

CHAPTER 5

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ARTICLE I

Cable Television System

Sec. 5-1. Definitions.

The following terms and phrases, as used herein, shall have the meanings set forth below:

(1) *Cable television system* or *CATV system* shall mean a system of antennas, towers, satellite earth stations, micro-wave, coaxial cable, fiber optics, waveguides or other conductors, converters, equipment and facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video, digital and other forms of electronic and electrical signals to persons who subscribe to programs and services delivered by such signals. Said definition shall not include any such facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control or management, and does not use Town rights-of-way.

(2) *Grantee* means the Franchising Authority and hereby confirms:

a. That the franchise was duly enacted and properly granted in accordance with state and local laws and is validly existing, legally enforceable and in full force and effect and without default; and

b. That US Cable is the holder of the right, title and interest in the franchise.

(3) *Gross revenues* shall mean any and all revenue derived directly or indirectly by the Grantee, in connection with the operation of the cable television system pursuant to this Article; provided however, that all revenues shall include but not be limited to, basic subscriber service monthly fees, pay-cable fees, advertising revenues and any other fees for services, but shall not include any taxes on services furnished by the Grantee and does not include the converter deposit. (Ord. 158 §2, 1982; Ord. 2002-O11 §2)

Sec. 5-2. Provision of services.

The Grantee shall provide all services, technical standards and system design specifically set forth in its proposal to provide cable television service with the Town; and by its acceptance of the certificate of convenience and necessity (permit), the Grantee specifically grants and agrees that its proposal is thereby incorporated by reference and made a part of the certificate and this Article. In the event of conflict between the proposal and the provisions of this Article, that provision which provides the greatest benefit to the Town, in the opinion of the Board of Trustees, shall prevail. (Ord. 158 §3, 1982)

Sec. 5-3. Grant of authority.

There is granted hereby to the Grantee the nonexclusive right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public utility easements, public ways and public places not laid out or dedicated, and all extensions thereof and additions thereto in the Town, according to the routes specified in Exhibit A attached to and

incorporated within Ordinance 158, 1982 by this reference, and according to the technical specifications of the Federal Communications Commission, all poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the transmission of television signals and all other signals permitted by the Federal Communications Commission or its successor agency, either separately or in conjunction with any public utility maintaining the same in the Town, with all of the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the right in, over, under and upon the streets, sidewalks, alleys, public utility easements and public grounds and places in the Town to install, erect, operate or in any way acquire the use of, as by leasing or licensing, all lines and equipment necessary to a cable television system and the right to make connections to subscribers and the right to repair, replace, enlarge and extend said lines, equipment and connections. The Grantee shall have authority to trim trees that overhang the public right-of-way only when absolutely necessary and then in a good and workmanlike manner. This franchise and grant includes the right to use public property which shall have been acquired by the Town in the future, as well as public property currently owned by it upon approval being granted by the Board of Trustees. In situations where the Grantee constructs or extends its apparatus through any route or routes currently shown in said Exhibit A or otherwise, prior thereto the Grantee shall describe by words such route or routes and also graphically by means of a map or plat. In any event, no such construction or extension shall have been undertaken by the Grantee or in its behalf until and unless prior approval therefor shall have been given by the Board of Trustees and such approval shall not be withheld without good and proper reason. Such map or plat shall show all existing private easements. Upon completion of such construction, the Grantee shall submit plans showing the system or applicable portion thereof "as built" together with existing public or private utility easements obtained by the Grantee. The rights herein granted for the purposes herein set forth are not necessarily exclusive. (Ord. 158 §4, 1982)

Sec. 5-4. Termination.

(a) In addition to all other rights and powers pertaining to the Town by virtue of this authority or otherwise, the Town reserves the right to terminate and cancel this authority and all rights and privileges of the Grantee hereunder in the event that the Grantee:

- (1) Violates any material provision of this authority or any rule, order or determination of the Board of Trustees made pursuant to this authority, except where such violation, other than of provisions concerning transfer or authority without prior Board of Trustees approval, is without fault of the Grantee;
- (2) Becomes insolvent, unable or unwilling to pay its debts, or files a petition to be adjudged bankrupt;
- (3) Attempts to dispose of any of the facilities or property of its CATV system in violation of the terms of this authority;
- (4) Attempts to evade any of the provisions of this authority or practices any fraud or deceit upon the Town;
- (5) Fails to begin or complete construction and/or fails to provide services as otherwise required hereby;

(6) Fails to make payments to the Town pursuant to this Article; or

(7) Fails to restore system-wide service following forty-eight (48) consecutive hours of interrupted service, except where prior approval of such interruption shall have been obtained from the Town, or in the event that any such action is caused by acts of God, national emergency, war, strikes or other actions beyond the control of the Grantee.

(b) Any termination proceeding initiated by the Town shall occur only after thirty (30) days' written notice to the Grantee. The Grantee shall have an opportunity to respond to such a claim at a public hearing held in this matter. The Grantee shall be a necessary party to all public hearings regarding operations or termination of said franchise.

(c) Upon termination or cancellation of this authority as provided herein, the Town shall have the right to require the Grantee to remove at its own expense all portions of the CATV system from all public ways within the Town within six (6) months of said termination or cancellation.

(d) If any property of the Grantee or any property of an employee, contractor or assignor of the Grantee remains in place more than six (6) months after such termination or cancellation, all such property shall be considered permanently abandoned and shall become the property of the Town, unless written extension of the six-month period is granted by the Town. The abandoned property shall only become the property of the Town upon adoption of a resolution by the Board of Trustees. (Ord. 158 §4, 1982)

Sec. 5-5. Police power.

At all times during the terms of this franchise, the Grantee shall be subject to all lawful exercise of the police power of the Town. The right hereby is reserved to the Town to adopt, in addition to the provisions herein contained and any other existing applicable ordinances, such additional applicable ordinance as it shall find necessary in the exercise of its police power; provided, however, that such additional ordinance shall be reasonable, shall not conflict with or alter in any manner the rights granted herein, and shall not conflict with the laws of the State, the laws of the United States, or the rules, regulations and policies of the Federal Communications Commission. (Ord. 158 §5, 1982)

Sec. 5-6. Liability; indemnification.

Provisions concerning the Grantee's liability, and its responsibilities for indemnification of the Town, are as follows:

(1) Damages. The Grantee shall pay, and by its acceptance of this authority, does specifically agree that it will pay, all damages and penalties which the Town legally may be required to pay as a result of granting the franchise. These damages or penalties shall include, but shall not be limited to, damages arising out of copyright infringements, defamation, authorized taking, royalty payments and all other damages arising out of the installation, operation or maintenance of the CATV system authorized hereby, whether or not any act or omission complained of is authorized, allowed or prohibited by this Article, except that the Grantee shall not be liable for damages resulting from organizations authorized by the Board of Trustees.

(2) Expenses of litigation. The Grantee shall pay and by its acceptance hereof specifically agrees that it will pay all expenses incurred by the Town in defending itself with regard to all damages and penalties mentioned in Subsection (1) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, provided that the Grantee shall have exclusive right to retain counsel of its choice, and shall include also the reasonable value of any services rendered by the Town Attorney or his or her assistants or any employees of the Town.

(3) Insurance. The Grantee shall maintain, and by acceptance hereof specifically agrees that it will maintain, throughout the term of this authority and grant, liability insurance insuring the Grantee with respect to all damages mentioned in Subsection (1) above, in the following minimum amounts:

a. The sum of one million dollars (\$1,000,000.00) for bodily injury or death to any one (1) person, within the limit, however, of one million dollars (\$1,000,000.00) for bodily injury or death resulting from any one (1) accident;

b. The sum of one million dollars (\$1,000,000.00) for property damages resulting from any one (1) accident; and

c. The sum of one million dollars (\$1,000,000.00) for comprehensive umbrella coverage.

(4) Casualty. The Grantee shall keep the CATV system and system facilities continuously insured against such risks as customarily are insured against any business of like size and type, including but not limited to insurance upon the repair or replacement basis if available and otherwise to the full insurable value of the system facilities (with reasonable deductible provisions) against loss or damage by fire and lightning, with uniform standard extended coverage endorsement at the time in use in the State.

(5) Co-insurance. The Grantee shall have the Town and all of its officers and employees in their official capacities included as co-insureds on all insurance policies referred to in Subsections (3) and (4) above. As evidence thereof, the Grantee shall file with the Town copies of all such policies, or in the alternative, certificates thereof issued by the carrier. All such policies shall provide that the issuing insurance company will not cancel them without at least ten (10) days' prior notice to the Grantee and the Town. Any subcontractors of the Grantee must also fulfill all of the requirements of this Section.

(6) Workers' Compensation Insurance. The Grantee shall at all times during the term of this franchise maintain Workers' Compensation Insurance as required by the State.

(7) Town liabilities. Nothing contained herein shall be construed as extending or expanding the liability of the Town, or any officers or agents or contractors thereof, beyond any liability enumerated or limited by the Colorado Governmental Immunities Act. (Ord. 158 §6, 1982)

Sec. 5-7. Construction and performance standards.

(a) Construction and performance standards required hereby are as follows:

(1) Local conditions. All systems facilities shall be installed, repaired and replaced by the Grantee, or by someone in its behalf, and the Grantee shall be solely responsible for and shall pay the expenses thereof. All such facilities erected, constructed or replaced by the Grantee within the Town, including extensions of streets, alleys and other public ways and places, shall be erected so as to cause no interference with the rights or reasonable convenience of property owners whose property adjoins any of said streets, alleys or public ways and places, and so as not to interfere with existing public utility installations or extensions thereof, or repairs to either. All service lines shall be underground in those areas of the Town where either public utilities providing telephone or electric utility facilities are underground at the time of installation; otherwise, the Grantee may install its service aboveground. If, subsequently, the electric utility facilities or other utilities go underground, then in that event and to that extent the affected facilities of the Grantee also shall go underground simultaneously and the Grantee shall pay for the costs of the same.

(2) General conditions. The Grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements and technical standards of the Federal Communications Commission. In addition, the Grantee shall provide the Town, upon request, with a written report of the results of the Grantee's proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.

(3) Additional specifications.

a. Construction, installation and maintenance of the Grantee's system shall be accomplished in an orderly and workmanlike manner. All cables and wires shall be installed parallel with electric and telephone lines, where practicable. Multiple cable configurations shall be arranged in parallel and shall be bundled, with due respect for engineering considerations.

b. The system shall not endanger or interfere with the safety of persons or property in the franchise area, or in other areas in which the Grantee may have equipment activated or situated.

c. Any antenna structure used in the Town's cable television system shall comply with construction, marking and lighting of antenna structure, required by the United States Department of Transportation.

d. All working facilities and conditions used during construction, installation and maintenance of the CATV system shall comply with the standards of the Federal Occupational Safety and Health Administration.

e. The Grantee shall at all times comply with the following:

1. National Electric Safety Code (National Bureau of Standards);
2. National Electrical Code (National Bureau of Fire Underwriters);
3. Bell System Code of Pole Line Construction; and
4. Applicable FCC or other federal, state and local regulations.

f. RF leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigational reception in the normal flight patterns. Federal rules and regulations shall govern. In order to ensure compliance herewith, the Town shall have the right to make inspections of the Grantee's system and to test the same. The Town shall pay the expense thereof if said inspection established compliance by the Grantee; otherwise, the Grantee shall pay the expense thereof of any such testing to be performed by qualified personnel.

(4) System testing. Tests and measurements to ensure compliance with technical standards shall be performed by the Grantee, in a manner that is consistent with the provisions of the Federal Communications Commission, and as amended from time to time. Results of all tests and measurements required to be taken by the Grantee shall be recorded, maintained and made available upon request to the Town. Where there exists evidence which, in the judgment of the Board of Trustees, casts doubt on the reliability or quality of cable service, the Town shall have the right to require the Grantee to perform tests and analysis directed toward such suspected inadequacies. The Grantee shall fully cooperate with the Town in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information: the nature of the complaint or problem which precipitated the special tests; what system components were tested; equipment used and procedure employed in testing; the method, if any, in which such complaint or problem was resolved; and any other information pertinent to said tests and analysis which may be required. The Town may require that tests be supervised, at the Grantee's expense, by a licensed professional engineer not on the Grantee's permanent staff. The engineer shall certify all records of special tests and forward to the Town such records with a report interpreting the results thereof and recommending actions to be taken, if any. The Town's right pursuant hereto shall be limited to requiring tests, analysis and reports pertaining to specific subjects and characteristics based on complaints or sufficient evidence which the Town has grounds to believe will require testing to be performed to protect the public against substandard cable service. In the event that the supervising engineer reports that no action is necessary on the part of the Grantee, the Town will pay for such testing.

(5) Operations.

a. The Grantee shall put, keep and maintain all parts of the system in good condition throughout the entire period of the franchise. The Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice from the Grantee to the Town and shall occur during periods of minimum system use whenever possible.

b. The Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by the Grantee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the Town.

c. The Grantee shall maintain, throughout the lifetime of this franchise, the technical standards and quality of said service set forth herein, and the Grantee will at its sole expense update and improve its system to maintain state-of-the-art quality and equipment. The standard for determining "state-of-the-art" quality and equipment will be based on service and

equipment provided to similar sized communities by unrelated cable companies in similar circumstances. Should the Board of Trustees find, by resolution, that the Grantee has failed to maintain these technical standards and quality of service, and in such resolution specifically sets forth reasonable improvements to be made, the Grantee shall make such improvements. Failure to make such improvements within three (3) months of such resolution shall constitute breach of a condition for which the remedy of termination shall be applicable.

(6) Signal quality. The Grantee shall produce a picture, whether in black or white or in color, accompanied with proper sound on typical standard production television sets in good repair, that is as good as the state-of-the-art reasonably and practicably allows. The Grantee shall limit failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than three (3) days after written notice by the Town to the Grantee unless the failure is beyond the control of the Grantee.

(7) Joint use. The Grantee may be required by the Town to permit joint use by utilities of the Grantee's system facilities located in the streets, alleys or other public rights-of-way of the Town insofar as such joint use reasonably may be practicable, and upon payment of reasonable rental therefor.

(8) Extent of facilities. Whatever facilities the Grantee initially shall have installed, they shall be of adequate capacity to serve the entirety of the geographical area within the Town's corporate boundaries thereafter without replacement and without substantial remodeling or supplementing, except for normal maintenance and betterment of said system. In any event, the Grantee shall commence construction of its facilities on or before ninety (90) days from the granting of this franchise, and shall complete its initial phase of service on or before six (6) months after date of commencement. If additional time is necessary, it shall be requested by the Grantee and the Grantee shall present evidence of need for the extension of time to the Board of Trustees for its consideration.

(9) Programming criteria. The total number of channels which shall be made available by the Grantee to subscribers within the Town shall be at least sixteen (16). The system shall be designed, established, constructed, operated and maintained so as to provide for twenty-four-hour-per-day continuous operation. Subject to fee rules, programming of each of the following types shall be provided, according to number of channels allotted therefor, and by the initial activation date, namely:

- | | | |
|------|----------------------|----------------------------------|
| (1) | KWGN | Channel 2 |
| (2) | KOA | Channel 4 |
| (3) | KYCU | Channel 5
(Cheyenne, Wyoming) |
| (4) | KRMA | Channel 6 |
| (5) | KMGH | Channel 7 |
| (6) | KBTV | Channel 9 |
| (7) | KBDI | Channel 12 |
| (8) | CBN | Christian Channel |
| (9) | Nickelodeon | |
| (10) | ESPN | |
| (11) | WGN | |
| (12) | WTBS | |
| (13) | | |
| (14) | CNN | |
| (15) | HBO | |
| (16) | Cinemax | |
| (17) | | |
| (18) | | |
| (19) | Local Access Channel | |
| (20) | | |

The Grantee may alter and substitute, in place of this proposed programming, any and all channels and programming as the Grantee may deem necessary. Such changes shall be made only after thirty (30) days' notice to the Board of Trustees and then upon Board approval. Temporary, emergency changes may be made without Board approval but with notice to the Board and such changes shall then be approved or disapproved by the Board. Board approval to programming changes shall not be unreasonably withheld. The system shall be designed, established, constructed, operated, maintained and initially capable of providing two-way radio video capability. Such two-way capability will, however, not be activated until it becomes economically feasible to do so. (Ord. 158 §7, 1982)

Sec. 5-8. Construction.

(a) Construction of the system shall commence within ninety (90) days of the final reading of the ordinance codified herein.

(b) The Town acknowledges that commencement of construction depends in large part upon the Grantee's retention of construction crews and obtaining pole attachments agreements with public utilities. The Grantee shall seek to retain and contract with such construction crews and complete pole agreements with all due diligence. Failure to proceed expeditiously shall be presumed in the event construction is not commenced within ninety (90) days of the grant and acceptance of this certificate.

(c) Failure to proceed expeditiously and/or failure to provide the service promised in the Grantee's proposal shall be deemed a material breach of this Article for which the provisions of Sections 5-3 and 5-4 shall apply.

(d) Subscriber services shall be provided within six (6) months of the granting of this franchise.

(e) Any new subdivision added to the Town limits, where completed homes in the new subdivision number enough to make it economically feasible, shall be serviced with the same service as is provided the core Town by the Grantee upon request by the Board of Trustees. Subscriber services shall be provided within twelve (12) months of the request of the Board of Trustees. (Ord. 158 §8, 1982)

Sec. 5-9. Damage to public or private property.

(a) Private property. Whenever the Grantee shall cause or any person acting on its behalf shall cause any injury or damage to any private property by or because of the installation, maintenance or operation of its cable communication facility, such injury or damage shall be repaired fully by the Grantee.

(b) Public property. Whenever the Grantee shall cause or any person acting on its behalf shall cause any injury or damage to any public property or street by or because of the installation, maintenance or operation of the cable communication facility, such injury or damage shall immediately be repaired in such fashion as shall meet with the approval of the Board of Trustees. (Ord. 158 §9, 1982)

Sec. 5-10. Plan and permits required.

(a) No installation of any cable communications facility shall be performed or conducted within any of the streets of the Town unless plans therefor have been first submitted to the Town Clerk for review by the Board of Trustees. No construction of any building or remodeling of any building or removal of any pavement, sidewalk or portion of any street or curb and gutter shall be commenced without first having obtained the appropriate building permit from the Town Clerk or such other permission as may be required.

(b) Failure to perform. Upon the failure of the Grantee to commence, pursue or complete any work required of it by law or by the provisions of this Article to be done in any street or upon any other public property, the Town, at its option, may cause such work to be done and the Grantee shall pay to the Town the cost thereof in the itemized amounts reported by the Town to the Grantee, within thirty (30) days after receipt of such itemized statement. (Ord. 158 §10, 1982)

Sec. 5-11. Franchise term; renewal and review.

(a) This franchise shall take effect and be in full force from and after acceptance by the Grantee, as provided elsewhere herein, and the same shall continue in full force and effect for a basic initial term of fifteen (15) years. The franchise is hereby amended to extend the term of the franchise for a term of two (2) years from its current expiration date of December 31, 2002 to a new expiration date of December 31, 2004. The franchise may be renewed for an additional ten-year term on approval by the Board of Trustees.

(b) At or before the expiration of the term of the grant, the Grantee may be considered by the Town for renewal of the grant. In determining at its option and sole discretion whether to grant the Grantee's application for an extended term, due consideration shall be given to the Grantee's performance during the initial basic term, with such consideration pertaining to but not being limited to: the extent to which the state of the cable TV art shall have improved, progressed or otherwise changed, and whether and to what extent the Grantee shall have performed in accordance with the requirements recited elsewhere herein pertaining to receipt of inquiries, requests and complaints, and approval shall not be unreasonably withheld. (Ord. 158 §11, 1982; Ord. 2002-O11 §1)

Sec. 5-12. FCC rules applicable.

(a) The franchise hereby granted is governed by and subject to all applicable rules, regulations and policies of the Federal Communications Commission specifically including Part 76, and by the laws of the State. Should there be any modifications of the provisions of said Part 76, which are inconsistent with the franchise hereby granted, this Article shall be amended so as to conform to such modifications within one (1) year after the effective date of the FCC's adoption of the modification, or upon renewal of this franchise, whichever occurs first.

(b) The Grantee shall notify the Town of the existence and effective day of any federal (including FCC rulings), state or local laws or regulations affecting its performance under this Article, as soon as it shall come to the knowledge of the Grantee. (Ord. 158 §12, 1982)

Sec. 5-13. Transfer of control.

(a) No transfer of control of the cable system shall take place, whether by forced or voluntary sale, lease, mortgage, assignment, encumbrance or any other form of disposition without prior notice to and approval by the Board of Trustees, which approval shall not be unreasonably refused. The notice shall include full identifying particulars of the proposed transaction, and the Board of Trustees shall act by resolution. The Board of Trustees shall have ninety (90) days within which to approve or disapprove a transfer of control. If no action is taken within the ninety (90) days, approval shall be deemed to have been given.

(b) The consent or approval of the Board of Trustees to any assignment, lease, transfer, sublease or mortgage of the Grantee shall not constitute a waiver or release of the rights of the Town in and to the streets.

(c) For the purpose of this section, the term *control* is not limited to majority ownership, but includes actual working control in whatever manner exercised.

(d) A rebuttal presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty percent (50%) of the voting shares of the Grantee.

(e) A mortgage or pledge of the cable system equipment or any part thereof or a leasing by the Grantee from another person of said cable system equipment or part thereof for financing purposes or otherwise shall be subject and subordinate to the rights of the Town under this Article or applicable law.

(f) In the absence of extraordinary circumstances, the Board of Trustees will not approve any transfer or assignment of the franchise before completion of construction of the energized cable. (Ord. 158 §13, 1982)

Sec. 5-14. Franchise fee.

(a) In consideration of the granting of the franchise and for use of the Town's streets and public places, and for maintenance and supervision thereof, the Grantee agrees to pay to the Town the sum of money equal to five percent (5%) of the Grantee's gross revenues. The Town and the Grantee acknowledge and agree that, at present, the maximum fractional portion of gross revenues which may be charged for such franchise privileges and rights is five percent (5%), pursuant to regulations of the Federal Communications Commission. If and whenever said regulations shall have been amended or rescinded so as to allow a larger fractional portion of gross revenues so to be charged, the fee for this franchise may be increased after a public hearing by the Board of Trustees with the Grantee and only if economically feasible for the Grantee, but in any event no more than the maximum allowed by law or the FCC. Such annual sum shall be payable one-half (½) thereof at the end of each semiannual period. The semiannual payment shall be paid within sixty (60) days thereafter.

(b) The foregoing franchise fee shall not be considered to be a tax but shall be in addition to any and all taxes which are now or hereafter required to be paid by any law of the Town, the State or the United States.

(c) No acceptance of any payment under this Article shall be construed to be a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable as a franchise fee or for the performance of any other obligations hereunder. (Ord. 158 §14, 1982; Ord. 2002-O11 §4)

Sec. 5-15. Rates; violations.

The Grantee shall charge subscribers for the connection of system services, and for the providing of system services of subscribers in accordance with the schedule on file in the office of the Town Clerk. Charges may be modified from time to time as set forth in Paragraphs (3) and (4) of this Section.

(1) Connection charges shall be at the current rate.

(2) Monthly charges for system services shall be at the current rate.

(3) Once during each calendar year of the franchise term, the Franchising Authority, upon giving thirty (30) days notice to the franchisee of its intention to do so, may review and change the franchise terms, but only to the extent that the franchisee has granted terms to another franchising authority which are more favorable to the franchising authority than the terms in the existing franchise. Any increase in a charge, or the establishment of a charge for a service other than a service provided in this Section, shall be only as authorized by the Town, unless the Town's authority is preempted by any state or federal authority. Any increase in a charge or the establishment of a charge for a new service shall only follow a public hearing conducted by the Board of Trustees. Adequate public notice shall be given by the Town of such hearing. At a minimum, such notice shall reasonably summarize the purpose of the hearing, and such notice

shall be by a one-time publication at least fifteen (15) and not more than thirty (30) days before the date of the hearing, in a newspaper of general circulation published in the Town. All persons appearing at the hearing shall have a reasonable opportunity to be heard. The Board of Trustees shall not unreasonably withhold authority to increase service charges.

(4) All charges for services in connection with this grant shall be uniform, reasonable, compensatory and nondiscriminatory.

(5) The basic service rate schedule shall remain in effect for not less than two (2) years from the date service is offered to subscribers. The Grantee has the right to petition the Town for an increase in its rates at any time after the first two (2) years.

(6) Charges shall abate pro rata in the event service to a subscriber is interrupted for more than twenty-four (24) hours, provided that notice is given to the Grantee by the subscriber by telephone and provided that the interruption is not due to negligence or intentional acts on the part of the subscriber or the Town.

(7) The Grantee shall file annually with the Board of Trustees not later than one hundred twenty (120) days after the end of the Grantee's fiscal year, a copy of a financial report applicable to the Town CATV system including an income and expense statement applicable to its operation during the preceding twelve-month period, a balance sheet, a statement of sources and application of funds giving its investment in such properties on the basis of original cost, less applicable depreciation, and a statement of current and projected subscribers (both basic and pay TV customers) and penetration percentages. These reports shall be certified as correct by an authorized agent of the company and there shall be submitted along with them such other reasonable information as the Town shall request with respect to the Grantee's properties and expenses related to the CATV system operations within the Town.

(8) If no final decision on the Grantee's request for rate increase has been rendered by the Board of Trustees within thirty-five (35) days following submission of financial justification for the rate increase, the Grantee's rate request will be deemed approved.

(9) For failure to complete system construction in accordance with the provisions of this franchise, unless the Board of Trustees specifically approves the delay by motion or resolution, which approval shall not be unreasonably withheld, due to the occurrence of conditions beyond the Grantee's control, the Grantee shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, the deficiency continues.

(10) For failure to provide data, documents, reports and information during a CATV system review or rate inquiry, the Grantee shall pay fifty dollars (\$50.00) per day for each violation or for each day a violation continues. A violation will exist when the Town has requested such information in writing or at a public hearing if such information is not provided within ten (10) days after the request.

(11) For failure to test, analyze and report on the performance of the system following a request pursuant to this franchise, the Grantee shall pay to the Town fifty dollars (\$50.00) per day for each day, or part thereof, that such noncompliance continues. Noncompliance will be

presumed if the requested test or information has not been performed or supplied within ten (10) days after requested by the Town either in writing or at a public hearing.

(12) Forty-five (45) days following adoption of a resolution of the Board of Trustees determining a failure of the Grantee to comply with operational or maintenance standards, the Grantee shall pay to the Town one hundred dollars (\$100.00) per day for each day, or part thereof, that such noncompliance continues.

(13) The Board of Trustees may, in writing, grant reasonable extensions of the requirements of this Section. (Ord. 158 §15, 1982; Ord. 2002-O11 §§3, 5)

Sec. 5-16. Rate payment.

Rate payment provisions are as follows:

- (1) There shall be no requirement that payment be made more than one (1) month in advance;
- (2) The Grantee may require the monthly subscriber fee to be paid one (1) month in advance;
- (3) The Grantee in any event may offer discounts to persons who prepay their monthly subscriber fee. (Ord. 158 §16, 1982)

Sec. 5-17. Business office, service calls and local facilities.

(a) The Grantee shall establish, operate and maintain within thirty (30) miles of the Town a business office and agent for the purpose of receiving inquiries, requests and complaints concerning all aspects of the establishment, construction, maintenance and operation of the system and the payment of subscriber's service charges. The office shall have a listed telephone and shall be open during reasonable business hours.

(b) The Grantee shall provide to the Town, at no cost, one (1) portable video camera and one (1) three-fourths-inch recorder at commencement of service, unless the Town has obtained such equipment from another source.

(c) The Grantee shall respond to and resolve subscriber's complaints or requests for service in connection with repairs and maintenance and malfunctions of system facilities. The Grantee shall respond as soon as possible on such complaints or requests, but in any event not more than forty-eight (48) hours after receipt of the complaint.

(d) The Grantee shall file with the Town copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints. The Grantee shall furnish in writing to subscribers, at the time they connect to the system, information concerning procedures for making inquiries, requests and complaints about the system. The information shall include, at least, names, addresses and telephone numbers of the business office and agent. The Grantee shall provide such information as reasonably will permit subscribers effectively to submit inquiries, requests and complaints and to obtain satisfactory resolution or handling in connection therewith, especially in connection with the quality of the Grantee's delivery of services.

(e) The Grantee shall keep full records in connection with all inquiries, complaints and requests in connection with the system. At the least, such records shall identify the person in contact, the subject matter of the contact and the resolution of the matter in question or the action taken by the Grantee in connection with the contact.

(f) The Grantee shall provide the Town with an override capability for emergency use. (Ord. 158 §17, 1982)

Sec. 5-18. Performance evaluation.

(a) The Town and the Grantee shall hold scheduled public hearings to evaluate performance within the first three (3) months of each calendar year after the franchise is granted and continuing throughout the term of said franchise. All such meetings shall be open to the public. Special evaluation meetings shall be held at any time during the term of the franchise, or any extension thereof, at the request of the Town or the Grantee. No party may request more than three (3) special meetings per year. The Grantee shall notify its subscribers of all evaluation meetings by announcements in a legal newspaper as provided in Section 5-15 of this Chapter or, as an alternative, through the cable system's bulletin board channel. Topics which may be discussed at any regularly scheduled or special meeting may include, but shall not be limited to, the following: service rate structure, free or discounted services, application of new technologies, system performance, services provided, programming offered, customer complaints, amendments to franchise ordinance, judicial and regulatory rulings as may be applicable, line extension policies as may be applicable, and line extension policies.

(b) Evaluation Committee. An evaluation and rate committee is hereby established. The Board of Trustees shall act as the Evaluation Committee unless the Board of Trustees in its discretion appoints a separate Evaluation Committee which shall consist of two (2) Board of Trustees members and three (3) citizens appointed by the Mayor with the approval of the Board of Trustees. (Ord. 158 §18, 1982)

Sec. 5-19. Grantee will not protest establishment of improvements to and extensions of other systems.

The Grantee hereby promises and agrees that it will not protest any proposal for establishment, improvement or extension of any other television system or other communications systems serving the Town, whether of the "translator" or "cable" type; provided, however, that the Grantee shall not be bound by this promise if and whenever such establishment, improvement or extension reasonably can be expected to interfere with the Grantee's obligation to the Town and the Grantee's subscribers pursuant thereto. (Ord. 158 §19, 1982)

Sec. 5-20. Color television.

Facilities used by the Grantee shall be capable of distributing color TV signals, and when the signals the Grantee distributes are received by the Grantee in color they shall be distributed in color whenever technically feasible. (Ord. 158 §20, 1982)

Sec. 5-21. Town's option to buy.

Upon termination of the franchise under the terms and conditions herein contained, the Town shall have a first and exclusive option to purchase the business operation and all assets pertaining thereto of the CATV system operated in the Town under the following terms and conditions:

(1) The Town shall have written notice of its election to exercise said option to the Grantee by certified mail not later than ten (10) days following the date of termination or cancellation.

(2) The date of closing of the Town's option to buy shall be not later than sixty (60) days after the determination of the "fair market value" of the CATV system and the Grantee's compliance with the requirements herein contained.

(3) The purchase price shall be paid in cash or by certified funds on the date of closing.

(4) The selling price by the Grantee to the Town for the CATV system shall be the "fair market value" of the CATV system owned and operated by the Grantee within the Town and including all assets, property and property rights of the Grantee pertaining thereto. The "fair market value" shall be the fair and reasonable value of the CATV system in place and in operation at the time of such termination and cancellation, and shall include any value for the privilege of operating under this or an extended franchise.

(5) On the date of closing, the CATV system and all assets pertaining thereto shall be conveyed to the Town by the Grantee free and clear of all liens and encumbrances. The Grantee shall convey all property, whether real or personal, by good and sufficient warranty deed and bill of sale conveying good and marketable title to such property.

(6) The Grantee shall, upon receipt of such notice, advise the Town of its determination of the "fair market value" of the CATV system and its property. In the event that the Town and the Grantee in good faith could not agree upon such "fair market value," then and in that event the "fair market value" will be determined by a board of appraisers as hereafter set forth.

(7) In the event that the Grantee and Town do not agree upon the "fair market value" then and in that event the "fair market value" shall be determined by a board of appraisers consisting of three (3) persons, each with experience in appraising the current market value of cable TV systems. One (1) person shall be selected by the Board of Trustees, one (1) person shall be selected by the Grantee and the two (2) persons so selected shall mutually agree and select a third person. When so selected, the three-person board of appraisers shall immediately proceed to appraise and determine the "fair market value" of the CATV system and its property, and the decision of the board of appraisers shall be binding upon the Town and the Grantee. In the event that the two (2) persons selected by the Town and the Grantee do not agree on the selection of the third person, they may petition the District Court to select the third person.

(8) The cost to determine the "fair market value" and the cost of the board of appraisers shall be shared equally between the Town and the Grantee.

(9) The decision of the board of appraisers and the compliance with this Section shall be enforceable in the District Court in accordance with the statutes of the State.

(10) In the event that the Town fails to exercise its option as herein provided, the Grantee shall have the absolute right to sell the CATV system and its property to any third party under such terms and conditions as it may desire. (Ord. 158 §21, 1982)

Sec. 5-22. Publication costs.

The Grantee shall be liable for and hereby assumes and agrees to pay the cost of publishing the ordinance codified herein, publishing all notices of public hearings, for providing copies of the ordinance codified herein to members of the public upon request, all attorney fees incurred by the Town, all labor expenses incurred by the Town including the Town's employees, all expert witness fees and any other fees and costs incurred by the Town which arise as a result of the granting of this franchise. All such costs shall be paid to the Town by the Grantee within thirty (30) days after mailing notice of such fees by the Town to the Grantee's address. (Ord. 158 §22, 1982)

Sec. 5-23. Annual reports.

Within ninety (90) days of the end of each fiscal year of the Grantee, it shall file with the Town an annual report prepared, certified and audited by an agent of the company in accordance with generally accepted accounting principles consistently applied, showing the financial status of the Grantee, and total revenues of the Grantee from the system for the report period. Upon termination of the franchise at the expiration of a term or otherwise, the Grantee shall continue to make the annual reports as provided in this Section until such time as all payments due the Town pursuant to this Article shall have been paid and accounted for to the reasonable satisfaction of the Town. (Ord. 158 §23, 1982)

Sec. 5-24. Letter of credit.

(a) Within thirty (30) days after the award of the franchise, the Grantee shall deposit with the Town Clerk a letter of credit from a financial institution in the amount of five thousand dollars (\$5,000.00). The form and content of such letter of credit shall be approved by the Town Attorney. The letter of credit shall be used to ensure faithful performance by the Grantee of all provisions of this Article, and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the Town having jurisdiction over its acts or defaults under this Article, and the payment by the Grantee of any claims, liens and taxes due the Town which arise by reason of the construction, operation or maintenance of the system.

(b) The level of credit pursuant to the aforesaid letter thereof continuously shall be maintained at five thousand dollars (\$5,000.00) during the entire term of the franchise even if amounts have to be withdrawn pursuant to the provisions of this franchise.

(c) If the Grantee fails to pay to the Town any compensation within the time fixed herein, or fails after ten (10) days to pay any damages, costs or expenses which the Town is compelled to pay by reason of any act or default of the Grantee in connection with this Article or fails after three (3) days' notice of such failure by the Town to comply with any provision hereof which the Town reasonably determines can be remedied by demand on the letter of credit, the Town immediately may request payment of the amount thereof, with interest and any penalties, upon the credit extended by the letter. Upon such request for payment, the Town shall notify the Grantee of the amount and date thereof.

(d) The Grantee shall have the right to contest the reasonableness or liability of the Grantee to pay such amount before any court having jurisdiction. Payment will be due under said letter of credit upon final determination of the liability of the Grantee to pay the same.

(e) The rights reserved to the Town with respect to the letter of credit are in addition to all other rights of the Town, whether reserved by this Article or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Town may have.

(f) The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be cancelled by the surety, nor may the intention not to renew be stated by the surety, until thirty (30) days after receipt by the Town, by registered mail, of written notice of such intention to cancel or not to renew."

(Ord. 158 §24, 1982)

Sec. 5-25. Construction bond.

(a) Within thirty (30) days after the acceptance of the franchise, the Grantee shall obtain and maintain at its cost and expense, and file with the Town Clerk, a corporate surety bond from a company authorized to do business in the State and found acceptable by the Town Attorney, in the amount of ten thousand dollars (\$10,000.00) to guarantee the timely construction and full activation of the CATV system.

(b) The bond shall provide, but not be limited to, the following condition: there shall be recoverable by the Town, jointly and severally from the principal and surety, all damages, losses or costs suffered by the Town resulting from the failure of the Grantee to satisfactorily complete and fully activate the CATV system throughout the area where the CATV system will be initially available to subscribers pursuant to the terms and conditions of this Article within the time provided therefor in this Article.

(c) Any extension to the prescribed time limit must be authorized by the Board of Trustees. Such extensions shall be authorized only when the Board of Trustees finds that such extension is necessary and appropriate due to causes beyond the control of the Grantee.

(d) The construction bond shall be terminated only after the Board of Trustees finds that the Grantee has satisfactorily completed initial construction and activation of the CATV system pursuant to the terms and conditions of this Article.

(e) The rights reserved to the Town with respect to the construction bond are in addition to all other rights of the Town, whether reserved by this Article and authorized by law, and no action, proceeding or exercise of a right with respect to such construction bond shall affect any other rights the Town may have.

(f) The construction bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled by the surety, nor the intention not to renew be stated by the surety, until thirty (30) days after receipt by the Town, by registered mail, of written notice of such intent to cancel or not to renew."

(Ord. 158 §25, 1982)

Sec. 5-26. Public buildings.

The Grantee agrees to and shall furnish without installation charge or monthly service fee one (1) connection to the Town Hall and one (1) connection to the Senior Citizen Center, as well as one (1) connection to any publicly owned medical facility; connections to all public library buildings and two (2) connections to each public elementary and secondary level school situated within the Town. The buildings so served shall be responsible for all internal wiring from such energized connection source. (Ord. 158 §26, 1982)

Sec. 5-27. Foreclosure.

Upon the foreclosure or other judicial sale of all or a substantial part of the CATV system or upon the termination of any lease covering all or a substantial part of the CATV system, the Grantee shall notify the Town of such fact, and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this certificate governing the consent of the Board of Trustees to such change in control of the Grantee shall apply. (Ord. 158 §27, 1982)

Sec. 5-28. Receivership.

The Board of Trustees shall have the right to cancel this certificate one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(1) Within one hundred twenty (120) days after his or her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Article and remedied all defaults thereunder; and

(2) Such receiver or trustee, within one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Article and the certificate granted to the Grantee. (Ord. 158 §28, 1982)

Sec. 5-29. Preferential or discriminatory practices.

The Grantee shall not, as to rates, charges, services, service facilities, rules, regulations or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage. (Ord. 158 §29, 1982)

Sec. 5-30. Receiver sales prohibited.

As a condition of this franchise, the Grantee agrees that it shall not engage in the business of sales or repair of television receivers owned by its subscribers, nor shall it be responsible for the operating condition of said receivers; provided, however, that this Section shall not apply to converters, decoder, home interactive terminals and other such devices as may be used in furnishing any programming or service via the Grantee's cable television system. (Ord. 158 §30, 1982)

Sec. 5-31. Acceptance.

The ordinance codified herein shall become effective when accepted by the Grantee, and then shall be and become a valid and binding contract between the Town and the Grantee; provided, however, that the ordinance codified herein shall be void unless the Grantee shall, within ninety (90) days after the final passage of the ordinance codified herein, file with the Town Clerk a written acceptance of the ordinance codified herein and the franchise herein granted, agreeing that it will comply with all of the provisions hereof and that it will refrain from doing any or all of the things prohibited by this Article. (Ord. 158 §31, 1982)

Sec. 5-32. Unlawful acts.

(a) It shall be unlawful for any person to:

(1) Make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the Grantee's cable television system for the purpose of enabling himself or herself or others to receive any television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over the Grantee's cable system without payment to the Grantee or its lessee.

(2) Without the consent of the owner, willfully tamper with, remove or injure any cable, wire or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over the Grantee's cable system.

(b) It shall be a misdemeanor, punishable by a fine as set forth in Section 1-72 of this Code or by imprisonment for a term not to exceed ninety (90) days, or both, for any person who violates any provision of this Article. (Ord. 158 §32, 1982)

Sec. 5-33. Civil penalties.

(a) For failure to complete system construction in accordance with the provisions of this franchise, unless the Board of Trustees specifically approves the delay by motion or resolution, the Grantee shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, the deficiency continues.

(b) For failure to provide data, documents, reports, information during a CATV system review or rate inquiry, the Grantee shall pay fifty dollars (\$50.00) per day as each violation occurs or continues.

(c) For failure to test, analyze and report on the performance of the system following a request pursuant to this franchise, the Grantee shall pay to the Town fifty dollars (\$50.00) per day for each day, or part thereof, that such noncompliance continues.

(d) Forty-five (45) days following adoption of a resolution of the Board of Trustees determining a failure of the Grantee to comply with operational or maintenance standards, the Grantee shall pay to the Town one hundred dollars (\$100.00) per day for each day, or part thereof, that such noncompliance continues. (Ord. 158 §33, 1982)

Sec. 5-34. Application fee.

(a) Notwithstanding any other requirement, each application for a CATV franchise must accompany with its application a certified check for five hundred dollars (\$500.00) made payable to the Town. No application for a franchise will be considered without the accompaniment of said check.

(b) All checks received will be deposited to an account of the Town and will serve to recover all expenses incurred by the Town in granting of the franchise. Said expenses shall include, but not be limited to, consultants' expenses, reasonable value of services performed by the Town's employees, agents or contractors, and the cost of elections or otherwise, for the granting of said franchise. In addition, the applicant shall pay all advertising and publication charges incurred by the Town.

(c) In the event that the expenses exceed the total amount of the fees collected for the applicant, then the company shall pay to the Town the excess amount within thirty (30) days of the award of a franchise, as certified to the company by the Town. (Ord. 158 §34, 1982)

Secs. 5-35—5-50. Reserved.

ARTICLE II

Poudre Valley Rural Electric Association Electric Franchise

Sec. 5-51. Definitions.

Whenever the following words are used herein, they shall mean:

(1) *Association* shall designate not only Poudre Valley Rural Electric Association, Inc., a Colorado corporation, the Grantee, but also its successors and assigns.

(2) *Commission* means the Public Utilities Commission of the State and shall be deemed to include any authority succeeding to the regulatory power thereof.

(3) *Plant* means the equipment, facilities and devices necessary to store, exchange, transmit and distribute electricity.

(4) *Public ways* means the streets, alleys, utility easements and rights-of-way which have been dedicated to the Town which would be available to the Town for use as this Article contemplated the Association will use them. (Ord. 184 Art. I §1, 1989)

Sec. 5-52. Grant of authority.

There is hereby granted by the Town to the Association the right, privilege and authority to locate, build, rebuild, construct, reconstruct, extend, maintain and operate, into, within and through the public ways for the storage, exchange, purchase, transmission and distribution of electrical energy, including selling and distributing said electrical energy to the Town as a retail consumer and to the inhabitants of the Town located within the Association's territory as certificated now or in the future by the Public Utilities Commission, for any purposes, by means of conduits, cables, poles with wires strung thereon, structures or otherwise, on, over, under, along, across and through the public ways in the Town and on, over, under, along, across and through any extension, connection with or continuation of the same as they may be thereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of the Town. It is expressly not the intent of this Article to authorize the Association to provide electrical energy to any consumer located within territory certificated by the Public Utilities Commission to another utility within the Town. (Ord. 184 Art. II §1, 1989)

Sec. 5-53. Manner of use; repair.

(a) The Association is further granted the right, privilege and authority to excavate in, occupy and use any and all public ways under the supervision of and in accordance with the regulations and ordinances of the Town and its properly constituted authority for the purpose of bringing electrical energy into, within and through the Town and supplying electrical energy to the Town and the inhabitants thereof and in the territory adjacent thereto; provided, however, that the Association shall so locate its plants, works, substations, transmission and distribution structures, lines, equipment and conduits within the Town as to cause minimum interference with the proper use of the public ways and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the public ways. Should it become necessary for the Association, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved street or any other public way, the Association shall repair the same in a workmanlike manner. The Association shall use due care not to interfere with or damage any water mains, sewers or other structures in said public ways.

(b) The Association will place underground newly constructed electric distribution lines within newly developed areas within the corporate limits of the Town in accordance with the Association's tariffs, rules and regulations and line extension policies as required by subdivision and other regulations adopted by the Town.

(c) The Town will consult the Association concerning future planning of the Town. Where the Town contemplates the annexations of areas which will be served by the Association, representatives of the Association will be notified and allowed to participate in all planning relative to the location of streets, roads, drainage easements, ditch rights-of-way, utility easements and other public areas. (Ord. 184 Art. II §2, 1989)

Sec. 5-54. Town held harmless.

The Association shall operate, construct and maintain its plant and distribution systems as to afford all reasonable protection against injury or damage to persons or property therefrom, and the Association shall indemnify and defend the Town from all liability or damage and expenses necessarily accruing against the Town arising out of the negligent exercise by the Association of the rights and privileges hereby granted to the extent of any insurance carried by the Association or to the extent of its net worth; provided that the Town shall be given written notice of the pendency of any action against the Town arising out of such exercise by the Association of said rights and privileges. The Town shall be permitted, at its election and its own expense, to appear and defend or assist in the defense of the same. Notwithstanding any provision hereof to the contrary, the Association shall not be obligated to indemnify and defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent act or failure to act of the Town or any of its officers or employees. The Association agrees not to name the Town as a defendant in any action resulting from the granting of the franchise or the approval of the agreement codified herein. In the event the Town is named in an action as the result of the Town's granting the Association's franchise, the Association will hold the Town harmless and shall indemnify and defend the Town's action to the extent of any liability granted against the Town by statute. (Ord. 184 Art. II §3, 1989)

Sec. 5-55. Changes at Association expense.

If at any time it shall be necessary to change the position of any pole, conduit or service connection of the Association located in dedicated streets or alleys to permit the Town to change street grades or make street or sidewalk improvements, such changes shall be made by the Association at its own expense. (Ord. 184 Art. II §4, 1989)

Sec. 5-56. Attachment.

The Town for itself alone shall have the right, without cost, to use all poles of the Association within the Town, only for the purpose of stringing wires thereon for its fire alarm, utility control wires and police signal system. Provided, however, that the Association shall neither assume nor be subject to any liability, and the Association shall not be subject to any additional expense in connection therewith. The Town shall at all times be the owner and operator of such wires, and the Town shall not assign or delegate any operation or use of such wires without written permission from the Association. The Town agrees that said wires shall be installed and maintained in accordance with the National Electrical Code and the National Electric Safety Code and conform with the Association standards as at any time hereafter established. (Ord. 184 Art. II §5, 1989)

Sec. 5-57. Jurisdiction; rate; regulations.

The Commission has granted the Association a certificate of public convenience and necessity to furnish electric energy within the area of its certificate which may include property in the limits of the Town as such limits may be extended, to the Town as a consumer, and to the inhabitants thereof, and to any person, persons or corporation doing business in the Town or any addition thereto, within the Association's certificated territory, at the rates and under the terms and conditions set forth in the Rate Schedules, Standards for Service, Rules and Regulations and Service Connection and Extension Policies, filed with or fixed by the Association, or by any other competent authority having jurisdictions of the operations of the Association, including, but not limited to the Rural

Electrification Administration and the National Rural Utilities Cooperative Finance Corporation. (Ord. 184 Art. III §1, 1989)

Sec. 5-58. No discrimination.

The Association shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any consumer coming within an established classification would be entitled. (Ord. 184 Art. III §2, 1989)

Sec. 5-59. Extensions.

The Association will from time to time during the term of this franchise agreement make such enlargements and extensions of its distribution systems as the business of the Association and the growth of the Town justify, in accordance with the Association's tariffs. Distribution feeder lines within the Town limits shall be constructed to avoid duplication of facilities of any other franchised electric utility. To this end, joint use pole construction shall be used where appropriate. (Ord. 184 Art. III §3, 1989)

Sec. 5-60. Rules and regulations.

The Association from time to time may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of electrical energy and payment therefor, and the interference with or alteration of any of the Association's property upon the premises of its consumers, as shall be necessary to ensure continuous and uninterrupted service to each and all of its consumers and the proper measurement thereof and payment therefor; provided that the Association shall keep on file in its Fort Collins, Colorado office, and available to the public, copies of the Association's tariffs currently in effect. The Association will furnish copies of its tariffs to the Town on request. (Ord. 184 Art. III §4, 1989)

Sec. 5-61. Franchise payment.

(a) As further consideration for the acceptance by the Town of a franchise agreement in lieu of all occupancy, occupation and license taxes or other taxes on the right to do business, or other special taxes, assessments or excises upon the property of the Association (except uniform taxes or assessments applicable to all taxpayers or businesses), the Association shall agree to pay to the Town a sum equal to three percent (3%) of its gross annual revenue derived from the sale of electricity within the corporate limits of the Town for electrical energy furnished, excluding the amount received from the Town for electrical street lighting service.

(b) In the event that the Town should sign a franchise agreement with another electric utility with substantially the same terms as the agreement codified herein with respect to all other matters herein addressed save for the franchise fee, the Town and the Association agree to meet with the other and discuss in good faith whether it would be appropriate to modify the agreement codified herein.

(c) The term *gross revenue* as used herein shall be construed to mean all amounts billed under authorized rates, electrical energy adjusted for uncollectible accounts and corrections of bills theretofore rendered. In the event that the gross revenue of the Association for any period of time during the term of the franchise is subsequently reduced by virtue of a refund to any of the consumers of the Association upon which the above-referred-to franchise payment is calculated and as a result thereof the Association has paid in excess of the percentage of its gross revenue provided herein as so adjusted for any such period of time, the Association shall be entitled to a refund from the Town of all said amounts paid in excess of said percentage of its gross revenue as adjusted by such refund.

(d) Payments shall be made monthly. Payments for the portions of the initial and terminal years of the franchise shall be made on the basis of revenue as above derived for the months and portions of the months in which the franchise is in effect. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this paragraph, the Town Clerk and/or any committee appointed by the Board of Trustees shall have access to the books of the Association during regular business hours for the purpose of checking the gross revenue received from operations within the Town. The Association will furnish to the Town on its request a copy of its latest audited financial statement. (Ord. 184 Art. IV §1, 1989)

Sec. 5-62. Term; effective date.

The franchise agreement shall become effective on the effective date of the franchise ordinance codified herein and upon acceptance in writing by the Association within said period, and the terms, conditions and covenants thereof shall remain in full force and effect for a period of twenty-five (25) years from and after said effective date. (Ord. 184 Art. V §1, 1989)

Sec. 5-63. Removal.

The Association is hereby granted the right to enter upon the public ways of the Town for the purpose of removing therefrom any or all of its plants, structures, conduits, cables, poles and wires, or equipment pertaining thereto at any time after the Town has had ample time and opportunity to purchase or condemn them. In so removing said conduits, cables, poles, wire and equipment, the Association shall, at its own expense, refill and repair in as good a condition as they were before any excavations that shall be made by it in the public ways after the removal of conduits, poles or other structures. (Ord. 184 Art. V §2, 1989)

Sec. 5-64. Eminent domain.

It is understood and agreed that in the event the Town desires to acquire by eminent domain the electric distribution system of the Association as provided by law, the Town must notify the Association not less than two (2) years prior to commencement of such action. Just compensation for the value of the acquisition shall include the facilities being acquired, the facilities being idled, the reintegration cost incurred by the Association as a result of the acquisition, and the value of the service rights for the certificate of public convenience and necessity. (Ord. 184 Art. V §3, 1989)

Sec. 5-65. Police power reserved.

The right is hereby reserved to the Town to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police powers,

provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State, or with orders of other authorities having a jurisdiction in the premises. (Ord. 184 Art. V §4, 1989)

Sec. 5-66. Performance; forfeiture.

It is agreed that in case of the failure of the Association to perform or carry out any of the stipulations, terms, conditions and agreements herein set forth in any substantial particular within the Association's control, and with respect to which redress is not otherwise herein provided, the Town, acting by and through its lawfully constituted governing body, may after prior written thirty (30) days' notice of any hearing, determine such substantial failure; and thereupon, after written notice delivered to the Association notifying the Association of such determination and stating with particularity the details of the substantial failure, the Association shall commence repairs and/or replacement as soon as feasible, but in any event, the Association shall complete the repairs and/or replacement within a reasonable time not more than three (3) months from the date of delivery of the notice in which to remedy the conditions respecting which such determinations shall have been made. The Association shall show on request its actions toward performance within one (1) month after the date of delivery of the notice, and if such failure is of such nature that it cannot be reasonably corrected within three (3) months' time provided above, the Town shall provide reasonable time for the reasonable correction of such alleged failure in lieu of the three (3) months' time provided above. After the expiration of such time and failure to correct such conditions, the Board of Trustees may declare the agreement forfeited, and thereupon the Association shall have no further right, privilege or authority thereunder. Nothing in this paragraph shall be construed to revoke the Association's certificate of public convenience and necessity. (Ord. 184 Art. V §5, 1989)

Sec. 5-67. Assignment.

Nothing in the agreement codified herein shall be so construed as to prevent the Association from assigning all of its rights, title or interest, gained or authorized under or by virtue of the terms of the agreement codified herein. (Ord. 184 Art. V §6, 1989)

Secs. 5-68—5-80. Reserved.

ARTICLE III

Public Service Company Electric Franchise

Sec. 5-81. Definitions.

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word *shall* is mandatory and *may* is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

(1) *Company* refers to and is the Public Service Company of Colorado and its successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.

(2) *Distribution facilities* refers to and is only that portion of the Company's electric system which delivers electric energy from the substation breakers to the point-of-delivery of the customer, including all devices connected to that system.

(3) *Facilities* refers to and are all facilities reasonably necessary to provide electricity into, within and through the Town and include plants, works, systems, substations, transmission and distribution structures, lines, equipment, conduit, transformers, underground lines, meters, wires, cables and poles.

(4) *Public easements* refer to and are public and dedicated easements created and available for use by investor-owned or other public utilities for their facilities.

(5) *Public Utilities Commission* or *PUC* refers to and is the Public Utilities Commission of the State or other authority succeeding to the regulatory powers of the Public Utilities Commission.

(6) *Residents* refers to and includes all persons, businesses, industry, governmental agencies, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the Town.

(7) *Revenues* refer to and are those amounts of money which the Company receives from its customers within the Town from the sale of electricity under rates authorized by the Public Utilities Commission and represent amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments.

(8) *Streets and other public places* refer to and are streets, alleys, viaducts, bridges, roads, lanes and other public places in said Town. (Ord. 194 §1, 1993)

Sec. 5-82. Grant of franchise.

(a) Grant of franchise. The Town hereby grants to Public Service Company, for the period specified in and subject to the conditions, terms and provisions contained in this franchise, a nonexclusive right to furnish, sell and distribute electricity to the Town and to all residents of the Town. Subject to the conditions, terms and provisions contained in this franchise, the Town also hereby grants to the Company a nonexclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to furnish, sell and distribute electricity within and through the Town and a nonexclusive right to make reasonable use of the streets and other public places and public easements as may be necessary to carry out the terms of this franchise. These rights shall extend to all areas of the Town as it is now constituted and to additional areas as the Town may increase in size by annexation or otherwise.

(b) Street lighting service. The rights granted in this franchise encompass the nonexclusive franchise to provide street lighting service to the Town and the provisions of this franchise apply with full and equal force to the street lighting service provided by the Company. Wherever reference is made to the sale of electricity or to the provision of electric service in this franchise, these references

shall be deemed to include the provision of street lighting service. Wherever reference is made to Company facilities, equipment, system or plant in this franchise, this reference shall be deemed to include Company-owned street lighting facilities, equipment, system and plant.

(c) Term of franchise. This franchise shall take effect on January 22, 1994. The term of this franchise shall be for twenty-five (25) years, beginning with said effective date of this franchise and expiring on January 21, 2019. (Ord. 194 §2, 1993)

Sec. 5-83. Franchise fee.

(a) Franchise fee. In consideration for the grant of this franchise, the Company shall pay the Town a sum equal to three percent (3%) of all revenues received from the sale of electricity within the Town, excluding revenues received from the Town for the sale of electricity to the Town.

(b) Payment schedule.

(1) For the franchise fee owed on revenues received after the effective date of this franchise, payment shall be made in monthly installments not more than thirty (30) days following the close of the month for which payment is to be made. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of the ordinance codified herein. All payments shall be made to the Town Clerk. The Town Clerk or other authorized representatives shall have access to the books of the Company for the purpose of auditing or checking to ascertain that the franchise fee has been correctly computed and paid.

(2) In the event an error by the Company results in an overpayment of the franchise fee to the Town and said overpayment is in excess of two thousand dollars (\$2,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is two thousand dollars (\$2,000.00) or less, credit shall be taken against the next payment.

(c) Change of franchise fee and other franchise terms.

(1) Once during each calendar year of the franchise term, the Board of Trustees, upon giving thirty (30) days' notice to the Company of its intention so to do, may review and change the consideration the Town may be entitled to receive as a part of the franchise; provided, however, that the Board of Trustees may only change the consideration to be received by the Town under the terms of this franchise to the equivalent of the consideration paid by the Company to any city or town in the State in which the Company supplies electric service under franchise.

(2) The Company shall, upon request, report to the Town within sixty (60) days of the execution of a subsequent franchise or of any change of franchise in other municipalities that could have a significant financial impact on the consideration to be paid by the Company to the Town hereunder. If the Board of Trustees decides the consideration shall be so changed, it shall provide for such change by ordinance; provided, however, that any change in the franchise fee is then allowed to be surcharged by the Company; and provided, further, that the consideration is not higher than the highest consideration paid by the Company to any municipality within the State. For purposes of this Section, *consideration* means the franchise fee established in Subsection (a) above, the undergrounding program established in Section 5-90 and also includes any other provision which is of similar significant financial benefit to the Town.

(d) Franchise fee payment in lieu of other fees. Payment of the franchise fee by the Company is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its property or any other tax not related to the franchise or the physical operation thereof and does not exempt the Company from payment of head taxes or other fees or taxes assessed generally upon businesses. (Ord. 194 §3, 1993)

Sec. 5-84. Supply, construction and design.

(a) Supply of electricity. The Company shall take all reasonable and necessary steps to provide an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of electricity to its customers should be interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.

(b) Restoration of service. In the event the Company's electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

(c) Obligations regarding Company facilities. The Company shall install, maintain, repair, renovate and replace its facilities with due diligence in a good and workmanlike manner, and the Company's facilities will be of sufficient quality and durability to provide adequate and efficient electric services to the Town and its residents. Company facilities shall not interfere with the Town's water mains, sewer mains or other municipal use of streets and other public places. The Company shall erect and maintain its facilities in such a way so as to minimize interference with trees and other natural features. Company facilities shall be installed in public easements so as to cause a minimal amount of interference with such property.

(d) Excavation and construction. All excavation and construction work done by the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. All public and private property whose use conforms to restrictions in public easements disturbed by Company excavation or construction activities shall be restored by the Company at its expense to substantially its former condition.

(e) Relocation of Company facilities.

(1) Any relocation of the Company's facilities in any street or other public place required, caused or occasioned by any Town project shall be at the cost of the Company. Relocation shall be completed within a reasonable time from the date when the Town makes its request, such time to be established by the Company as soon as possible after the Town's request. The Company shall be granted an extension of time of completion equivalent to any delay caused by conditions not under its control, provided that the Company proceeds with due diligence at all times.

(2) Relocated underground facilities shall be underground. Relocated aboveground facilities shall be aboveground unless the Town either agrees to pay the additional cost of moving them underground or requests such additional cost be paid out of available funds under Section 5-91.

(f) Service to new areas. If the boundaries of the Town are expanded during the term of this franchise, the Company shall extend service to residents in the expanded area at the earliest practicable time and in accordance with the Company's extension policy. Service to the expanded area shall be in accordance with the terms of this franchise agreement, including payment of franchise fees.

(g) Town not required to advance funds. Upon receipt of the Town's authorization for billing and construction, the Company shall extend its facilities to provide electric service to the Town for municipal uses within the Town limits or for any major municipal facility outside the Town limits, and within the Company certificated service area, without requiring the Town to advance funds prior to construction.

(h) Technological improvements. The Company shall generally introduce and install, as soon as practicable, electrical energy 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. Upon request by the Town, the Company shall review and promptly report advances which have occurred in the electric utility industry that have been incorporated into the Company's operations in the Town in the previous year or will be so incorporated in the six (6) months following the Town's request. (Ord. 194 §4, 1993)

Sec. 5-85. Compliance.

(a) Town regulation. The Town expressly reserves, and the Company expressly recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances, rules and regulations as may by the Town be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens.

(b) Compliance with Town requirements. The Company will comply with all Town requirements regarding curb and pavement cuts, excavating, digging and related construction activities. If requested by the Town, the Company shall submit copies of reports of annual and long-term planning for capital improvement projects with descriptions of required street cuts, excavation, digging and related construction activities within thirty (30) days after issuance. Except for emergencies, the Town may require that all installations be coordinated with the Town's street improvement programs. The Town Director of Public Works shall be the Town's agent for inspection and for compliance with Town ordinances and regulations on any such projects.

(c) Town review of construction and design. Prior to construction of any significant facilities above ground, or, for electrical energy, any transmission lines or generating plant, building, substation or similar structure within the Town, if requested by the Town, the Company shall furnish to the Town the plans for such facilities. In addition, the Company shall assess and report on the impact of such proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain, *inter alia*, (1) that all applicable laws including building and zoning codes and air and water pollution regulations are complied with, (2) that aesthetic and good planning principles have been given due consideration and (3) that adverse impact on the environment has been minimized.

(d) Compliance with PUC regulations. The electrical energy which the Company distributes shall conform with the standards promulgated by the Public Utilities Commission in the Rules

Regulating the Service of Electric Utilities and with the tariff provisions of the Company setting standards, as the same may be amended from time to time.

(e) Compliance with air and water pollution laws. The Company shall use its best efforts to take measures which will result in its facilities meeting the standards required by applicable federal and state air and water pollution laws. Upon the Town's request, the Company will provide the Town with a status report of such measures.

(f) Inspection. The Town shall have the right to inspect at all reasonable times any portion of the Company's system used to serve the Town and its residents. The Town shall also have access to Company records for the purpose of determining Company compliance with this franchise. The Company agrees to cooperate with the Town in conducting the inspection and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner. (Ord. 194 §5, 1993)

Sec. 5-86. Public Utilities Commission.

The Town and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the Public Utilities Commission which are consistent with the restrictions and limitations of Article XXV of the Colorado Constitution regarding the rights of municipalities to franchise are controlling over any inconsistent provision in this franchise dealing with the same subject matter. In the opinion of the Company, no provision of this franchise is inconsistent with any of the currently effective provisions of the Company's tariffs. (Ord. 194 §6, 1993)

Sec. 5-87. Reports to Town.

(a) Reports on Company operations. The Company shall submit reasonable and necessary reports containing or based on information readily obtainable from the Company's books and records as the Town may request to the operations of the Company under this franchise and provide the Town with a list of real property within the Town which is owned by the Company.

(b) Copies of tariffs, all PUC filings. The Company shall keep on file in the nearest Company office, all tariffs, rules, regulations and policies approved by the Public Utilities Commission relating to service by the Company to the Town and its residents. Upon request by the Town, the Company shall provide the Town with copies of filings affecting said service which it makes with the PUC. (Ord. 194 §7, 1993)

Sec. 5-88. Town use of Company facilities.

(a) Town use. The Town shall have the right to use all poles and suitable overhead structures for the purpose of stringing wires constructed by the Company within the Town, which use shall not include the distribution or transmission of electricity. Such use by the Town will be without cost. The Company will allow others holding a franchise, except for electric service, from the Town to so utilize such poles and suitable overhead structures upon reasonable terms and conditions to be agreed upon by the Company and such holder of a franchises from the Town; provided, however, that the Company shall assume no liability nor shall it be put to any additional expense in connection therewith, and the use of said poles and structures by the Town or others holding a franchise from the Town shall be in such a manner as not to constitute a safety hazard or to interfere unnecessarily with the Company's use of same.

(b) Underground conduit. If the Company installs new electric underground conduit or opens a trench or replaces such conduit, the Company shall provide adequate advance notice to permit additional installation of similar conduit and pull wire for the Town. If the Town wants additional similar conduit and pull wire installed, it will so notify the Company and provide similar conduit and pull wire at its expense to the Company which will install it without further expense to the Town, provided that such action by the Town will not unnecessarily interfere with the Company's facilities or delay the accomplishment of the project. (Ord. 194 §8, 1993)

Sec. 5-89. Indemnification of the Town.

(a) Town held harmless. The Company shall indemnify, defend and save the Town harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the Company within the Town pursuant to this franchise and the securing of and the exercise by the Company of the franchise rights granted in this ordinance, and shall pay all reasonable expense arising therefrom. The Town will provide prompt written notice to the Company of the pendency of any claim or action against the Town arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. 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 act or failure to act of the Town or any of its officers or employees.

(b) Payment of expenses incurred by Town in relation to ordinance. At the Town's option, the Company shall pay in advance or reimburse the Town for expense incurred in publication of notices and ordinances and for photocopying of documents arising out of the negotiations or process for obtaining the franchise. (Ord. 194 §9, 1993)

Sec. 5-90. Underground electrical distribution lines in new areas.

As and when requested by the Town, the Company will spend one percent (1%) of the preceding calendar year's electric revenues to move electric distribution facilities located in streets and other public places in the Town underground, provided that the undergrounding shall extend for a minimum distance of one (1) block or seven hundred fifty (750) feet, or as may be mutually agreed to by the parties. (Ord. 194 §10.1, 1993)

Sec. 5-91. Overhead conversion at expense of Company.

(a) As and when requested by the Town, the Company will spend annually an amount equal to one percent (1%) of the preceding calendar year's electric revenues to move electric distribution facilities located in streets and other public places in the Town underground, provided that the undergrounding shall extend for a minimum distance of one (1) block or seven hundred fifty (750) feet, or as mutually agreed to by the parties.

(b) Any unexpended portion of the one percent (1%) of electric revenue may be carried over to succeeding years and, in addition, upon request by the Town, the Company shall anticipate amounts to be available for up to three (3) years in advance. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated. No relocation

expenses which the Company is required to expend pursuant to Subsection 5-84(e) of this Chapter shall be charged to this allocation.

(c) Funds to be expended pursuant to this Section shall not be used in any project or situation for which and to the extent that the Town has received federal or state funds for the purpose of undergrounding utilities. Funds to be expended pursuant to this Section may be used for "matching" purposes with state or federal monies.

(d) If the Public Utilities Commission authorizes a system-wide program or programs of undergrounding electric distribution lines, the Company will allocate to the program of undergrounding in the Town such amount as is authorized by the Public Utilities Commission, but in no case less than one percent (1%) of annual electric revenues.

(e) In addition to the provisions of this Section, the Town may require additional facilities to be moved underground at the Town's expense.

(f) The Town acknowledges that the establishment of this undergrounding fund creates no vested right in the Town to the undergrounding monies. Further, if such monies are not expended pursuant to the conditions hereof, the fund is not convertible to cash or available for any other purposes. (Ord. 194 §10.2, 1993)

Sec. 5-92. Review of undergrounding program.

Representatives of both the Town and the Company shall meet periodically to review the Company's undergrounding program. This review shall include:

(a) Undergrounding programs including conversions and replacements which have been accomplished or are underway by the Company together with the Company's plans for additional undergrounding;

(b) Undergrounding projects anticipated by the Town. Such meetings shall be held to achieve a continuing program for the orderly undergrounding of electrical distribution lines in the Town. (Ord. 194 §10.3, 1993)

Sec. 5-93. Cooperation with other utilities.

When undertaking a project of undergrounding, the Town and the Company shall work with other utilities or companies which have their lines overhead to attempt to have all lines undergrounded as part of the same project. When other utilities or companies are placing their lines underground, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where feasible. The Company shall not be required to pay the cost of any other utility or company in connection with work under this Section. (Ord. 194 §10.4, 1993)

Sec. 5-94. Transfer of franchise.

(a) Consent of Town required. The Company shall not transfer or assign any rights under this franchise to a third party, excepting only corporate reorganizations of the Company not including a

third party, unless the Town shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld.

(b) Transfer fee. In order that the Town may share in the value this franchise adds to the Company's operation, any such transfer or assignment of rights under this franchise requiring the approval of the Town shall be subject to the conditions that the transferee shall promptly pay to the Town a pro rata share of one million dollars (\$1,000,000.00), which pro rata amount of one million dollars (\$1,000,000.00) shall be calculated by multiplying one million dollars (\$1,000,000.00) times a fraction of which the then population of the Town is the numerator and the then population of the City and County of Denver is the denominator. Such transfer fee shall not be recovered from the Town or from the Town residents or property owners through electric rates of customers in the Town or by surcharge by the transferee or the Company. (Ord. 194 §11, 1993)

Sec. 5-95. Purchase or condemnation.

(a) Town's right to purchase or condemn. The right of the Town to construct, purchase or condemn any public utility works or ways, and the rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved.

(b) Continued cooperation by Company. In the event the Town exercises its option to purchase or condemn, the Company agrees that, at the Town's request, it will continue to supply any service it supplies under this franchise, for the duration of the term of this franchise pursuant to terms and conditions negotiated for such continued operation. (Ord. 194 §12, 1993)

Sec. 5-96. Removal of Company facilities at end of franchise.

In the event this franchise is not renewed at the expiration of its term or the Company terminates any service provided herein for any reason whatsoever, and the Town has not purchased or condemned the system and has not provided for alternative electrical service, the Company shall have no right to remove said system pending resolution of the disposition of the system. The Company further agrees it will not withhold any temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount that it would have been entitled to were such services provided during the term of this franchise. Only upon receipt of written notice from the Town stating that the Town has adequate alternative electrical energy sources to provide for the people of the Town shall the Company be entitled to remove any or all of said systems in use under the terms of this franchise. (Ord. 194 §13, 1993)

Sec. 5-97. Small power production and cogeneration.

The Town expressly reserves the right to engage in the production of electricity. The Company agrees to negotiate for the purchase of Town-generated power in accordance with its tariffs and applicable Public Utilities Commission Rules and Regulations. (Ord. 194 §14, 1993)

Sec. 5-98. Forfeiture.

(a) Forfeiture. Both the Company and the Town recognize there may be circumstances whereby compliance with the provisions of this franchise is impossible or is delayed because of circumstances beyond the Company's control. In those instances, the Company shall use its best efforts to comply

in a timely manner and to the extent possible. If the Company fails to perform any of the terms and conditions of this franchise and such failure is within the Company's control, the Town, acting by and through its Board, may determine, after hearing, that such failure is of a substantial nature. Upon receiving notice of such determination, the Company shall have a reasonable time in which to remedy the violations. If during said reasonable time corrective actions have not been successfully taken, the Town, acting by and through its Board, shall determine whether any or all rights and privileges granted the Company under the ordinance codified herein shall be forfeited.

(b) Judicial review. Any such declaration of forfeiture shall be subject to judicial review as provided by law.

(c) Other legal remedies. Nothing herein contained shall limit or restrict any legal rights that the Town or the Company may possess arising from any alleged violation of this franchise.

(d) Continued obligations. Upon forfeiture, the Company shall continue to provide services to the Town and its residents in accordance with the terms hereof until the Town makes alternative arrangements for such service. If the Company fails to provide continued service, it shall be liable for damages to the Town. (Ord. 194 §15, 1993)

Sec. 5-99. Amendments.

(a) Amendments to franchise. At any time during the term of this franchise, the Town, through its Board, 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 negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendment(s). The word *amendment* as used in this section does not include a change authorized in section 5-83(c). (Ord. 194 §16, 1993)

Sec. 5-100. Miscellaneous.

(a) Successors and assigns. The rights, privileges, franchises and obligations granted and contained in this ordinance shall inure to the benefit of and be binding upon Public Service Company, its successors and assigns.

(b) Third parties. Nothing contained in this franchise shall be construed to provide rights to third parties.

(c) Representatives. 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 the ordinance codified herein. Notice shall be in writing and forwarded by certified mail 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. Until any such change shall hereafter be made, notices shall be sent to the Town Mayor and to the Company's Home Light Division Manger. Currently the addresses are as follows:

For the Town:

Mayor, Town of Kersey

P.O. Box 67
Kersey, Colorado 80644

For the Company:

Mel Cobb - Division Manager
Home Light Division
810 9th Street
P.O. Box 8
Greeley, Colorado 80632

(d) Severability. Should any one (1) or more provisions of this franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, that the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties hereunder.

(e) Entire agreement. This franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this franchise. (Ord. 194 §17, 1993)

Sec. 5-101. Approval.

(a) Board approval. This grant of franchise shall not become effective unless approved by a majority vote of the Board of Trustees.

(b) Company approval. The Company shall file with the Town Clerk its written acceptance of this franchise and of all of its terms and provisions within ten (10) days after the adoption of this franchise by the Board of Trustees. The acceptance shall be in form and content approved by the Town Attorney. If the Company shall fail to timely file its written acceptance as herein provided, this franchise shall be and become null and void. (Ord. 194 §18, 1993)

Secs. 5-102—5-120. Reserved.

ARTICLE IV

Gas Franchise

Sec. 5-121. Definitions.

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Section. Words not defined in this Article shall be given their common and ordinary meaning.

(1) *Company* refers to and is Greeley Gas Company and its successors and assigns.

(2) *Distribution facilities* refer to and are only those facilities reasonably necessary to provide gas within the Town.

(3) *Facilities* refer to and are all facilities reasonably necessary to provide gas into, within and through the Town and include plants, works, systems, lines, equipment, pipes, mains, underground links, gas compressors and meters.

(4) *Gas or natural gas* refers to and is such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured or any mixture thereof.

(5) *Public Utilities Commission* refers to and is the Public Utilities Commission of the State or other authority succeeding to the regulatory powers of the Public Utilities Commission of the State.

(6) *Revenues* refer to and are those amounts of money which the Company receives from its customers within the Town for the sale of gas under rates, temporary or permanent, authorized by the Public Utilities Commission and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments.

(7) *Streets and other public places* refer to and are streets, alleys, viaducts, bridges, roads, lanes, easements, public ways and other public places in the Town. (Ord. 183 Art. I, 1989)

Sec. 5-122. Grant of franchise.

The Town hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this Article, the right to furnish, sell and distribute gas to the Town and to all persons, businesses and industries within the Town; the right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to provide gas to the Town and to all persons, businesses and industries within the Town and in the territory adjacent thereto; and the right to make reasonable use of all streets and other public places as may be necessary to carry out the terms of this Article. (Ord. 183 Art. II §1, 1989)

Sec. 5-123. Term of franchise.

This franchise shall supersede the franchise granted to Greeley Gas Company passed, adopted and approved September 8, 1964. The term of this franchise shall be for twenty-five (25) years, beginning November 12, 1989, and expiring November 11, 2014. (Ord. 183 Art. II §2, 1989)

Sec. 5-124. Franchise fee.

(a) In consideration for the grant of this franchise, the Company shall collect and remit annually to the Town a sum equal to three percent (3%) of the revenues derived from the sale of gas within the Town, excluding the amount received from the Town itself for gas service furnished it.

(b) Annual franchise fee payments shall be made on or before March 1 for the preceding calendar year ending December 31. Payments at the beginning and end of the franchise shall be prorated. (Ord. 183 Art. III §1, 1989)

Sec. 5-125. Franchise fee payment in lieu of other fees.

Payment of the franchise fee by the Company is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax, assessment or excise upon the pipes, mains, meters or other personal property of the Company or on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful

taxation upon its real property or any other tax not related to the franchise or the physical operation thereof. (Ord. 183 Art. III §2, 1989)

Sec. 5-126. Franchise fee review.

At any time after the fifteenth anniversary of the effective date of this franchise, upon request by the Town, the Company and the Town shall review the franchise fee amount being collected and remitted herein. The parties shall amend the franchise if a franchise fee adjustment is mutually agreed. (Ord. 183 Art. III §3, 1989)

Sec. 5-127. Conduct of business.

The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the State. (Ord. 183 Art. IV §1, 1989)

Sec. 5-128. Tariffs on file.

The Company shall keep on file in its nearest office copies of all its tariffs currently in effect and on file with the Public Utilities Commission. Said tariffs shall be available for inspection by the public. (Ord. 183 Art. IV §2, 1989)

Sec. 5-129. Compliance with PUC regulations.

The Company shall comply with all rules and regulations adopted by the Public Utilities Commission. (Ord. 183 Art. IV §3, 1989)

Sec. 5-130. Compliance with Company tariffs.

The Company shall furnish gas within the Town to the Town and to all persons, businesses and industries within the Town at the rates and under the terms and conditions set forth in its tariffs on file with the Public Utilities Commission. (Ord. 183 Art. IV §4, 1989)

Sec. 5-131. Applicability of Company tariffs.

The Town and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the Public Utilities Commission are controlling over any inconsistent provision in this franchise dealing with the same subject matter. (Ord. 183 Art. IV §5, 1989)

Sec. 5-132. Location of facilities.

Company facilities shall not interfere with the Town's water mains, sewer mains or other municipal use of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition. (Ord. 183 Art. V §1, 1989)

Sec. 5-133. Excavation and construction.

All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable local, state and federal codes. All public and private property whose use conforms to restrictions in easements disturbed by Company construction or excavation activities shall be restored as soon as practicable by the Company at its expense to substantially its former condition. The Company shall comply with the Town's requests for reasonable and prompt action to remedy all damage to private property adjacent to streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The Town reserves the right to restore property and remedy damages caused by Company activities at the expense of the Company in the event the Company fails to perform such work within a reasonable time after notice from the Town. (Ord. 183 Art. V §2, 1989)

Sec. 5-134. Relocation of Company facilities.

If at any time the Town requests the Company to relocate any distribution gas main or service connection installed or maintained in streets or other public places in order to permit the Town to change street grades, pavements, sewers, water mains or other Town works, such relocation shall be made by the Company at its expense. The Company is not obligated hereunder to relocate any facilities at its expense which were installed in private easements obtained by the Company, the underlying fee of which was, at some point subsequent to installation, transferred to the Town. Following relocation, all property shall be restored to substantially its former condition by the Company at its expense. (Ord. 183 Art. V §3, 1989)

Sec. 5-135. Service to new areas.

If during the term of this franchise the boundaries of the Town are expanded, the Company shall extend service to the newly incorporated areas. Service to annexed areas shall be in accordance with the terms of this franchise agreement. (Ord. 183 Art. V §4, 1989)

Sec. 5-136. Restoration of service.

In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time. (Ord. 183 Art. V §5, 1989)

Sec. 5-137. Supply and quality of service.

The Company shall make available an adequate supply of gas to provide service in the Town. The Company's facilities shall be of sufficient quality, durability and redundancy to provide adequate and efficient gas service to the Town. (Ord. 183 Art. V §6, 1989)

Sec. 5-138. Safety regulations by the Town.

The Town reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety and welfare of the public, provided

that such regulations are not destructive of the rights granted herein. The Company agrees to comply with all such regulations, in the construction, maintenance and operation of its facilities and in the provision of gas within the Town. (Ord. 183 Art. V §7, 1989)

Sec. 5-139. Inspection, audit and quality control.

The Town shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the Town and its residents. The Town also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Article at all reasonable times. The Company agrees to cooperate with the Town in conducting the inspection and/or audit and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner. (Ord. 183 Art. V §8, 1989)

Sec. 5-140. Town held harmless.

The Company shall save the Town harmless from all liability or damage and all reasonable expenses necessarily accruing against the Town arising out of the negligent exercise by the Company of the rights and privileges hereby granted. (Ord. 183 Art. VI §1, 1989)

Sec. 5-141. Notice to Company.

The Town will provide notice to the Company of the pendency of any claim or action against the Town arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. (Ord. 183 Art. VI §2, 1989)

Sec. 5-142. Assignment.

Nothing in this Article shall prevent the Company from assigning its rights under this franchise. (Ord. 183 Art. VII §1, 1989)

Sec. 5-143. Saving clause.

If any portion of this Article is declared illegal or void by a court of competent jurisdiction, the remainder of the Article shall survive and not be affected thereby. (Ord. 183 Art. VII §2, 1989)

Sec. 5-144. Expiration of franchise; purchase or condemnation.

If at the time of expiration of the franchise granted under this Article no extension or renewal has been negotiated between the Town and the Company, the Company shall have the right to remove its distribution facilities from the streets and other public places, but only after the Town has had sufficient time to purchase or condemn said facilities. All public property shall be restored by the Company to its former condition, to the extent practicable, after said removal. (Ord. 183 Art. VIII §1, 1989)

Secs. 5-145—5-160. Reserved.

ARTICLE V

Telephone Utilities Tax

Sec. 5-161. Levy of tax.

There is hereby levied on and against each telephone utility company operating within the Town, a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the Town and of supplying local exchange telephone service to the inhabitants of the Town. The amount of tax levied hereby shall be:

(1) For the portion of 1979 remaining after the date on which the tax begins to accrue as provided in Section 5-162 below, two dollars (\$2.00) per telephone account for which local exchange telephone service is provided within the corporate limits of the Town on said date; and

(2) For each subsequent calendar year, four dollars (\$4.00) per telephone account for which local exchange telephone service is provided within the corporate limits of the Town on the anniversary of the date on which the tax begins to accrue as provided in Section 5-162. (Ord. 138 §1, 1979)

Sec. 5-162. Time payment of tax.

The tax levied by this Article shall begin to accrue on July 1, 1979, and be payable in equal installments for the remaining portion of 1979, payable on December 31, 1979, and in four (4) equal quarterly installments for years subsequent to 1979, to be paid on the last business days of the months of March, June, September and December. (Ord. 138 §2, 1979)

Sec. 5-163. Filing statement.

Within thirty (30) days after the date on which the tax begins to accrue as provided in Section 5-162 above, each telephone utility company subject to this Article shall file with the Town Clerk, in such form as the Clerk may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the Town on said date. Such statement shall be filed within thirty (30) days after each anniversary of the date on which the tax begins to accrue, showing such accounts on the anniversary date. (Ord. 138 §3, 1979)

Sec. 5-164. Failure to pay.

If any telephone utility company subject to the provisions of this Article shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same together with an addition of ten percent (10%) of the amount of taxes due shall be and hereby is declared to be a debt due and owing from such company to the Town. The Town Attorney upon direction of the Board of Trustees shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect said debt. (Ord. 138 §4, 1979)

Sec. 5-165. Penalty clause.

If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Article shall fail, neglect, refuse to make or file the annual statement of accounts provided in Section 5-163, said officer, agent, manager or person shall, on conviction thereof, be punished as set forth in Section 1-72 of this Code; provided that each day after said statement shall become delinquent during which said officer, agent, manager or person shall so fail, neglect or refuse to make and file such statement shall be considered a separate and distinct offense. (Ord. 138 §5, 1979)

Sec. 5-166. Inspection of records.

The Town, its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility companies which are subject to the provisions of this Article and to make copies of the entries or contents thereof. (Ord. 138 §6, 1979)

Sec. 5-167. Local purpose.

The tax herein provided is upon occupations and businesses in the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this Article be construed to mean that any telephone utility company is issued a franchise by the Town. (Ord. 138 §7, 1979)

Sec. 5-168. Tax in lieu of other business and occupation taxes, etc.

The tax herein provided shall be in lieu of all other occupation taxes or taxes on the privilege of doing business in the Town on any telephone utility company subject to the provisions of this Article, and in addition shall be in lieu of any free service furnished the Town by any said telephone utility. (Ord. 138 §8, 1979)

Sec. 5-169. Certain offenses and liabilities to continue.

All offenses committed and all liabilities incurred prior to the effective date of the ordinance codified herein shall be treated as though all prior applicable ordinances and amendments thereto were in full force and effect for the purpose of sustaining any proper suit, action or prosecution with respect to such offenses and liabilities. (Ord. 138 §9, 1979)

Secs. 5-170—5-180. Reserved.

ARTICLE VI

Emergency Telephone Charge

Sec. 5-181. Charge imposed, collected.

(a) There is hereby imposed, pursuant to Section 29-11-101, *et seq.*, C.R.S., upon all telephone exchange access facilities within that portion of the Town, located within the County, an emergency telephone charge in an amount not to exceed two percent (2%) of the tariff rates as approved by the Public Utilities Commission or fifty cents (\$.50), whichever is less. Upon re-commandation of the

Weld Emergency Telephone Service Authority, the Board of Trustees may, by resolution, raise or lower the emergency telephone charge, but in no event shall such charge exceed the amount of two percent (2%) of the tariff as approved by the Public Utilities Commission.

(b) Telephone service suppliers providing telephone service in the Town are hereby authorized to collect the emergency telephone charge imposed by this Section in accordance with Section 29-11-101 *et seq.*, C.R.S., and to provide those funds to the Weld Emergency Telephone Service Authority as provided in the Intergovernmental Agreement. (Ord. 178 §§2, 3, 1987)

Secs. 5-182—5-200. Reserved.