepping by government and he complained the process was time consuming and unnecessary. Following discussion regarding batten, Glover stated the intent was to not change any siding on the house and the Board generally agreed that the house and the new addition should match with either batten or T1-11 siding. Glover agreed he would not put batten siding on the addition and would install T1-11 siding consistent with the existing structure. Just closed the hearing at 7:03 pm and request a motion.

**Motion #3** by Trustee Baum, seconded by Mayor Pro Tem Lynn, that the Fairplay Board of Trustees, sitting as the Architectural Review Committee, approve the application for a Certificate of Appropriateness filed by Steve Glover for a remodel and addition to an existing residence located at 724 Front Street within the Town Center Overlay District, with the following condition, and that the Town Clerk issue said Certificate of Appropriateness within seven (7) business days as per the plans submitted and approved by the Committee.

1. The Applicant is encouraged to consider installing 1-1/2" wood bats over the T1-11 siding on the existing residence to match the proposed detailing of the addition and to produce a more traditional board and batten finish around the entirety of the structure.

A roll call vote was taken: Douglas – aye, Baum – aye, Just – aye, and Voorhis – nay, Lynn – aye. Motion carried 4 to 1. Trustee Voorhis stated that while he generally supported the application and improvement to the structure, he did not appreciate Glover's sarcasm and patronizing remarks and it did not make the Trustees job easier.

**B. CONTINUED FROM APRIL 1, 2024 – THIRD READING** – Should the Board of Trustees Approve the Adoption of Ordinance No. 2, Series of 2024, entitled, **“AN ORDINANCE OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO, AMENDING CHAPTER 18 BUILDING REGULATIONS TO INCREASE THE DESIGN SNOW LOADS FOR STRUCTURES.”**?

Mayor Just introduced the matter and opened the hearing at 7:07 PM. Building Officials Kyle Parag and Troy Dicker appeared online. Parag reviewed the history of the discussions on the proposed amendment. Parag stated the reason he was recommending moving up from the 65 was because he had received reports from several places including Park County, the State of Colorado, DOLA and multiple engineers that have stated the Fairplay snow loads were too low and he was presenting this to the Board with a recommendation in reducing or starting with the 722 data and reducing it by 20% down to 80 lbs. per square foot (PSF). He also noted leaving in the footnote that the Board previously discussed of allowing projects such as a solar improvement or any other sort of structural evaluations to use the older 716 standard and the idea behind that was to not prohibit installations such as solar on existing structures that were designed years ago. Mayor Just commented that even at the current snow loads that Fairplay works under, there would have to be 6 feet of stacked snow on the roof to even come close to 45 PSI or PSF. Just added that while he was not taking into account wind load, the wind cleared most of the snow when it falls

or pretty shortly thereafter, if not as it's happening, and he had to wonder why the snow load needed to be raised. He added that his real angst with the proposal was that it would increase the financial burden on a community that was committed to building affordable housing at some point. Parag did not disagree but felt the Town needed to think about future safety. However, he would support whatever decision the Board made. Trustee Baum inquired if there would be any pushback from the County or the State if the Town did not adopt the higher standard. Parag replied that the load should be in line with the Town's opinion of its climatic assessment. He noted the subject came up with all the recent modular housing (CDOT and Spruce Hill) going in. Baum also questioned liability of the Town and Parag replied that if the Town knew its snow load was too low and issued building permits and structure collapsed, it could potentially bring liability to the Town if the correct snow load was not adopted.

Mayor Just opened the floor to public comment. Scott Dodge, 1317 Meadow Drive, did not see why the Town would go to the County's standard. He felt someone building a home could make the decision to go higher than the adopted standard if they wanted to and he felt the Town was ok where it was at. Following additional discussion, the Board closed the floor to public comment and generally agreed that when it could be proved that the increase was needed to keep the people in the Town safe from the potential of a collapse then they would be for raising the snow load.

Mayor Just opened the floor for a motion to approve. There was no such motion, and he then opened the floor for a motion to deny.

**Motion #4** by Trustee Voorhis, seconded by Trustee Douglas, to deny adoption of Ordinance No. 2, Series of 2024. A roll call vote was taken: Douglas – aye, Baum – aye, Just – aye, and Voorhis – aye, Lynn – aye. Motion carried unanimously.

The Board thanked Kyle and Troy for bringing these types of issues to them.

**C. CONTINUED FROM APRIL 1, 2024 – SECOND READING:** Should the Board of Trustees Approve the Adoption of Ordinance No. 3, Series of 2024, entitled, **“AN ORDINANCE OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO AMENDING CHAPTER 10 AND ARTICLE X OF THE FAIRPLAY MUNICIPAL CODE REGARDING NOISE.”?**

Mayor Just provided an overview of the format of the hearing and opened the Public Hearing at approximately 7:40 pm. Town Administrator Sciacca presented an overview of the Staff Report noting she and the Mayor had reviewed and made amendments to the prior version. She noted this would replace all of Article X of Chapter 10 in the code. She noted that any reference or use of decibels to determine excessive noise was removed and instead members of the Police Department would make the determination based on a reasonable person standard. She noted the table needed to be amended to allow for mowing of lawns on Sundays between 12 noon and 7 pm. Mayor Just added that this is not a change in the code, it is a modification of the existing code to remove language that made no sense, especially the references to decibels. He noted for demonstrative purposes that as he was speaking at that moment his decibel meter said he was at 76 decibels so the code was ridiculous representing that 50 decibels could be considered a violation. Trustee Baum questioned the Town's authority over complaints about mining operations and how loud those were. Sciacca replied that those operations were outside the Town and the Town had no jurisdiction and this was monitored by Park County and the State. She added the Town would have to lodge a complaint with Park County Development Services or the State Division of Mining and Reclamation. Trustee Voorhis stated he liked the idea that the complaining party and the officer would be the ones testifying to a complaint. Mayor Pro Tem Lynn questioned where the prohibition of construction activities on Sunday was. Sciacca replied that would be added to 10-10-40(3).

Mayor Just opened the floor to public comment. Scott Dodge, 1317 Meadow Drive, commented for his neighbors advising they were concerned that the Town was going to get too restrictive so they would not be able to do certain things on Sundays when they only have one or two days off during the week. They just wanted to make sure that

the Town was not going to allow kids to ride their bikes up and down the street screaming and yelling. Mayor Just responded advising that is why the responsibility was being turned over to Police personnel.

Mayor Just closed the floor to public comment and opened the floor to a motion.

**Motion #5** by Trustee Voorhis, seconded by Trustee Douglas, to approve the adoption of Ordinance No. 3 Series of 2024, with the stated amendments. A roll call vote was taken: Douglas – aye, Baum – aye, Just – aye, and Voorhis – aye, Lynn – aye. Motion carried unanimously.

#### **NEW BUSINESS**

**A. FIRST READING** – Should the Board of Trustees for the Town of Fairplay adopt Resolution No. 16, Series of 2024, entitled “**A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO, APPROVING AN PROFESSIONAL SERVICES AGREEMENT WITH SGM FOR ADDITIONAL WATER DISTRIBUTION MODEL SERVICES.**”?

Sciaccia provided an overview of the Staff Report noting the main purpose of the agreement was to address pressure issues throughout the Town and the Professional Services Agreement detailed the Scope of Work. She noted that Scope 1 was actually \$16,000 and Scope #2 was \$12,700 and each was independent of the other. Phase #2 would also not been started without Board approval. Sciaccia noted Town Engineer Dirksen was online to answer questions. Mayor Just provided a general synopsis of the pressure issues and what was occurring throughout Town and the dangers of possible property damage. Following additional discussion and examples of pressure issues, the Mayor opened the floor to a motion.

**Motion #6** by Trustee Voorhis, seconded by Mayor Pro Tem Lynn, to approve Resolution No. 16, Series of 2024, as presented approving an agreement with SGM for additional Water Distribution Model services. A roll call vote was taken: Douglas – aye, Baum – abstain, Just – aye, and Voorhis – aye, Lynn – aye. Motion carried with 4 ayes and 1 abstention.

**B. FIRST READING** – Should the Board of Trustees for the Town of Fairplay adopt Resolution No. 17, Series of 2024, entitled “**A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO, ADOPTING A REMOTE PARTICIPATION POLICY, WHEN A LOCAL DISASTER EMERGENCY IS NOT IN EFFECT.**”?

Sciaccia provided an overview of the Staff Reported and noted a prior policy was adopted when COVID hit. When the pandemic ended, entities found these policies provided for greater meeting participation by Board members and the public and they amended them to allow for remote participation at all times. The proposed policy replaces the COVID policy and puts parameters in place for participation under today’s circumstances.

**Motion #7** by Trustee Baum, seconded by Trustee Douglas to approve Resolution No. 17, Series of 2024, as presented approving a Remote Participation Policy. A roll call vote was taken: Douglas – aye, Baum – aye, Just – aye, and Voorhis – aye, Lynn – aye. Motion carried unanimously.

#### **STAFF AND BOARD OF TRUSTEE REPORTS**

**A.** Discussion regarding upgrades or replacements recommended or desired at Beaver Creek Water Treatment Plant.

Town Contract Water and Wastewater Engineer Ken Hardesty reviewed his packet memorandum discussing the history and individual items, their importance, timeline and associated costs. Following discussion, Mayor Just stated that he felt all the items were safety issues and he highly recommend that the Town allocate the funds for the entire \$97,500 to complete the upgrades and replacements by Hardesty.

**Motion #8** by Trustee Voorhis, seconded by Trustee Douglas to approve allocation of \$97,500 as recommended for Water Treatment Plant upgrades and replacements. A roll call vote was taken: Douglas – aye, Baum – aye, Just – aye, and Voorhis – aye, Lynn – aye. Motion carried unanimously.

Mayor Just asked that Hardesty be applauded for the diligent work on the Gallery project, the manner in which he's did it, the quality of work that was received and the professional oversight. The Board gave Hardesty a round of applause and thanked him and stated they look forward to working with him on future Town projects.

Chief Worley stated his report stood as presented and asked for questions. Mayor Just commended him on making 24/7 police services for Fairplay and Alma a reality and stated it was a big step for the Town. Just also noted a very nice article in the Park County Advocate about the department and what the Town has accomplished and the quality of people. Douglas stated it was a significant commitment by the Board to make this happen. Worley stated that when he met with Sciacca, she said here is what we want to do and the Board said committed to money and support behind the effort. Worley thanked the Board for their support. Sciacca also reported that she and the Chief would be meeting with Alma Town Administrator Goettelman the following week to discuss the agreement and fees for a first quarter check in, but overall, Alma was happy with the arrangement.

Treasurer Danner advised she and Sciacca were working to see when the Town would get its audit from Mayberry. Sciacca noted that Tim Mayberry had suffered a concussion during the winter and she and Danner would continue to try and get the report to the Board.

Sciacca reported that work at 501 Main was moving along, and the ceiling tiles and flooring and Staff was targeting May 26 for a soft-opening by hosting an elected officials meeting with Congresswoman Brittany Pedersen. She also noted upcoming CML regional workshops. Sciacca then announced that Bailey Days representatives have asked if they could use the Town's shuttles for their event. She stated an agreement would be drafted and they would have to pay for drivers, insurance and fuel. She requested Board approval of the request which would be for June 22 and 24. She also advised that this was allowed because there was no federal funding associated with the Town's grant. The Board generally agreed to allow for the use.

Planner Hunn reported on an opportunity for the Town to partner with CU Denver on a summer intensive Colorado Mountain Studio program for graduate students in the Urban Planning Master's program and for them to focus on a project or problem. He introduced the idea to Sciacca who jumped on the opportunity. They both felt this was a good opportunity to focus on information to update to the 2013 Comprehensive Plan. He noted this was free to the Town. A tentative schedule was drafted and a scope and the project was set to begin in June and end the last week of July. Hunn felt this could result in some really great foundational work for the Town to move forward on some updates of planning documents.

Trustee Baum reported that he would like the Town to look into illegal squatting and what options the Town had in protecting homeowners. Sciacca reported that she did bring this up with the Town Attorney who thought Woodland Park might have just adopted something Fairplay could review.

Trustee Lynn stated the road cut has been made and digging started at the CDOT project on Hathaway. He hoped they would find a 6-inch Main. Chisholm stated the Town was shutting off the water tomorrow. Just asked if notice was given to the neighborhood. Lynn stated his household did receive a call.

#### **ADJOURNMENT**

There being no further business before the Fairplay Board of Trustees, Mayor Just declared the meeting adjourned at 8:51 p.m.

**BOARD OF TRUSTEES, FAIRPLAY, COLORADO**

**ATTEST:**

\_\_\_\_\_  
Frank Just, Mayor

\_\_\_\_\_  
Janell Sciacca, Town Clerk

## Report Criteria:

Detail report type printed

| Check<br>Issue Date | Check<br>Number | Name                        | Description                 | Seq | Invoice<br>Date | Check<br>Amount | GL Account |
|---------------------|-----------------|-----------------------------|-----------------------------|-----|-----------------|-----------------|------------|
| 08/15/2024          | 20513           | Caselle, Inc                | Software Support            | 1   | 08/01/2024      | 758.00          | 517206     |
| 08/15/2024          | 20513           |                             | Software Support            | 2   | 08/01/2024      | 758.00          | 105060     |
| Total 334:          |                 |                             |                             |     |                 | 1,516.00        |            |
| 08/15/2024          | 20514           | Cash                        | Petty Cash for 8/23 concert | 1   | 08/01/2024      | 600.00          | 101002     |
| Total 340:          |                 |                             |                             |     |                 | 600.00          |            |
| 08/15/2024          | 20527           | O'Rourke Media Group, LL    | legal notices, Ordinances,  | 1   | 07/31/2024      | 315.24          | 106125     |
| 08/15/2024          | 20527           |                             | Burro Days Adds             | 2   | 07/31/2024      | 3,109.00        | 105162     |
| Total 868:          |                 |                             |                             |     |                 | 3,424.24        |            |
| 08/15/2024          | 20530           | Postal Pros Southwest, Inc  | water billing               | 1   | 08/11/2024      | 306.67          | 517218     |
| 08/15/2024          | 20530           |                             | water billing               | 1   | 08/11/2024      | 125.45          | 105130     |
| Total 1699:         |                 |                             |                             |     |                 | 432.12          |            |
| 08/15/2024          | 20537           | Town of Fairplay            | 1507 County Road 16 Wat     | 1   | 07/31/2024      | 6.50            | 517680     |
| 08/15/2024          | 20537           |                             | 501 Main Street             | 1   | 07/31/2024      | 413.33          | 105195     |
| 08/15/2024          | 20537           |                             | 901 Main Street             | 1   | 07/31/2024      | 6.50            | 105023     |
| Total 2134:         |                 |                             |                             |     |                 | 426.33          |            |
| 04/13/2017          | 12556           | USABlueBook                 | testing supplies            | 1   | 03/28/2017      | 140.92          | 617140     |
| 08/15/2024          | 20538           |                             | Testing supplies            | 2   | 03/28/2017      | 429.99          | 517480     |
| 08/15/2024          | 20538           |                             | Filters for new station     | 1   | 08/06/2024      | 899.10          | 517495     |
| 08/15/2024          | 20538           |                             | Repairs and Maint           | 1   | 08/06/2024      | 55.28           | 517465     |
| Total 2176:         |                 |                             |                             |     |                 | 1,525.29        |            |
| 08/15/2024          | 20539           | Utility Notification Center | RTL Transmissions           | 1   | 07/31/2024      | 18.71           | 517650     |
| 08/15/2024          | 20539           |                             | RTL Transmissions           | 2   | 07/31/2024      | 18.70           | 517650     |
| 08/15/2024          | 20539           |                             | locates                     | 1   | 07/31/2024      | 21.29           | 517455     |
| 08/15/2024          | 20539           |                             | locates                     | 2   | 07/31/2024      | 21.28           | 517650     |
| Total 2194:         |                 |                             |                             |     |                 | 79.98           |            |
| 08/15/2024          | 20541           | Xcel Energy                 | Street Lights               | 1   | 08/01/2024      | 992.66          | 105640     |
| Total 2296:         |                 |                             |                             |     |                 | 992.66          |            |
| 08/15/2024          | 20536           | South Park Ace & Lumber     | Water Plant Supplies        | 1   | 07/25/2024      | 25.29           | 517465     |
| 08/15/2024          | 20536           |                             | Water Plant Supplies        | 2   | 07/25/2024      | 11.99           | 517465     |
| 08/15/2024          | 20536           |                             | Vehicle maint               | 3   | 07/25/2024      | 7.59            | 105420     |
| 08/15/2024          | 20536           |                             | Shop Supplies               | 4   | 07/25/2024      | 81.48           | 105630     |
| 08/15/2024          | 20536           |                             | Shop Supplies               | 5   | 07/25/2024      | 121.85          | 105630     |
| 08/15/2024          | 20536           |                             | Shop Supplies               | 6   | 07/25/2024      | 68.13           | 105630     |
| 08/15/2024          | 20536           |                             | Water Plant Repairs         | 7   | 07/25/2024      | 74.72           | 517460     |
| 08/15/2024          | 20536           |                             | plant food                  | 8   | 07/25/2024      | 63.98           | 105134     |
| 08/15/2024          | 20536           |                             | flower watering supplies    | 9   | 07/25/2024      | 65.56           | 517465     |
| 08/15/2024          | 20536           |                             | Green Room Keys             | 10  | 07/25/2024      | 1.99            | 105120     |
| 08/15/2024          | 20536           |                             | pad Lock for electric box   | 11  | 07/25/2024      | 23.99           | 105162     |

| Check<br>Issue Date | Check<br>Number | Name                       | Description                  | Seq | Invoice<br>Date | Check<br>Amount | GL Account |
|---------------------|-----------------|----------------------------|------------------------------|-----|-----------------|-----------------|------------|
| 08/15/2024          | 20536           |                            | pad lock for water plant gat | 12  | 07/25/2024      | 23.99           | 517465     |
| 08/15/2024          | 20536           |                            | pad lock for beach trash ca  | 13  | 07/25/2024      | 23.99           | 105134     |
| 08/15/2024          | 20536           |                            | course marking supplies      | 14  | 07/25/2024      | 67.75           | 105162     |
| 08/15/2024          | 20536           |                            | Shop supplies                | 15  | 07/25/2024      | 14.00           | 105630     |
| 08/15/2024          | 20536           |                            | Burro Days                   | 16  | 07/25/2024      | 13.99           | 105162     |
| 08/15/2024          | 20536           |                            | Water plant                  | 17  | 07/25/2024      | 23.98           | 517495     |
| Total 2405:         |                 |                            |                              |     |                 | 714.27          |            |
| 08/15/2024          | 20518           | Family Support Registry    | 15890460                     | 1   | 08/01/2024      | 285.69          | 102265     |
| 08/15/2024          | 20518           |                            | 14882492                     | 1   | 08/01/2024      | 252.00          | 102265     |
| Total 2456:         |                 |                            |                              |     |                 | 537.69          |            |
| 08/15/2024          | 20516           | Colorado Natural Gas, Inc. | san office                   | 1   | 08/14/2024      | 60.13           | 517234     |
| 08/15/2024          | 20516           |                            | Public Works Shop            | 1   | 08/05/2024      | 200.03          | 105650     |
| 08/15/2024          | 20516           |                            | 901 Main Street              | 1   | 08/14/2024      | 104.25          | 105023     |
| 08/15/2024          | 20516           |                            | sewer treatment plant        | 1   | 08/01/2024      | 761.35          | 517680     |
| Total 2728:         |                 |                            |                              |     |                 | 1,125.76        |            |
| 08/15/2024          | 20512           | Bullock, Julie             | Wellness reimb request       | 1   | 08/06/2024      | 115.00          | 105010     |
| Total 2812:         |                 |                            |                              |     |                 | 115.00          |            |
| 08/15/2024          | 20526           | Mountain Peak Controls, In | Effluent Flow troubleshooti  | 1   | 08/07/2024      | 290.00          | 517620     |
| Total 2861:         |                 |                            |                              |     |                 | 290.00          |            |
| 08/15/2024          | 20535           | Shirley Septic Pumping, In | Burro Days                   | 1   | 06/19/2024      | 7,805.00        | 105162     |
| 08/15/2024          | 20535           |                            | Rock and Gem Show            | 1   | 07/30/2024      | 500.00          | 105150     |
| 08/15/2024          | 20535           |                            | Sheep Mtn Toilets            | 1   | 08/07/2024      | 500.00          | 105170     |
| Total 2893:         |                 |                            |                              |     |                 | 8,805.00        |            |
| 08/15/2024          | 20524           | McGoon Productions         | TGIF August Band             | 1   | 08/01/2024      | 1,500.00        | 105150     |
| Total 3106:         |                 |                            |                              |     |                 | 1,500.00        |            |
| 08/15/2024          | 20534           | SGM                        | General Engineering Fees     | 1   | 04/18/2024      | 190.00          | 105105     |
| Total 3272:         |                 |                            |                              |     |                 | 190.00          |            |
| 08/15/2024          | 20528           | Park County Government     | monthly internet             | 1   | 08/01/2024      | 52.50           | 105455     |
| 08/15/2024          | 20528           |                            | monthly internet             | 2   | 08/01/2024      | 52.50           | 105065     |
| 08/15/2024          | 20528           |                            | monthly internet             | 3   | 08/01/2024      | 105.00          | 517226     |
| Total 3381:         |                 |                            |                              |     |                 | 210.00          |            |
| 08/15/2024          | 20540           | Warm Springs Consulting    | contract watersystem overs   | 1   | 08/02/2024      | 4,500.00        | 517417     |
| 08/15/2024          | 20540           |                            | contract wastewater operat   | 1   | 08/02/2024      | 5,000.00        | 517627     |
| Total 3463:         |                 |                            |                              |     |                 | 9,500.00        |            |
| 08/15/2024          | 20519           | Hayes Poznanovic Korver    | legal fees - Water           | 1   | 08/02/2024      | 141.00          | 517360     |

| Check<br>Issue Date | Check<br>Number | Name                       | Description                 | Seq | Invoice<br>Date | Check<br>Amount | GL Account |
|---------------------|-----------------|----------------------------|-----------------------------|-----|-----------------|-----------------|------------|
| Total 3518:         |                 |                            |                             |     |                 | 141.00          |            |
| 08/15/2024          | 20529           | Phoenix Technology Group   | 501 main Street             | 1   | 08/12/2024      | 5,066.00        | 105196     |
| Total 3580:         |                 |                            |                             |     |                 | 5,066.00        |            |
| 08/15/2024          | 20532           | Rocks & Walls Excavation   | Bogue and 6th Water Line    | 1   | 08/07/2024      | 129,556.00      | 517445     |
| Total 3614:         |                 |                            |                             |     |                 | 129,556.00      |            |
| 08/15/2024          | 20515           | CivicPlus LLC              | codification                | 1   | 07/11/2024      | 834.30          | 105075     |
| Total 3622:         |                 |                            |                             |     |                 | 834.30          |            |
| 08/15/2024          | 20531           | ProWest Filtration Inc.    | Compliance Filter Cartridge | 1   | 08/08/2024      | 2,040.75        | 517430     |
| Total 3663:         |                 |                            |                             |     |                 | 2,040.75        |            |
| 08/15/2024          | 20517           | Curiosity Clubhouse LLC    | 4th Of July Kids Activities | 1   | 07/03/2024      | 325.00          | 105171     |
| 08/15/2024          | 20517           |                            | August 23 Kids Kraft Booth  | 1   | 07/25/2024      | 200.00          | 105150     |
| 08/15/2024          | 20517           |                            | Fall Festival               | 1   | 07/25/2024      | 650.00          | 105170     |
| Total 3667:         |                 |                            |                             |     |                 | 1,175.00        |            |
| 08/15/2024          | 20523           | Konica Minolta Premier Fin | town hall copier c360i      | 1   | 08/10/2024      | 58.73           | 105465     |
| 08/15/2024          | 20523           |                            | town hall copier c360i      | 2   | 08/10/2024      | 188.42          | 105032     |
| 08/15/2024          | 20523           |                            | Burro Days/Events           | 3   | 08/10/2024      | 202.27          | 105162     |
| 08/15/2024          | 20523           |                            | copier                      | 4   | 08/10/2024      | 143.84          | 105032     |
| Total 3700:         |                 |                            |                             |     |                 | 593.26          |            |
| Multiple            | 20389           | Rocky Mountain Puppets     | 4th of July puppets         | 1   | 06/08/2024      | .00             | 105171     |
|                     |                 |                            | 4th of July puppets         | 2   | 06/08/2024      |                 | 105171     |
| 08/15/2024          | 20533           |                            | 4th of July puppets         | 3   | 06/08/2024      | 450.00          | 105171     |
| Total 3712:         |                 |                            |                             |     |                 | 450.00          |            |
| 08/15/2024          | 20522           | Kleinschmidt, Mark         | Wellness Reimbursement      | 1   | 08/11/2024      | 250.00          | 517010     |
| 08/15/2024          | 20522           |                            | Wellness Reimbursement      | 2   | 08/11/2024      | 250.00          | 105010     |
| 08/15/2024          | 20522           |                            | reimbursement for work pa   | 1   | 08/08/2024      | 147.67          | 105680     |
| Total 3752:         |                 |                            |                             |     |                 | 647.67          |            |
| 08/15/2024          | 20521           | JOC Construction           | 501 Remodel Final Payme     | 1   | 08/05/2024      | 29,316.95       | 105196     |
| 08/15/2024          | 20521           |                            | Town Hall Generator Proje   | 1   | 08/02/2024      | 25,105.27       | 105025     |
| Total 3758:         |                 |                            |                             |     |                 | 54,422.22       |            |
| 08/15/2024          | 20520           | Highside Brewing           | TGIF Concert Beer           | 1   | 07/29/2024      | 495.00          | 105150     |
| 08/15/2024          | 20520           |                            | Burro Days Beer             | 2   | 07/29/2024      | 2,640.00        | 105162     |
| Total 3763:         |                 |                            |                             |     |                 | 3,135.00        |            |
| 08/15/2024          | 20511           | AT&T MOBILITY              | Office At Hand Phone Syst   | 1   | 07/07/2024      | 1,641.21        | 105455     |
| 08/15/2024          | 20511           |                            | Office At Hand Phone Syst   | 2   | 07/07/2024      | 333.00          | 105065     |
| 08/15/2024          | 20511           |                            | Office At Hand Phone Syst   | 3   | 07/07/2024      | 333.00          | 105645     |

| Check<br>Issue Date | Check<br>Number | Name                      | Description   | Seq | Invoice<br>Date | Check<br>Amount | GL Account |
|---------------------|-----------------|---------------------------|---------------|-----|-----------------|-----------------|------------|
| 08/15/2024          | 20511           |                           | marketing     | 4   | 07/07/2024      | 71.36           | 105130     |
| Total 3786:         |                 |                           |               |     |                 | 2,378.57        |            |
| 08/15/2024          | 20525           | Minimal Impact Events, LL | Trash/Recycle | 1   | 08/01/2024      | 2,938.50        | 105162     |
| Total 3839:         |                 |                           |               |     |                 | 2,938.50        |            |
| Grand Totals:       |                 |                           |               |     |                 | 235,362.61      |            |

Report Criteria:  
Detail report type printed



## **Town of Fairplay**

400 Front Street • P.O. Box  
267 Fairplay, Colorado  
80440  
(719) 836-2622 phone  
(719) 836-3279 fax  
[www.fairplayco.us](http://www.fairplayco.us)

### **STAFF REPORT**

**TO:** Mayor and Board of Trustees

**FROM:** Janell Sciacca, Town Administrator

**RE:** Public Hearing Item A – Ordinance No. 7, Series of 2024, Public Service Company of Colorado  
aka Xcel Energy Franchise Agreement

**DATE:** August 19, 2024

---

#### **BACKGROUND/ANALYSIS:**

The current Franchise Agreement with Public Service Company of Colorado (*Xcel Energy*) is set to expire this month (August 2024). The Town's law firm, and specifically Attorney Brandon Dittman, has been negotiating with Attorneys for Xcel to arrive at the document you see in the packet tonight.

Staff recommends the Board introduce the Ordinance and set a Public Hearing for September 16, 2024. Staff will then publish and post notices of the hearing so that citizens have the ability to ask questions and provide comment on the granting of the new 20 year agreement.

Attorney Brandon Dittman will be appearing online to answer any questions the Board may have

#### **REQUESTED ACTION:**

Staff requests the Board introduce the Ordinance and set the public hearing for Monday, September 16, 2024 at 6PM, and direct Staff to publish notice of the hearing in the local newspaper as well as post notices at Town Hall, the Fairplay Library, Fairplay Post Office and online at the Town of Fairplay website.

**“Where History Meets the High Country”**

## **TOWN OF FAIRPLAY, COLORADO**

### **ORDINANCE NO. 7 (SERIES 2024)**

**AN ORDINANCE OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO GRANTING A FRANCHISE TO PUBLIC SERVICE COMPANY OF COLORADO FOR THE NON-EXCLUSIVE RIGHT TO PROVIDE, SELL, AND DELIVER GAS AND ELECTRICITY TO THE TOWN AND ITS RESIDENTS THROUGH THE NON-EXCLUSIVE REASONABLE USE OF TOWN STREETS, PUBLIC UTILITY EASEMENTS, AND OTHER TOWN PROPERTY.**

**WHEREAS**, the Public Service Company of Colorado (the “Company”) provides gas and electricity within the corporate boundaries of the Town of Fairplay, Colorado (the “Town”) to persons, businesses, industries, and governmental agencies including the Town residents; and

**WHEREAS**, the Company seeks renewal of its non-exclusive franchise to continue providing gas and electric services within the Town; and

**WHEREAS**, consistent with C.R.S. §§ 31-32-101, *et seq.*, franchises may only be granted by ordinance; and

**WHEREAS**, the Company and the Town have negotiated a Franchise Agreement ("Franchise Agreement"), a copy of which is attached hereto and incorporated herein by reference; and

**WHEREAS**, the Franchise Agreement grants the Company a non-exclusive right to provide, sell, and deliver gas and electricity to the Town and its residents through the non-exclusive reasonable use of Town streets, public utility easements, and other Town property as provided in the Franchise Agreement; and

**WHEREAS**, the Board of Trustees for the Town (the “Board”) has concluded that approval of the Franchise Agreement promotes the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD FOR THE TOWN OF FAIRPLAY, COLORADO AS FOLLOWS:**

**Section 1.** The above recitals are incorporated herein by reference.

**Section 2.** The Board hereby approves the Franchise Agreement. The Mayor and other Town officials are authorized and directed to execute the attached Franchise Agreement by and on behalf of the Town.

**Section 3.** Town officials are hereby authorized to take such action as appropriate to implement the Franchise Agreement.

**Section 4.** Chapter 5, Articles II and IV of the Fairplay Municipal Code are hereby repealed without replacement.

**Section 5.** Safety Clause. The Town Board hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town of Fairplay, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Board further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

**Section 6.** Should any one or more sections or provisions of this Ordinance or of the Code provisions enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance or of such Code provision, the intention being that the various sections and provisions are severable.

**Section 7.** This Ordinance shall become effective thirty (30) days after final publication.

**INTRODUCED, READ AND PASSED, ADOPTED AND ORDERED PUBLISHED  
IN FULL** in a newspaper of general circulation in the Town of Fairplay by the Board of Trustees  
this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**TOWN OF FAIRPLAY, COLORADO**

\_\_\_\_\_  
Frank Just, Mayor

**ATTEST:**

\_\_\_\_\_  
Janell Sciacca, Town Clerk

**FRANCHISE AGREEMENT**  
**BETWEEN**  
**THE TOWN OF FAIRPLAY, COLORADO**  
**AND**  
**PUBLIC SERVICE COMPANY OF COLORADO**

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**PUBLIC SERVICE COMPANY OF COLORADO  
AND  
THE TOWN OF FAIRPLAY, COLORADO**

**ELECTRIC FRANCHISE AGREEMENT**

**ARTICLE 1  
DEFINITIONS AND PRINCIPLES OF CONSTRUCTION**

**Section 1.1** Defined Terms. In addition to the capitalized terms defined elsewhere in this Franchise, the following capitalized words and phrases shall have the meanings set forth below. Words not defined in this Article 1 or elsewhere in this Franchise shall be given their common and ordinary meaning.

**“Board”** refers to and is the legislative body of the Town.

**“Clean Energy”** means energy produced from Renewable Energy Resources (as defined below), eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, “cost” means all those costs as determined by the PUC.

**“Company”** means Public Service Company of Colorado, a Colorado corporation, and an Xcel Energy company and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this Franchise.

**“Company Designee”** has the meaning ascribed in Section 5.2.

**“Company Facilities”** refer to all facilities of the Company which are reasonably necessary or desirable to provide electric service into, within and through the Town, including but not limited to plants, works, systems, substations, transmission and distribution structures and systems, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles as well as all associated appurtenances.

**“Effective Date”** has the meaning ascribed in Section 2.3.

**“Electric Gross Revenues”** refers to those amounts of money that the Company receives from the sale and/or delivery of electricity in the Town, after adjusting for refunds, net write-offs of accounts, corrections, or Regulatory Adjustments (as defined below). Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Electric Gross Revenues” shall exclude any revenue from the sale and/or delivery of electricity to the Town as a customer of the Company.

**“Energy Conservation”** means the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

**“Energy Efficiency”** means the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.

**“Franchise”** or **“Franchise Agreement”** means this franchise agreement by and between the Town and Company.

**“Franchise Fee”** has the meaning ascribed in Section 4.1(A).

**“Force Majeure Event”** means the inability to undertake an obligation of this Franchise Agreement due to a cause, condition or event that could not be reasonably anticipated by a party, or is beyond a party’s reasonable control after exercise of best efforts to perform. Such cause, condition or event includes but is not limited to fire, strike, war, riots, terrorist acts, acts of governmental authority, acts of God, floods, pandemics, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in the delivery of materials. Neither the Town nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure Event.

**“Gross Revenues”** refers to those amounts of money the Company receives from the sale of electricity within the Town under rates authorized by the Public Utilities Commission, to its customers within the Town, as adjusted for refunds, net write-offs of uncollectible accounts, corrections, expense reimbursements or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Gross Revenues” shall exclude any revenues from the sale of electricity to the Town.

**“Industry Standards”** refers to standards developed by government agencies and generally recognized organizations that engage in the business of developing utility industry standards for materials, specifications, testing, construction, repair, maintenance, manufacturing, and other facets of the electric and gas utility industries. Such agencies and organizations include, but are not limited to the U.S. Department of Transportation, the Federal Energy Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Colorado Public Utilities Commission, the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), the Pipeline Research Council International, Inc. (PRCI), the American Society of Mechanical Engineers (ASME), the Institute of Electric and Electronic Engineers (IEEE), the Electric Power Research Institute (EPRI), the GTI Energy (GTI), the National Fire Protection Association (NFPA), and specifically includes the National Electric Safety Code (NESC).

**“Open Space”** refers to privately-owned property protected by real covenant, or publicly-owned property protected by covenant and/or designated by ordinance or resolution of the Town Board, which covenant or designation designates the property for use as one (1) or more of the following: a community buffer; a wildlife corridor and habitat area; a wetland; a view corridor; agricultural land; an area of archeological, historical, geologic or topographic significance; an area containing significant renewable and/or nonrenewable natural resources;

and/or other undesignated, typically non-irrigated, undeveloped land uses. Open Space shall not include Parks.

**“Other Town Property”** refers to the surface, the air space above the surface and the area below the surface of any property owned by the Town or directly controlled by the Town due to the Town’s real property interest in the same or hereafter owned by the Town, that would not otherwise fall under the definition of “Streets,” but which provides a suitable location for the placement of Company Facilities as specifically approved in writing by the Town. Other Town Property does not include Public Utility Easements.

**“Parks”** refers to land area owned by the Town, either independently or with another governmental or quasi-governmental entity, that is developed and maintained for active or passive recreational use and is open for the general public’s use and enjoyment; which, by way of example only, may include public playfields, courts, and other recreation facilities, or may include greenways, water features, picnic areas, or natural areas.

**“Private Project”** refers to any project not included in the definition of Public Project.

**“Public Project”** refers to (1) any public work or improvement within the Town that is wholly owned by the Town; or (2) any public work or improvement within the Town where at least fifty percent (50%) or more of the funding is provided by any combination of the Town, the federal government, the State of Colorado, or any Colorado county, but excluding all entities established under Title 32 of the Colorado Revised Statutes.

**“Public Utilities Commission”** or **“PUC”** refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.

**“Public Utility Easement”** refers to any platted easement over, under, or above public or private property, expressly dedicated to, and accepted by, the Town for the use of public utility companies for the placement of utility facilities, including but not limited to Company Facilities.

**“Relocate”** and **“Relocation,”** and any variation thereof, means a temporary or permanent change or alteration by the Company in the position of any Company Facilities.

**“Renewable Energy Resources”** means wind, solar, and geothermal resources; energy produced from biomass from nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush, or from animal wastes and products of animal wastes, or from methane produced at landfills or as a by-product of the treatment of wastewater residuals; new hydroelectricity with a nameplate rating of ten (10) megawatts or less; hydroelectricity in existence on January 1, 2005 with a nameplate rating of thirty (30) megawatts or less; fuel cells using hydrogen derived from a Renewable Energy Resource; recycled energy produced by a generation unit with a nameplate capacity of not more than fifteen (15) megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel, and

includes any eligible renewable energy resource as defined in C.R.S. § 40-2-124(1)(a), as the same may be amended from time to time.

**“Residents”** refers to all persons, businesses, industries, governmental agencies, including the Town, and any other entity whatsoever presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the Town.

**“Streets”** or **“Town Streets”** refers to the surface, the air space above the surface and the area below the surface of any Town-dedicated or Town-maintained streets, alleys, bridges, roads, lanes, access easements, and other public rights-of-way within the Town, which are primarily used for motorized vehicle traffic. Streets shall not include Public Utility Easements and Other Town Property.

**“Supporting Documentation”** refers to all information reasonably required or needed in order to allow the Company to design and construct any work performed under the provisions of this Franchise. Supporting Documentation may include, but is not limited to, construction plans, a description of known environmental issues, the identification of critical right-of-way or easement issues, the final recorded plat for the property, the date the site will be ready for the Company to begin construction, the date gas service and meter set are needed, and the name and contact information for the Town’s project manager.

**“Tariffs”** refer to those tariffs of the Company on file and in effect with the PUC or other governing jurisdiction, as amended from time to time.

**“Town”** means the Town of Fairplay, a municipal corporation of the State of Colorado.

**“Town Designee”** has the meaning ascribed in Section 5.1.

**“Underground Program”** has the meaning ascribed in Section 11.2(A).

**“Utility Service”** refers to the sale of electricity to Residents by the Company under Tariffs approved by the PUC.

**Section 1.2** Singular/Plural. Unless the context otherwise requires, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural.

**Section 1.3** Mandatory/Permissive. The words “shall” and “will” are mandatory and the word “may” is permissive.

## **ARTICLE 2 GRANT OF FRANCHISE**

### **Section 2.1** Grant of Franchise.

(A) Grant. The Town hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this Franchise, the non-exclusive right to

make reasonable use of Town Streets, Public Utility Easements (as applicable) and Other Town Property:

(1) to provide Utility Service to the Town and to its Residents under the Tariffs; and

(2) to acquire, purchase, construct, install, locate, maintain, operate, upgrade and extend into, within and through the Town all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transportation, transmission and distribution of Utility Service within and through the Town.

(B) Street Lighting and Traffic Signal Lighting Service. The rights granted by this Franchise encompass the nonexclusive right to provide street lighting service and traffic signal lighting services as directed by the Town and, where applicable, the provisions of this Franchise shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company pursuant to its Tariffs. In the event of a conflict between the provisions of this Franchise and the Tariffs with regard to Street Lighting and Traffic Signal Service, the Tariffs shall control. Wherever reference is made in this Franchise to the sale or provision of Utility Service these references shall be deemed to include the provision of street lighting service and traffic signal lighting service.

(C) New Company Facilities in Other Town Property, Excluding Parks and Open Space. For all Other Town Property that is not a Park or Open Space, the Town's grant to the Company of the right to locate Company Facilities in, on, over or across such Other Town Property shall be subject to the Company's already having or first receiving from the Town approval of the location of such Company Facilities, in the Town's reasonable discretion; and the terms and conditions of the use of such Other Town Property shall be governed by this Franchise as may be reasonably supplemented to account for the unique nature of such Other Town Property. By way of illustration and example only, the Town may want to condition the use of Other Town Property that is a golf course upon the Company not constructing Company Facilities in fairways or greens or during peak golf season. Nothing in this Section 2.1(C) shall modify or extinguish pre-existing Company property rights. Further, this paragraph shall not prohibit the Company from modifying, replacing or upgrading Company Facilities already located in Parks or Open Space in accordance with the terms and conditions of the Town license agreement, permit or other agreement that granted the Company the right to use such Other Town Property or, if there is no such license agreement, permit or other agreement, in accordance with this Franchise.

(D) New Company Facilities in Other Town Property that are Parks or Open Space. The Town's grant to the Company of the right to locate Company Facilities in, on, over or across Other Town Property that is a Park or Open Space shall be subject to (i) the Company's already having or first receiving from the Town a revocable license, permit or other agreement approving the location of such Company Facilities, which the Town may grant or deny in its sole discretion; and (ii) the terms and conditions of such revocable license agreement, permit or other written agreement. Nothing in this Section

2.1(D) shall modify or extinguish pre-existing Company property rights. Further, this paragraph shall not prohibit the Company from modifying, replacing or upgrading Company Facilities already located in Parks or Open Space in accordance with the terms and conditions of the Town license agreement, permit or other agreement that granted the Company the right to use such Parks or Open Space or, if there is no such license agreement, permit or other agreement, in accordance with this Franchise.

## **Section 2.2** Conditions and Limitations.

(A) Scope of Franchise. The grant of this Franchise and the terms and conditions hereof shall extend to the jurisdictional boundaries of the Town as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this Franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

(B) Subject to Town Usage. The Company's right to make reasonable use of Town Streets and Other Town Property to provide Utility Service to the Town and its Residents under this Franchise is subject to and subordinate to any Town usage of said Streets and Other Town Property.

(C) Prior Grants Not Revoked. This grant and Franchise is not intended to and does not revoke any prior license, grant, or right to use the Streets, Other Town Property or Public Utility Easements, and such licenses, grants or rights of use are hereby affirmed.

(D) Franchise Not Exclusive. The rights granted by this Franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the Town reserves the right to make or grant a franchise to any other person, firm, or corporation.

**Section 2.3** Effective Date and Term. This Franchise shall take effect on August 16, 2024 (the "**Effective Date**") and shall supersede any prior franchise grants to the Company by the Town. This Franchise shall terminate on August 15, 2044, unless extended by mutual consent.

## **ARTICLE 3** **TOWN POLICE POWERS**

**Section 3.1** Police Powers The Company expressly acknowledges the Town's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the Town considers making any substantive changes in its local codes or regulations that in the Town's reasonable opinion will significantly impact the Company's operations in the Town's Streets, Public Utility Easements and Other Town Property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.

**Section 3.2** Regulation of Streets and Other Town Property. The Company expressly acknowledges the Town's right to enforce regulations concerning the Company's access to or use of the Streets and/or Other Town Property. In addition, the Company acknowledges the Town's

right to require the Company to obtain permits for work in Streets, Other Town Property, and Public Utility Easements.

**Section 3.3** Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders lawfully enacted by the Town. Nothing herein provided shall prevent the Company from legally challenging or appealing the enactment or applicability of any laws, regulations, permits and orders enacted by the Town. To the extent that the Company believes that any Town regulations, permits and orders are inconsistent with Industry Standards, the Town agrees to meet with the Company upon the Company's written request for consideration of the matters at issue within a reasonable period of time.

**Section 3.4** Industry Standards. In enacting laws and regulations and issuing permits that affect the Company's access to or use of the Streets, Other Town Property and Public Utility Easements, the Town agrees to make good faith efforts to make its regulations and permit conditions consistent with Industry Standards to the extent practicable, and the Company agrees to make good faith efforts to advise the Town of Industry Standards that affect the Company's operations within the Town. Without limiting the Town's police power in any way, the Town will take into consideration any input from the Company on new regulations and permit conditions that the Company believes unnecessarily increase its costs of operations within the Town.

## **ARTICLE 4 FRANCHISE FEE**

### **Section 4.1** Franchise Fee.

(A) Fee. In consideration for this Franchise Agreement, which provides the certain terms related to the Company's use of Town Streets, Public Utility Easements and Other Town Property, which are valuable public properties acquired and maintained by the Town at the expense of its Residents, and in recognition of the fact that the grant to the Company of this Franchise is a valuable right, the Company shall pay the Town a sum equal to three percent (3%) of Gross Revenues (the "**Franchise Fee**"). To the extent required by law, the Company shall collect the Franchise Fee from a surcharge upon Town Residents who are customers of the Company.

(B) Obligation in Lieu of Franchise Fee. In the event that the Franchise Fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the Town, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount that the Company would have paid as a Franchise Fee as partial consideration for use of the Town Streets, Public Utility Easements and Other Town Property. Such payments shall be made in accordance with applicable provisions of law. Further, to the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to Town Residents who are customers of the Company.

(C) Changes in Utility Service Industries. The Town and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and

regulatory authorities and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes may have an adverse impact upon the Franchise Fee revenues provided for herein. In recognition of the length of the term of this Franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the Town, the Company will cooperate with and assist the Town in making reasonable modifications of this Franchise Agreement in an effort to provide that the Town receives an amount in Franchise Fees or some other form of compensation that is the same amount of Franchise Fees paid to the Town as of the date that such initiatives and changes adversely impact Franchise Fee revenues.

(D) Utility Service Provided to the Town. No Franchise Fee shall be charged to the Town for Utility Service provided directly or indirectly to the Town for its own consumption, including street lighting service and traffic signal lighting service, unless otherwise directed by the Town in writing and in a manner consistent with Company policy.

#### **Section 4.2** Remittance of Franchise Fee.

(A) Remittance Schedule. Franchise fee revenues shall be remitted by the Company to the Town as directed by the Town in monthly installments not more than thirty (30) days following the close of each calendar month.

(B) Correction of Franchise Fee Payments. In the event that either the Town or the Company discovers that there has been an error in the calculation of the Franchise Fee payment to the Town, either party shall provide written notice of the error to the other party. Subject to the following sentence, if the party receiving written notice of the error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2(D) of this Franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the Franchise Fee to the Town, and said overpayment is in excess of Five Thousand Dollars (\$5,000.00), correction of the overpayment by the Town shall take the form of a credit against future Franchise Fees and shall be spread over the same period the error was undiscovered or the Town shall make a refund payment to the Company. If such period would extend beyond the term of this Franchise, the Company may elect to require the Town to provide it with a refund instead of a credit, with such refund to be spread over the same period the error was undiscovered, even if the refund will be paid after the termination date of this Franchise. All Franchise Fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. Subject to the terms of the Tariffs, in no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the error.

(C) Audit of Franchise Fee Payments.

- (1) Company Audit. At the request of the Town, every three (3) years commencing at the end of the third calendar year of the Term of this Franchise, the Company shall conduct an internal audit, in accordance with the Company's auditing principles and policies that are applicable to electric and gas utilities that are developed in accordance with the Institute of Internal Auditors, to investigate and determine the correctness of the Franchise Fees paid to the Town. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the Town Administrator summarizing the audit procedures followed along with any findings.
- (2) Town Audit. At the request of the Town, every three (3) years commencing at the end of the third year of this Franchise, the Town may conduct its own audit at its own expense, in accordance with generally accepted auditing principles that are developed in accordance with the Institute of Internal Auditors, and the Company shall cooperate by providing the Town's auditor with non-confidential information that would be required to be disclosed under applicable state sales and use tax laws and applicable PUC rules and regulations.
- (3) Underpayments. If the results of a Town audit conducted pursuant to Section 4.2(C)(2) above concludes that the Company has underpaid the Town by two percent (2%) or more, in addition to the obligation to pay such amounts to the Town, the Company shall also pay all reasonable costs of the Town's audit. The Company shall not be responsible for the costs of the Town's audit when the underpayment is caused by errors from information provided by an entity certified by the Colorado Department of Revenue as a "hold harmless entity" or other similar entity recognized by the Department of Revenue.

(D) Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.2(B) of this Franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

(E) Franchise Fee Payment Not in Lieu of Permit or Other Fees. Payment of the Franchise Fee by Company to Town does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the Town, except that the Franchise Fee provided for herein shall be in lieu of any occupation, occupancy or similar tax or fee for the Company's use of Town Streets, Public Utility Easements or Other Town Property under the terms set forth in this Franchise.

## **ARTICLE 5**

### **ADMINISTRATION OF FRANCHISE**

**Section 5.1** Town Designee. The Town Administrator shall designate in writing to the Company an official or officials having full power and authority to administer this Franchise (whether one or more, the “**Town Designee**”). The Town Administrator may also designate one or more additional Town representatives to act as the primary liaison with the Company as to particular matters addressed by this Franchise and shall provide the Company with the name(s) and telephone number(s) of said Town representatives. The Town Administrator may change these designations by providing written notice to the Company. The Town Designee shall have the right, at all reasonable times and with reasonable notice to the Company, to inspect any Company Facilities in Town Streets and Other Town Property.

**Section 5.2** Company Designee. The Company shall designate a representative to act as the primary liaison with the Town and shall provide the Town with the name, address, and telephone number for the Company’s representative under this Franchise (“**Company Designee**”). The Company may change its designation by providing written notice to the Town. The Town shall use the Company Designee to communicate with the Company regarding Utility Service and related service needs for Town facilities.

**Section 5.3** Coordination of Work.

(A) Company and Town agree to coordinate their activities in Town Streets, Public Utility Easements and Other Town Property. The Town and the Company will meet annually upon the written request of the Town Designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Town Streets, including but not limited to any planned Town Streets paving projects. The Town and Company shall hold such meetings as either deems necessary to exchange additional information with a view toward coordinating their respective activities in those areas where such coordination may prove beneficial and so that the Town will be assured that all applicable provisions of this Franchise, applicable building and zoning codes, and applicable Town air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

(B) In addition to the foregoing meetings, the Company and the Town agree to use good faith efforts to provide notice to one another whenever (i) the Company initiates plans to significantly upgrade its infrastructure within the Town, including without limitation the replacement of utility poles and overhead lines; and (ii) third-party applicants within the Town initiate private land uses and projects or the Town initiates a Public Project that requires significant upgrade to future electric utility development by the Company, in order to allow for mutual Town and Company input and consultation for beneficial coordination of activities.

## **ARTICLE 6 SUPPLY, CONSTRUCTION AND DESIGN**

**Section 6.1** Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the Town to the Residents that require the Company to provide prompt and reliable Utility Service and the performance of related services for Town facilities. The Town and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the Town in order to facilitate and enhance the operation of Town facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the Town.

**Section 6.2** Supply. Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of electricity to Residents at the lowest reasonable cost consistent with reliable supplies.

**Section 6.3** Charges to the Town for Service to Town Facilities. No charges to the Town by the Company for Utility Service shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the PUC over the Company's regulated intrastate electric rates. All charges to the Town shall be in accord with the Tariffs.

**Section 6.4** Restoration of Service.

(A) Notification. The Company shall provide to the Town daytime and nighttime telephone numbers of a Company Designee from whom the Town may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of Utility Service in any part of the Town.

(B) Restoration. In the event the Company's electric system within the Town, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such system to satisfactory service within the shortest practicable period of time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

**Section 6.5** Obligations Regarding Company Facilities.

(A) Company Facilities. All Company Facilities within Town Streets, Public Utility Easements and Other Town Property shall be maintained in good repair and condition.

(B) Company Work within the Town. All work within Town Streets and Other Town Property performed or caused to be performed by the Company shall be performed:

- (1) in a high-quality manner that is in accordance with Industry Standards;
- (2) in a timely and expeditious manner;
- (3) in a manner that reasonably minimizes inconvenience to the public;

- (4) in a cost-effective manner, which may include the use of qualified contractors; and
- (5) in accordance with all applicable Town laws, ordinances and regulations that are consistent with Industry Standards and the Tariffs.

(C) No Interference with Town Facilities. Company Facilities shall not unreasonably interfere with any Town facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other Town uses of the Streets or Other Town Property. Company Facilities shall be installed and maintained in Town Streets and Other Town Property so as to reasonably minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets and Other Town Property in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services.

(D) Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the Town Streets or Other Town Property by or on behalf of the Company shall be subject to permit, inspection and approval by the Town in accordance with applicable Town laws. Such permitting, inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and pruning of trees and shrubs and disturbance of pavement, sidewalks and surfaces of Town Streets or Other Town Property; provided, however, the Company shall have the right to cut, prune, and/or remove vegetation in accordance with its standard vegetation management requirements and procedures. The Company agrees to cooperate with the Town in conducting inspections and shall promptly perform any remedial action lawfully required by the Town pursuant to any such inspection.

(E) Compliance. Subject to the provisions of Section 3.3 above, the Company and all of its contractors shall comply with the requirements of applicable municipal laws, ordinances, regulations, permits, and standards lawfully adopted, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall use commercially reasonable efforts to require that its contractors working in Town Streets and Other Town Property hold the necessary licenses and permits required by law.

(F) Increase in Voltage. The Company shall reimburse the Town for the cost of upgrading the electrical system or facility of any Town building or facility that uses Utility Service where such upgrading is solely caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases required by law, including but not limited to a final order of the PUC, or voltage increases requested by the Town.

#### **Section 6.6** As-Built Drawings.

(A) Within thirty (30) days after written request of the Town Designee, but no sooner than fourteen (14) days after project completion, the Company shall commence its internal

process to permit the Company to provide, on a project by project basis, as-built drawings of any Company Facility installed within the Town Streets or contiguous to the Town Streets. The Company shall provide the requested documents no later than forty-five (45) days after it commences its internal process.

(B) If the requested information must be limited or cannot be provided pursuant to regulatory requirements or Company data privacy policies, the Company shall promptly notify the Town of such restrictions. The Town acknowledges that the requested as-built drawings are confidential information of the Company and the Company asserts that disclosure to members of the public would be contrary to the public interest. Accordingly, the Town shall deny the right of inspection of the Company's confidential information as set forth in C.R.S. § 24-72-204(3)(a)(IV), as may be amended from time to time (the "**Open Records Act**"). If an Open Records Act request is made by any third party as-built drawings that the Company has provided to the Town pursuant to this Franchise, the Town will immediately notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the Town. In no circumstance shall the Town provide to any third-party as-built drawings provided by the Company pursuant to this Franchise without first conferring with the Company. Provided the Town complies with the terms of this Section, the Company shall defend, indemnify and hold the Town harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

(C) As used in this Section 6.6, "as-built drawings" refers to hard copies of the facility drawings as maintained in the Company's business records and shall not include information maintained in the Company's geographical information system. The Company shall not be required to create drawings or data that do not exist at the time of the request.

**Section 6.7** Excavation and Construction. Subject to Section 3.3, the Company shall be responsible for obtaining, paying for, and complying with all applicable permits, in the manner required by the laws, ordinances, and regulations of the Town. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing Relocations requested by the Town under Section 6.9 of this Franchise and undergrounding requested by the Town under Article 11 of this Franchise, the Town will not require the Company to pay the fees charged for such permits. Upon the Company submitting a construction design plan, the Town shall promptly and fully advise the Company in writing of all requirements for the restoration of Town Streets in advance of Company excavation projects in Town Streets, based upon the design submitted, if the Town's restoration requirements are not addressed in publicly available standards.

**Section 6.8** Restoration.

(A) Subject to the provisions of Section 6.5(D), when the Company does any work in or affecting the Town Streets or Other Town Property, it shall, at its own expense, promptly

remove any obstructions placed thereon or therein by the Company and restore the affected surface of such Town Streets or Other Town Property to a condition that is substantially the same as existed before the work, in accordance with applicable Town standards.

(B) If weather or other conditions do not permit the complete restoration required by Section 6.8(A), the Company may, with the approval of the Town, temporarily restore the affected Town Streets or Other Town Property, provided that such temporary restoration is not at the Town's expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(C) Upon the request of the Town, the Company shall restore the Streets or Other Town Property to a better condition than existed before the Company work was undertaken, provided that the Town shall be responsible for any incremental costs of such restoration not required by then-current Town standards, and provided the Town seeks and/or grants, as applicable, any additional required approvals.

(D) If the Company fails to promptly restore the Town Streets or Other Town Property as required by this Section 6.8, and if, in the reasonable discretion of the Town, immediate action is required for the protection of public health, safety or welfare, the Town may restore such Streets or Other Town Property or remove the obstruction therefrom; provided however, Town actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the Town to restore such Town Streets or Other Town Property or to remove any obstructions therefrom. In the course of its restoration of Town Streets or Other Town Property under this Section 6.8, the Town shall not perform work on Company Facilities unless specifically authorized by the Company in writing on a project-by-project basis and subject to the terms and conditions agreed to in such authorization.

#### **Section 6.9    Relocation of Company Facilities.**

(A) Relocation Obligation. The Company shall Relocate any Company Facility in Town Streets or in Other Town Property at no cost or expense to the Town whenever such Relocation is necessary for the completion of any Public Project. The Company shall Relocate any Company Facility in a Public Utility Easement which is located in Town Streets or Other Town Property. In the case of Relocation that is necessary for the completion of any Public Project in a Public Utility Easement that is not in a Street or Other Town Property, the Company shall not be responsible for any relocation costs. For all Relocations, the Company and the Town agree to cooperate on the location and Relocation of the Company Facilities in the Town Streets or Other Town Property in order to achieve Relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has completed a Relocation of any Company Facility at the Town's direction, if the Town requests a Relocation of the same Company Facility within two (2) years, the subsequent Relocation shall not be at the Company's expense. Nothing provided herein shall prevent the Company from recovering its Relocation costs and expenses from third-parties.

(B) Private Projects. Subject to Section 6.9(F), the Company shall not be responsible for the expenses of any Relocation required by Private Projects, and the Company has the right to require the payment of estimated Relocation expenses from the party causing, or responsible for, the Relocation before undertaking the Relocation.

(C) Relocation Performance. The Relocations set forth in Section 6.9(A) of this Franchise shall be completed within a reasonable time, not to exceed one hundred twenty (120) days from the later of the date on which the Town Designee requests, in writing, that the Relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall receive an extension of time to complete a Relocation where the Company's performance was delayed due to Force Majeure or the failure of the Town to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold or condition any such extension.

(D) Town Revision of Supporting Documentation. Any revision by the Town of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding Company Facility Relocation shall be deemed good cause for a reasonable extension of time to complete the Relocation under this Franchise.

(E) Completion. Each such Relocation shall be complete only when the Company actually Relocates the Company Facilities, restores the Relocation site in accordance with Section 6.9 of this Franchise or as otherwise agreed with the Town, and properly abandons on site all unused Company Facilities, equipment, material and other impediments, consistent with any permit issued by the Town for such Relocation. "Unused" for the purposes of this Franchise shall mean the Company is no longer using the Company Facilities in question and has no plans to use the Company Facilities in the foreseeable future.

(F) Scope of Obligation. Notwithstanding anything to the contrary in this Franchise, the Company shall not be required to Relocate any Company Facilities from property (i) owned by the Company in fee; or (ii) in which the Company has a property right, grant or interest, including without limitation an easement but excluding Public Utility Easements, which are addressed in Section 6.9(A).

(G) Underground Relocation. The Company shall Relocate underground Company Facilities underground. The Company shall Relocate above-ground Company Facilities above-ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of Relocation, or the Town requests that such additional incremental cost be paid out of available funds under Article 11.

(H) Coordination.

- (1) When requested in writing by the Town Designee or the Company, representatives of the Town and the Company shall meet to share information regarding anticipated projects which will require Relocation of Company Facilities in Town Streets and Other Town Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the Town for any Public Project.
- (2) The Town shall make reasonable best efforts to provide the Company with two (2) years advance notice of any planned Street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the Streets within the two-year period if practicable.

(I) Proposed Alternatives or Modifications. Upon receipt of written notice of a required Relocation, the Company may propose an alternative to or modification of the Public Project requiring the Relocation in an effort to mitigate or avoid the impact of the required Relocation of Company Facilities. The Town shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the discretion of the Town. In the event the Town accepts the proposed alternative or modification, the Company agrees to promptly compensate the Town for all additional costs, expenses or delay that the Town reasonably determines resulted from the implementation of the proposed alternative.

**Section 6.10** New or Modified Service Requested by Town. The conditions under which the Company shall install new or modified Utility Service to the Town as a customer shall be governed by this Franchise and the Company's Tariffs.

**Section 6.11** Service to New Areas. If the territorial boundaries of the Town are expanded during the term of this Franchise, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time if the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the Tariffs and this Franchise, including the payment of Franchise Fees.

**Section 6.12** Town Not Required to Advance Funds. Upon receipt of the Town's authorization for billing and construction, the Company shall install Company Facilities to provide Utility Service to the Town as a customer, without requiring the Town to advance funds prior to construction. The Town shall pay for the installation of Company Facilities once completed in accordance with the Tariffs. Notwithstanding anything to the contrary, the provisions of this Section to allow the Town to not advance funds prior to construction shall apply unless prohibited by PUC rules or the Tariffs. The parties agree that as of the date of execution of this Agreement, Company Electric Tariff Sheets R120, R167 and R175 governs the terms of installation of

Company Facilities for the Town and allows installation of Company Facilities without the Town advancing funds prior to construction.

**Section 6.13 Technological Improvements.** The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the Town when such advances are technically and economically feasible and are safe and beneficial to the Town and its Residents.

## **ARTICLE 7 RELIABILITY**

**Section 7.1 Reliability.** The Company shall operate and maintain Company Facilities efficiently and economically, in accordance with Industry Standards, and in accordance with the standards, systems, methods and skills consistent with the provision of adequate, safe and reliable Utility Service.

**Section 7.2 Franchise Performance Obligations.** The Company recognizes that, as part of its obligations and commitments under this Franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical and workmanlike manner.

**Section 7.3 Reliability Reports.** Upon written request, the Company shall provide the Town with a report regarding the reliability of Company Facilities and Utility Service.

## **ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS**

**Section 8.1 New or Modified Service to Town Facilities.** In providing new or modified Utility Service to Town facilities, the Company agrees to perform as follows:

(A) **Performance.** The Company shall complete each project requested by the Town within a reasonable time. Other than traffic facilities, where the Company's performance obligations are governed by Tariff, the parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the Town Designee makes a written request and provides the required Supporting Documentation for all Company Facilities other than traffic facilities, including a copy to the Area Manager as designated in Section 21.4 below. Provided that the Town provides the Company's designated representative with a copy of the Supporting Documentation, the Company shall notify the Town within twenty (20) days of receipt of the request if the Supporting Documentation is sufficient to complete the project. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the Town Designee may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

(B) **Town Revision of Supporting Documentation.** Any revision by the Town of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or substantially change its plans regarding new or modified

service to Town facilities shall be deemed good cause for a reasonable extension of time to complete the Relocation under this Franchise.

(C) Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of this Franchise or as otherwise agreed with the Town and properly abandons on site any unused Company Facilities, equipment, material and other impediments.

**Section 8.2** Adjustments to Company Facilities. The Company shall perform adjustments to Company Facilities that are consistent with Industry Standards, including manhole rings and other appurtenances in Streets and Other Town Property, to accommodate Town Street maintenance, repair and paving operations at no cost to the Town. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

(A) Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the Town makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to a Force Majeure Event. Upon request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

(B) Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts and, if required, readjusts, Company Facilities to accommodate Town operations in accordance with Town instructions following Town paving operations.

(C) Coordination. As requested by the Town or the Company, representatives of the Town and the Company shall meet regarding anticipated Street maintenance operations which will require such adjustments to Company Facilities in Streets or Other Town Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

**Section 8.3** Third Party Damage Recovery.

(A) Damage to Company Facilities. If any individual or entity damages any Company Facilities, to the extent permitted by law the Town will notify the Company of any such incident of which it has knowledge and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

(B) Damage to Company Facilities for which the Town is Responsible. If any individual or entity damages any Company Facilities for which the Town is obligated to reimburse the Company for the cost of the repair or replacement, to the extent permitted by law, the Company will notify the Town of any such incident of which it has knowledge

and will provide to the Town within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

(C) Meeting. The Company and the Town agree to meet periodically upon written request of either party for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third-parties for damaging Company Facilities.

## **ARTICLE 9 BILLING AND PAYMENT**

### **Section 9.1    Billing for Utility Services.**

(A) Monthly Billing. Unless otherwise provided in the Tariffs, the rules and regulations of the PUC, or the Public Utility Law, the Company shall render bills monthly to the offices of the Town for Utility Service and other related services for which the Company is entitled to payment.

(B) Address for Billing. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the Town and payment for same shall be made as prescribed in this Franchise and the applicable Tariffs.

(C) Supporting Documents. To the extent requested by the Town, the Company shall provide all billings and any underlying Supporting Documentation reasonably requested by the Town in an editable and manipulatable electronic format that is acceptable to the Company and the Town.

(D) Annual Meetings. The Company agrees to meet with the Town Designee on a reasonable basis at the Town's request, but no more frequently than once a year, for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the Town.

(E) Payment to Town. In the event the Town determines after written notice to the Company that the Company is liable to the Town for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the Town may deduct all monies due and owing the Town from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's Designee and a designee of the Town to discuss such determination. The Town agrees to attend such a meeting. As an alternative to such deduction and subject to the Company's right to challenge, the Town may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty

(30) days of the date of receipt of such bill unless it challenges the validity of the charge. If the Company challenges the Town determination of liability, the Town shall make such payments to the Company for Utility Service received by Town pursuant to the Tariffs until the challenge has been finally resolved.

## **ARTICLE 10**

### **USE OF COMPANY ELECTRIC DISTRIBUTION POLES**

**Section 10.1 Town Use of Company Electric Distribution Poles.** The Town shall be permitted to make use of Company electric distribution poles in the Town, subject to the Tariffs, without a use fee for the placement of Town equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The Town shall notify the Company in advance and in writing of its intent to use Company's electric distribution poles, and the nature of such use. The Town shall be responsible for all costs incurred by the Company associated with such use by the Town, including but not limited to reviews, inspections and modifications of Company electric distribution poles to accommodate the Town's use of such Company electric distribution poles and for any electricity used. The Town shall not install any equipment or facilities without the express written consent and approval of the Company. No such use of Company electric distribution poles may occur if it would constitute a safety hazard or would interfere with the Company's use or use by any other authorized entity of Company Facilities. Any such Town use must comply with the Company's specifications, the National Electric Safety Code, Industry Standards and all other applicable laws, rules and regulations.

**Section 10.2 Third Party Use of Company Electric Distribution Poles.** If requested in writing by the Town, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the Town to use the Streets, Other Town Property, and Public Utility Easements, to utilize Company electric distribution poles in Town Streets, Other Town Property, and Public Utility Easements, subject to the Tariffs, for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions, including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. The Company shall not be required to permit the use of Company electric distribution poles for the provision of utility service except as otherwise required by law.

**Section 10.3 Town Use of Company Transmission Rights-of-Way.** The Company shall offer to grant to the Town use of transmission rights-of-way which it now, or in the future, owns in fee within the Town for trails, parks and open space on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such use would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. In order to exercise this right, the Town must make specific, advance written request to the Company for any such use and must enter such written agreements as the Company may reasonably require.

**Section 10.4 Emergencies.** Upon written request, the Company shall assist the Town in developing an emergency management plan that is consistent with Company policies. The Town

and the Company shall work cooperatively with each other in any emergency or disaster situation to address the emergency or disaster.

## **ARTICLE 11**

### **UNDERGROUNDING OF OVERHEAD ELECTRIC DISTRIBUTION LINES**

**Section 11.1 Underground Electrical Lines in New Areas.** Upon payment to the Company of the charges provided in the Tariffs or their equivalent, the Company shall place all newly constructed electrical distribution lines in newly developed areas of the Town underground in accordance with applicable laws, regulations and orders of the Town. Such underground construction shall be consistent with Industry Standards.

**Section 11.2 Underground Conversion at Expense of Company.**

(A) **Underground Conversion Program.** The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues, for the purpose of undergrounding its existing overhead electric distribution lines in the Town Streets (excluding alleys and access easements) and Other Town Property, as may be requested by the Town Designee (the "**Underground Program**"), so long as the underground conversion does not result in end use customers of the Company incurring any costs related to the conversion and does not require the Company to obtain any additional land use rights. If the Town requires Relocation of overhead electric lines in the Streets and Other Town Property and there is no room to relocate the lines overhead, the Company may relocate the Facilities underground and may charge the cost of undergrounding to the Underground Program.

(B) **Unexpended Portion and Advances.** Any unexpended portion of the Underground Program shall be carried over to succeeding years and, in addition, upon request by the Town, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance provided there are at least three (3) years remaining before the expiration or termination of this Franchise. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated under any prior franchise shall be carried over to this Franchise. Notwithstanding the foregoing, the Town shall have no vested interest in monies allocated to the Underground Program and any monies in the Underground Program not expended at the expiration or termination of this Franchise shall remain the property of the Company. At the expiration or termination of this Franchise, the Company shall not be required to underground any existing overhead electric distribution lines pursuant to this Article, but may do so in its sole discretion.

(C) **System-wide Undergrounding.** If, during the term of this Franchise, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution lines system wide, the Company will budget and allocate to the program of undergrounding in the Town such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

(D) Town Requirement to Underground. In addition to the provisions of this Article, the Town may require any above ground Company lines in Streets and Other Town Property to be moved underground at the Town's expense.

**Section 11.3 Undergrounding Performance.** Upon receipt of a written request from the Town, the Company shall underground Company electric distribution lines pursuant to the provisions of this Article 11, in accordance with the procedures set forth in this Section.

(A) Estimates. Promptly upon receipt of an undergrounding request from the Town and the Supporting Documentation necessary for the Company to design the undergrounding project, including a copy to the Area Manager as designated in Section 21.4 below, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the Town to review and, if acceptable to the Town, the Town will issue a project authorization. The Company shall notify the Town within twenty (20) days of receipt of the request if the Supporting Documentation is insufficient to prepare the cost estimate for the project. The Town and the Company agree to meet upon the request of either party during the period when the Company is preparing its estimate to discuss all aspects of the project toward the goal of enabling the Company to prepare an accurate cost estimate. At the Town's request, the Company will provide all documentation that forms the basis of the estimate that is not proprietary. The Company will not proceed with any requested project until the Town has provided a written acceptance of the Company's estimate.

(B) Performance. The Company shall complete each undergrounding project requested by the Town within a reasonable time considering the size and scope of each project, not to exceed two hundred forty (240) days from the later of the date upon which the Town Designee makes a written request or the date the Town provides to the Company all Supporting Documentation. The Company shall have one hundred twenty (120) days after receiving the Town's written request to design project plans, prepare the good faith estimate, and transmit same to the Town Designee for review. If Town approval of the plans and estimate has not been granted, the Company's good faith estimate will be void sixty (60) days after delivery of the plans and estimate to the Town Designee. If the plans and estimate are approved by the Town, the Company shall have one hundred twenty (120) days to complete the project, from the date of the Town Designee's authorization of the underground project, plus any of the one hundred twenty (120) unused days in preparing the good faith estimate. At the Company's sole discretion, if the good faith estimate has expired because the Town Designee has not approved the same within sixty (60) days, the Company may extend the good faith estimate or prepare a new estimate using current prices. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure Event. Upon written request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

(C) Town Revision of Supporting Documentation. Any revision by the Town of Supporting Documentation provided to the Company that causes the Company to

substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under this Franchise.

(D) Completion/Restoration. Each such undergrounding project undertaken pursuant to this Article shall be complete only when the Company actually undergrounds the designated Company Facilities and restores the undergrounding site in accordance with Section 6.7 of this Franchise, or as otherwise agreed with the Town. When performing underground conversions of overhead lines, the Company shall make reasonable efforts consistent with its contractual obligations to persuade joint users of Company distribution poles to remove their facilities from such poles within the time allowed by this Article.

(E) Report of Actual Costs. Upon completion of each undergrounding project undertaken pursuant to this Article, the Company shall submit to the Town a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within one hundred twenty (120) days after completion of the project and written request from the Town.

(F) Audit of Underground Projects. The Town may require the Company to undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The Town shall make any such request in writing within one hundred twenty (120) days of receipt of the report of actual costs, as referenced in Section 11.3(E) of this Franchise Agreement. Such audits shall be limited to projects completed within twelve (12) months prior to the date when the audit is requested. The cost of any such independent audit shall reduce the amount of the Underground Program balance. The Company shall cooperate with any audit and the independent auditor shall prepare and provide to the Town and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the Town, only those actual project costs confirmed and verified by the independent auditor as reasonable and necessary to complete the project shall be charged against the Underground Program balance.

**Section 11.4** Audit of Underground Program. Upon written request, every three (3) years commencing at the end of the third year of this Franchise, the Company shall cause an independent auditor to investigate and determine the correctness of the charges to the Underground Program. Such audits shall be limited to the previous three (3) calendar years. Audits performed pursuant to this Section shall be limited to charges to the Underground Program and shall not include an audit of individual underground projects. If the Town has concerns about any material information contained in the audit, the parties shall meet and make good faith attempts to resolve any outstanding issues. The independent auditor shall provide to the Town and the Company a written report containing its findings. The Company shall reconcile the Underground Program balance consistent with the findings contained in the independent auditor's written report. The costs of the audit and investigation shall be charged against the Underground Program balance.

**Section 11.5** Cooperation with Other Utilities. When undertaking an undergrounding project the Town and the Company shall coordinate with other utilities or companies that have

their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior written notification, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for any costs of undergrounding the facilities of other companies or the Town.

**Section 11.6 Planning and Coordination of Undergrounding Projects.** The Town and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other Town and Company construction projects. The Town and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the Town and the Company in order to achieve the orderly undergrounding of Company overhead lines. Representatives of both the Town and the Company shall meet periodically to review the Company's undergrounding of Company overhead lines and at such meetings shall review:

- (A) Undergrounding, including conversions, Public Projects and replacements that have been accomplished or are underway, together with the Company's plans for additional undergrounding; and
- (B) Public Projects anticipated by the Town.

## **ARTICLE 12 PURCHASE OR CONDEMNATION**

### **Section 12.1 Municipal Right to Purchase or Condemn.**

(A) **Right and Privilege of Town.** The right and privilege of the Town to construct, own and operate a municipal utility, and to purchase pursuant to a mutually acceptable agreement or condemn any Company Facilities located within the territorial boundaries of the Town, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution, statutes and case law of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The Town shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to condemn Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the Town. In the event of any such condemnation, no value shall be ascribed or given to the right to use Town Streets or Other Town Property granted under this Franchise in the valuation of the property thus sold.

(B) **Notice of Intent to Purchase or Condemn.** The Town shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this Section 12.1 shall be deemed or construed to constitute a consent by the Company to the Town's purchase or condemnation of Company Facilities, nor a waiver of any Company defenses or challenges related thereto.

## **ARTICLE 13**

### **MUNICIPALLY PRODUCED UTILITY SERVICE**

#### **Section 13.1 Municipally Produced Utility Service.**

(A) Town Reservation. The Town expressly reserves the right to engage in the production of utility service to the extent permitted by law. The Company agrees to negotiate in good faith long term contracts to purchase Town-generated power made available for sale, consistent with PUC requirements and other applicable requirements. The Company further agrees to offer transmission and delivery services to the Town that are required by judicial, statutory and/or regulatory directive and that are comparable to the services offered to any other customer with similar generation facilities.

(B) Franchise Not to Limit Town's or Company's Rights. Nothing in this Franchise prohibits the Town from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law, nor does it affect the Company's rights and obligations pursuant to any Certificate of Public Convenience and Necessity granted by the PUC.

## **ARTICLE 14**

### **ENVIRONMENT AND CONSERVATION**

**Section 14.1 Environmental Leadership.** The Town and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this Franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of Energy Conservation and Energy Efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet the requirements of environmental laws, regulations and permits; shall invest in cost-effective, environmentally sound technologies; shall consider environmental issues in its planning and decision making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. If requested in writing by the Town on or before December 1<sup>st</sup> of each year, the Company shall provide the Town a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this Section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements.

**Section 14.2 Conservation.** The Town and the Company recognize and agree that Energy Conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The Town and the Company further recognize that creative and effective Energy Conservation solutions are crucial to sustainable development. The Company recognizes and shares the Town's stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective Energy Efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate Energy Efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future demand side management ("DSM") programs. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs, the benefits of which would otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective programs for the various classes of the Company's customers, including low-income customers. The Company shall advise the Town and its Residents of the availability of assistance that the Company makes available for investments in Energy Conservation through newspaper advertisements, bill inserts and Energy Efficiency workshops and by maintaining information about these programs on the Company's website. Further, at the Town's request, the Company's Area Manager shall act as the primary liaison with the Town who will provide the Town with information on how the Town may take advantage of reducing energy consumption in Town facilities and how the Town may participate in Energy Conservation and Energy Efficiency programs sponsored by the Company. As such, the Company and the Town commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers. The Company agrees to help the Town participate in Company programs and, when opportunities exist to partner with others, such as the State of Colorado, the Company will help the Town pursue those opportunities. In addition, and in order to assist the Town and its Residents' participation in Renewable Energy Resource programs, the Company shall: notify the Town regarding eligible Renewable Energy Resource programs; provide the Town with technical support regarding how the Town may participate in Renewable Energy Resource programs; and advise Residents regarding eligible Renewable Energy Resource programs. Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the Town, the Company retains the sole discretion as to whether to incur such costs.

**Section 14.3 Continuing Commitment.** It is the express intention of the Town and the Company that the collaborative effort provided for in this Article continue for the entire term of this Franchise. The Town and the Company also recognize, however, that the programs identified in this Article 14 may be for a limited duration and that the regulations and technologies associated with Energy Conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this Franchise by continuing to provide leadership, support and assistance, in collaboration with the

Town, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this Franchise in order to help the Town achieve its environmental goals.

**Section 14.4 PUC Approval.** Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process.

**Section 14.5 Sustainability Committee.** To the extent the Town has a sustainability committee, it shall provide the Company an opportunity to have a Company representative on such committee. At the Town's request, any Company representative may participate in regular committee meetings as a non-voting member for the purpose of providing information on Company programs and offerings and will be a meaningful participant as it relates to Company programs and offerings.

## **ARTICLE 15 TRANSFER OF FRANCHISE**

**Section 15.1 Consent of Town Required.** The Company shall not transfer or assign any rights under this Franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory requirements, unless the Town approves such transfer or assignment in writing. The Town may impose reasonable conditions upon the transfer, but approval of the transfer or assignment shall not be unreasonably withheld, conditioned or delayed.

**Section 15.2 Transfer Fee.** In order that the Town may share in the value this Franchise adds to the Company's operations, any transfer or assignment of rights granted under this Franchise requiring Town approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the Town a transfer fee in an amount equal to the proportion of the Town's then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by the Company multiplied by one million dollars (\$1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

## **ARTICLE 16 CONTINUATION OF UTILITY SERVICE**

**Section 16.1 Continuation of Utility Service.** In the event this Franchise is not renewed at the expiration of its term or is terminated for any reason, and the Town has not provided for alternative utility service, the Company shall have no obligation to remove any Company Facilities from Streets, Public Utility Easements or Other Town Property or discontinue providing Utility Service unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the Town until the Town arranges for utility service from another provider. The Town acknowledges and agrees that the Company has the right to use Streets, Other Town Property and Public Utility Easements during any such period. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public.

**Section 16.2 Compensation.** The Town agrees that in the circumstances of this Article 16, the Company shall be entitled to monetary compensation as provided in the Tariffs and the Company shall be entitled to collect from Residents and, upon the Town's compliance with applicable provisions of law, shall be obligated to pay the Town, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise Fee as consideration for use of the Town's Streets and Other Town Property. Only upon receipt of written notice from the Town stating that the Town has adequate alternative utility service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the Town and its Residents.

## **ARTICLE 17 INDEMNIFICATION AND IMMUNITY**

**Section 17.1 Town Held Harmless.** The Company shall indemnify, defend and hold the Town harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or directly arising from the grant of this Franchise, the exercise by the Company of the related rights, but in both instances only to the extent caused by the Company, and shall pay the costs of defense plus reasonable attorneys' fees. The Town shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the Town seeks indemnification hereunder; and, (b) unless in the Town's judgment a conflict of interest may exist between the Town and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel reasonably satisfactory to the Town. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the Town determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this Franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the Town or any of its officers, agents or employees or to the extent that the Town is acting in its capacity as a customer of record of the Company.

**Section 17.2 Governmental Immunity Act.** Nothing in this Article 17 or any other provision of this Franchise shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Town may have under the Colorado Governmental Immunity Act (C.R.S. § 24-10-101, *et. seq.*) or of any other defenses, immunities, or limitations of liability available to the Town by law.

## **ARTICLE 18 BREACH**

**Section 18.1 Change of Tariffs.** The Town and the Company agree to take all reasonable and necessary actions to assure that the terms of this Franchise are performed. The Company reserves the right to seek a change in its Tariffs, including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the Town and its Residents, and the Town retains all rights that it may have to intervene and participate in any such proceedings.

## Section 18.2 Breach.

(A) Notice/Cure/Remedies. Except as otherwise provided in this Franchise, if a party (the “**Breaching Party**”) to this Franchise fails or refuses to perform any of the terms or conditions of this Franchise (a “**Breach**”), the other party (the “**Non-Breaching Party**”) may provide written notice to the Breaching Party of such Breach. Upon receipt of such notice, the Breaching Party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the Breach or, if such Breach cannot be remedied in thirty (30) days, such additional time as reasonably needed to remedy the Breach, but not exceeding an additional thirty (30) day period, or such other time as the parties may agree. If the Breaching Party does not remedy the Breach within the time allowed in the notice, the Non-Breaching Party may exercise the following remedies for such Breach:

- (1) specific performance of the applicable term or condition to the extent allowed by law; and
- (2) recovery of actual damages from the date of such Breach incurred by the Non-Breaching Party in connection with the Breach, but excluding any special, punitive or consequential damages.

(B) Termination of Franchise by Town. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this Franchise (a “**Material Breach**”), the Town may provide written notice to the Company of such Material Breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed sixty (60) days in which to remedy the Material Breach or, if such Material Breach cannot be remedied in sixty (60) days, such additional time as reasonably needed to remedy the Material Breach, but not exceeding an additional sixty (60) day period, or such other time as the parties may agree. If the Company does not remedy the Material Breach within the time allowed in the notice, the Town may, in its sole discretion, terminate this Franchise. This remedy shall be in addition to the Town’s right to exercise any of the remedies provided for elsewhere in this Franchise. In the event of the termination of this Franchise by the Town pursuant to this Section 18.2(B), the Company shall continue to provide Utility Service to the Town and its Residents in accordance with Article 16 above.

(C) Company Shall Not Terminate Franchise. In no event does the Company have the right to terminate this Franchise.

(D) No Limitation. Except as provided herein, nothing in this Franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged Breach of this Franchise.

## **ARTICLE 19 AMENDMENTS**

**Section 19.1 Proposed Amendments.** At any time during the term of this Franchise, the Town or the Company may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.

**Section 19.2 Effective Amendments.** No alterations, amendments or modifications to this Franchise shall be valid unless executed in writing by the parties, which alterations, amendments or modifications shall be adopted with the same formality used in adopting this Franchise, to the extent required by law. Neither this Franchise, nor any term herein, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever. Any amendment of the Franchise shall become effective only upon the approval of the PUC, if such PUC approval is required.

## **ARTICLE 20 EQUAL OPPORTUNITY**

**Section 20.1 Economic Development.** The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is committed also to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.

**Section 20.2 Employment.**

(A) **Programs.** The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.

(B) **Businesses.** The Company recognizes that the Town and the business community in the Town, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under-represented communities into management positions, and agrees to keep the Town regularly advised of the Company's progress by providing the Town a copy of the Company's annual affirmative action report upon the Town's written request.

(C) Recruitment. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity-specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity-specific expertise.

(D) Advancement. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under-represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training and leadership programs.

(E) Non-Discrimination. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, gender, sexual orientation, marital status, age, military status, national origin, ancestry, or physical or mental disability, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified.

(F) Board of Directors. The Company shall identify and consider women, persons of color and other under-represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the Shareholders, customers and employees of the Company.

### **Section 20.3 Contracting.**

(A) Contracts. It is the Company's policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

(B) Community Outreach. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the Town regularly advised of the Company's programs.

(C) Community Development. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing

predominately minority owned, women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company.

**Section 20.4 Coordination.** Town agencies provide collaborative leadership and mutual opportunities or programs relating to Town based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

## **ARTICLE 21 MISCELLANEOUS**

**Section 21.1 No Waiver.** Neither the Town nor the Company shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

**Section 21.2 Successors and Assigns.** The rights, privileges, and obligations, in whole or in part, granted and contained in this Franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 15 of this Franchise. Upon a transfer or assignment pursuant to Article 15, the Company shall be relieved from all liability from and after the date of such transfer, except as otherwise provided in the conditions imposed by the Town in authorizing the transfer or assignment and under state and federal law.

**Section 21.3 Third Parties.** Nothing contained in this Franchise shall be construed to provide rights to third parties.

**Section 21.4 Notice.** Both parties shall designate from time to time in writing representatives for the Company and the Town who will be the persons to whom notices shall be sent regarding any action to be taken under this Franchise. Notice shall be in writing and forwarded by certified mail, reputable overnight courier or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Notice shall be deemed received (a) three (3) days after being mailed via the U.S. Postal Service, (b) one (1) business day after mailed if via reputable overnight courier, or (c) upon hand delivery if delivered by courier. Until any such change shall hereafter be made, notices shall be sent as follows:

|              |                          |
|--------------|--------------------------|
| To the Town: | Town Administrator       |
|              | Town of Fairplay         |
|              | 901 Main Street          |
|              | P.O. Box 267             |
|              | Fairplay, Colorado 80440 |

With a copy to: Nina P. Williams  
Wilson Williams Fellman Dittman  
1314 Main Street, Suite 100  
Louisville, CO 80027

To the Company: Director, Community Relations  
Public Service Company of Colorado  
P.O. Box 840  
Denver, Colorado 80201

With a copy to: Legal Department  
Public Service Company of Colorado  
P.O. Box 840  
Denver, Colorado 80201

and Area Manager  
Public Service Company of Colorado  
P.O. Box 840  
Denver, Colorado 80201

Any request involving any audit specifically allowed under this Franchise shall also be sent to:

Audit Services  
Public Service Company of Colorado  
P.O. Box 840  
Denver, Colorado 80201

### **Section 21.5 Examination of Records.**

(A) The parties agree that any duly authorized representative of the Town and the Company shall have access to and the right to examine any directly pertinent non-confidential books, documents, papers, and records of the other party involving any activities related to this Franchise. All such records must be kept for a minimum of the lesser of three (3) years or the time period permitted by a party's record retention policy. To the extent that either party believes in good faith that it is necessary in order to monitor compliance with the terms of this Franchise to examine confidential books, documents, papers, and records of the other party, the parties agree to meet and discuss providing confidential materials, including without limitation providing such materials subject to a reasonable confidentiality agreement that effectively protects the confidentiality of such materials and complies with PUC rules and regulations. The Town will maintain the confidentiality of the information by keeping it under seal and segregated from information and documents that are available to the public.

(B) With respect to any information requested by the Town which the Company identifies as "Confidential" or "Proprietary":

- (1) The Town will maintain the confidentiality of the information by keeping it under seal and segregated from information and documents that are available to the public;
- (2) The information will be used solely for the purposes stated in the Town's request;
- (3) The information shall only be made available to Town employees and consultants who represent in writing that they agree to be bound by the provisions of this subsection; and
- (4) The information shall be held by the Town for such time as is reasonably necessary for the Town to address the Franchise issue(s) that generated the request and shall be returned to the Company when the Town has concluded its use of the information. The parties agree that in most cases, the information should be returned within one hundred twenty (120) days. However, in the event that the information is needed in connection with any action that requires more time, including, but not necessarily limited to litigation, administrative proceedings and/or other disputes, the Town may maintain the information until such issues are fully and finally concluded.

**Section 21.6 Confidential or Proprietary Information.** If an Open Records Act (C.R.S. § 24-72-201 *et seq.*) request is made by any third-party for confidential or proprietary information that the Company has provided to the Town pursuant to this Franchise, the Town will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the Town. In no circumstance shall the Town provide to any third-party confidential information provided by the Company pursuant to this Franchise without first conferring with the Company. Provided the Town complies with the terms of this Section, the Company shall defend, indemnify and hold the Town harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding. Unless otherwise agreed between the parties, the following information shall not be provided by the Company: confidential employment matters, specific information regarding any of the Company's customers, information related to the compromise and settlement of disputed claims including but not limited to PUC dockets, information provided to the Company which is declared by the provider to be confidential and which would be considered confidential to the provider under applicable law.

**Section 21.7 List of Utility Property.** Upon written request by the Town, but in no event more than once every two (2) years, the Company shall provide the Town a list of electric utility-related real property owned in fee by the Company within the County in which the Town is located. The list shall include the legal description of the real property, and where available on the deed, the physical street address. If the physical address is not available on the deed, if the Town requests the physical address of the real property described in this Section 21.7, to the extent that such physical street address is readily available to the Company, the Company shall provide such

address to the Town. All such records must be kept for a minimum of three (3) years or such shorter duration if required by Company policy.

**Section 21.8 PUC Filings.** Upon written request by the Town, the Company shall provide the Town non-confidential copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Public Utilities Commission. Notwithstanding the foregoing, notice regarding any electric filings that may affect Utility Service rates in the Town shall be sent to the Town upon filing.

**Section 21.9 Information.** Upon written request, the Company shall provide the Town Administrator or the Town Administrator's designee with:

- (A) A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's website;
- (B) Maps or schematics indicating the location of specific Company Facilities (subject to Town executing a confidentiality agreement as required by Company policy), including gas or electric lines, located within the Town, to the extent those maps or schematics are in existence at the time of the request and related to an ongoing project within the Town. The Company does not represent or warrant the accuracy of any such maps or schematics; and
- (C) A copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

**Section 21.10 Payment of Taxes and Fees.**

(A) **Impositions.** Except as otherwise provided herein, the Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Franchise ("**Impositions**"), provided that the Company shall have the right to contest any such Impositions and shall not be in breach of this Section so long as it is actively contesting such Impositions.

(B) **Town Liability.** The Town shall not be liable for the payment of late charges, interest or penalties of any nature other than pursuant to applicable Tariffs.

**Section 21.11 Conflict of Interest.** The parties agree that no official, officer or employee of the Town shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the Town to the extent prohibited by law, including ordinances and regulations of the Town.

**Section 21.12 Certificate of Public Convenience and Necessity.** The Town agrees to support the Company's application to the PUC to obtain a Certificate of Public Convenience and Necessity to exercise its rights and obligations under this Franchise.

**Section 21.13 Authority.** Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this Franchise on behalf of the parties and to bind the parties to its terms. The persons executing this Franchise on behalf of each of the parties warrant that they have full authorization to execute this Franchise. The Town acknowledges that notwithstanding the foregoing, the Company requires a Certificate of Public Convenience and Necessity from the PUC in order to operate under the terms of this Franchise.

**Section 21.14 Severability.** Should any one or more provisions of this Franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.

**Section 21.15 Force Majeure.** Neither the Town nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure Event, as defined herein.

**Section 21.16 Earlier Franchises Superseded.** This Franchise shall constitute the only franchise between the Town and the Company related to the furnishing of Utility Service, and it supersedes and cancels all former franchises between the parties hereto.

**Section 21.17 Titles Not Controlling.** Titles of the paragraphs herein are for reference only and shall not be used to construe the language of this Franchise.

**Section 21.18 Applicable Law.** Colorado law shall apply to the construction and enforcement of this Franchise. The parties agree that venue for any litigation arising out of this Franchise shall be in the District Court for Park County, State of Colorado.

**Section 21.19 Payment of Expenses Incurred by Town in Relation to Franchise Agreement.** The Company shall pay for expenses reasonably incurred by the Town for the adoption of this Franchise, limited to the publication of notices, publication of ordinances, and photocopying of documents and other similar expenses.

**Section 21.20 Costs of Compliance with Franchise.** The parties acknowledge that PUC rules, regulations and final decisions may require that costs of complying with certain provisions of this Franchise be borne by customers of the Company who are located within the Town.

**Section 21.21 Conveyance of Town Streets, Public Utility Easements or Other Town Property.** In the event the Town vacates, releases, sells, conveys, transfers or otherwise disposes of a Town Street, or any portion of a Public Utility Easement or Other Town Property in which Company Facilities are located, the Town shall reserve an easement in favor of the Company over

that portion of the Street, Public Utility Easement or Other Town Property in which such Company Facilities are located. The Company and the Town shall work together to prepare the necessary legal description to effectuate such reservation. For the purposes of Section 6.9(A) of this Franchise, the land vacated, released, sold, conveyed, transferred or otherwise disposed of by the Town shall no longer be deemed to be a Street or Other Town Property from which the Town may demand the Company temporarily or permanently Relocate Company Facilities at the Company's expense.

**Section 21.22 Audit.** For any audits specifically allowed under this Franchise, such audits shall be subject to the Tariff and PUC rules and regulations. Audits in which the auditor is compensated on the basis of a contingency fee arrangement shall not be permitted.

**Section 21.23 Land Use Coordination.** The Town shall coordinate with the Company regarding its land use planning. This coordination shall include meeting with the Company and identifying areas for future utility development.

**Section 21.24 Counterpart Signature.** This Franchise may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Franchise, and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals.

(Signature page follows.)

**IN WITNESS WHEREOF**, the parties have caused this Franchise to be executed as of the dates indicated below, effective as of the Effective Date.

**TOWN OF FAIRPLAY**

ATTEST:

\_\_\_\_\_  
Clerk, Town of Fairplay

\_\_\_\_\_  
Mayor, Town of Fairplay

APPROVED AS TO FORM:  
(if applicable)

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Town Attorney, Town of Fairplay

**PUBLIC SERVICE COMPANY OF  
COLORADO**, a Colorado corporation

By: \_\_\_\_\_  
Robert Kenney  
President

STATE OF COLORADO            )  
                                          )ss.  
COUNTY OF DENVER         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Robert Kenney, President, Public Service Company of Colorado, a Colorado corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_.



## MEMORANDUM

**TO:** Mayor and Board of Trustees

**FROM:** Janell Sciacca, Town Administrator/Clerk

**RE:** Public Hearing Item A – Ordinance No. 6, Series of 2024, Regarding Nuisance Parking Lots - THIRD READING

**DATE:** August 19, 2024

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**Background:**

The original ordinance was presented to the Board for consideration on July 15, 2024. At that time, there was discussion on government overreach. The Board generally felt more time was needed to review and digest the legislation so the matter was continued to August 5, 2024. On August 5, two Board members were not present and the Trustees presented voted to continued the matter to August 19, 2024

Staff's position has not changed and believes the ordinance will help to alleviate current and future issues.

**Recommendation:**

Staff recommends that following Public Hearing, the Board approve Ordinance No. 6, Series of 2024, as presented by motion, second and a roll call vote.

**Attachments:**

- Ordinance No. 6, Series of 2024

**TOWN OF FAIRPLAY, COLORADO  
ORDINANCE NO. 6  
(SERIES 2024)**

**AN ORDINANCE CREATING SECTION 7-2-200, WITHIN NUISANCES, OF THE  
FAIRPLAY MUNICIPAL CODE, ESTABLISHING PARKING LOT REGULATIONS**

**WHEREAS**, the Town of Fairplay, Colorado (the “Town”), is a statutory town, duly organized and existing under the laws of the State of Colorado;

**WHEREAS**, the Board of Trustees (the “Board”) has the authority, pursuant to C.R.S. §31-16-101, *et seq.*, to adopt and enforce all ordinances and enact laws to govern and regulate the use of land within its territory;

**WHEREAS**, pursuant to C.R.S. §31-15-401, as part of the Town’s police powers, the Town also possesses the authority to declare what is a nuisance;

**WHEREAS**, pursuant to such authority, the Town previously adopted Chapter 7, Article II of the Fairplay Municipal Code (“Code”), the Town’s Nuisance Code;

**WHEREAS**, as the Town operates, it sometimes becomes necessary to amend and clarify nuisances that exist within Town boundaries;

**WHEREAS**, pursuant to its authority, the Board desires to establish clear and enforceable codes within the Town;

**WHEREAS**, the Board finds it desirable and appropriate, and in the best interest of the general health, safety, and welfare of its citizens to establish Section 7-2-200, to establish parking lot regulations.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, AS FOLLOWS:**

**Section 1.** The above and foregoing recitals are adopted as express findings and determinations of the Town of Fairplay Board of Trustees.

**Section 2.** Section 7-2-200, concerning parking lot regulations, is hereby established to read as follows:

**Sec. 7-2-200. – Parking lots.**

All parking lots, whether appurtenant to public or private buildings or structures, shall be kept in a proper state of repair and maintained in a safe operating condition free from potholes or other hazardous conditions. Parking lots not kept in a proper state of repair will be deemed a nuisance and may be abated as provided in this Chapter.

**Section 3.** Severability. If any section, sentence, clause, phrase, word, or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

**Section 4.** Effective Date. This Ordinance shall become effective thirty (30) days after final publication.

INTRODUCED, READ, ADOPTED, AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

Town of Fairplay

\_\_\_\_\_  
Frank Just, Mayor

ATTEST:

\_\_\_\_\_  
Janell Sciacca, Town Clerk



## **Town of Fairplay**

901 Main • P.O. Box 267  
Fairplay, Colorado 80440  
(719) 836-2622 phone

(719) 836-3279 fax  
www.fairplayco.us

### **STAFF REPORT**

**TO:** Mayor and Board of Trustees

**FROM:** Janell Sciacca, Town Administrator

**RE:** New Business Item A – ACL Real Estate, LLC Improvements Deferment Request

**DATE:** August 19, 2024

---

#### **BACKGROUND/ANALYSIS:**

ACL Real Estate, LLC acquired 411 US Highway in January of 2022 and opened Highside Brewing at that location shortly thereafter. During the development process, Town Staff advised the primary owner Dave Axelrod that the Fairplay Municipal Code required certain improvements with the change of use. In discussions with Axelrod, there was a difference of opinion on that determination. However, there was also a realization that the subject property would be impacted by the current Highway 285 widening. Additionally, Axelrod was trying to get the business open and off the ground so Staff recommended the Board grant a 1 year deferment for the parking and landscaping improvements. At that time, the Board advised Axelrod he could return to request a subsequent deferment. That request was heard on August 21, 2023 and the Board again granted a 1 year deferment with the option to appear before the body again to request another deferment.

The intent was for the request to be heard alongside 2 applications Axelrod has pending for new liquor licenses. Unfortunately, Staff missed a deadline to publish notice of the liquor hearings in time for the Board's August 19 meeting. Therefore, the liquor license applications will now be heard on September 19. Instead of having the applicant and his attorney(s) appear twice, Staff is recommending the request for deferment be postponed to September 16.

Both Axelrod and his Attorneys took no exception to the postponements.

#### **REQUESTED ACTION:**

Staff requests the Board postpone the request from ACL Real Estate, LLC for an additional 1 year deferment of parking and landscape improvements for 411 US Highway 285 to September 16, 2024 as presented by motion, second and a roll call vote.



## MEMORANDUM

**TO:** Mayor and Board of Trustees

**FROM:** Janell Sciacca, Town Administrator/Clerk

**RE:** Old Business Item A – Review and Discussion Regarding Proposed Employee Handbook update

**DATE:** August 19, 2024

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### **Background:**

The Town of Fairplay Employee Handbook was sent to Employer's Council in 2023 for review. The marked-up version was then sent to the Town Attorney and returned with additional suggested changes. After Staff determined it was almost impossible to try and reconcile all the comments, the Town obtained a basic government employee handbook from Employers Council of Colorado for use in updating of the Town's guidelines.

In reviewing the basic policy and the Town's existing policy, Staff found that some topics needed to be further updated or expanded out, so we also utilized parts of other government handbooks from the Colorado State Judicial Branch, Colorado Department of Corrections, and City of Cripple Creek to further address needed clarifications.

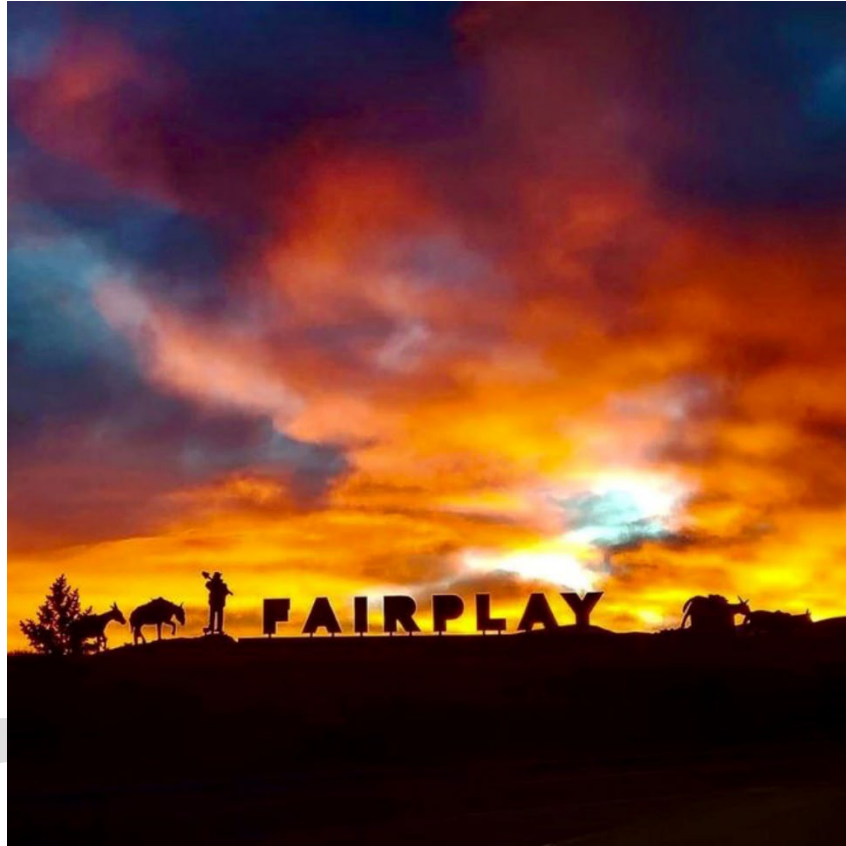
The revised handbook was introduced with the Board on August 5 and will be brought back to the Board throughout the fall for continued discussions and revisions. One document tracking all the changes is being kept to more easily recall what has been discussed and modified.

For this meeting, I have included the list below of the more significant changes or things the Board needs to discuss and provide direction on:

- Format is different and policy / procedural items have been removed
- Welcome message is from Board and not Town Administrator
- At-Will Notice is completely new and expanded
- Lines out some of significant laws protecting employees and further expands on rights
- Clarifies eligibility for rehire
- Clarifies hiring of relatives
- Further delineates and outlines employee status types and defines changes in status

- Sets forth that Department Managers of Appointed Officers must give 30 days' notice prior to leaving if they wish to leave in good standing
- Sets forth the benefits approved by the Town
- Amends schedule of holidays to include Juneteenth and sets forth straight time is paid for the designated shift up to 10 hours, which all but one employee currently works. Also sets forth that part time employees that work a holiday get time and one half instead of straight time.
- PTO is better defined and sets forth responsibilities for employee for notification and use (*Board discussion needs to be held on separating out vacation/PTO and sick time*)
- Further delineates leave of absences and rules and regulations. (*Board should discuss personal leaves of absence, whether to offer or grant them, and if so, how many days*)
- Clarifies compensation time and sets forth only 60 hours may be carried on the books (*Board discussion needs to be held on this which would be a new policy*)
- Permits the Public Works Department Head, with Town Administrator approval, to allow the On-Call crew member to take a Town truck home
- Adds information about use of ADP for tracking and reporting time and approval of timecards by the employee and supervisor. Also adding in that there is no toleration of misrepresenting hours
- Provides that employees receive a one-hour paid lunch break as part of their regular day and non-use cannot be used to shorten the workday
- Sets forth that time off from scheduled work due to an Emergency Closing such as adverse weather will be paid.
- Sets forth accommodations for nursing employees.
- Adds information about appearance and attire and attendance and punctuality expectations.
- Further clarifies use of the internet, social media, email, voicemail, and communication equipment and systems.
- Amends information related to political participation.
- Adds policies and procedures and rules and regulations regarding operation and use of Town Vehicles including acceptable driving records with annual driver history checks.
- Clarifies Conflicts of Interest and includes examples of what constitutes a conflict, which does include employees working for any business, establishment or organization which is regulated by the Town.
- Adds a Data Disposal Policy for PII (Personal Identifying Information).
- Adds standards of conduct for employees both on and off duty.
- Adds notification to employee of inspections and searches and limited expectation of privacy in work locations.
- Sets forth that Police Officers have one year of probation and all other employees are 6 months, minimum. (*Board should discuss whether or not all employees should be 6 months*)
- Adds information about safety and reporting of injuries.

# TOWN OF FAIRPLAY



# EMPLOYEE HANDBOOK

*Guidelines, policies and procedures for  
Employees of the Town of Fairplay.*

**ADOPTED:**\_\_\_\_\_

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## **A MESSAGE FROM THE FAIRPLAY BOARD OF TRUSTEES**

Greetings and welcome to the Town of Fairplay, Colorado. The Town of Fairplay is a special and unique community and the employees of the Town help make and keep it a place that people love to live in and visit.

The purpose of this handbook is to provide employees with information on the responsibilities, rights and expectations of working for the Town. It was written in accordance with federal and state laws (e.g., Colorado Anti-Discrimination Act, Colorado Workers' Compensation Act, Pregnant Workers Fairness Act, Healthy Families Workplaces Act, Equal Pay for Equal Work, Colorado Paid Family and Medical Leave Insurance Act), rules, in effect at the time of publication. Subsequent revisions to these could cause conflicting statements.

The handbook is a valuable reference tool, and employees are always encouraged to speak with their supervisor or the Town Administrator or Town Administrator if any additional information is needed or a specific concern is not addressed in this handbook.

Thank you for choosing to join this great Town; we support a professional workforce that is empowered and embraces honesty, integrity and ethical behavior.

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

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

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

**NO REPRESENTATIVE OF THE TOWN OF FAIRPLAY, OTHER THAN AN ELECTED OFFICIAL OR DEPARTMENT HEAD, HAS AUTHORITY TO ENTER INTO AN AGREEMENT OF EMPLOYMENT FOR ANY SPECIFIED PERIOD AND SUCH AGREEMENT MUST BE IN WRITING, SIGNED BY THE ELECTED OFFICIAL OR AGENCY HEAD AND THE EMPLOYEE.**

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

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

## Federal & State Laws

All government employees have job protections in federal and state law. Colorado state law is reflected in the Colorado Constitution and Colorado Revised Statutes (C.R.S.). Colorado Revised Statutes is the legal title of the collection of compiled laws that have been revised, collected and reenacted as a whole to supplement the State's constitution.

### *Anti-Discrimination, Retaliation & Workplace Harassment*

The Town of Fairplay values and respects all employees. The Town is committed to maintaining a work environment free from any form of employee harassment, retaliation, or discrimination, and compliance with federal and state laws prohibit this type of behavior.

Town employees are protected from workplace discrimination, retaliation, and harassment under various federal and state laws, including but not limited to:

- The Colorado Anti-Discrimination Act (C.R.S. §§24-34-401, et seq.), which prohibits employment discrimination, retaliation, and harassment based on disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry.
- The State Employee Protection (Whistleblower) Act (C.R.S. §§24-50.5-101, et seq.), which prohibits retaliation for disclosure of information in certain circumstances.
- Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000 (e), et seq.), which prohibits discrimination based on race, sex, color, religion, and national origin.
- The Pregnancy Discrimination Act of 1978, an amendment to Title VII, which prohibits discrimination based on pregnancy, childbirth, or other related medical conditions.
- The Family and Medical Leave Act (FMLA) (29 U.S.C. 2601, et seq.), which entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons.
- The Americans with Disabilities Act as Amended (ADAAA) of 2008, which prohibits discrimination against qualified persons with a disability.
- The Fair Labor Standards Act (FLSA) (29 U.S.C. §201), which establishes compensation requirements.
- The Pregnant Workers Fairness Act (PWFA) (C.R.S. § 24-34-402.3)

## **APPLICATION OF PERSONNEL POLICIES**

The personnel policies herein shall apply to all offices, positions and employment in the service of the Town of Fairplay except: elected officials, members of citizen boards, commissions and committees, and persons in the following positions:

1. City Attorney.
2. Municipal Judge.
3. Consultants or special staff as designated by the City Administrator.

## **SAVING CLAUSE AND CONFLICT**

It is the intent of the Board of Trustees that these policies comply with applicable criteria and requirements of State and Federal statutes and regulations. In the event there is a conflict between these policies and such applicable statutes and/or regulations, the criteria and requirements of the applicable State and Federal statutes and/or regulations shall prevail. In the event a section or provision of these policies is declared invalid, the remainder of the policies shall not be affected, and shall be invalid only to the extent required to make the policies legal.

## **DISTRIBUTION OF HANDBOOK**

A copy of the Employee Handbook and any amendments thereto shall be furnished to all existing and new employees upon approval of the manual or changes by Board of Trustees. Each employee shall review and acknowledge the receipt of the Personnel Policies and Procedures Manual on the “Acknowledgment of Receipt – At Will.”

## **EQUAL EMPLOYMENT OPPORTUNITY / UNLAWFUL HARASSMENT**

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

### **ADA and Religious Accommodation**

The Town is committed to complying fully with the Americans with Disabilities Act (ADA), as amended, and ensuring equal opportunity in employment for qualified persons with disabilities. The Town will make reasonable accommodation for qualified individuals with known disabilities and employees whose work requirements interfere with a religious belief unless doing so would result in an undue hardship to the Town or cause a direct threat to health or safety. The Town will make reasonable accommodation for employees whose work requirements interfere with a religious belief, unless doing so poses undue hardship on the Town.

This policy is neither exhaustive nor exclusive. The Town is committed to taking all other actions necessary to ensure equal employment opportunity for persons with disabilities in accordance with the ADA and all other applicable federal, state, and local laws. This policy governs all aspects of employment, including, but not limited to, application, selection, job assignment, compensation, discipline, termination and access to benefits and training.

### **Pregnancy Accommodation**

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

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

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

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

### **EEO Harassment**

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

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

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

### **Sexual Harassment**

Because sexual harassment raises issues that are, to some extent, unique in comparison to other types of harassment, the Organization believes it warrants separate emphasis. The Town strongly opposes sexual harassment and inappropriate sexual conduct. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

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

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

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

### **Complaint Procedure**

If you believe there has been a violation of the EEO policy or harassment based on the protected classes listed above, including sexual harassment, please use the following complaint procedure. The Town expects employees to make a timely complaint to enable the Town to investigate and correct any behavior that may be in violation of this policy.

Employees should report the incident to their supervisor, Department Head, or the Town Administrator who will investigate the matter and take corrective action. Employee complaints will be kept as confidential as practicable. Employees who would prefer not to go to any of these individuals with their complaint should report the incident to the Mayor.

The Town prohibits retaliation against any employee for filing a complaint under this policy or for assisting in a complaint investigation. If you believe there has been a violation of our EEO or retaliation standard, please follow the complaint procedure contained in the sexual harassment policy.

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

### **JOB POSTING**

Generally, job openings will be posted at Town Hall and disseminated through the email system. Each job posting notice will include the dates of the posting period, job title, department, location, job summary, essential duties, qualifications (required skills and abilities), job compensation, and benefits.

To apply for an open position, employees should submit a job posting application to the appropriate hiring party or Department Head listing job-related skills and accomplishments. It should also describe how their current experience with the Town and prior work experience and/or education qualifies them for the position.

### **ELIGIBILITY FOR REHIRE**

Former employees who leave employment with the Town of Fairplay in good standing may be considered for rehire, absent an applicable agreement to the contrary. Former employees who were dismissed for disciplinary reasons may not be considered for rehire. A former employee who is rehired will be considered a new employee from the date of re-employment, except where otherwise required by law. Length of service for the purpose of benefits is governed by the terms of each benefit plan. Employees who retire may be eligible, in certain circumstances, to be considered for rehire.

### **HIRING OF RELATIVES**

The Town may employ relatives of current employees except in the following situations:

- Relatives would be in a position to supervise another relative.
- Relatives have access to confidential information, including payroll and personnel records.

- Relatives audit, verify, receive, or are entrusted with money handled by the other relative.

In cases of marriage [or the formation of a civil union] between two employees, if the above guidelines apply, one must transfer.

These guidelines apply to all categories of employment, including full-time, part-time, and temporary classifications. They also apply to all relatives and individuals who are not legally related but who reside with another employee.

## **EMPLOYEE STATUS**

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

### **Exempt Employees**

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

#### **Exempt Employee – Partial-Day Absence**

As a public entity, the Organization has a duty to taxpayers for public accountability in its actions. If an exempt employee who accrues sick and vacation pay is absent for less than one workday when accrued leave is not used by an employee because accrued leave has been exhausted or the employee chooses to use leave without pay, the pay will be docked from the employee's salary.

### **Nonexempt Employees**

Nonexempt employees are employees whose job positions do not meet FLSA or applicable state exemption tests, and who are not exempt from minimum wage and/or overtime pay requirements. Nonexempt employees shall be paid time and one-half of their regular rate of pay for any work in excess of 40 hours per workweek (excluding duty-free meal periods).

**OFFICERS:** This is a position appointed by the Board of Trustees per Colorado Revised Statutes and the Fairplay Municipal Code. Town Officers include the Town Administrator, Town Clerk, Town Treasurer and Town Administrator.

**FULL-TIME:** These are positions that are regularly scheduled to work more than 32 hours per week. Generally, they are eligible for the Town's benefit package, subject to the terms, conditions, and limitations of each benefit program.

**PART-TIME:** These are positions that are regularly scheduled to work less than 32 hours per week. While they do receive all legally mandated benefits, they are ineligible for most of the Town's other benefit programs, except where required by law.

**TEMPORARY OR SEASONAL:** These are positions that are filled by employees hired for a specific period of time or for a specific project and are not eligible for benefits, except as outlined in other sections of this Handbook or as except where required by law.

## CHANGES IN STATUS

1. Probationary to Regular Status: Immediately prior to the expiration of the probationary period, the immediate Supervisor/Department Manager shall complete a performance evaluation. This will be signed by the Department Manager and submitted to the Town Administrator for final approval.
2. Transfer or Reassignment: When a job vacancy is announced, any Town employee may apply for the position. All qualified applicants will be considered although no Town employee is ensured of selection.
3. Promotion: When a job vacancy is announced any City employee may apply for promotion to the position. All qualified applicants will be considered, although no City employee is ensured appointment. The department from which a successful applicant for promotion is chosen will arrange for the release of the employee to the new department within two (2) weeks after being notified of the selection.

Any current employee receiving a promotion must serve a probationary period of ninety (90) days. During this time the employee's performance is evaluated by the Department Manager as to work habits, ability to work with others and to satisfactorily perform the essential functions of the job.

4. Resignation: Any employee, other than a Department Manager, wishing to terminate employment with the Town is requested to file with their Department Manager, a written resignation two weeks prior to the date the termination is effective, stating reason(s) for leaving.

Any Department Manager or Appointed Officer wishing to leave the Town in good standing is recommended to notify the Town Administrator at least thirty (30) days prior to leaving by providing a written resignation stating the effective date and the reason(s) for leaving.

Resigning employees may use available vacation to cover the designated time period, from notification to actual date of termination, if approved by the Town Administrator. The Town will not compensate terminating employees for holidays nor allow them to accrue vacation during the non-working period.

Prior to the resigning employee's last working day the Department Manager or Town Administrator may conduct a confidential exit interview with the employee. It is the responsibility of the Department Manager to make sure the employee schedules this interview. In the case of a terminating Department Manager, the Town Administrator will be responsible to see that an exit interview is scheduled. This must be completed before termination benefits, if any, are granted.

The Town will pay any outstanding **vacation and compensatory time** benefit pay in a lump sum within the time period prescribed by law. Should an employee owe money to the Town at the time of termination, that debt will be deducted from the final net pay due.

Failure to comply with these procedures may be considered cause for denying the employee future employment with the Town of Fairplay.

## ACCESS TO PERSONNEL FILES

The Town keeps a personnel file as a record of your employment. It is important for this record to be up-to-date and complete. This enables us to reach you in an emergency, forward your mail, and properly maintain your insurance and other benefits. It also helps keep track of your payroll deductions and many other things that concern you as an employee.

Notify the Administration Department immediately if you have changes in any of the following areas: name, residence, telephone, marital status, insurance changes, tax exemptions, person to notify in case of an emergency,

and other relevant information.

Additionally, you should notify the Human Resources Department if you complete educational or training courses. This information may be considered with your other employment records as job opportunities arise in the Town.

If you want to look at your file or discuss it with someone, contact the Human Resources Department.

## **SALARY ADMINISTRATION**

We review individual salaries to pay according to the employee's overall job performance, contribution, and responsibilities. Our salary ranges are periodically assessed to try to remain competitive with our identified market. Salary increases are not automatic and are awarded only when merited.

## **CONFIDENTIALITY**

Employees of the Town will have access to confidential information of the organization and the public we serve. Confidential information includes, but is not limited to, information concerning citizens financial documents, court records, personally identifying information (PII) and similar subjects. If uncertain if information is secret, contact your supervisor.

This non-disclosure prohibition applies both during and after an employee's employment. Any copying, reproducing, or distributing of confidential information in any manner must be authorized by management. Confidential information remains the property of the employer and must be returned to the Company upon separation or at any time upon demand.

## **EMPLOYEE BENEFITS**

### **Benefits Overview**

As part of its compensation strategy, the Town offers a generous insurance package for eligible employees. Currently, the Town pays all premiums for the employee and family for health, dental, vision, LTD, STD and supplemental life insurance as outlined in the Annual Summary of Benefits.

Full-time employees working a minimum of 32 hours per week are eligible for benefits. Unless otherwise noted in these policies, and except where required by law, part-time and temporary or seasonal employees are not eligible to receive benefits including insurance, retirement, leave, and holiday pay. The Town covers all employees in the manner prescribed by law for Social Security, Workers' Compensation, and Unemployment Insurance.

The Town currently offers these plans:

- *Medical Insurance Plan* - helps pay covered medical expenses for you and eligible family members.
- *Dental Insurance Plan* - provides you and your eligible dependents with dental coverage at group rates.
- *Vision Insurance Plan* - provides you and your eligible dependents with vision coverage at group rates.
- *Life Insurance Plan* - provides certain insurance coverage at group rates.
- *Aflac Insurance* – supplemental insurance for paying out of pocket expenses the medical insurance does not cover.
- *Accidental Death and Dismemberment (AD&D) Insurance Plan* - provides payments in case of accidental death or dismemberment. This coverage is available to you and your eligible dependents at group rates.

- *Short-Term Disability (STD) Plan* - helps replace your salary if you suffer a covered disability for a limited period of time.
- *Long-Term Disability (LTD) Plan* - helps replace your salary if you suffer a covered disability for an indefinite period of time.
- *Employee Assistance Program (EAP)* – program designed to help alleviate workplace issues due to mental health, substance abuse, personal and workplace issues.
- *401(a) Pension Plan* - Employer-sponsored defined contribution retirement pension plan.
- *Fire and Police Pension Association (FPPA) Pension Plan* (sworn police officers only) – retirement, disability, and survivor benefits for Colorado police officers, firefighters, and other first responders.
- *457 Defined Contribution Plan* – Employee defers compensation into a pre-tax or after-tax plan.
- *Employee Wellness Plan* – Program designed to promote healthy lifestyles among employees.

Plans, coverage and/or payment of premiums are subject to change at any time by action of the Mayor and Board of Trustees.

For complete information about benefit plans, including the terms, conditions, or eligibility requirements, please contact or obtain a copy of any Summary Plan Document from the Administration Department.

### **Health Insurance Benefit Continuation (COBRA)**

The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives employees and their qualified beneficiaries the opportunity to continue insurance coverage under the Town's health plan when a "qualifying event" would normally result in the loss of eligibility. Some common qualifying events are resignation, termination of employment, or death of an employee; a reduction in an employee's hours or a leave of absence; an employee's divorce or legal separation; or when a dependent child no longer meets eligibility requirements.

Under COBRA, the employee or beneficiary pays the full cost of coverage at the Town's group rate. The Town of Fairplay provides each eligible employee with a written notice describing rights granted under COBRA when the employee becomes eligible for coverage. The notice contains important information about the employee's rights and obligations.

### **Holidays**

The Town currently observes the following holidays as days off with pay ~~plus one paid floating holiday~~:

- New Year's Day
- Martin Luther King, Jr. Day
- President's Day
- Memorial Day
- Independence Day
- Juneteenth
- Labor Day
- Veteran's Day
- Thanksgiving Day
- Friday after Thanksgiving
- Christmas Day

- Day prior to or after ~~Thanksgiving Christmas~~ (Annual Decision)

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

All eligible non-exempt employees that work on a recognized Town holiday will be paid straight time for their regularly scheduled shift up to a maximum of ten hours, plus the hours worked on the holiday at time and one-half. For example, an employee who normally works an eight-hour shift and has to work 8 hours on a scheduled City holiday, would be paid 8 hours at straight time and 8 hours at time and one half. Paid time off for holidays will not be counted as hours worked for the purposes of determining overtime.

If a part-time or seasonal/temporary employee works on a Town holiday, they will be paid at time and one-half for those hours worked. They are not paid if they do not work the holiday.

~~Officers who work an approved holiday may elect to carry over the holiday hours to be used another day within the same year.~~

~~Floating Holidays must be used within the fiscal year. Under no circumstances may they be carried over. Floating holidays are granted only after 6 months of employment. Floating Holidays will not be paid upon separation of employment and are only granted to full-time employees.~~

#### **Paid Time Off (PTO) (Trustee position on changing to a combination of sick and vacation?)**

All employees accumulate paid time off (PTO) for personal needs such as vacation, illness, personal business, etc. Effective upon employment, PTO is accumulated monthly according to the following schedule:

| Months of Service | Hours Earned Per Month | Maximum Accrual |
|-------------------|------------------------|-----------------|
| 1-12 Months       | 16 Hours               | 192 Hours       |
| 13-60 Months      | 20 Hours               | 240 Hours       |
| 61-120 Months     | 24 Hours               | 288 Hours       |
| 121-180 Months    | 28 Hours               | 336 Hours       |

Part-time employees shall be entitled to accrue PTO at a rate of 1 hour for every 30 hours worked and not to exceed 48 hours annually.

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

If you have an extended illness, accumulated PTO currently provides pay while you are away from work. Unused PTO hours currently are carried over from year to year.

Because PTO can be accumulated to be used if you are personally sick or injured, you will not receive extra pay or extra time off for your unused PTO. PTO will not be used in the calculation of overtime.

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

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

When a paid holiday falls within the employee's vacation period, such holiday shall not be considered PTO.

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

### **Trainings, Conferences and Conventions**

Employees are encouraged to participate in continuing education opportunities by attending trainings, conferences, conventions and meetings which have a direct relationship to the employee's position, the Town's needs and budgetary considerations. Approval to attend such must be obtained from the Department Manager or Supervisor, and the Town Administrator if the annual approved budgetary amount would be exceeded.

## **LEAVES OF ABSENCE**

### **Domestic Abuse and Crime Victim Leave<sup>1</sup>**

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

### **Funeral Leave**

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

Supervisors, in their discretion, may grant a total of up to five 5 days with pay and special consideration will be given to an employee whose association was similar to any of the above relationships of someone not an immediate family member.

The Town Administrator may authorize bereavement leave for employee attendance at funeral services for special circumstances including deceased employees.

### **Jury Duty**

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

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

Beginning the fourth day and thereafter, employees, as jurors, are paid \$50.00 per day by the State of Colorado for state, district, or county court jury duty. For jury duty in excess of three days, employees receive the difference between jury duty pay and their regular pay up to a maximum of 10 days (80 hours). Jury duty leave beyond this time is without pay from the Town.

## **FAMLI Participation**

The Town has voted to opt-out of participating in the FAMLI state-run family leave program. All employees of the Town have the ability to participate in FAMLI on an individual basis. FAMLI provides benefits and protections, including partial income protection for eligible employees who are temporarily unable to work due to their or a family member's qualifying medical or legal reason, specifically, for the care of a newborn, adopted child, or fostered child; to care for a family member with a serious health condition; for the employee's own serious health condition; for qualifying military exigency leave; or to address safety needs or the impact of domestic violence and/or sexual assault. Partially paid leave is available for up to 12 weeks in a calendar year or up to 16 weeks under certain circumstances related to pregnancy and childbirth. Employees should notify Human Resources at least 30 days prior to using any such FAMLI leave or as soon as practicable. Please see Human Resources to obtain additional copies of the required notices to employees of local government employers who have opted out of FAMLI that are distributed upon hiring.

### **Family and Medical Leave (Required if No Employees Eligible for FMLA)**

Public sector employers are subject to the provisions of the Family and Medical Leave Act (FMLA). However, to be eligible to take FMLA leave, employees must work at a worksite with at least 50 employees within 75 miles. Because the Town does not have 50 employees within a 75-mile radius, employees are not eligible to take FMLA leave. However, the Town does provide medical leave as outlined below.

### **Medical Leave (If No Employees Eligible for FMLA)**

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

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

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

An employee ready to return to work from leave must present a doctor's statement indicating ability to return to work. The Town may reinstate an employee ready to return from a medical leave of absence when, in the opinion of the Town, it is practical to do so. The Town does not guarantee reinstatement of an employee to the former job. When the employee is available to return to work, the employee is free to apply for any vacancy available and may be considered along with other applicants.

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

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

Employees who fail to return at the expiration of their authorized leave may be terminated. If the employee's failure to return is due to a disability under the Americans with Disabilities Act (ADA) or other law, additional accommodations may be provided. Employees must supply sufficient information from their medical provider indicating that they have a covered disability and when they can return to work with or without reasonable accommodation. Accommodation must not cause undue hardship to the employer. Potential accommodations will be determined in an interactive process between the employee and the Town.

Part-time employees are not eligible for medical leave except as required for a disability.

### **Military Leave**

Employees granted a military leave of absence are re-employed and paid in accordance with the laws governing veteran's re-employment rights. The Town pays for the first three weeks of regularly scheduled days of leave per year. After that time, leave is without pay.<sup>ii</sup>

### **Personal Leave**

Normally, personal leaves of absence are not granted. If, on rare occasions, management deems the circumstances warrant approval, an unpaid leave for reasons other than illness, disability, vacation or a leave of absence otherwise protected under federal or state law may be granted for not more than **[insert number]** days.

### **Voting**

Voting is an important responsibility we all assume as citizens. We encourage employees to exercise their voting rights in all municipal, state, and federal elections.

Under most circumstances, it is possible for employees to vote either before or after work. If it is necessary for employees to arrive late or leave work early to vote in any election, employees should arrange with their supervisor/manager no later than the day prior to Election Day.

## **PAY**

### **Salary and Wage Structure**

Employees will be paid either a salary or an hourly wage depending on their classification of employment. The pay schedule will be reviewed periodically and adjustments made according to the following priorities:

1. Availability of funds.
2. Cost of living may be reviewed for possible adjustment for inflation.
3. Performance adjustments.

The availability of funds criterion recognizes the Town's status as a public entity dependent on taxpayer support and demand on public services. Performance adjustments, when applied, may be based on individual performance, attendance and punctuality as approved by the Town Administrator. Wage comparisons may be based on current payroll information available through statewide surveys and other comparable employers in the Town's labor market. The salary plan(s) will generally be reviewed every year and changes, if any, will generally take effect the first of January, at commencement of the Town's fiscal year.

## **Overtime / On-Call**

This overtime policy applies to all employees who are non-exempt under terms of the Fair Labor Standards Act (FLSA). All non-exempt employees must obtain authorization in advance by the respective Department Manager prior to working overtime. Overtime will be held to an essential minimum. Overtime hours worked during the work period shall be paid at a rate of one and one-half (1½) times the employee's base rate. From time to time, your Supervisor may require you to work overtime. In these instances, you are given as much advance notice as practical.

For all nonexempt employees, excluding Officers, hours worked in excess of 40 hours per workweek are paid at one and one-half (1 1/2) times the employee's regular rate. For sworn law enforcement personnel, overtime is paid after ~~86-80~~ hours worked during a 14 consecutive day work period. The established workweek begins at 12:00 a.m. midnight on Sunday and ends at 11:59 p.m. on Saturday.

For purposes of calculating overtime payments, only hours actually worked are counted. Consequently, hours paid but not worked (e.g., vacation, compensatory time, holidays) are not counted.

In lieu of payment for overtime, employees may elect to convert overtime hours to compensation time, at the rate of one and one-half (1 ½) hour's compensation time for each one (1) hour of overtime. This election must be made and approved by the Department Manager before the end of the pay period in which the overtime hours were worked. The limits for overtime compensation is as follows: Sixty (60) hours compensatory time may be carried on the books. The compensatory time balance is payable to the nonexempt employee at termination. An employee request for payment at any other time must be approved by the Town Administrator.

Public Works employees may be required to respond to service emergencies related to Town infrastructure and operations outside of normal work hours. This work is considered on-call and employees should refer to "Appendix B" for the Fairplay Public Works On-Call Policy for additional information and compensation. An employee who is placed on standby must be available for contact by pager or telephone. During the standby period, the employee is able to engage in non-work related activities. Upon call out, the employee is expected to be capable of performing assigned duties and is to respond in accordance with department instructions. Call out may require, but is not limited to, a return to the worksite or providing assistance via the telephone. The Public Works Department Head, with approval of the Town Administrator, may also allow the on-call employee to take a Town vehicle home for use in responding to service emergencies.

An employee assigned to standby that is not available for call out or who is incapable of performing assigned duties, will be subject to appropriate disciplinary action. An employee is responsible for informing the immediate supervisor of prescribed drugs or alcohol use that would render them incapable of responding to the call out.

## **Paydays**

Employees are paid every other Friday. If the regular payday occurs on a holiday, the payday is the last working day prior to the holiday.

On each payday, employees are entitled to receive a statement showing gross pay, deductions, and net pay. Statements are available electronically via the employee's ADP portal.

Automatic deductions such as additional tax withholding, contributions to voluntary benefit plans, and individual savings plans may be arranged through the Town Administrator.

The Town deposits paychecks automatically into employees' bank accounts. Upon hire, we gather this information from each employee.

## **Pay for Exempt Employees**

Exempt employees must be paid on a salary basis. This means exempt employees will regularly receive a predetermined amount of compensation each pay period on a weekly basis. The Town is committed to complying with salary-based requirements, which allow properly authorized deductions.

If you believe an improper deduction has been made to your salary, you should immediately report this information to the Town Administrator. Reports of improper deductions will be promptly investigated. If it is determined that an improper deduction has occurred, you will be promptly reimbursed.

## **Time Reporting**

Nonexempt employees are required to complete a timecard daily by entering the time they arrive at work and the time they leave work. All time entries are made in the ADP Workforce Now Time and Attendance system. At the conclusion of each pay period, employees must approve their electronic timecard. The employee's immediate supervisor will review the

-electronic timecard for accuracy and approval. It is necessary for employees to indicate whether the recorded hours are for time worked or time off. Exempt employees are required to report to their Supervisor if they have taken time off from their regular work schedule.

These records are the only ones used by the Town to calculate employee pay and paid time off balances. It is very important that they are accurate and complete. Nonexempt employees are expected to submit accurate and complete time records reflecting all hours worked. Employees who also choose to keep their own personal time records must provide them to the Town if they find a discrepancy between the Town's records and their records. Employees should contact their supervisor or the Town Administrator with any questions about how their pay is calculated. Employees must promptly notify their supervisors or the Town Administrator of any mistakes in their time records or pay. Employees also must notify one of these individuals if they perceive that anyone is interfering with their ability to record their time accurately and completely. The Town will not tolerate retaliation against employees for making a report or participating in an investigation. The Town also does not tolerate any misrepresentation of actual hours worked. All reports of interference or instances of falsification of hours will be investigated, and appropriate corrective action will be taken as necessary.

## **Administrative Pay Corrections**

The Town takes all reasonable steps to assure that employees receive the correct amount of pay in each paycheck and that employees are paid promptly on the scheduled payday. In the unlikely event that there is an error in the amount of pay, the employee should promptly bring the discrepancy to the attention of the Town Administrator so corrections can be made as quickly as possible.

## **Meal Periods and Breaks**

A non-exempt employee's normal work schedule will include a one-hour lunch break for each workday and one 15-minute paid break period for every 4 hours worked. During the meal break, employees will be relieved of all duties and permitted to pursue personal activities. There are times when operational requirements may prevent the use of break periods. If the nature of the business activity or other circumstances exist that makes an uninterrupted meal break impracticable, the employee will be allowed to consume an on-duty meal without any loss of time or compensation. No additional compensation shall be paid in lieu of any missed break. Unused work breaks cannot be accumulated in order to shorten the workday.

## **Hours of Work and Schedules**

Work schedules for personnel shall be established by the appropriate Department Manager with approval of the Town Administrator. Such work schedule shall be established in accordance with the needs of the Department and may include longer work periods, different hours and different workdays. The Police Department is the only Department that may operate twenty-four (24) hours per day.

Flexible scheduling or “flextime” may be available in some limited cases. This practice allows employees to vary their starting and ending times each day within established limits. Flextime is only possible if a mutually workable schedule can be negotiated with the Department Manager and approved by the Town Administrator.

## **Emergency Closings**

At times, severe weather or other exigent circumstances may require the closing of Town offices. When operations are officially closed due to emergency conditions, the time off from scheduled work will be paid. Employees in essential operations will be expected to work when other operations are officially closed. In these circumstances, employees who work will receive their regular pay.

## **WORK ENVIRONMENT**

### **Accommodations for Nursing Employees**

A private space will be provided, and reasonable time will be permitted for nursing employees to express milk during the workday for up to two years following the birth of a child. The time permitted typically will run concurrently with the time already provided for meal and rest breaks. If the breaks cannot run concurrently and/or additional time is needed, human resources and the employee will agree upon a schedule that might include the employee using unpaid leave (if non-exempt), annual leave/vacation time, arriving at work earlier, or leaving later. In the event unpaid leave is used, the employee will be relieved of all work-related duties during any unpaid break.

Employees will be provided with the use of a room, office, or other private area, other than a bathroom or toilet stall, that is shielded from view and free from intrusion from coworkers and the public. The Town will make a reasonable effort to identify a location within close proximity to the work area for the employee to express milk. Employees should contact human resources to discuss the location for storage of expressed milk.

Nursing employees are responsible for using anti-microbial wipes to clean milk expression areas, and for keeping the general lactation space clean for the next user. This responsibility extends to other areas where expressing milk is permitted, equipment is cleaned, and milk is stored.

The Town reserves the right to not provide additional break time or a private location for expressing breast milk if doing so would substantially disrupt the Town's operations.

The Town will not demote, terminate, or otherwise take adverse action against an employee who requests or makes use of the accommodations and break time described in this policy.

## **Alcohol and Drugs**

Alert and rational behavior is required for the safe and adequate performance of job duties. Therefore, working after the apparent use of alcohol, a controlled substance or abuse of any other substance is prohibited. This includes working after the apparent use of marijuana, whether or not you are a lawfully registered user. Furthermore, the possession, purchase, or consumption (use), or sale of a controlled substance or alcohol on Town premises or while conducting Town business is prohibited.

## **Anti-Violence**

Any action that in the management's opinion is inappropriate to the workplace will not be tolerated. Such behaviors may include, but are not limited to, physical and/or verbal intimidating, threatening, or violent conduct, vandalism, sabotage, arson, use of weapons, and bullying. Also prohibited is the carrying of weapons onto Town property, regardless of whether the employee possesses a concealed carry permit. Only sworn law enforcement personnel are authorized to carry firearms in the workplace.

Employees should immediately report any such occurrences of violations to their supervisor or to the Town Administration Department. Allegations will be investigated. When employees are found to have engaged in the above conduct, management will take action that it believes is appropriate.

Employees should directly contact law enforcement, security, and/or emergency services if they believe there is an imminent threat to the safety and health of themselves or co-workers.

If you are a victim of domestic violence, please contact Human Resources or the Town Administrator for assistance.

*Workplace bullying is repeated mistreatment through verbal abuse, offensive conduct/behaviors, and work interference. If you feel you are subjected to workplace bullying, please contact Human Resources or the Town Administrator.*

## **Appearance and Attire**

Our work environment encourages employees to dress comfortably for work. Good judgment is the main guideline to follow. This includes being clean and neat, with attire that meets reasonable grooming standards. So long as clothing does not conflict with the dress code, employees' attire may be based on their gender identity.

## **Attendance and Punctuality**

All employees are expected to be on time and punctual for showing up to work. In addition, regular attendance is considered an essential function and is necessary for the efficient operation of the business.

Employees who are going to be absent or late must contact their Supervisor as soon as possible prior to the start of their shift. Leaving messages with or sending a text to other employees is not acceptable.

Failure to call in when absent for two consecutive days could result in termination.

## **Communication Systems**

The Town's computer network, access to Internet, email and voicemail systems are business tools intended for employees to use in performing their job duties. Therefore, all documents and files are the property of the Town. All information regarding access to the Town's computer resources, such as user identifications, modem phone numbers, access codes, and passwords are confidential Town information and may not be disclosed to non-Town personnel.

All computer files, documents, and software created or stored on the Town's computer systems are subject to review and inspection at any time. This includes web-based email employees may access through Town systems, whether password protected or not. Employees should not assume that any such information is confidential, including email either sent or received.

Computer equipment should not be removed from the Town premises without written approval from a Department Head. Upon separation of employment, all communication tools should be returned to the Town.

## **Personal Use of the Internet**

Some employees need to access information through the Internet to do their jobs. Use of the Internet is for business purposes during the time employees are working. Personal use of the Internet should not be on business time, but rather before or after work or during breaks or lunch period. Regardless, the Town prohibits the display, transmittal, or downloading of material that is in violation of Town guidelines or otherwise is offensive, pornographic, obscene, profane, discriminatory, harassing, insulting, derogatory, or otherwise unlawful at any time.

## **Personal Use of Social Media Guidelines**

Personal use of social media is never permitted on working time by means of the Town's computers, Town-issued mobile devices, networks, and other IT resources and communications systems. Use of personal mobile devices during work time should be kept to a minimum. Postings by an employee on a blog, wiki, chat room, or social networking site are considered personal communications and are not Town communications. All social media postings on behalf of the Town must be preapproved and sent by authorized employees. Personal postings by an employee concerning the Town are not prohibited, provided they comply with guidelines set forth below or in this handbook.

If you post any comments that promote or endorse Town products or services in any way, the law requires that you disclose that you are employed by the Town. Posting personal opinions about Town business; making statements which create, or give the appearance of, a conflict of interest; and making statements which negatively reflect on the professionalism of the Town or which otherwise have an adverse effect on the confidence of the public in the integrity, propriety and impartiality of the Town are prohibited.

You must comply with all applicable laws, including copyright and fair use laws. You may not disclose any sensitive, proprietary, confidential, or financial information about the Town. Confidential information includes trade secrets or anything related to the Town's inventions, strategy, financials, or products that have not been made public, internal reports, procedures, or other internal business-related confidential communications. Further detail is provided in the "Confidentiality" section of your employee handbook.

We encourage you to make complaints to the Town using the complaint process. Complaints to the Town regarding these issues should be made consistent with the complaint process in this handbook so that the Town can address them.

Nothing in this guideline is meant to interfere with employees' right under state law to engage in protected and concerted activity, including employees' ability to discuss terms and conditions of their employment.

## **Political Participation**

The Town encourages employees to participate in matters of responsible citizenship. The Town will not interfere with the conduct of Town employees engaged in political activity, if the activities are confined to hours when the employees are not on duty, are not campaigning in their official Town uniforms, and that the activities do not impair the employees' job efficiency or that of others.

Employees may not use their official authority or influence for the purposes of interfering with or affecting the results of elections or nominations for office. In addition, they may not coerce, attempt to coerce, command, or advise other covered employees to pay, lend, or contribute anything of value to a party, committee, Town, agency, or person for political purposes.

Political beliefs, activities, and affiliations are the private concern of the employee. An employee's work status is not affected by participating or not participating in lawful civic and political activities. No employee of the Town

can directly or indirectly coerce or command any other employee to pay, lend, or contribute salary, compensation, service, or anything else of value to any political party, group, Town, or candidate.

Any Town employee may be a candidate for a partisan political office provided that the involvement does not interfere or present a conflict of interest with their job. If involvement is necessary during normal working hours, the individual must take vacation leave or leave without pay. Employees whose salary comes in part or in whole from federal government sources are subject to the Federal Hatch Act and its revisions.

No employee will be forced to pay any contributions to any political Town whatsoever.

Employees will not be required to work for or participate in the support of any political candidate during their off-duty hours.

### **Software and Copyright**

The Town fully supports copyright laws. Employees may not copy or use any software, images, music, or other intellectual property (such as books or videos) unless the employee has the legal right to do so. Employees must comply with all licenses regulating the use of any software and may not disseminate or copy any such software without authorization. Employees may not use unauthorized copies of software on personal computers housed in Town facilities.

### **Unauthorized Use**

Employees may not attempt to gain access to another employee's personal file of email messages or send a message under someone else's name without the latter's express permission. Employees are strictly prohibited from using the Town communication systems in ways that management deems to be inappropriate. If you have any question whether your behavior would constitute unauthorized use, contact your immediate supervisor before engaging in such conduct.

### **Email**

Email is to be used for business purposes. While personal email is permitted, it is to be kept to a minimum. Personal email should be brief and sent or received as seldom as possible. The Town prohibits the display, transmittal, or downloading of material that is offensive, pornographic, obscene, profane, discriminatory, harassing, insulting, derogatory, or otherwise unlawful at any time. No one may solicit, promote, or advertise any outside Town, product, or service through the use of email or anywhere else on Town premises at any time. Management may monitor email from time to time. Employees should be aware that emails might be public records and subject to public disclosure.

Employees are prohibited from unauthorized use of encryption keys or the passwords of other employees to gain access to another employee's email messages.

### **Voicemail**

The Town's voicemail system is intended for transmitting business-related information. Although the Town does not monitor voice messages as a routine matter, the Town reserves the right to access and disclose all messages sent over the voicemail system for any purpose. Employees must use judgment and discretion in their personal use of voice mail and must keep such use to a minimum.

## Telephones/Cell Phones/Mobile Devices

Employee work hours are valuable and should be used for business. Excessive personal phone calls can significantly disrupt business operations. Employees should use their break or lunch period for personal phone calls.

Confidential information should not be discussed on a cell phone or via any mobile device. Phones and mobile devices with cameras should not be used in a way that violates other Town guidelines such as, but not limited to, EEO/Sexual Harassment and Confidential Information. Employees' use of a cell phone or mobile device to access Town systems is restricted/prohibited without prior authorization. Such access, once authorized, may subject the employee's personal device to discovery requests or Town action. Employees authorized to access Town systems and information using a personal device must immediately inform the Town if the device is lost or stolen.

For safety reasons, employees should avoid the use of cell phones and mobile devices to make calls while driving. Employees must park whenever they need to use a cell phone. Generally, stopping on the shoulder of the road is not acceptable. Employees are prohibited from using a cell phone or other device to text while operating a motor vehicle. Texting is permitted only where the vehicle is at rest and lawfully parked.

## On Duty Use of Town Vehicles / Personal Use of Town Vehicles

Employees who operate Town Vehicles must provide evidence of qualifications to be an eligible driver for the Town:

1. Minimum driving age is 18.
2. Have held a driver's license for at least two years.
3. The ability to read and speak English.
4. The ability to safely operate a motor vehicle if required for the position being pursued, including possessing a valid CDL if required.
5. Must be eligible as a driver per the below policy and maintain that eligibility.

Driving records will be required for each prospective employee prior to employment if it is required for the position. The record shall be provided by the applicant at their own expense and must be dated within the last 30 days. These records will be retained and checked annually for each applicable employee. If an employee is considered borderline according to our policy, their motor vehicle record will be pulled bi-annually. An employee with a poor driving record, as defined herein, may be subject to discipline up to and including termination.

Proof of personal automobile insurance must be provided upon hire and updated as the employee's policy is renewed by the insurance carrier if driving is required according to the employee's job description.

The following is a guideline of acceptable and unacceptable driving records:

### Motor Vehicle Grading Criteria (last two years)

| # of Minor Violations | # of Preventable Accidents |            |            |      |
|-----------------------|----------------------------|------------|------------|------|
|                       | 0                          | 1          | 2          | 3    |
| 0                     | Clear                      | Acceptable | Borderline | Poor |
| 1                     | Acceptable                 | Acceptable | Borderline | Poor |
| 2                     | Acceptable                 | Borderline | Poor       | Poor |

|   |            |      |      |      |
|---|------------|------|------|------|
| 3 | Borderline | Poor | Poor | Poor |
| 4 | Poor       | Poor | Poor | Poor |

For a Non-Exhaustive list of unacceptable driving violations, please see “Appendix A.”

Some employees, excluding Officers, may be authorized to take a Town vehicle to their home during off-duty hours. Such privilege will be granted only on the basis of a recognized need for that individual to respond to Town emergencies or other frequent needs during off-duty hours. When such privilege is granted, the vehicle will be transportation to and from Town business only. No unapproved personal use of any Town vehicle is authorized.

The Chief of Police, with approval of the Town Administrator, will determine the policy for Officers taking patrol units home during off-duty hours.

### **Vehicle Operation Policies and Procedures**

The following are policies and procedures for operating a Town vehicle or a personal vehicle used for Town business.

1. Employee must possess and carry a valid driver’s license or a CDL if it is required for the position or equipment being operated.
2. Employee must comply with all traffic laws (i.e. wearing seatbelts; obeying all speed limits; obeying all traffic signs and signals; proper lane changes).
3. Do not use a cell phone while operating a vehicle to include the use of texting. Bluetooth or handsfree devices are acceptable.
4. Do not operate a vehicle while under the influence of alcohol.
5. Do not operate a vehicle while under the influence of an illegal substance.
6. Do not operate a vehicle while under the influence of a prescription drug unless under the care of a physician and proper usage of the medication is being adhered to. If you notice drowsiness or other problems while driving, stop the operation of the vehicle and inform your supervisor.
7. Do not allow anyone that is not a city employee to operate a city vehicle. Also, do not let a Town employee that is not qualified to drive under these policies operate a Town vehicle.
8. Report any unsafe driving by another city employee to a supervisor as soon as possible.
9. As stated in this section above, no unapproved personal use of any Town vehicle is authorized.
10. There will be no passengers allowed in Town vehicles unless they are an employee, a volunteer who has signed a waiver, or a Town Board of Trustee member.

For Sworn Law Enforcement, reference Police Department specific policy.

### **Confidential Information**

Employees of the Town will have access to confidential information of the Town and the public we serve, and other agencies and entities we conduct business with. This non-disclosure prohibition applies both during and after an employee’s employment. Any copying, reproducing, or distributing of confidential information in any manner must be authorized by management. Confidential information remains the property of the employer and must be returned to the Company upon separation or at any time upon demand. If uncertain if information is secret, contact your supervisor.

In addition, employees are prohibited from purchasing or selling securities based on information not generally available to the public.

## **Conflicts of Interest**

Town employees shall not:

Solicit or accept any fee, compensation, gift, payment or expenses, or any other thing of monetary value under circumstances in which the acceptance may appear to improperly influence the employee's job performance or the integrity of the Town. This provision shall not include the receipt of any gifts of historical or significant value donated by any person or group for the benefit of the court system provided such gift is received on behalf of the courts by the appropriate designated authority.

Use authority or influence to secure anything of value for private gain, including using or attempting to use the employee's position, or the prestige of Town affiliation, to secure an unwarranted privilege, advantage, or exemption for the employee or others.

Use Town time, property, equipment or resources for private gain including, without limitation, accessing Town records for non-official or personal purposes.

Obtain a contract with the Town in which the employee, a member of the employee's family, or a business, organization, or person with which the employee is associated has an interest, unless granted in the same manner applied to other interested contractors.

Engage in any activity or business, which creates a conflict of interest or has an adverse effect on the confidence of the public in the integrity of the Town.

Make statements which negatively reflect on the professionalism of the Town or which otherwise have an adverse effect on the confidence of the public in the integrity, propriety and impartiality of the Town are prohibited.

Some examples of direct conflicts of interest are:

- A Town employee works for pay or as a volunteer for a business, establishment or organization, which is regulated by the Town.
- A Town employee has any influence on transactions involving purchases, contracts, or leases.
- Personal gain may result not only in cases where an employee or relative has a significant ownership in a firm with which the Town does business, but also when an employee or relative receives any kickback, bribe, substantial gift, or special consideration as a result of any transaction or business dealings involving the Town of Fairplay.

The above list is not intended to be an all-inclusive list and if employees have any question whether a situation is a conflict of interest, they should discuss the matter with their supervisor. If it remains unresolved, refer the matter to the Town Administrator for a final determination.

## **Outside Activities**

Employees shall conduct any activities outside normal working hours in a manner as to avoid any negative impact on the Town and/or the employee's ability to perform assigned duties. If an outside activity involves regular interactions with the Town, the employee shall first consult with the Town Administrator to determine whether the proposed activity is consistent with this provision.

## **Data Disposal Policy**

During the course of your employment, the Town will collect certain information that is classified as "personal identifying information," or PII, under applicable laws. Such information may include, but is not limited to:

- Your first and last name or initials
- Username(s) and password(s)
- Social Security number
- Driver license or other identification card number
- Medical documentation
- Biometric data
- And more

The Town may keep these records in paper and/or electronic format.

When such documentation is no longer needed, pursuant to records retention requirements and best practices, the Town will either (a) destroy the records or (b) arrange for their destruction, e.g., by shredding, erasing, or otherwise modifying the personal identifying information in such a manner as to render it unreadable or indecipherable through any means.

### **Standards of Conduct (On and Off Duty as applicable)**

Employees shall:

Uphold the rules and regulation of the Fairplay Municipal Code and the constitutions and laws of the United States of America and the State of Colorado;

- Serve the public with respect, concern, courtesy and responsiveness in the performance of all job duties;
- Demonstrate high standards of professionalism in the workplace that includes interacting with the public, co-workers and management in a civil, courteous, and respectful manner;
- Demonstrate the highest standards of personal integrity, truthfulness, and honesty;
- Uphold state-wide and local policies and procedures including providing full cooperation, candidness, and truthfulness when participating in any investigation of wrongful conduct;
- Use Town resources, time, property and funds prudently and in accordance with prescribed procedures and Town policies including limiting personal use of the internet, electronic communications, media and applications while on the Town's computer network and consistent with the Town's Electronic Communications Usage Policy, and limiting the personal use of personal cell phones and personal electronic media devices while on work time;
- Perform all duties without favoritism and without improper influence by family, social or other relationships. Avoid any involvement in the processing of any matter before the Municipal Court in which the employee has a personal, business or family interest and immediately inform the Town Administrator of the existence of such conflict of interest;
- Behave in a manner that promotes public confidence in the Town;

- Avoid impropriety or any activity that gives the appearance of impropriety;
- Avoid any activity that would appear to lend the reputation of the Town to advance the private interests of the employee or others; and

### **Discipline/Discharge**

Occasionally performance or other behavior falls short of our standards and/or expectations. When this occurs, management will take action that, in its opinion, seems appropriate.

Disciplinary actions can range from a formal discussion with the employee about the matter to immediate discharge. Action taken by management in an individual case does not establish a precedent in other circumstances.

### **Inspections**

We may conduct searches of employees' personal effects after notice is given and with the employee's consent. This may include, but is not limited to, lunch bags, boxes, purses, personal computers, packages, or vehicles. We may conduct searches of the aforementioned items without employee consent if we have a reasonable suspicion to believe that illegal activity is taking place. Any illegal and unauthorized articles discovered may be taken into custody and will be turned over to law enforcement representatives.

Employees do not have a reasonable expectation of privacy in work locations such as lockers, desks, cabinets, or file drawers.

### **Job-Related Problems**

Employees who disagree or are dissatisfied with a Town practice should promptly discuss the matter with their immediate supervisor, where appropriate. Normally, this discussion should be held within three to five days of the incident, or in a timely manner. Discussions held in a timely manner will enhance our ability to resolve concerns while they are fresh in everyone's mind. The majority of misunderstandings can be resolved at this level.

If the solution offered is not satisfactory, or if it is inappropriate to go to the supervisor, then employees are encouraged to take the problem to the Town Administrator. If the problem still cannot be resolved, employees may submit a written complaint to the Town Attorney for review and final decision about the situation. Also see the EEO/Harassment Complaint Procedure on page 9.

### **Probationary Period**

All employees must satisfactorily complete a probationary period. This applies not only to the first appointment of a new employee but also to any subsequent appointments in connection with a promotion. The probationary period shall be regarded as an integral part of the selection process and shall be used for closely observing the employee's work, for securing the most effective adjustment of a new or promoted employee, and for screening out any employee whose performance or conduct is not satisfactory.

The normal period of probation is one year for police officers and six months for all other employees. An employee's probationary period may be extended up to an additional 90 calendar days if, in the opinion of the employee's supervisor and department director, the initial probationary period was not sufficient to evaluate the capability of the employee to serve in the appointed position.

### **References**

The Town does not furnish open letters of recommendation addressed "To Whom It May Concern."

If employees receive a call inquiring about a former employee, please refer the caller to the Town Administrator. Only the Town Administrator or someone responsible for Human Resource matters has the authority to respond to such inquiries. This restriction includes recommendations on social media sites.

### **Safety/Reporting of Injury**

The Town is committed to a safe work environment for employees. Employees should report any unsafe practices or conditions to their supervisor. If employees are injured on the job, no matter how minor, they must report this fact within 24 hours in writing or as soon as they are able. If an employee is seriously injured or incapacitated, the Supervisor must file an Accident-Injury Report within 24 hours.

Employees who are involved in an accident with a Town vehicle must first notify the Town Police Department and then the Supervisor or Department Manager, regardless of how minor the accident may be. The investigating Officer shall submit a report of the accident to the Town Administrator. Accidents may require post-accident drug testing or a breathalyzer based on findings of the Officer.

The Town maintains Worker's Compensation Insurance to cover accidents/illnesses incurred by Town employees when on duty.

If medical care is requested or required by a citizen or person visiting a Town facility, emergency services should be called at "911." Incidents should be reported to the Town Administrator as soon as possible.

If medical treatment for an on-the-job injury is needed, it must be obtained from one of the Town's designated physicians. If not, the employee may be responsible for the cost of medical treatment.

Furthermore, in order to promote development and implementation of safe working practices and conditions, the following rules apply:

1. Department managers shall:

- a) Ensure that safety rules and regulations are posted.
- b) Periodically conduct safety inspections of the work site to detect hazardous areas or practices for correction as appropriate.
- c) Maintain a record of said inspections and results therefrom.
- d) Shall post the location of all exits from the work place and emergency escape procedures, where appropriate.

2. It is the responsibility of all employees to cooperate in making the Town workplace safe. Employees must but are not limited to the following:

- a) Be informed of and observe established safety practices.
- b) Notify supervisors of any unsafe conditions they discover.
- c) Use personal protective equipment such as steel toed shoes, safety vests, safety glasses, and hard hats where required.
- d) Not remove guards or other protective devices from machinery and equipment.
- e) Not engage in "horseplay."
- f) Attend any required training or orientation to increase safety awareness.
- g) Not report to work with alcohol or drugs in their system which might impair normal behavior or ability to function safely.
- h) Report all job-related injuries or illnesses to their supervisors immediately.
- i) Assist supervisors in their investigation of any accident of which they have knowledge.

- j) Refrain from smoking in "no smoking" areas to include all Town buildings and vehicles.
- k) Refrain from operating, modifying, adjusting or using equipment in an unauthorized manner.

### **Smoking**

It is our objective to provide a smoke-free environment within our Town. Smoking is prohibited within all areas of the building and within 25 feet of the main entrance into the building. Employees may smoke in designated outdoor areas. This restriction applies to all employees and visitors, at all times, including non-business hours.

### **Separation of Employment**

If you desire to end your employment relationship with the Town, we ask that you notify us as soon as possible of the intended separation. Notice generally allows sufficient time to transfer work, cover shifts, return Town property, review eligibility for continuation of insurance, and make arrangements for your final pay.

Employees who plan to retire are asked to provide sufficient advance notice to the Town so we can timely process any pension forms or other retirement benefits to which an employee may be entitled.

## ACKNOWLEDGMENT OF RECEIPT (AT-WILL)

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I HAVE RECEIVED A COPY OF THE EMPLOYEE HANDBOOK DATED \_\_\_\_\_. I UNDERSTAND THAT I AM TO BECOME FAMILIAR WITH ITS CONTENTS. FURTHER, I UNDERSTAND:

EMPLOYMENT WITH THE TOWN OF FAIRPLAY IS AT-WILL. I HAVE THE RIGHT TO END MY WORK RELATIONSHIP WITH THE TOWN, WITH OR WITHOUT ADVANCE NOTICE FOR ANY REASON. THE TOWN HAS THE SAME RIGHT.

THE LANGUAGE USED IN THIS HANDBOOK AND ANY VERBAL STATEMENTS OF MANAGEMENT ARE NOT INTENDED TO CONSTITUTE A CONTRACT OF EMPLOYMENT, EITHER EXPRESS OR IMPLIED, NOR ARE THEY A GUARANTEE OF EMPLOYMENT FOR A SPECIFIC DURATION.

THE HANDBOOK IS NOT ALL INCLUSIVE BUT IS INTENDED TO PROVIDE ME WITH A SUMMARY OF SOME OF THE TOWN'S GUIDELINES.

THIS EDITION REPLACES ALL PREVIOUSLY ISSUED HANDBOOKS. THE NEED MAY ARISE TO CHANGE THE GUIDELINES DESCRIBED IN THE HANDBOOK, EXCEPT FOR THE AT-WILL NATURE OF EMPLOYMENT. THE TOWN, THEREFORE, RESERVES THE RIGHT TO INTERPRET THEM OR TO CHANGE THEM WITHOUT PRIOR NOTICE.

NO REPRESENTATIVE OF THE TOWN OF FAIRPLAY, OTHER THAN THE ELECTED OFFICIAL OR AGENCY HEAD OF THE TOWN, HAS THE AUTHORITY TO ENTER INTO AN AGREEMENT OF EMPLOYMENT FOR ANY SPECIFIED PERIOD AND SUCH AGREEMENT MUST BE IN WRITING, SIGNED BY THE ELECTED OFFICIAL OR AGENCY HEAD AND MYSELF. WE HAVE NOT ENTERED INTO SUCH AN AGREEMENT.

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Signature

---

Employee Name

---

Date

## APPENDIX A

### UNACCEPTABLE DRIVING OFFENSES / RECORD

The following is a non-exhaustive list of unacceptable driving records

(serious violations) whose time frame is within the last 3 years:

1. Driving under the influence of alcohol/drugs
2. Driving after suspension or revocation of license
3. Reckless driving
4. Leaving the scene of an accident
5. Vehicular homicide, manslaughter, or assault arising out of the use of a vehicle
6. Speeding 20 MPH or more above the limit
7. Racing
8. Chemical test refusal
9. Fleeing or eluding a police officer
2. Passing a stopped school bus
3. Making a false accident report
4. Similar offenses

The following is a non-exhaustive list of minor violations:

1. Motor vehicle equipment, load, or size requirement
2. Improper or failure to display license plates
3. Failure to sign and/or display registration
4. Failure to have a driver's license in possession (if valid license exists)
5. Speeding less than 20 MPH
6. Careless driving
7. Any moving violation that is not a serious violation

Employees shall immediately report the next working day any of the above violations which could impact their ability/eligibility to operate a Town vehicle to the Town Administrator.

The Town of Fairplay will determine proper disciplinary action once an employee has incurred any of the above violations or violated the City's Vehicle Operation Policies and Procedures, based on the circumstances of the violation. If an accident occurs, a review will be done to determine what disciplinary action should be taken, if any. Disciplinary action can include termination of employment.

DRAFT



**AGENDA for a Regular Meeting**  
**of the Board of Trustees of the Town of Fairplay, Colorado**  
**Monday, August 19, 2024, at 6:00 P.M. in the**  
**Fairplay Town Hall Board Room, 901 Main Street, Fairplay, CO**  
[Join the TEAMS Meeting](#) (Meeting ID: 237 577 628 045 / Passcode: mjUk7V)

- I. **6:00 PM CALL TO ORDER & PLEDGE OF ALLEGIANCE**
- II. **APPROVAL OF AGENDA**
- III. **CONSENT AGENDA** (*This item is intended to streamline the Board Meeting grouping routine, non-controversial business. The public or the Board Members may ask that an item be removed from the Consent Agenda for individual consideration.*)
  - A. **APPROVAL OF MINUTES OF PRIOR REGULAR MEETING** – May 6, 2024.
  - B. **APPROVAL OF EXPENDITURES** – Paid bills for all Town funds from August 2, 2024, through August 15, 2024, in the amount of **\$235,362.61**.
- IV. **CITIZEN COMMENTS** (*This item allows for the public to sign up to address the Board on matters that are not on the agenda. Sign-up can be done prior to, or at the start of a meeting, on the required form.*)
- V. **PUBLIC HEARINGS**
  - A. **FIRST READING** – Should the Board of Trustees for the Town of Fairplay adopt Ordinance No. 7, Series of 2024, entitled “**AN ORDINANCE OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO GRANTING A FRANCHISE TO PUBLIC SERVICE COMPANY OF COLORADO FOR THE NON-EXCLUSIVE RIGHT TO PROVIDE, SELL, AND DELIVER GAS AND ELECTRICITY TO THE TOWN AND ITS RESIDENTS THROUGH THE NON-EXCLUSIVE REASONABLE USE OF TOWN STREETS, PUBLIC UTILITY EASEMENTS, AND OTHER TOWN PROPERTY.**”? *The Board will introduce an ordinance to grant a Franchise Agreement to Public Service Company of Colorado (Xcel Energy) and set the Second Reading and Public Hearing for September 16, 2024.*
  - B. **THIRD READING** – Should the Board of Trustees for the Town of Fairplay adopt Ordinance No. 6, Series of 2024, entitled “**AN ORDINANCE CREATING SECTION 7-2-200, WITHIN NUISANCES, OF THE FAIRPLAY MUNICIPAL CODE, ESTABLISHING PARKING LOT REGULATIONS.**”? *The Board will consider adopting Municipal Code language requiring repair and maintenance of public and private parking lots and declaring violations a nuisance.*
- VI. **NEW BUSINESS**
  - A. **TO BE CONTINUED TO SEPTEMBER 16, 2024** - Consideration of Request from ACL Real Estate, LLC, for an additional extension of 1-year Deferment of parking and landscape improvements for Highside Brewery located at 411 US Hwy 285. *The Board will consider a request from the owner of 411 US Hwy 285 for a subsequent 1-year deferment of required parking and landscape improvements.*
  - B. **Transmittal of Final Report** –University of Colorado Denver Urban and Regional Planning Program Mountain Studio 2013 Comprehensive Plan Assessment Findings and Recommendations.
- VII. **OLD BUSINESS**
  - A. Continued review of and discussion on proposed Employee Handbook update.
- VIII. **STAFF AND BOARD OF TRUSTEE REPORTS**
- IX. **ADJOURNMENT.**

**Upcoming Meetings / Important Dates**

|                                                                    |                    |
|--------------------------------------------------------------------|--------------------|
| TGIFairplay Free Concert – Split Window and Free Peaches/Ice Cream | August 23, 2024    |
| Labor Day – Town Offices Closed                                    | September 2, 2024  |
| Board of Trustees Regular Meeting - CANCELLED                      | September 2, 2024  |
| Board of Trustees Budget Work Session                              | September 9, 2024  |
| Board of Trustees Regular Meeting                                  | September 19, 2024 |
| 1 <sup>st</sup> Annual Fairplay Fall Fest                          | September 21, 2024 |