

## CHAPTER 5

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## ARTICLE 1

### Cable Television Franchise

#### *Division 1*

#### *General Provisions*

#### **Sec. 5-1-10. Definitions.**

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word *shall* is always mandatory and not merely directory.

*Access channel* means any channel, or portion thereof, designated for access programming.

*Access programming* means noncommercial video programming acquired or produced by various agencies, institutions, organizations, groups and individuals in the community, including but not limited to:

a. *Educational access* which is access programming acquired or produced by schools. For purposes of this definition, *school* means any state-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

b. *Government access* which is access programming acquired or produced by governmental institutions or their designees.

c. *Public access* which is access programming acquired or produced by community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis.

*Activated* means the status of any capacity or part of the cable system in which any cable service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

*Affiliate*, when used in connection with Grantee, means any person who owns or controls, is owned or controlled by or is under common ownership or control with Grantee.

*Bad debt* means amounts lawfully billed to a subscriber and owed by the subscriber for cable service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

*Basic service* means any cable service tier which includes, at a minimum, the retransmission of local television Broadcast Signals and local access programming.

*Broadcast signal* means a television or radio signal transmitted over the air to a wide geographic audience, and received by a cable system by antenna, microwave, satellite dishes or any other means.

*Cable Act* means Title VI of the Communications Act of 1934, as amended.

*Cable internet service* means any cable service offered by Grantee whereby Persons receive access to the Internet through the cable system.

*Cable operator* means any person or groups of persons, including Grantee, who provides cable service over a cable system and, directly or through one (1) or more affiliates, owns a significant interest in such cable system, or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

*Cable service* means the one-way transmission to subscribers of video programming or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. To the extent consistent with applicable law, *cable service* shall include cable internet service and other interactive services such as, but not limited to, game channels, information services and enhanced services made available to subscribers by Grantee.

*Cable system* means any facility, including Grantee's, consisting of a set of closed transmissions paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community; however, such term does not include: (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (b) a facility that serves subscribers without using any right-of-way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of Section 621(c) (47 U.S.C. § 541(c) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (d) an open video system that complies with federal statutes; or (e) any facilities of any electric utility used solely for operating its electric utility systems.

*Channel* means a portion of the electromagnetic frequency spectrum which is used in the cable system and which is capable of delivering video programming on a twenty-four-hour-per-day basis.

*City* means the City of Centennial, Colorado, and all of the incorporated territory within its boundaries, as such may change from time to time.

*City Council* means the City Council of Centennial, or its successor, the governing body of the City of Centennial, Colorado.

*Commercial subscribers* means any subscribers other than residential subscribers.

*Designated access provider* means the entity designated now or in the future by the City to manage or co-manage access channels and facilities. The City may be a designated access provider.

*Downstream* means carrying a transmission from the headend to remote points on the cable system or to interconnection points on the cable system.

*Dwelling unit* means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one (1) set of facilities for cooking shall be considered multiple dwelling units unless the additional facilities are clearly accessory.

*Expanded basic service* means the tier of optional video programming, which is the level of cable service received by most subscribers above basic service, and does not include premium services.

*FCC* means the Federal Communications Commission.

*Fiber optic* means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying cable service by means of electric lightwave impulses.

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

*Franchise area* means the areas within the jurisdictional boundaries of the City.

*Franchise fee* means the compensation paid to the City in accordance with this Article for using the right-of-way within the City.

*GAAP* means generally accepted accounting principles.

*Grantee* means Mountain States Video, Inc., TCI Cablevision of Colorado, Inc., TCI Cablevision of Florida, Inc., United CATV, Inc., and United Cable Television of Colorado, Inc., to the extent these entities operate a cable system in the City, or their lawful successor, transferee or assignee.

*Greater Metro Telecommunications Consortium* or *GMTC* means a Colorado agency, formed by intergovernmental agreement between franchising authorities in the greater Denver metropolitan area to communicate with regard to franchising matters collectively and cooperatively.

*Gross revenues* means any and all revenue received by Grantee, or by any other entity that is a cable operator of the cable system, including Grantee's affiliates, from the operation of Grantee's cable system to provide cable services. *Gross revenues* include, by way of illustration and not limitation, monthly fees charged subscribers for basic service; any expanded tiers of cable service; optional premium services; installation, disconnection, reconnection and change-in-service fees; leased access channel fees; remote control rental fees; all cable service lease payments from the cable system; late fees and administrative fees; fees, payments or other consideration received by Grantee from programmers for carriage of programming on the cable system and accounted for as revenue under GAAP; revenues from rentals or sales of converters or other cable system

equipment; advertising revenues; the fair market value of consideration received by Grantee for use of the cable system to provide cable service and accounted for as revenue under GAAP; revenues from program guides; revenue from data transmissions to the extent these transmissions are considered cable services under federal law; additional outlet fees; revenue from cable internet service to the extent this service is considered a cable service under federal law; franchise fees; revenue from interactive services to the extent they are considered cable services under federal law; revenue from the sale or carriage of other cable services; and revenue from home shopping, bank-at-home channels and other revenue-sharing arrangements. *Gross revenues* shall include revenue received by any entity other than Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the franchise fees. *Gross revenues* shall not include:

- a. To the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected;
- b. The capital contribution specified in Section 5-1-325 of this Article;
- c. Any taxes on services furnished by Grantee which are imposed directly on any subscriber or user by the State, City or other governmental unit and which are collected by Grantee on behalf of said governmental unit; or
- d. Franchise fees collected from subscribers.

Except as to items specifically excluded above, the parties intend for the definition of *gross revenues* to be as inclusive as possible consistent with existing applicable law. If there is a change in federal law subsequent to the effective date of this Franchise, such change shall not impact this *gross revenues* definition unless the change specifically preempts the affected portion of the definition above.

*Headend* means any facility for signal reception and dissemination on a cable system, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for broadcast signals, equipment for the interconnection of the cable system with adjacent cable systems and interconnection of any networks which are part of the cable system, and all other related equipment and facilities.

*Hub* means an intermediary exchange point in the signal distribution portion of the cable system, located between the headend and the nodes.

*Interconnect* or *interconnection* means the linking of the cable system with another cable system, including technical, engineering, physical, financial and other necessary components, to accomplish, complete and adequately maintain such linking, in a manner that permits the transmission and receiving of electronic or optical signals between the cable system and other cable systems; or the necessary components to accomplish, complete and adequately maintain pathways that permit the transmission and receiving of electronic or optical signals between locations connected to portions of the cable system outside the franchise area and those portions of the cable system inside the franchise area.

*Leased access channel* means any channel or portion of a channel commercially available for programming by persons other than Grantee, for a fee or charge.

*Manager* means the Department Director as designated by the City Council to whom the responsibility for administration of this Franchise has been assigned.

*Node* means an exchange point in the signal distribution system portion of the cable system, where optical signals are converted to RF signals.

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

*Premium service* means programming choices (such as movie channels, pay-per-view programs or video on demand) offered to subscribers on a per-channel, per-program or per-event basis.

*Residential subscriber* means any person who receives cable service delivered to dwelling units or multiple dwelling units, excluding such multiple dwelling units billed on a bulk-billing basis.

*Right-of-way* means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, utility easements, rights-f-way and similar public property and areas.

*Special districts* means districts organized pursuant to Article 1 of Title 32, C.R.S.

*State* means the State of Colorado.

*Subscriber* means any person who or which elects to subscribe to, for any purpose, cable service provided by Grantee by means of or in connection with the cable system, and whose premises are physically wired and lawfully activated to receive cable service from Grantee's cable system.

*Telecommunications* means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. § 153(43)).

*Telecommunications service* means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. § 153(46)).

*Tier* means a group of channels for which a single periodic subscription fee is charged.

*Two-way* means that the cable system is capable of providing both upstream and downstream transmissions.

*Upgrade* means improvements to the cable system, as specifically detailed in Section 5-1-610 of this Article.

*Upstream* means carrying a transmission to the headend from remote points on the cable system or from Interconnection points on the cable system.

*Video programming* means programming provided by, or generally considered comparable to programming provided by, a local television broadcast signal. (Ord. 2001-04 §1)

**Sec. 5-1-15. Grant of Franchise.**

(a) The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the rights-of-way within the City to construct, operate, maintain, reconstruct, rebuild and upgrade a cable system for the purpose of providing cable service subject to the terms and conditions set forth in this Franchise and in any prior utility or use agreements entered into with regard to any individual property. This Franchise shall constitute both a right and an obligation to provide the cable services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(b) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance, resolution or regulation existing as of the effective date, as defined in Section 5-1-25 below.

(c) Each and every term, provision or condition herein is subject to the provisions of state law, federal law and the City's ordinances, resolutions and regulations. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(d) This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation and/or conditions for use of the rights-of-way, should Grantee provide service other than cable service.

(e) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any affiliate of Grantee directly involved in the offering of cable service in the franchise area, or directly involved in the management or operation of the cable system in the franchise area, will also comply with the terms and conditions of this Franchise.

(f) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances, resolutions or regulations of the City;

(2) Any permit, agreement or authorization required by the City for right-of-way users in connection with operations on or in rights-of-way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise, including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(g) This Franchise is intended to convey limited rights and interests only as to those rights-of-way in which the City has an actual interest. It is not a warranty of title or interest in any right-of-way; it does not provide Grantee with any interest in any particular location within the right-of-way; and it does not confer rights other than as expressly provided in the grant hereof.

(h) This Franchise does not authorize, prohibit or condition Grantee's provision of telecommunications service in the franchise area. This Franchise is not a bar to imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City any such authorizations that may be lawfully required in order to provide telecommunications services, or to construct, operate or maintain telecommunications facilities. (Ord. 2001-04 §2.1)

**Sec. 5-1-20. Use of rights-of-way.**

(a) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the rights-of-way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a cable system within the City. Grantee, through this Franchise, is granted extensive and valuable rights to operate its cable system for profit using the City's rights-of-way in compliance with all applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation to be paid for these valuable rights throughout the term of the Franchise.

(b) Grantee must follow City-established requirements for placement of cable system facilities in rights-of-way, including the specific location of facilities in the rights-of-way, and must in any event install cable system facilities in a manner that minimizes interference with the use of the rights-of-way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that cable system facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular right-of-way; may deny access if Grantee is not willing to comply with the City's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the rights-of-way through joint trenching and other arrangements. (Ord. 2001-04 §2.2)

**Sec. 5-1-25. Effective date and term of Franchise.**

(a) This Franchise and the rights, privileges and authority granted hereunder shall take effect on February 7, 2001 (the "Effective Date"), and shall terminate on February 7, 2016, unless terminated sooner as hereinafter provided.

(b) The grant of this Franchise shall have no effect on Grantee's duty under the prior franchise, license or any ordinance, resolution or regulation in effect prior to the effective date of this Franchise to indemnify or insure the City against acts and omissions occurring during the period that the prior franchise or license was in effect. (Ord. 2001-04 §2.3)

**Sec. 5-1-30. Franchise nonexclusive.**

This Franchise shall be nonexclusive and subject to all prior rights, interests, easements or franchises granted by the City to any person to use any property, right-of-way, right, interest or franchise for any purpose whatsoever, including the right of the City to use the same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the rights-of-way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for cable systems as the City deems appropriate. (Ord. 2001-04 §2.4)

**Sec. 5-1-35. Police powers.**

(a) Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances, resolutions or regulations necessary to the safety, health and welfare of the public, and Grantee agrees to comply with all laws, ordinances, resolutions or regulations of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City shall have the right to adopt, from time to time, such ordinances, resolutions or regulations as may be deemed necessary in the exercise of its police power; provided that such ordinances, resolutions or regulations shall be reasonable and not destructive of the rights granted in this Franchise.

(b) The City reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary, and any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter. (Ord. 2001-04 §2.5)

**Sec. 5-1-40. Grant of other franchises.**

The City shall not authorize or permit any person providing video programming and/or cable services to enter into the right-of-way in any part of the franchise area on terms or conditions more favorable or less burdensome to such person than those applied to Grantee pursuant to this Franchise, in order that one (1) operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. (Ord. 2001-04 §2.6)

**Sec. 5-1-45. Familiarity with Franchise.**

Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. Grantee further acknowledges and states that it has fully studied and considered the requirements relating to the upgrade of the cable system and all other requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time. (Ord. 2001-04 §2.7)

**Sec. 5-1-50. Effect of acceptance.**

By accepting the Franchise, Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this

Franchise subject to applicable law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary. (Ord. 2001-04 §2.8)

**Sec. 5-1-55. Franchise fee.**

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the City's rights-of-way, Grantee shall pay as a franchise fee to the city, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's gross revenues. Accrual of such franchise fee shall commence as of the effective date of this Franchise. (Ord. 2001-04 §3.1)

**Sec. 5-1-60. Payments.**

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

(b) Until March 31, 2002, Grantee's franchise fee payments to the City shall be computed monthly for the preceding calendar month ending on the last day of the month. Each monthly payment shall be due and payable no later than forty-five (45) days after the last day of the month. During this time, the City understands that Grantee's records may not be accurate for the number of subscribers included within the City. Grantee shall use its best efforts during this time to calculate an estimate of franchise fees that are owed to the City. If it is discovered that Grantee has paid Arapahoe County for any franchise fees that may be due to the City during this time, the City shall collect any such payments directly from Arapahoe County. The City shall not penalize Grantee for any underpayments made during this time period. The City shall not hold Grantee responsible for any costs related to an audit for payments made during this time period. (Ord. 2001-04 §3.2)

**Sec. 5-1-65. Acceptance of payment and recomputation.**

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee. (Ord. 2001-04 §3.3)

**Sec. 5-1-70. Franchise fee reports.**

Each payment shall be accompanied by a written report to the City, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's gross revenues and the computation of the payment amount. Such reports shall detail all gross revenues of the cable system and shall be drafted in accordance with GAAP. (Ord. 2001-04 §3.4)

**Sec. 5-1-75. Annual franchise fee reports.**

Grantee shall, within ninety (90) days after the end of each year, furnish to the City a statement stating the total amount of gross revenues for the year and all payments, deductions and computations

for the period. Such statement shall be audited by a certified public accountant, who may also be the chief financial officer or controller of Grantee, prior to submission to the City. (Ord. 2001-04 §3.5)

**Sec. 5-1-80. Audits.**

On an annual basis, upon thirty (30) days' prior written notice, the City, including the City's Auditor or his or her authorized representative, shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP. If the audit shows that franchise fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the total cost of the audit, such cost not to exceed five thousand dollars (\$5,000.00) for each year of the audit period. The City's right to audit and Grantee's obligation to retain records related to a franchise fee audit shall expire three (3) years after each franchise fee payment has been made to the City. Grantee's franchise fee payments made until March 31, 2002, referenced in Section 5-1-60 above are specifically excluded from this provision. (Ord. 2001-04 §3.6)

**Sec. 5-1-85. Late payments.**

In the event any payment due quarterly or monthly is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date the payment was originally due until the date the City receives the payment. (Ord. 2001-04 §3.7)

**Sec. 5-1-90. Underpayments.**

If a net franchise fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the City. Grantee's franchise fee payments made until March 31, 2002, referenced in Section 5-1-60 above are specifically excluded from this provision. (Ord. 2001-04 §3.8)

**Sec. 5-1-95. Alternative compensation.**

In the event the obligation of Grantee to compensate the City through franchise fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's rights-of-way for Grantee's use of the City's rights-of-way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's gross revenues (subject to the other provisions contained in this Franchise). (Ord. 2001-04 §3.9)

**Sec. 5-1-100. Maximum legal compensation.**

The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible franchise fee of five percent (5%) of gross revenues. In the event that at any time during the duration of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of gross revenues, then this Franchise may be amended unilaterally by the City to provide that such excess amount shall be added to the franchise fee payments to be paid by Grantee to

the City hereunder, provided that Grantee has received at least ninety (90) days' prior written notice from the City of such amendment. (Ord. 2001-04 §3.10)

**Sec. 5-1-105. Additional commitments not franchise fee payments.**

No term or condition in this Franchise, including the funding required by Division 3 of this Article, shall in any way modify or affect Grantee's obligation to pay franchise fees. Although the total sum of franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's gross revenues in any twelve-month period, Grantee agrees that the additional commitments herein are not franchise fees as defined under any federal law, nor are they to be offset or credited against any franchise fee payments due to the City, nor do they represent an increase in franchise fees to be passed through to subscribers pursuant to any federal law. (Ord. 2001-04 §3.11)

**Sec. 5-1-110. Tax liability.**

The franchise fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States, including, without limitation, sales, use and other taxes, business franchise fees or other payments. Payment of the franchise fees under this Franchise shall not exempt Grantee from the payment of any other franchise fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other franchise fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a cable operator, or against subscribers, solely because of their status as such. (Ord. 2001-04 §3.12)

**Sec. 5-1-115. Financial records.**

Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of franchise fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records. (Ord. 2001-04 §3.13)

**Sec. 5-1-120. Payment on termination.**

If this Franchise terminates for any reason, Grantee shall file with the City, within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the gross revenues received by Grantee since the end of the previous fiscal year. (Ord. 2001-04 §3.14)

*Division 2*  
*Administration and Regulation*

**Sec. 5-1-150. Authority.**

(a) The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent in its sole discretion.

(b) Nothing in this Franchise shall limit or expand the City's right of eminent domain under state law. (Ord. 2001-04 §4.1)

**Sec. 5-1-155. Rates and charges.**

All of Grantee's rates and charges related to or regarding cable services shall be subject to regulation by the City to the full extent authorized by applicable federal, state and local laws. (Ord. 2001-04 §4.2)

**Sec. 5-1-160. Rate discrimination.**

All of Grantee's rates and charges shall be published (in the form of a publicly available rate card) and be nondiscriminatory as to all persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with identical rates and charges for all subscribers receiving identical cable services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, physical or mental disability or geographic location within the City. Grantee shall offer the same cable services to all residential subscribers at identical rates and to multiple dwelling unit subscribers as authorized by FCC rules. Grantee shall permit subscribers to make any lawful in-residence connections the subscriber chooses without additional charge or penalizing the subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

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

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

(3) The offering of rate discounts for cable service; or

(4) Grantee from establishing different and nondiscriminatory rates and charges and classes of service for commercial subscribers, as allowable by federal law and regulations. (Ord. 2001-04 §4.3)

**Sec. 5-1-165. Filing of rates and charges.**

(a) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for cable services provided under this Franchise. Nothing in this Subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(b) Upon request of the City, Grantee shall provide a complete schedule of current rates and charges for any and all leased access channels, or portions of such channels, provided by Grantee. The schedule shall include a description of the price, terms and conditions established by Grantee for leased access channels. (Ord. 2001-04 §4.4)

**Sec. 5-1-170. Cross-subsidization.**

Grantee shall comply with all applicable laws regarding rates for cable services and all applicable laws covering issues of cross-subsidization. (Ord. 2001-04 §4.5)

**Sec. 5-1-175. Reserved authority.**

The City reserves all regulatory authority arising from the Cable Act and any other relevant provisions of federal, state or local law. (Ord. 2001-04 §4.6)

**Sec. 5-1-180. Time limits strictly construed.**

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material breach of this Franchise and sufficient grounds for the City to invoke any relevant remedy. (Ord. 2001-04 §4.7)

**Sec. 5-1-185. Regulations promulgated by City Council.**

(a) In addition to the powers held by the City under the Colorado Constitution and the laws of the State, the City Council is hereby authorized to promulgate by ordinance, resolution or regulation, in the exercise of its lawful powers, such additional regulations as it shall find necessary to effectuate fully the construction and operation of a cable system pursuant to this Franchise; provided that such additional regulations shall be consistent with the terms and conditions of this Franchise and shall not expand the obligations of Grantee or limit Grantee's benefits, as provided in this Franchise.

(b) Grantee may propose additional regulations by application to the City Council, but the City Council shall not adopt any such proposal unless it expressly determines that such proposal is consistent with the terms and conditions of this Franchise. (Ord. 2001-04 §4.8; Ord. 2007-O-14 §1)

**Sec. 5-1-190. Franchise amendment procedure.**

Either party to this Franchise may at any time seek an amendment of this Franchise by notifying the other party in writing. Within thirty (30) days of receipt of notice, the City and Grantee shall meet to discuss the proposed amendment. If the parties reach a mutual agreement upon the suggested amendment, such amendment shall be submitted to the City Council for its approval. If so approved by the City Council, acting by ordinance, resolution or regulation, then such amendment shall be

deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment. (Ord. 2001-04 §4.9; Ord. 2007-O-14 §1)

**Sec. 5-1-195. Performance evaluations.**

(a) The City may hold performance evaluation sessions within thirty (30) days of the biennial anniversary dates of the effective date of this Franchise. All such evaluation sessions shall be conducted by the City.

(b) Special evaluation sessions may be held at any time by the City during the term of this Franchise.

(c) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in a newspaper of general circulation in the City. Grantee shall also include with or on the subscriber billing statements, for the billing period immediately preceding the commencement of the session, written notification of the date, time and place of the regular performance evaluation session, and any special evaluation session as required by the City, provided that Grantee receives appropriate advance notice.

(d) Topics which may be discussed at any evaluation session may include, but are not limited to, cable service rate structures; franchise fee payments; liquidated damages; free or discounted cable services; application of new technologies; cable system performance; cable services provided; programming offered; subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the City's or Grantee's rules; provided that nothing in this Subsection shall be construed as requiring the renegotiation of this Franchise.

(e) During evaluations under this Section, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require to perform the evaluation. (Ord. 2001-04 §4.10)

**Sec. 5-1-200. Late fees.**

(a) For purposes of this Section, any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a subscriber solely for late payment of a bill is a late fee.

(b) Nothing in this Section shall be deemed to create, limit or otherwise affect the ability of Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this Section, for Grantee's other services or activities it performs in compliance with applicable law, including FCC law, rule or regulation.

(c) Grantee's late fee and disconnection policies and practices shall be nondiscriminatory; and such policies and practices, and any fees imposed pursuant to this Section, shall apply equally in all parts of the City without regard to the neighborhood or income level of the subscriber. (Ord. 2001-04 §4.11)

**Sec. 5-1-205. Force majeure.**

(a) In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions which have a direct and substantial impact on Grantee's ability to provide cable services in the City and which was not caused and could not have been avoided by Grantee which used its best efforts in its operations to avoid such results.

(b) If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably required by the City to substantiate Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure. (Ord. 2001-04 §4.12)

**Sec. 5-1-210. Indemnification.**

(a) General indemnification. Grantee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses, arising from any casualty or accident to person or property, including, without limitation, copyright infringement, defamation and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise, by or for Grantee, its agents or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the City while conducting its defense of the City. Notwithstanding the foregoing, Grantee shall not indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City.

(b) Indemnification for relocation. Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against, or payable by, the City arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the rights-of-way in a timely manner in accordance with any relocation required by the City.

(c) Additional circumstances. Grantee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses in any way arising out of:

(1) The lawful actions of the City in granting this Franchise to the extent such actions are consistent with this Franchise and applicable law;

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, franchisees or franchisors of programs to be delivered by the cable system, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(d) Procedures and defense. If a claim or action arises, the City or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim and, in any event, Grantee may not agree to any settlement of claims affecting the City without the City's approval.

(e) Nonwaiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this Section.

(f) Expenses. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall pay all expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Grantee. The City's expenses shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his or her assistants or any employees of the City or its agents, but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided to the City by Grantee. (Ord. 2001-04 §5.1)

**Sec. 5-1-215. Insurance.**

(a) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial general liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate. Coverage shall include severability of interests. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial automobile liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the cable system in the City. The policy shall contain a severability of interests provision.

(b) Each policy shall provide that the insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the City, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the commercial general liability, for at least one (1) year after expiration of this Franchise. (Ord. 2001-04 §5.2)

**Sec. 5-1-220. Deductibles and certificate of insurance.**

Any deductible of the policies shall not in any way limit Grantee's liability to the City.

(1) Endorsements. All policies shall contain, or shall be endorsed so that:

a. The City, its officers, officials, boards, commissions, employees and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or applicable law, or in the construction, operation, repair or ownership of the cable system;

b. Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees and agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of Grantee's insurance and shall not contribute to it; and

c. Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(2) Acceptability of insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A VIII."

(3) Verification of coverage. Grantee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

(4) Self-insurance. In the alternative to providing a certificate of insurance to the City certifying insurance coverage as required above, Grantee may provide self-insurance in the same amount and level of protection for Grantee and the City, its officers, agents and employees as otherwise required under this Section. The adequacy of self-insurance shall be subject to the periodic review and approval of the City. (Ord. 2001-04 §5.3)

**Sec. 5-1-225. Letter of credit.**

(a) No later than May 31, 2001, Grantee shall establish and provide to the City a letter of credit from a financial institution satisfactory to the City in the amount of twenty thousand dollars (\$20,000.00).

(b) The letter of credit shall be maintained at twenty thousand dollars (\$20,000.00) throughout the term of this Franchise, provided that, once every five (5) years, the City shall have the right to increase this amount to reflect increases in the Denver Metropolitan Area Consumer Price Index during the prior three-year period.

(c) The letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the City sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee; and

(3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements.

(d) The City shall give Grantee written notice of any withdrawal under this Section upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(e) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

(f) If the City joins the GMTC and remains a GMTC member in good standing, Grantee shall establish and provide the City with the GMTC letter of credit in the amount of one hundred thousand dollars (\$100,000.00) held in the name of the members of the GMTC. Upon joining the GMTC, the City shall release Grantee's letter of credit for twenty thousand dollars (\$20,000.00) held in the name of the City. (Ord. 2001-04 §5.4)

**Sec. 5-1-230. Customer service standards.**

Grantee shall comply with Section 76.309 of the FCC's Rules and Regulations as such may be amended from time to time. If the City becomes a member of the GMTC in good standing, Grantee shall comply with the GMTC Customer Service Standards as such may be amended from time to time. Grantee reserves the right to challenge any customer service requirement which it believes is inconsistent with its contractual rights under this Franchise. (Ord. 2001-04 §6.1)

**Sec. 5-1-235. Subscriber privacy.**

Grantee shall fully comply with any provisions regarding the privacy rights of subscribers contained in federal, state or local law. (Ord. 2001-04 §6.2)

**Sec. 5-1-240. Subscriber contracts.**

Grantee shall not enter into a contract with any subscriber which is in any way inconsistent with the terms of this Franchise. Upon request, Grantee will provide to the City a sample of the subscriber contract or service agreement then in use. (Ord. 2001-04 §6.3)

**Sec. 5-1-245. Advance notice to City.**

Grantee shall use reasonable efforts to furnish information provided to subscribers or the media in the normal course of business to the City in advance. (Ord. 2001-04 §6.4)

**Sec. 5-1-250. Open records.**

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and affiliates which are reasonably related

to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the City access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, affiliate or a third party. The City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the City, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the City inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee. (Ord. 2001-04 §7.1)

**Sec. 5-1-255. Confidentiality.**

The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any person. (Ord. 2001-04 §7.2)

**Sec. 5-1-260. Records required.**

(a) Grantee shall at all times maintain and shall furnish to the City upon request:

(1) A complete set of maps showing the exact location of all cable system equipment and facilities in the right-of-way, but excluding detail on proprietary electronics contained therein and subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representatives or agents and made available to such during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or affiliates which relate to the operation of the cable system in the City;

(3) Current subscriber records and information;

(4) A log of cable services added or dropped, channel changes, number of subscribers added or terminated, all construction activity and total homes passed for the previous twelve (12) months; and

(5) A list of cable services, rates and channel line-ups.

(b) Subject to Section 5-1-255 above, all information furnished to the City is public information and shall be treated as such, except for information involving the privacy rights of individual subscribers. (Ord. 2001-04 §7.3)

**Sec. 5-1-265. Reporting requirements.**

(a) General reports. Grantee shall prepare and furnish to the City upon written request such reports with respect to its operations, affairs, transactions or property as is reasonably necessary or appropriate to the performance of the City's rights, functions or duties under this Franchise. Grantee shall not be required to create reports which are not generated in the normal course of business. The City shall consult with Grantee as to the form, detail and due dates of the reports requested.

(b) Federal and state reports. Upon written request, Grantee shall provide to the City a copy of any reports provided to the FCC or any other federal or state authority which directly concern Grantee's cable system in the franchise area. (Ord. 2001-04 §7.4)

**Sec. 5-1-270. False statements.**

Any false or misleading statement or representation in any report required by this Franchise (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to the City under this Franchise or otherwise. (Ord. 2001-04 §7.5)

*Division 3  
Cable Services*

**Sec. 5-1-300. Broad programming categories.**

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (1) Educational programming;
- (2) News, weather and information;
- (3) Sports;
- (4) General entertainment (including movies);
- (5) Children and family oriented;
- (6) Arts, culture and performing arts;

(7) Foreign language; and

(8) Science and documentary. (Ord. 2001-04 §8.1)

**Sec. 5-1-305. Deletion or reduction of broad programming categories.**

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

(b) In the event of a modification proceeding under federal law, the mix and quality of cable services provided by Grantee on the effective date of this Franchise shall be deemed the mix and quality of cable services required under this Franchise throughout its term. (Ord. 2001-04 §8.2)

**Sec. 5-1-310. Obscenity.**

Grantee shall not transmit, or permit to be transmitted over any channel subject to its editorial control, any programming which is obscene under, or violates any provision of, applicable law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers, employees or agents have permitted programming which is obscene under, or violative of, any provision of applicable law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity. (Ord. 2001-04 §8.3)

**Sec. 5-1-315. Parental control device.**

Upon request by any subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a subscriber to control access to both the audio and video portions of any or all channels. Grantee shall inform its subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with applicable law. (Ord. 2001-04 §8.4)

**Sec. 5-1-320. Continuity of service mandatory.**

(a) It shall be the right of all subscribers to continue to receive cable service from Grantee insofar as their financial and other obligations to Grantee are honored. Grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted cable service regardless of the circumstances. For the purposes of this Section, *uninterrupted* does not include short-term outages of the cable system for maintenance or testing.

(b) In the event of a change of grantee, or in the event a new cable operator acquires the cable system in accordance with this Franchise, Grantee shall cooperate with the City, new franchisee or cable operator in maintaining continuity of cable service to all subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the cable system, and shall be entitled to reasonable costs for its services when it no longer operates the cable system.

(c) In the event Grantee fails to operate the cable system for four (4) consecutive days without prior approval of the Manager or without just cause, the City may, at its option, operate the cable system itself or designate another cable operator until such time as Grantee restores service under conditions acceptable to the City or a permanent cable operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee's failure to perform. (Ord. 2001-04 §8.5)

**Sec. 5-1-325. Capital contribution.**

Grantee shall collect and provide to the City up to fifty cents (\$0.50) per month per residential subscriber for access programming capital support (the "capital contribution") after Grantee's billing conversion is complete. Grantee's billing conversion may not be complete until March 31, 2002. Grantee shall not be responsible for collecting or paying the capital contribution with respect to gratis accounts. The City shall give Grantee at least ninety (90) days' advance written notice of Grantee's obligation to begin payment of the capital contribution, including the monthly amount to be collected. Each payment shall be due and payable no later than thirty (30) days following the end of the quarter from when the capital contribution takes effect. The City shall have discretion to allocate the capital contribution in accordance with applicable law. The City may adjust the amount of the capital contribution on an annual basis (up to the maximum amount specified in this Section), provided that Grantee is given ninety (90) days' advance written notice. (Ord. 2001-04 §9.1)

**Sec. 5-1-330. Management and control of access channels.**

(a) The City shall have sole and exclusive responsibility for identifying the designated access providers and allocating the access resources under this Division. The City may authorize designated access providers to control and manage the use of any and all access facilities provided by Grantee under this Franchise, including, without limitation, the operation of future access channels. To the extent of such designation by the City, the designated access provider shall have sole and exclusive responsibility for operating and managing such access facilities. The City may formulate rules for the operation of the future access channels, consistent with this Franchise. Grantee shall cooperate with the City and designated access providers in the use of the cable system and access facilities for the provision of access. Nothing herein shall prohibit the City from authorizing itself to be a designated access provider. Nothing herein shall prohibit the City from assigning several designated access providers to share a single future access channel.

(b) All assigned access channels can be used to transmit signals in any format which is technically compatible with the cable system, including, by way of example and not limitation, video, audio only, secondary audio and/or text messages. Such uses must be in furtherance of access purposes. (Ord. 2001-04 §9.2)

**Sec. 5-1-335. Access channels.**

(a) The parties acknowledge that the franchise area as it exists today makes it technically and economically unfeasible to provide any access channels to the City. If, in the future it becomes technically and economically feasible to do so, Grantee shall, at its expense, provide three (3) downstream access channels, which shall be allocated as follows: one (1) K-12 educational access channel; one (1) higher educational access channel; and one (1) government access channel in accordance with the requirements set forth in this Section.

(b) If a designated access provider believes that access channel capacity is needed, the designated access provider may file a request with the Manager. In his or her deliberations, the Manager will consider supply and demand and, in particular, the ability and resources of the designated access provider to produce access programming, the interest of the community in the access programming as measured through a survey methodology that is mutually acceptable between the City and Grantee, consideration of the programming that would be displaced, how much programming is produced on the existing access channels in the Denver metro area, how much programming on the existing access channels is repeated, how much programming on the existing access channels is character-generated, whether it is feasible for the designated access providers to cluster access programming into blocks of time such that the channel space can be compatibly shared between multiple designated access providers, and if several designated access providers should combine their programming onto a single access channel.

(c) Should the Manager find that the evidence exists to support the activation of an access channel, then the Manager shall provide his or her decision in writing and Grantee shall provide the activated channel within ninety (90) days of receiving the request if technically and economically feasible. Grantee may appeal the decision of the Manager to the City Council.

(d) Until access channels are activated, any unassigned access channel may be used by Grantee for programming of its sale discretion.

(e) All assigned access channels can be used to transmit signals in any format which is technically compatible with the cable system, including, by way of example and not limitation, video, audio only, secondary audio and/or text messages. Such uses must be in furtherance of access purposes. (Ord. 2001-04 §9.3)

#### **Sec. 5-1-340. Changes in technology.**

In the event Grantee makes any change in the cable system and related equipment and facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment and full training of access personnel, to ensure that the capabilities of access services are not diminished or adversely affected by such change. For example, this provision shall apply if the cable system is converted from an analog to a digital format, such that the access channels must also be converted to digital in order to be received by subscribers. (Ord. 2001-04 §9.4)

#### **Sec. 5-1-345. Underutilized access channels.**

(a) Grantee and the City agree that it is their mutual goal to fully and efficiently use the channel capacity of the cable system, which may include allowing Grantee to use underutilized time on access channels. If Grantee believes that any access channel has underutilized time, Grantee may file a request with the Manager to use that time. In response to the request, the Manager will consider a combination of factors, including but not limited to the community's needs and interests, and the source, quantity, type and schedule of the programming carried on the access channel. The Manager will also consider, taking into account the mission of the access programming, whether it is feasible for the designated access providers to cluster access programming into blocks of time such that the channel space can be compatibly shared between the designated access provider and Grantee and/or if

several designated access providers can combine their programming onto a single access channel. The Manager shall render his or her decision regarding the matter within sixty (60) days of receiving the request. Should the Manager find that the access channel or portion of the access channel may be used by Grantee, then Grantee may begin using such time ninety (90) days after receipt of the decision. Grantee's request shall not be unreasonably denied. Any permission granted pursuant to this Section for use of an access channel or a portion thereof shall be considered temporary.

(b) At such time as a designated access provider believes that it has the resources and ability to utilize the access channel time currently used by Grantee pursuant to this Section, a designated access provider may request that the Manager return such channel or portion of the channel for access purposes. In response to the request, the Manager will consider a combination of factors, including but not limited to the community's needs and interests, and the source, quantity, type and schedule of the programming proposed to be carried on the access channel, as well as the applicant's ability and resources to acquire or produce the proposed access programming. The Manager will also consider, taking into account the mission of the access programming, whether it is feasible for the designated access providers to cluster access programming into blocks of time such that the channel space can be compatibly shared between the designated access provider and Grantee and/or if several designated access providers can combine their programming onto a single access channel. The Manager shall render his or her decision regarding the matter within sixty (60) days of receiving the request. Should the Manager find that the evidence exists to support the return of the access channel or portion of the access channel to the designated access provider, then Grantee shall surrender the requested time on the access channel within ninety (90) days of receiving the decision. The designated access provider's request shall not be unreasonably denied. (Ord. 2001-04 §9.5)

**Sec. 5-1-350. Additional access channels.**

(a) The maximum number of access channels that will be provided to the City is six (6) channels. If a designated access provider believes that additional access channel capacity is needed in addition to the three (3) future access channels discussed in Section 5-1-335 above, the designated access provider may file a request with the Manager. In his or her deliberations, the Manager will consider supply and demand and, in particular, the ability and resources of the designated access provider to produce additional access programming, the interest of the community in the additional access programming as measured through a survey methodology that is mutually acceptable between the City and Grantee, consideration of the programming that would be displaced, how much programming is produced on the existing access channels in the Denver metro area, how much programming on the existing access channels is repeated, how much programming on the existing access channels is character-generated, whether it is feasible for the designated access providers to cluster access programming into blocks of time such that the channel space can be compatibly shared between multiple designated access providers, and if several designated access providers should combine their programming onto a single access channel.

(b) Should the Manager find that the evidence exists to support the activation of an additional access channel, then the Manager shall provide his or her decision in writing and Grantee shall provide the activated channel within ninety (90) days of receiving the request. Grantee may appeal the decision of the Manager to the City Council. (Ord. 2001-04 §9.6)

**Sec. 5-1-355. Access channels on basic service.**

All access channels provided to subscribers under this Franchise shall be included by Grantee, without limitation, as a part of basic service. (Ord. 2001-04 §9.7)

**Sec. 5-1-360. Access channel assignments.**

Grantee will use reasonable efforts to minimize the movement of access channel assignments once assigned. Grantee shall also use reasonable efforts to institute common channel assignments among the GMTC members for compatible access programming' for example, assigning all educational access channels programmed by higher education organizations to the same channel number. (Ord. 2001-04 §9.8)

**Sec. 5-1-365. Relocation of access channels.**

Grantee will use reasonable efforts to minimize the movement of access channel assignments once assigned. Grantee shall provide the City with a minimum of ninety (90) days' notice, and use its best efforts to provide one hundred twenty (120) days' notice, prior to the time any access channel designation is changed, unless the change is required by federal law, in which case Grantee shall give the City the maximum notice possible. In addition, Grantee shall pay to the City an amount equal to the City's costs in remarketing the location of the access channels and managing the relocation administratively and technologically, up to a maximum of fifty cents (\$.50) per subscriber. Grantee shall only be allowed to recover such amounts paid to the City as "external costs" (as that term is used in 47 C.F.R. § 76.922) if the movement of channels is required by federal, state or local law. Grantee, at Grantee's expense, will place the City's notices of the channel change on or with its regular monthly billings, upon the City's request. Any new channel designations for the access channels provided pursuant to this Franchise shall be in full compliance with FCC signal quality and proof-of-performance standards. (Ord. 2001-04 §9.9)

**Sec. 5-1-370. Access interconnections.**

Grantee acknowledges that it is the City's goal to further the community's needs and interests by providing for the interconnection of active access channels between the City and surrounding communities. Therefore, when the downstream access channels are activated, Grantee shall participate in the access channel interconnection which is in place as of the effective date which facilitates the sharing of access programming between and among participating GMTC members. In addition, the City shall have the right to use any access channel for access programming provided to it through an interconnect. (Ord. 2001-04 §9.10; Ord. 2007-O-14 §1)

**Sec. 5-1-375. Technical quality.**

Grantee shall maintain all access channels at the same or better level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations for other channels and cable services. Grantee shall provide routine maintenance and shall repair and replace all transmission equipment as necessary to carry a quality signal from the access facilities provided under this Franchise to subscribers. (Ord. 2001-04 §9.11)

**Sec. 5-1-380. Institutional network.**

Grantee will work cooperatively with the City and the school districts that have facilities located in the City to create proposals as desired for network services that allow for private, noncommercial two-way communications between City buildings located in the franchise area and/or private, noncommercial two-way communications between school district buildings located within the license area. Nothing contained herein should be construed as a requirement for Grantee to provide these network services without fair reimbursement from the City and/or school district. Grantee shall also not be required to create proposals for or provide any network services that are not authorized by the granting of this Franchise. At the City's discretion, the capital contribution specified in Section 5-1-325 above may be used to offset the cost of network services provided to the City or the school district by Grantee. (Ord. 2001-04 §9.12)

*Division 4  
Rights-of-Way and Construction*

**Sec. 5-1-410. Right to construct.**

Subject to applicable laws, regulations, rules, resolutions and ordinances of the City and the provisions of this Franchise, Grantee may perform all construction in the rights-of-way for any facility needed for the maintenance, upgrade or extension of Grantee's cable system. (Ord. 2001-04 §10.1)

**Sec. 5-1-415. Right-of-way meetings.**

Grantee will regularly attend and participate in meetings of the City, of which Grantee is made aware, regarding right-of-way issues that may impact the cable system. (Ord. 2001-04 §10.2)

**Sec. 5-1-420. Joint trenching/boring meetings.**

Grantee will regularly attend and participate in planning meetings of the City, of which Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, franchisees, and permittees so as to reduce so far as possible the number of right-of-way cuts within the City. (Ord. 2001-04 §10.3)

**Sec. 5-1-425. General standard.**

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices. (Ord. 2001-04 §10.4)

**Sec. 5-1-430. Permits required for construction.**

Prior to doing any work in the right-of way or other public property, Grantee shall apply for, and obtain, appropriate permits from the City. As part of the permitting process, the City may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such rights-of-way, proper restoration of such rights-of-way and structures, the protection of the public and

the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the right-of-way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee. (Ord. 2001-04 §10.5)

**Sec. 5-1-435. Emergency permits.**

In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency. (Ord. 2001-04 §10.6)

**Sec. 5-1-440. Compliance with applicable codes.**

(a) City construction codes. Grantee shall comply with all applicable City construction codes, including, without limitation, the Building Code, Fire Code and Mechanical Code, as adopted by the City, together with the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, City Roadway Standards and zoning codes and regulations.

(b) Tower specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, state and local codes or regulations, including City zoning regulations.

(c) Safety codes. Grantee shall comply with all federal, state and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction, operation and repair of its cable system. By way of illustration and not limitation, Grantee shall comply with the Electrical Code as adopted by the City and Occupational Safety and Health Administration (OSHA) Standards. (Ord. 2001-04 §10.7; Ord. 2007-O-14 §1)

**Sec. 5-1-445. GIS mapping.**

Grantee shall comply with any generally applicable ordinances, resolutions and regulations of the City regarding geographic information mapping systems for users of the rights-of-way. (Ord. 2001-04 §10.8)

**Sec. 5-1-450. Minimal interference.**

Work in the right-of-way, on other public property, near public property or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's cable system shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes or any other property of the City or special districts in the City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the rights-of-way by or under the City's authority. Grantee's cable system shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with new improvements the City may deem proper to make or to

unnecessarily hinder or obstruct the free use of the rights-of-way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense. (Ord. 2001-04 §10.9)

**Sec. 5-1-455. Safety and prevention of injury.**

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the City's property or property belonging to any person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair and safe and presentable condition. All excavations made by Grantee in the rights-of-way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights. (Ord. 2001-04 §10.10)

**Sec. 5-1-460. Hazardous substances.**

(a) Grantee shall comply with any and all applicable laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's cable system in the rights-of-way.

(b) Upon reasonable notice to Grantee, the City may inspect Grantee's facilities in the rights-of-way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's cable system. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(c) Grantee agrees to indemnify the City against any claims, costs and expenses of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances caused by Grantee's cable system. (Ord. 2001-04 §10.11)

**Sec. 5-1-465. Locates.**

(a) Prior to performing any work in the right-of-way, Grantee shall give appropriate notices to the City and to the notification association established in Section 9-1.5-105, C.R.S.

(b) Within forty-eight (48) hours after any City bureau or franchisee or permittee notifies Grantee of a proposed right-of-way excavation, Grantee shall, at Grantee's expense:

(1) Mark on the surface all of its located underground facilities within the area of the proposed excavation;

(2) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or

(3) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation. (Ord. 2001-04 §10.12; Ord. 2007-O-14 §1)

**Sec. 5-1-470. Notice to private property owners.**

Grantee shall give advance notice to private property owners of work on or adjacent to private property in accordance with the customer service standards contained in Appendix 5-A to this Chapter. (Ord. 2001-04 §10.13; Ord. 2007-O-14 §1)

**Sec. 5-1-475. Underground construction and use of poles.**

(a) When required by general ordinances, resolutions, regulations or rules of the City or applicable state or federal law, Grantee's cable system shall be placed underground. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(b) Where electric, telephone and other above-ground utilities are installed underground at the time of cable system construction, or when all such wiring is subsequently placed underground, all cable system lines shall also be placed underground with other wireline service at no expense to the City or subscribers unless funding is generally available for such relocation to all users of the rights-of-way. Related cable system equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(c) Grantee shall utilize existing poles and conduit wherever possible.

(d) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the rights-of-way for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's cable system. All poles of Grantee shall be located as designated by the proper City authorities.

(e) This Franchise does not grant, give or convey to Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other person. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon request by the City.

(f) Grantee and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit for fiber optic cable in trenches or bores opened by Grantee. Grantee agrees to cooperate with the City in any construction by Grantee that involves trenching or boring, provided that the City has first notified Grantee in some manner that it is interested in sharing the trenches or bores in the area where Grantee's construction is occurring. Grantee shall allow the City to lay its cable, conduit and fiber optic cable in Grantee's trenches and bores, provided that the City shares in the cost of the trenching and boring on the same terms and conditions as Grantee at that time shares the total cost of trenches and bores. The City shall be responsible for maintaining its respective cable, conduit and fiber optic cable buried in Grantee's trenches and bores under this Section. (Ord. 2001-04 §10.14)

**Sec. 5-1-480. Undergrounding of multiple dwelling unit drops.**

In cases of single-site multiple dwelling units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and multiple dwelling unit where determined to be technologically feasible in agreement with the owners and/or owners' association of the multiple dwelling units. (Ord. 2001-04 §10.15)

**Sec. 5-1-485. Burial standards.**

(a) Depths. Unless otherwise required by the City's ordinances, regulations or resolutions, Grantee shall comply with the following burial depth standards. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities in the same portion of the right-of-way:

- (1) Underground cable drops from the curb shall be buried at a minimum depth of twelve (12) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.
- (2) Feeder lines shall be buried at a minimum depth of eighteen (18) inches.
- (3) Trunk lines shall be buried at a minimum depth of thirty-six (36) inches.
- (4) Fiber optic cable shall be buried at a minimum depth of thirty-six (36) inches.

(b) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one (1) calendar week of initial installation, or at a time mutually agreed upon between Grantee and the subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the subscriber of the circumstances and the revised schedule for burial, and shall provide the subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met. (Ord. 2001-04 §10.16)

**Sec. 5-1-490. Electrical bonding.**

Grantee shall ensure that all cable drops are properly bonded to the electrical power ground at the home, consistent with applicable code requirements. All nonconforming or nonperforming cable drops shall be replaced by Grantee as necessary. (Ord. 2001-04 §10.17)

**Sec. 5-1-495. Prewiring.**

Any ordinance, regulation or resolution of the City which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for cable systems. (Ord. 2001-04 §10.18)

**Sec. 5-1-500. Repair and restoration of property.**

(a) Grantee shall protect public and private property from damage. If damage occurs, Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(b) Whenever Grantee disturbs or damages any right-of-way, other public property or any private property, Grantee shall promptly restore the right-of-way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(c) Rights-of-way and other public property. Grantee shall warrant any restoration work performed by or for Grantee in the right-of-way or on other public property for one (1) year. If restoration is not satisfactorily performed by Grantee within a reasonable time, the City may, after prior notice to Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, Grantee shall pay the City.

(d) Private property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use its best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. (Ord. 2001-04 §10.19)

#### **Sec. 5-1-505. Use of conduits by City.**

The City may install or affix and maintain wires and equipment owned by the City for City purposes in or upon any and all of Grantee's ducts, conduits or equipment in the rights-of-way and other public places, without charge to the City, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances, resolutions, regulations and codes. For the purposes of this Section, *City purposes* includes, but is not limited to, the use of the structures and installations for City law enforcement, public safety, traffic, water, telephone and/or signal systems, but not for cable service in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its franchise fee payments or from other fees payable to the City. (Ord. 2001-04 §10.20)

#### **Sec. 5-1-510. Common users.**

(a) For the purposes of this Section:

*Attachment* means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment for the purpose of voice, video or data transmission.

*Conduit* or *conduit facility* means any structure, or section thereof, containing one (1) or more ducts, conduits, manholes, handhole or other such facilities in Grantee's cable system.

*Duct* means a single enclosed raceway for cables, fiber optics or other wires.

*Franchisee* means any person licensed or otherwise permitted by the City to use the rights-of-way.

*Surplus ducts or conduits* are conduit facilities other than those occupied by Grantee or any prior franchisee, unoccupied ducts held by Grantee as emergency use spares, or other unoccupied ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.

(b) Grantee acknowledges that the rights-of-way have a finite capacity for containing conduits. Therefore, Grantee agrees that, whenever the City determines that it is impracticable to permit construction of an underground conduit system by any other person which may at the time have authority to construct or maintain conduits or ducts in the rights-of-way, but excluding persons providing cable services in competition with Grantee, the City may require Grantee to afford to such person the right to use Grantee's surplus ducts or conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of surplus ducts or conduits entered into by Grantee and the franchisee. Nothing herein shall require Grantee to enter into an agreement with such person if, in Grantee's reasonable determination, such an agreement could compromise the integrity of the cable system.

(c) A franchisee occupying part of a duct shall be deemed to occupy the entire duct.

(d) Grantee shall give a franchisee a minimum of one hundred twenty (120) days' notice of its need to occupy a licensed conduit and shall propose that the franchisee take the first feasible action as follows:

(1) Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, fiber optics or other space-saving technology sufficient to meet Grantee's space needs;

(2) Pay revised conduit rent based on the cost of new conduit constructed to meet Grantee's space needs;

(3) Vacate the needed ducts or conduit; or

(4) Construct and maintain sufficient new conduit to meet Grantee's space needs.

(e) When two (2) or more franchisees occupy a section of a conduit facility, the last franchisee to occupy the conduit facility shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting, space-saving technology or construction of new conduit, all franchisees shall bear the increased cost.

(f) All attachments shall meet local, state, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Grantee and the franchisee. Grantee may, at its option, correct any attachment deficiencies and charge the franchisee for its costs. Each franchisee shall pay Grantee for any fines, fees, damages or other costs the franchisee's attachments cause Grantee to incur.

(g) In order to enforce the provisions of this Subsection with respect to Grantee, the City must demonstrate that it has required that all similarly situated users of the rights-of-way to comply with the provisions of this Section. (Ord. 2001-04 §10.21)

#### **Sec. 5-1-515. Acquisition of facilities.**

Upon Grantee's acquisition of facilities in any City right-of-way, or upon the addition to the City of any area in which Grantee owns or operates any facility, Grantee shall, at the City's request, submit to the City a statement describing all facilities involved, whether authorized by permit, franchise or

other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such facilities shall immediately be subject to the terms of this Franchise. (Ord. 2001-04 §10.22)

**Sec. 5-1-520. Discontinuing use or abandonment of cable system facilities.**

Whenever Grantee intends to discontinue using any facility within the rights-of-way, Grantee shall submit for the City's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the City may require Grantee to remove the facility from the right-of-way or modify the facility to protect the public health, welfare, safety and convenience, or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the right-of-way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the City may choose to use such facilities for any purpose whatsoever, including but not limited to access programming purposes. (Ord. 2001-04 §10.23)

**Sec. 5-1-525. Movement of cable system facilities for City purposes.**

(a) The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the rights-of-way or on any other property of the City in the event of an emergency or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, right-of-way vacation, right-of-way construction, change or establishment of right-of-way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at Grantee's expense. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee the opportunity to perform such action. In the event of any capital improvement project exceeding five hundred thousand dollars (\$500,000.00) in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days' written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any right-of-way, or on any other property of the City. If the City requires Grantee to relocate its facilities located within the rights-of-way, the City shall make a reasonable effort to provide Grantee with an alternate location within the rights-of-way. If funds are generally made available to users of the rights-of-way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

(b) If Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to Grantee, including all costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for any damage to any portion of Grantee's cable system. Within thirty (30) days of receipt of an itemized list of those costs, Grantee shall pay the City all such costs and expenses. (Ord. 2001-04 §10.24)

**Sec. 5-1-530. Movement of cable system facilities for other Franchise holders.**

If any removal, replacement, modification or disconnection of the cable system is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited party. (Ord. 2001-04 §10.25)

**Sec. 5-1-535. Temporary changes for other permittees.**

At the request of any person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance. (Ord. 2001-04 §10.26)

**Sec. 5-1-540. Reservation of City use of right-of-way.**

Nothing in this Franchise shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers; grading, paving, repairing or altering any right-of-way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's cable system. (Ord. 2001-04 §10.27)

**Sec. 5-1-545. Tree trimming.**

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the City's rights-of-way which interferes with Grantee's cable system. Grantee shall comply with any general ordinance, resolution or regulation of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week's written notice has been given to the owner or occupant of the premises abutting the right-of-way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one-week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this Section, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only. (Ord. 2001-04 §10.28)

**Sec. 5-1-550. Inspection of construction and facilities.**

The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours' notice or, in case of emergency, upon demand without prior notice. The City shall have the right to charge generally applicable inspection fees therefor. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefor. (Ord. 2001-04 §10.29)

**Sec. 5-1-555. Stop work.**

(a) On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, resolutions or standards, the work may immediately be stopped by the City.

(b) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the person doing the work or posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed. (Ord. 2001-04 §10.30)

**Sec. 5-1-560. Work of contractors and subcontractors.**

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations, resolutions and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them. (Ord. 2001-04 §10.31)

*Division 5  
Technical Standards*

**Sec. 5-1-610. Upgrade.**

(a) Subject to Subsection 5-1-650(b) of this Article, Grantee shall activate the cable system bandwidth to at least 550 MHz and provide activated two-way capability in the franchise area within five (5) years from the effective date of this Franchise. Grantee intends to deploy fiber optics to nodes which serve no more than one thousand five hundred (1,500) subscribers per node, with amplifier cascades no longer than eight (8) amplifiers, as part of the upgrade. Grantee may substitute another transmission material and/or modify its upgrade design, provided that the same technical benefits in reliability and picture quality are attained. The cable system shall be capable of supporting video, audio, data transmission and cable internet service. Upon completion of the upgrade, the cable system shall deliver no less than one hundred ten (110) channels of analog and/or digital video programming to subscribers, provided that Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(b) Equipment must be installed so that all closed captioning programming received by the cable system shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and access programming) are retransmitted in those same formats. In the case of AM/FM radio transmission, the above specifications, where applicable, shall apply.

(c) All upgrade construction shall be subject to the City's permitting process.

(d) Grantee and City shall meet, at the City's request, to discuss the progress of the upgrade design plan and construction.

(e) Grantee will take prompt corrective action if it finds that any facilities or equipment on the cable system are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or applicable law.

(f) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the franchise area. (Ord. 2001-04 §11.1)

**Sec. 5-1-615. Standby power.**

Grantee shall provide standby power generating capacity at the cable system headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, rated for at least two (2) hours' duration, throughout the trunk and distribution networks, and rated for at least four (4) hours duration at all nodes and at all hubs. (Ord. 2001-04 §11.2)

**Sec. 5-1-620. Emergency alert capability.**

(a) Grantee shall comply with the rules and procedures of the FCC with respect to providing an Emergency Alert System ("EAS") so that the City may use the cable system to transmit an emergency alert signal to subscribers in the City.

(b) The City shall permit only appropriately trained and authorized persons to operate the EAS equipment provided pursuant to this Section.

(c) Grantee shall ensure that the EAS is functioning properly at all times. It will test the EAS periodically, in a manner consistent with sound operational practices for emergency systems. Grantee will advise the City of the testing schedule and the City may be present for the tests. (Ord. 2001-04 §11.3)

**Sec. 5-1-625. Technical performance.**

The technical performance of the cable system shall meet or exceed all applicable federal (including but not limited to the FCC), state and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full

authority permitted by applicable law to enforce compliance with these technical standards. (Ord. 2001-04 §11.4)

**Sec. 5-1-630. Cable system performance testing.**

(a) Grantee shall, at Grantee's expense, perform the following tests on its cable system:

(1) All tests required by the FCC;

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

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

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

(1) Cumulative leakage index testing of any new construction;

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

(3) Tests in response to subscriber complaints;

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

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

(c) Grantee shall maintain written records of all results of its cable system tests, performed by or for Grantee. Copies of such test results will be provided to the City upon request.

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

(e) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the City contacts Grantee prior to the next test period (i.e., before December 15 and June 15 respectively of each year), Grantee shall provide the City with no less than seven (7) days' prior written notice of the actual date for FCC compliance testing. If the City notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present during the next test, Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the City.

(f) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be re-tested following correction. (Ord. 2001-04 §11.5)

**Sec. 5-1-635. Additional tests.**

Where there exists other evidence which in the judgment of the City casts doubt upon the reliability or technical quality of cable service, the City shall have the right and authority to require Grantee to test, analyze and report on the performance of the cable system. Grantee shall fully cooperate with the City in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (1) The nature of the complaint or problem which precipitated the special tests;
- (2) The cable system component tested;
- (3) The equipment used and procedures employed in testing;
- (4) The method, if any, in which such complaint or problem was resolved; and
- (5) Any other information pertinent to said tests and analysis which may be required. (Ord. 2001-04 §11.6)

*Division 6*  
*Service Availability*

**Sec. 5-1-650. Universal service.**

(a) Grantee shall not arbitrarily refuse to provide cable services to any person within its franchise area. Subject to Subsection (b) below, all dwelling units, multiple dwelling units and commercial establishments in the franchise area shall have the same availability of cable services from Grantee's cable system under nondiscriminatory rates and reasonable terms and conditions. The City acknowledges that Grantee cannot control the dissemination of particular cable services beyond the point of demarcation at a multiple dwelling unit. Notwithstanding the foregoing, Grantee may introduce new or expanded cable services on a geographically phased basis, where such services require an upgrade of the cable system. Grantee may also charge for line extensions and nonstandard installations pursuant to Section 5-1-655 below.

(b) The parties recognize that it is not economically feasible to provide upgraded cable services to certain outlying communities of the franchise area as of the effective date of this Franchise. Grantee shall use reasonable efforts to make upgraded cable services available to these areas when and if such construction is economically feasible. (Ord. 2001-04 §12.1)

**Sec. 5-1-655. Service availability.**

(a) In general. Except as otherwise provided herein, Grantee shall provide cable service within seven (7) days of a request by any person within the City. For purposes of this Subsection, a request

shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise.

(2) At a nondiscriminatory installation charge for a standard installation, consisting of a one-hundred-twenty-five-foot drop connecting to an inside wall for residential subscribers, with additional charges for nonstandard installations computed according to a nondiscriminatory methodology for such installations, adopted by Grantee and provided in writing to the City.

(3) At nondiscriminatory monthly rates for residential subscribers.

(b) Service to multiple dwelling units. Grantee shall offer the individual units of a multiple-dwelling unit all cable services offered to other dwelling units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon Grantee having legal access to said unit. The City acknowledges that Grantee cannot control the dissemination of particular cable services beyond the point of demarcation at a multiple dwelling unit.

(c) Customer charges for extensions of service. No customer shall be refused service arbitrarily. However, for unusual circumstances, such as a customer's request to locate the cable drop underground, the existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to customers, or a density of less than forty (40) residences per five thousand two hundred eighty (5,280) cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and customers in the area in which service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per five thousand two hundred eighty (5,280) cable-bearing strand feet of its trunk or distribution cable and whose denominator equals forty (40). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance. (Ord. 2001-04 §12.2)

#### **Sec. 5-1-660. Interconnection with other cable systems.**

(a) The cable system shall be interconnected with other contiguous cable systems that are owned and operated by Grantee or an affiliate, provided that such systems are served by the same headend that serves the franchise area.

(b) Grantee shall explore with any public interconnection authority, regional interconnection authority or local, state or federal regulatory agency which may hereafter be established for the purpose of regulating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the City, the possibility of further interconnects. (Ord. 2001-04 §12.3; Ord. 2007-O-14 §1)

**Sec. 5-1-665. Connection of public facilities.**

Grantee shall, at no cost to the City, continue to provide one (1) outlet of basic service and expanded basic service to all City-owned and -occupied buildings, schools and public libraries where such service is provided as of the effective date of this Franchise. For purposes of this Section, *school* means all state-accredited K-12 public and private schools. In addition, Grantee shall provide, at no cost to the City or other entity, one (1) outlet of basic and expanded basic service to additional owned or leased and occupied City buildings, schools and libraries upon request if the drop line from the feeder cable to such building does not exceed one hundred fifty (150) feet or if the City or other entity agrees to pay the incremental cost of such drop line in excess of one hundred fifty (150) feet, including the cost of such excess labor and materials. Such obligation to provide free cable service shall not extend to areas of City buildings where Grantee would normally enter into a commercial contract to provide such cable service (e.g., golf courses, airport restaurants and concourses, and recreation center work-out facilities). Outlets of basic and expanded basic service provided in accordance with this Section may be used to distribute cable services throughout such buildings, provided that such distribution can be accomplished without causing cable system disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. (Ord. 2001-04 §12.4)

**Sec. 5-1-670. Cable internet service to schools and libraries.**

Grantee has established a voluntary initiative to provide cable internet service to all state-accredited K-12 public and private schools and public libraries which are passed by the upgraded cable system at no cost to the City or institutions. Grantee intends to provide each of these schools and libraries with one (1) outlet of unlimited internet access, including the necessary cable modem. The City encourages and supports Grantee's efforts in this area. (Ord. 2001-04 §12.5)

*Division 7  
Violations and Enforcement*

**Sec. 5-1-710. Procedure for remedying Franchise violations.**

(a) If the City believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) Respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with Subsection (b), below;

(2) Cure the default; or

(3) Notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with Subsection (b) below to determine whether additional

time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(b) If Grantee does not cure the alleged default within the cure period stated above or by the projected completion date under Paragraph (a)(3) above, or denies the default and requests a meeting in accordance with Paragraph (a)(1) above, or if the City orders a meeting in accordance with Paragraph (a)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(c) If, after the meeting, the City determines that a default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the City shall determine. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

(1) Assess liquidated damages as set forth in Section 5-1-745 below;

(2) Recommend the revocation of this Franchise pursuant to the procedures in Section 5-1-715 below; or

(3) Recommend any other legal or equitable remedy available under this Franchise or any applicable law.

(d) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under applicable law. (Ord. 2001-04 §13.1)

#### **Sec. 5-1-715. Revocation.**

(a) In addition to revocation in accordance with other provisions of this Franchise, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance, resolution or regulation or document regarding the City and Grantee;

(2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted cable service;

(3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or subscribers;

(4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors; or

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(b) Prior to forfeiture or termination of the Franchise, the City shall give written notice to Grantee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance. Grantee shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection and provide any explanation. In the event the City has not received a satisfactory response from Grantee, it may then seek a termination of the Franchise by the City Council in accordance with this Section.

(c) Any proceeding under the Subsection (b) above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days' prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence and to question witnesses. A recorded transcript shall be made of such proceeding. The City Council shall hear any persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked; or, if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time, in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the written decision to Grantee. Grantee shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within thirty (30) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The City Council may at its sole discretion take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise. (Ord. 2001-04 §13.2)

**Sec. 5-1-720. Procedures in event of termination or revocation.**

(a) If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

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

(2) Purchase Grantee's cable system in accordance with the procedures set forth in Section 5-1-725 below.

(b) In the event that a sale has not been completed in accordance with Paragraphs (a)(1) and/or (a)(2) above, the City may order the removal of the aboveground cable system facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as

determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all rights-of-way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefor.

(c) If Grantee fails to complete any removal required by Subsection (b) above to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs.

(d) The City may seek legal and equitable relief to enforce the provisions of this Franchise. (Ord. 2001-04 §13.3)

**Sec. 5-1-725. Purchase of cable system.**

(a) If at any time this Franchise is revoked, terminated or not renewed upon expiration in accordance with the provisions of federal law, the City shall have the option to purchase the cable system.

(b) The City may, at any time thereafter, offer in writing to purchase Grantee's cable system. Grantee shall have thirty (30) days from receipt of a written offer from the City within which to accept or reject the offer.

(c) In any case where the City elects to purchase the cable system, the purchase shall be closed within one hundred twenty (120) days of the date of the City's audit of a current profit and loss statement of Grantee. The City shall pay for the cable system in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(d) For the purposes of this Section, the price for the cable system shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's cable system valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance or other obligation of Grantee which the City would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's cable system. (Ord. 2001-04 §13.4)

**Sec. 5-1-730. Receivership and foreclosure.**

(a) At the option of the City, subject to applicable law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(b) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise. (Ord. 2001-04 §13.5)

**Sec. 5-1-735. No monetary recourse against City.**

Grantee shall not have any monetary recourse against the City or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the City under this Franchise are in addition to, and shall not be read to limit, any immunities the City may enjoy under federal, state or local law. (Ord. 2001-04 §13.6)

**Sec. 5-1-740. Alternative remedies.**

No provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity. (Ord. 2001-04 §13.7)

**Sec. 5-1-745. Assessment of monetary damages.**

(a) Upon completion of the procedures set forth in Section 5-1-710 above, and from the date of said completion, the City may assess against Grantee monetary damages up to five hundred dollars (\$500.00) per day for material cable system upgrade delays, and up to one hundred dollars (\$100.00) per day for any other material breaches of this Franchise.

(b) The assessment does not constitute a waiver by the City of any other right or remedy it may have under the Franchise or applicable law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by the City by reason of the breach of this Franchise. (Ord. 2001-04 §13.8)

**Sec. 5-1-750. Effect of abandonment.**

If Grantee abandons its cable system during the Franchise term, or fails to operate its cable system in accordance with its duty to provide continuous service, the City, at its option, may operate the cable system; designate another entity to operate the cable system temporarily until Grantee restores service under conditions acceptable to the City or until the Franchise is revoked and a new franchisee is selected by the City; or obtain an injunction requiring Grantee to continue operations. If the City is required to operate or designate another entity to operate the cable system, Grantee shall reimburse the City or its designee for an reasonable costs, expenses and damages incurred. (Ord. 2001-04 §13.9)

**Sec. 5-1-755. Abandonment.**

The City shall be entitled to exercise its options in Section 5-1-750 above if:

(1) Grantee fails to provide cable service in accordance with this Franchise over a substantial portion of the franchise area for four (4) consecutive days, unless the City authorizes a longer interruption of service; or

(2) Grantee, for any period, willfully and without cause, refuses to provide cable service in accordance with this Franchise. (Ord. 2001-04 §13.10)

*Division 8  
Franchise Renewal and Transfer*

**Sec. 5-1-810. Renewal.**

(a) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or successor law.

(b) In addition to the procedures set forth in said Section 626(a) or any successor law, the City agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then-current franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and the City agree that, at any time during the term of the then-current Franchise, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then-current Franchise, and the City may grant a renewal thereof. Grantee and the City consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Act as amended. (Ord. 2001-04 §14.1)

**Sec. 5-1-815. Transfer of ownership or control.**

(a) The cable system and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in, any person or entity without the prior written consent of the City, which consent shall be by the City Council, acting by ordinance, resolution or regulation.

(b) Grantee shall promptly notify the City of any actual or proposed change in, transfer of or acquisition by any other party of control of Grantee. The word *control*, as used herein, is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of Grantee shall make this Franchise subject to cancellation unless and until the City has consented in writing thereto.

(c) The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish an information required by law and the City.

(d) In seeking the City's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit, including any violation of federal, state or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit or administrative proceeding arising out of or involving a cable system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the City may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the cable system for the remaining term of the Franchise.

(e) The City shall act by ordinance, resolution or regulation on the request within one hundred twenty (120) days of the request, provided that it has received all requested information. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(f) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a change in control, in

which Grantee is not replaced by another entity, Grantee will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and will not be required to file an additional written acceptance.

(g) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, that any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee.

(h) Notwithstanding anything to the contrary in this Section, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or cable system to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with an of the provisions of the Franchise. Further, Grantee may pledge the assets of the cable system for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise. (Ord. 2001-04 §14.2)

*Division 9  
Miscellaneous Provisions*

**Sec. 5-1-850. Severability.**

If any section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise. (Ord. 2001-04 §15)

**Sec. 5-1-855. Preferential or discriminatory practices prohibited.**

In connection with the performance of work under this Franchise, Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against, any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local laws, and in particular, FCC rules and regulations relating thereto. (Ord. 2001-04 §16.1)

**Sec. 5-1-860. Notices.**

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent postage prepaid to such respective

address and such notices shall be effective upon the date of mailing. These addresses may be changed by the City or Grantee by written notice at any time. At the effective date of this Franchise:

Grantee's address shall be:

AT&T Broadband  
Attention: Director of Local Government Relations  
8000 East Iliff Avenue  
Denver, Colorado 80231

With a copy to:

AT&T Broadband  
Attention: Legal Department  
188 Inverness Dr. West, Suite 600  
Denver, Colorado 80112

The City's address shall be:

City of Centennial  
12503 E. Euclid Avenue  
Centennial, Colorado 80111

(Ord. 2001-04 §16.2)

**Sec. 5-1-865. Descriptive headings.**

The headings and titles of the sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein. (Ord. 2001-04 §16.3)

**Sec. 5-1-870. Publication costs to be borne by Grantee.**

Grantee shall reimburse the City for all costs incurred in publishing this Franchise, if such publication is required. (Ord. 2001-04 §16.4)

**Sec. 5-1-875. Binding effect.**

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns. (Ord. 2001-04 §16.5)

**Sec. 5-1-880. No joint venture.**

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other. (Ord. 2001-04 §16.6)

**Sec. 5-1-885. Waiver.**

The failure of the City at any time to require performance by Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City

of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision. (Ord. 2001-04 §16.7)

**Sec. 5-1-890. Reasonableness of consent or approval.**

Whenever under this Franchise *reasonableness* is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy and moral and ethical standards, as well as business and economic considerations. (Ord. 2001-04 §16.8)

**Sec. 5-1-895. Entire agreement.**

This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior oral negotiations between the parties. (Ord. 2001-04 §16.9)

**ARTICLE 2**

**Electric Franchise**

**Sec. 5-2-10. Definitions.**

As used in this Article, the following definitions shall apply:

*City* means the City of Centennial, Arapahoe County, Colorado.

*Company* means the Intermountain Rural Electric Association, a Colorado corporation, and its successors and assigns, if any, approved by the City pursuant to Section 5-2-270 of this Article.

*Facilities* means lines, poles, conduits, cables, switches, transformers, voltage regulators and related equipment used in connection with the transmission and distribution of electricity.

*Gross revenue* means any revenue derived by the Company under authorized rates, temporary or permanent, within the service territory from the sale of electrical energy to customers other than the City or any federal, state or local governmental entities, after the net write-off of uncollectible accounts or corrections of bills theretofore rendered.

*Service territory* means that part of the City, including territory hereafter annexed to the City, for which the Company has been granted a certificate of public convenience and necessity by the Colorado Public Utilities Commission. (Ord. 2002-23 §1)

**Sec. 5-2-20. Grant of authority.**

There is hereby granted by the City to the Company the franchise right, privilege and authority to construct, purchase, acquire, locate, maintain, operate and extend facilities into, within and through the City and to sell, furnish and distribute electrical energy within the service territory. The Company is hereby authorized to provide such service on, over, under, along and across all public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways and other public places in the City, and on,

over, under, along and across any extension, connection with or continuation of the same, and on, over, under, along and across all new public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways and other public places as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of the City, in accordance with the terms set forth herein. (Ord. 2002-23 §1)

**Sec. 5-2-30. Manner of use, repair.**

The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways and other public places under the supervision of properly constituted City authority for the purpose of bringing electrical energy into, within and through the City and supplying electrical energy to and within the service territory; provided, however, that the Company shall so locate its facilities within the City as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of said public and dedicated streets, alleys or other public ways and places. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved streets, public place or any other public improvement, the Company shall repair the same in a workmanlike manner, in accordance with and subject to the then-applicable agreements of the City. The Company shall use due care not to interfere with or damage any water mains, sewers or other structures in said public and dedicated streets, alleys or other public places. (Ord. 2002-23 §1)

**Sec. 5-2-40. Indemnification.**

(a) In the construction, installation, repair, operation and maintenance of its facilities, the Company shall use reasonable precautions to avoid damage or injury to persons or property. The Company shall indemnify the City from all such damage, injury or expense caused by any act or failure to act by the Company, its officers, agents and employees in connecting, installing, repairing and maintaining any of its facilities or in excavating the public streets and highways or public grounds of the City, including the paving, repaving or repairing of any of the public streets, highways or public property of the City. If the City is notified of any claim asserted by any person, entity or corporation for damages or injuries to person or property on account of the installation, operation, maintenance or repairs of the Company's facilities in the City, the City shall promptly notify the Company of such claim and the Company, its successors and assigns shall defend such claim and pay all final judgments entered on any such claim. The Company shall have the right to retain counsel of its choice to defend any such claim and may settle or compromise any such claim, in its discretion.

(b) The Company shall indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City and arising out of or resulting from, directly or indirectly, the Company's failure to remove, adjust or relocate any of its facilities as required by this Franchise, provided that the Company shall not be liable for the consequences of any delay resulting from untimely notice to it by the City or the unavailability of adequate rights-of-way for relocation.

(c) The fact that the Company carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or a defense to the Company's duty of defense and indemnification under this Section.

(d) The Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any intentional or negligent act or failure to act of the City or any of its officers or employees. (Ord. 2002-23 §1)

**Sec. 5-2-50. New construction.**

All new construction shall comply with all applicable laws, including the City's building and land use codes. All applicable permits, including excavation and street cut permits, shall be obtained and paid for in compliance with City agreements and codes. For purposes of emergency response planning, prior to constructing any new substation facilities, the Company shall provide to the City the plans and a description of the proposed location of the substation facilities. Such plans shall include a general map of the proposed location of any substation facilities, but need not be global positioning maps or maps of such character. (Ord. 2002-23 §1)

**Sec. 5-2-60. Right to inspect.**

The City shall have the right to inspect any and all facilities owned and operated by the Company located within the boundaries of the City, for any proper purpose under this Franchise. Any inspection shall be conducted during normal business hours upon reasonable written notice specifying the purpose of the inspection. (Ord. 2002-23 §1)

**Sec. 5-2-70. Relocation of Company facilities.**

The cost of relocation of Company facilities located within the City shall be borne as follows:

(1) Company facilities located within the public right-of-way will be relocated by the Company at its own cost and expense when such relocation is necessary to permit the City to change street grades or to permit construction, expansion or repair of City-owned public improvements.

(2) The Company shall have no obligation to relocate at its expense any of its facilities located on private property, private easements or private rights-of-way, however acquired.

(3) In the event the City abandons or vacates any public right-of-way in which the Company has located facilities, the City agrees to exercise its authority to reserve the rights granted to the Company by this Franchise; provided that the Company shall remove and, if necessary, relocate such facilities to the nearest or most practicable public right-of-way at the request of a property owner burdened by such reservation if the property owner pays the actual cost of said removal and relocation. (Ord. 2002-23 §1)

**Sec. 5-2-80. Use of facilities by City.**

The City shall have the right to petition the Company to use all poles and appropriate overhead structures within the City limits for any reasonable City purpose; provided, however, that in the event the Company grants permission for the City to use any of its structures within the City limits, the Company will assume no liability of any nature therefor, directly or indirectly, or incur any expense by virtue of the use by the City of said poles and structures. Further, the use by the City shall in no way interfere with the Company's use of said poles and structures in providing electric service within

the City. The City's use of any pole or structure as of the date of this Franchise shall be deemed approved by the Company. (Ord. 2002-23 §1)

**Sec. 5-2-90. Service interruptions.**

The Company will identify a contact person and provide telephone numbers sufficient to enable the City to obtain current information at any time regarding interruptions of service within the service territory. The Company shall make available to the City on request its records showing the date, time, duration, cause, extent and remedial action as to interruptions within the service territory. In addition, the Company will provide available data regarding average frequency and duration of interruptions system-wide and as to those substation service areas covering the service territory. (Ord. 2002-23 §1)

**Sec. 5-2-100. Streetlights.**

The Company shall continue to own and maintain streetlights located in public rights-of-way and public places controlled by the City and shall install such additional lights as the City may require from time to time, in accordance with the Company's rates, rules and regulations. The Company shall maintain and provide to the City upon request an inventory showing the number and location of all such lights. The City shall pay for electricity used by such lights, which usage shall not be subject to the franchise fee specified herein. The Company shall not be required to assume ownership of, nor shall the City be required to purchase electricity for, any light owned by any homeowners' association or other party, whether private or governmental, regardless of whether such association or party has lights in public rights-of-way or public places. (Ord. 2002-23 §1)

**Sec. 5-2-110. Exchange of information.**

The Company shall provide to the City at least annually a list of customers within the City, in digital format. The City shall promptly notify the Company of all changes to its boundaries and shall provide the Company with maps accurately showing such changes. The Company shall at all times maintain and shall provide to the City on request a map or set of maps showing the location of Company substations within the City. As-built maps shall be available at the Company's offices for inspection by the City's authorized representatives or agents and made available during the course of technical inspections as reasonably conducted by the City. Such map shall be a general positioning map for purposes of emergency response planning, and need not be a global positioning map or map of like exact character. (Ord. 2002-23 §1)

**Sec. 5-2-120. Rates regulation.**

The Company shall furnish electric energy within the service territory and any addition thereto at the rates and under the terms and conditions set forth in the rates, rules and regulations promulgated by the Company, as amended from time to time. (Ord. 2002-23 §1)

**Sec. 5-2-130. No discrimination.**

The Company shall not, as to rates, charges, services, 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 Section shall be

taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled. (Ord. 2002-23 §1)

**Sec. 5-2-140. Extensions.**

The Company will from time to time during the term of this Franchise make such enlargements and extensions of its distribution systems as reasonably necessary to serve the service territory consistent with the Company's rates, rules and regulations. The City will not hinder or impede the Company's efforts to fulfill this obligation. (Ord. 2002-23 §1)

**Sec. 5-2-150. Rules and regulations.**

The Company 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 Company's property upon the premises of its customers, as shall be necessary to ensure continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefor, provided that the Company shall keep on file, make available to the public and provide to the City copies of its rates, rules and regulations, including such revisions thereto as are adopted by the Company from time to time. (Ord. 2002-23 §1)

**Sec. 5-2-160. Franchise payment.**

As a further consideration for this Franchise, and in lieu of all occupancy, occupation and license taxes or other taxes on the rights to do business, or other special taxes, assessments or excises upon the property of the Company (except uniform taxes or assessments applicable to all taxpayers or businesses, including excavation and road cut fees), the Company shall pay to the City, for the period beginning on the effective date of this Franchise to the termination of this Franchise, a franchise fee equal to three percent (3%) of annual gross revenue derived from the sale of electric energy to each customer at any location within the service territory. (Ord. 2002-23 §1)

**Sec. 5-2-170. Franchise fee for 2002.**

For calendar year 2002 only, such fee percentage shall be adjusted by the Company to furnish to the City a total franchise fee equaling up to three percent (3%) of gross revenues for the calendar year; i.e., the fee shall be increased for the months remaining in 2002 to recover up to an amount equal to three percent (3%) of gross revenues for the entire year. (Ord. 2002-23 §1)

**Sec. 5-2-180. Annual fee adjustments.**

Not more often than once in any twelve-month period, the City may change the franchise fee, upon adoption of an ordinance to that effect and written notification to the Company. No such change shall increase the percentage above that percentage set forth in Section 5-2-160 above or allowed by Section 5-2-220 of this Article, whichever is greater. (Ord. 2002-23 §1)

**Sec. 5-2-190. Payment schedule.**

Unless otherwise specifically provided herein, payment of the franchise fee accruing after the effective date of this Franchise shall be made in monthly installments not more than thirty (30) days following the close of the month. Initial and final payments shall be prorated for the portions of the months, if any, at the beginning and end of the term of this Franchise. (Ord. 2002-23 §1)

**Sec. 5-2-200. Adjustments, credits.**

In the event that the gross revenue of the Company for any period of time during the term of this Franchise is reduced as a result of a customer refund or write-off of uncollectible accounts after payment of the franchise fee for that period, the Company shall be entitled to a credit toward further payments for all franchise payments paid in excess of the franchise fee based on the Company's gross revenue as so reduced. (Ord. 2002-23 §1)

**Sec. 5-2-210. Audit.**

For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this Article, the City Manager, City Treasurer, City Clerk and/or any committee or auditor appointed by the City Council shall have access to the books of the Company for the purpose of checking the gross revenue received for operations within the City. (Ord. 2002-23 §1)

**Sec. 5-2-220. Most favored status.**

In the event that the Company should, during the term of this franchise, increase its franchise payments to any city or town in the Counties of Adams, Arapahoe and Jefferson in which it supplies electric service under a franchise, by reason of an increase in the percentage payments on revenue or a different basis of determining revenue excluded from the percentage payment, the Company shall notify the City of such increase, and the same changes to provide increased franchise payments shall be placed in effect in the City, upon the City's written request. (Ord. 2002-23 §1)

**Sec. 5-2-230. Proration.**

Payments for the portions of the initial and terminal years of this Franchise shall be made on the basis of revenue as above provided for the months and portions of months in which this Franchise is in effect. (Ord. 2002-23 §1)

**Sec. 5-2-240. Term; effective date.**

This Franchise shall become effective upon the last date of execution set forth below, and shall remain in full force and effect for a period of twenty (20) years from and after the effective date. (Ord. 2002-23 §1)

**Sec. 5-2-250. Removal of facilities.**

Upon the expiration of this Franchise, if the Company has not acquired an extension or renewal thereof and accepted the same, it is hereby granted the right to enter upon the public and dedicated streets, alleys, bridges, viaducts, roads, lanes, public ways and other public places of the City for the purpose of removing therefrom any or all of its facilities at any time after the City has had ample time

and opportunity to purchase, condemn or replace them. In so removing said conduits, cables, poles, wires and equipment, the Company shall, at its own expense and in a workmanlike manner, refill, repair, resurface and return to its original state excavations that shall be made by it in the graveled or paved streets, alleys, bridges, viaducts, roads, lanes, public ways and other public or private places after the removal of conduits, poles or other structures. (Ord. 2002-23 §1)

**Sec. 5-2-260. Police power reserved.**

The right is hereby reserved to the City 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 power, 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 jurisdiction in the premises. (Ord. 2002-23 §1)

**Sec. 5-2-270. Assignment.**

Nothing in this Agreement shall be so construed as to prevent the Company from assigning all of its rights, title or interest, gained or authorized under or by virtue of the terms of this Franchise, subject to the City's approval, not to be unreasonably withheld. Approval shall not be required for an assignment for the purpose of increased capitalization or loan or bond guarantee. (Ord. 2002-23 §1)

**Sec. 5-2-280. Extension or renewal of agreement.**

In the event the parties mutually agree that this Franchise should be continued beyond the expiration date set forth in 5-2-240 above, and mutually agree to the terms of the extension or renewal, including any adjustment to the fee under Section 5-2-180 above, the parties shall amend this Franchise in writing to reflect the new terms, and the City shall adopt an ordinance to effect the extension or renewal of this Franchise and the inclusion of the new terms. In the event the parties mutually agree that this Franchise should be continued beyond the expiration date set forth in 5-2-240, but have not agreed to the terms of the extension or renewal or have not amended this Franchise in writing or passed an ordinance extending the terms of this Franchise on the expiration date of this Franchise, the parties may mutually agree to a month-to-month extension, at the same terms as this Franchise, until such amendment is adopted or ordinance is passed giving effect to the agreed-upon new terms. No mutual agreement under this Section shall be effective unless in writing and signed by authorized representatives or agents of the Company and the City. (Ord. 2002-23 §1)

**Sec. 5-2-290. Termination.**

This Franchise may be terminated by either party if any material provision or condition of this Franchise is finally adjudged invalid by any court of competent jurisdiction or if the other party fails to remedy or cure any breach or default of any material condition of this Franchise within one hundred twenty (120) days of written notice from the nondefaulting party to do so. (Ord. 2002-23 §1)

**Sec. 5-2-300. Effect of Agreement.**

This Agreement expresses the entire understanding of the parties regarding its subject matter. Except as is expressly set forth herein, this Agreement shall not be deemed to alter or modify either party's rights or obligations under applicable law. (Ord. 2002-23 §1)

## ARTICLE 3

### Gas Franchise

#### *Division 1 General Provisions*

#### **Sec. 5-3-10. Definitions.**

For the purpose of this Franchise, the following words and phrases shall have the meaning given in this Section. When not inconsistent with 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 Section shall be given their common and ordinary meaning.

*City* means the municipal corporation designated as the City of Centennial, Arapahoe County, Colorado.

*Company* means the Public Service Company of Colorado, its successors, assigns, affiliates and subsidiaries.

*Council* or *City Council* means the legislative body of the City.

*Facilities* means all apparatuses reasonably necessary to provide gas and electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wires, cables and poles.

*Party* or *parties* means the Company and the City, either singly or collectively as the context requires.

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

*Residents* means 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 City.

*Streets* means streets, alleys, viaducts, bridges, roads, lanes and other public rights-of-way in the City. *Streets* shall also include public easements and other public places within the City that are suitable locations for the placement of facilities. (Ord. 2002-24 Art. I)

#### **Sec. 5-3-20. Grant of Franchise.**

(a) The City hereby grants to the Company the right to use the streets within the City to furnish, sell, transport and distribute gas and electricity to the City and to Residents of the City. The City also hereby grants to the Company the right to acquire, construct, install, locate, maintain, operate and

extend into, within and through the City all facilities reasonably necessary to furnish, sell, transport and distribute gas and electricity within and through the City. The rights and obligations granted in this Franchise encompass the right and obligation to provide street lighting service to the City. These franchise rights shall extend to all areas of the City to which the Company is now or may in the future be certificated to serve by the PUC and to additional areas as the City may increase in size by annexation or otherwise and which the Company is or may in the future be certificated to serve by the PUC.

(b) If the boundaries of the City are expanded during the term of this Franchise into an area which is certificated to be served by the Company, 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 requirements of the PUC and the terms of this Franchise, including payment of franchise fees.

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

(d) Except as otherwise specifically provided herein, the City retains the right through the exercise of its police power to use, control and regulate the use of the streets, and the space above and beneath said streets. The City retains the right to impose such other regulations as may be determined by the City to be necessary in the reasonable exercise of its police power to protect the health, safety and welfare of the public. (Ord. 2002-24 §2.1)

**Sec. 5-3-30. Term of Franchise.**

This Franchise shall take effect upon its adoption and shall supersede any prior franchise granted to the Company by the City. The term of this Franchise shall be twenty (20) years. (Ord. 2002-24 §2.2)

**Sec. 5-3-40. Extension or renewal of Franchise.**

In the event the parties mutually agree that this Franchise should be continued beyond the expiration date set forth in Section 5-3-30 above, the parties shall amend this Franchise to reflect the agreed-upon new term, and the City shall adopt an ordinance to effectuate the extension or renewal of this Franchise. All other provisions herein shall remain in full force and effect unless otherwise amended in writing. A decision to renew or extend this Franchise shall be made by the parties no later than three hundred sixty-five (365) days before this Franchise is set to expire. (Ord. 2002-24 §2.3)

**Sec. 5-3-50. Franchise fee.**

As consideration for the franchise rights granted herein, and in recognition of the fact that the grant to the Company of the right to use City streets is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of all revenues received from the sale of electricity, and three percent (3%) from the sale and transportation of gas within the City, excluding revenues received from the City for the sale of electricity and the transportation and sale of gas to the City. (Ord. 2002-24 §3.1)

**Sec. 5-3-60. Franchise fee for 2002.**

For the calendar year 2002 only, such fee percentage shall be adjusted by the Company to furnish to the City a total franchise fee equaling three percent (3%) of gross revenues for the calendar year; i.e., the fee shall be increased for the months remaining in 2002 to recover an amount equal to three percent (3%) of gross revenues for the entire year. The City and the Company shall agree in writing upon the adjustment necessary to reach the three percent (3%) of gross revenues, which adjustment shall be conclusive on the parties. (Ord. 2002-24 §3.2)

**Sec. 5-3-70. Surcharge of Franchise fees.**

Unless otherwise prohibited by law, the Company shall charge a franchise fee to all City residents that use facilities of the Company in City streets to obtain electricity and/or gas. No franchise fee shall be charged to the City for street lighting service or for electric or gas service provided to the City for its own consumption. (Ord. 2002-24 §3.3)

**Sec. 5-3-80. Remittance schedule.**

Franchise fee revenues that are collected from residents shall be remitted by the Company to the City in monthly installments not more than thirty (30) days following the close of each month. All payments shall be made to the City Clerk. In the event that either the City or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City, the error shall be corrected in the next monthly payment, subject to the following sentence. In the event an error by the Company results in an overpayment of the franchise fee to the City in excess of ten thousand dollars (\$10,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered; if the overpayment is ten thousand dollars (\$10,000.00) or less, credit shall be taken against the next payment. In no event shall either party be required to refund any overpayment or underpayment made as a result of a Company error which is discovered more than three (3) years from the date of the overpayment or underpayment. (Ord. 2002-24 §3.4)

**Sec. 5-3-90. Audit rights; protection of confidential information.**

The City Manager, or his or her designee, shall have access to the metering records of the Company during normal business hours upon reasonable notice for the purpose of auditing to ascertain that the franchise fee has been correctly computed and paid. Except as provided in Section 5-3-100 below, all information obtained by the City Manager or his or her designee during a franchise fee audit shall be kept confidential and shall be utilized for the sole purpose of verifying that the franchise fee has been correctly computed and paid. (Ord. 2002-24 §3.5)

**Sec. 5-3-100. Enforcement of City sales and use tax laws.**

The City may use the metered information obtained from franchise fee audits for the purpose of enforcing its sales and use tax laws. Upon request by the City, the Company shall supply the City with a list of all suppliers of electricity and/or gas that utilize Company facilities within the City streets to sell electricity and/or gas to City residents. (Ord. 2002-24 §3.6)

**Sec. 5-3-110. Franchise fee payment in lieu of certain taxes and other fees.**

The City accepts payment of the franchise fee by the Company in lieu of any occupation tax, occupancy tax, license tax or similar tax or fee the City might charge the Company or its subcontractors for the privilege of doing business in the City. Payment of the franchise fee does not exempt the Company from any lawful taxation upon its property or from any other tax not related to the franchise or the occupation or use of City streets. Payment of the franchise fee does not exempt the Company from payment of head taxes, sales taxes or other fees or taxes assessed generally upon businesses, nor does it exempt the Company and its subcontractors and agents from obtaining land use approvals and permits for working in City streets and paying appropriate fees. (Ord. 2002-24 §3.7)

**Sec. 5-3-120. Share of joint use payments.**

Within ninety (90) days following the close of each year, the Company shall pay the City a sum equal to three percent (3%) of all revenues received from others for the placement of wires or other equipment on Company distribution poles and distribution conduit located in City streets. No fee shall be collected by the Company or remitted to the City for the use of Company facilities by entities affiliated with the Company. (Ord. 2002-24 §3.8)

*Division 2  
Supply, Construction and Design*

**Sec. 5-3-210. Obligations regarding Company facilities.**

The Company shall install, maintain, repair, renovate and replace its facilities with due diligence in a good and workmanlike manner. Company facilities shall not interfere with the City's water mains, sewer mains or other municipal uses of the streets. The Company shall construct and maintain its facilities in such a way as to minimize interference with trees and other natural features. The Company shall install underground all gas pipelines and all newly constructed electric distribution lines serving new residential subdivisions. All other Company facilities may be installed above ground unless the City or affected City residents pay to the Company the additional costs incurred by the Company to construct, operate and maintain the facilities underground. (Ord. 2002-24 §4.1)

**Sec. 5-3-220. Streetlights.**

The Company shall continue to own and maintain streetlights located in public rights-of-way and public places controlled by the City, and shall install such additional lights as the City may require from time to time, in accordance with the Company's tariffs. The Company shall maintain and provide to the City upon request an inventory showing the number and location of all such lights. The City shall pay for electricity used by such lights, which usage shall not be subject to the franchise fee specified herein. (Ord. 2002-24 §4.2)

**Sec. 5-3-230. Excavation and construction.**

All excavation and construction work performed by the Company shall be done in a manner that minimizes the inconvenience to the public. All property disturbed by Company excavation or

construction activities shall be restored by the Company at its expense to substantially its former condition. (Ord. 2002-24 §4.3)

**Sec. 5-3-240. Relocation of Company facilities.**

The Company shall relocate, at its expense, facilities in the streets that interfere with a public project undertaken and paid for by the City with public funds. The City shall provide at its expense sufficient right-of-way for the Company to relocate its facilities. The Company shall relocate its facilities at the request of the City or other person to avoid interference with other projects which are not publicly financed, but the expense of the relocation and the new right-of-way shall be paid in advance by the City or by the person conducting the project and requesting the relocation. Relocation shall be completed within a reasonable time after a request and payment therefor are made (if applicable). In the event that the City requests the Company to relocate the same facilities within five (5) years of completion of a prior relocation, the subsequent relocation shall be at the City's expense, except for any phased project planned and agreed to between the City and the Company at the time of the first relocation. Underground facilities shall be relocated underground. Aboveground facilities shall be relocated above ground, unless the City pays the additional cost of relocating aboveground facilities underground. (Ord. 2002-24 §4.4; Ord. 2007-O-14 §1)

**Sec. 5-3-250. City not required to advance funds.**

Upon receipt of the City's authorization for billing and construction, the Company shall extend its facilities to provide gas and/or electricity to the City for municipal uses within the Company's certificated service area, without requiring the City to advance funds prior to construction. Nothing in this Section shall release the City from the obligation to pay for the extension of facilities once complete, in accordance with the Company's electric and gas tariffs on file with the Public Utilities Commission. (Ord. 2002-24 §4.5)

**Sec. 5-3-260. Records and reporting.**

The Company shall furnish to the City, upon written request by the City, such reports with respect to its operations, affairs, transactions or property as are reasonably necessary and appropriate to the performance of the City's rights, functions, or duties under this Franchise. In order to comply, the Company shall not be required to create reports and shall only provide reports that are maintained. As-built maps shall be available at the Company's offices for inspection and copying by the City's authorized representatives or agents. (Ord. 2002-24 §4.6)

**Sec. 5-3-270. Interruptions in service.**

The Company shall provide to the City, within thirty (30) days of the effective date of this Franchise, the name and direct telephone contact information of a Company representative the City may contact in the event of a major interruption in service. This contact information shall be for use of authorized City personnel only in the event of an emergency or major service interruption, and shall in no event be distributed to any member of the public not authorized to act on behalf of the City. (Ord. 2002-24 §4.7)

*Division 3  
Regulations*

**Sec. 5-3-310. Compliance with applicable laws.**

The Company and all of its contractors shall comply with all applicable City laws, ordinances and regulations. The Company shall require its contractors working in the streets to hold the necessary licenses and permits required by the City from all contractors working in the streets. (Ord. 2002-24 §5.1)

**Sec. 5-3-320. Compliance with City requirements.**

The Company will comply with all City building and zoning codes and requirements regarding curb and pavement cuts, excavating, digging and related construction activities. (Ord. 2002-24 §5.2)

**Sec. 5-3-330. Inspection.**

The City shall have the right to inspect any portion of the Company's facilities in the City streets. The Company agrees to cooperate with the City in conducting the inspection. (Ord. 2002-24 §5.3)

**Sec. 5-3-340. Compliance with orders by PUC.**

The provision of electric and gas service by the Company is regulated in whole or in part by the Public Utilities Commission. The Company is obligated by law to comply with all PUC orders, rules and regulations. The City shall impose no obligation on the Company that interferes with the Company's ability to comply with PUC orders, rules and regulations. (Ord. 2002-24 §6.1)

**Sec. 5-3-350. Certificates to exercise Franchise rights.**

The City agrees to assist the Company, if necessary, in obtaining PUC approval of a certificate to exercise the franchise rights conferred under this Franchise. (Ord. 2002-24 §6.2)

**Sec. 5-3-360. City use of distribution poles.**

The City shall have the right to attach, without paying a pole attachment fee, City-owned police, fire and traffic control equipment to Company distribution poles within the City in a manner that complies with the National Electric Safety Code. All other attachments must be pre-screened and approved by the Company, and the Company reserves the right to charge a reasonable fee for such attachments. The City shall hold harmless and indemnify the Company for all liability associated with the City's facilities on the Company's poles. The City's use of the Company's poles shall be in such a manner as not to constitute a safety hazard or to interfere with the Company's use of the poles. Any construction or reconfiguration that may, in the sole judgment of the Company, be required because of the City's attachment of equipment to Company distribution poles shall be paid for by the City. (Ord. 2002-24 §7.1)

**Sec. 5-3-370. Trenches available for City use.**

If the Company opens a trench to install its facilities, the Company shall provide advance notice to the City to permit the City to install City facilities in the same trench at the City's expense. The City's

installation of its facilities shall not interfere with the Company's facilities or delay the commencement or completion of the Company's construction project. (Ord. 2002-24 §7.2)

**Sec. 5-3-380. Indemnification of City.**

The Company shall indemnify, defend and hold the City harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the Company's operations within the City pursuant to this Franchise. The fact that the Company carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to the Company's duties to defend and indemnify under this Section. The City shall provide prompt written notice to the Company of the pendency of any claim or action against the City arising out of the exercise by the Company of its franchise rights. The Company shall be permitted, at its own expense, to appear and defend or to assist in defense of such claim. The Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any intentional or negligent act or failure to act of the City or any of its officers or employees, or to the extent that any claim, demand or lien arises out of or in connection with the use of City facilities. (Ord. 2002-24 §8.1)

**Sec. 5-3-390. Payment of ordinance expenses.**

The Company shall reimburse the City for actual out-of-pocket expenses incurred in publishing notices and ordinances and conducting elections related to this Franchise. (Ord. 2002-24 §8.2)

*Division 4  
Undergrounding of Facilities*

**Sec. 5-3-410. Overhead conversion at expense of Company.**

(a) The Company shall allocate an annual amount, equivalent to one percent (1%) of the preceding year's adjusted electric gross revenues derived from customers within the City, for the purpose of undergrounding its overhead electric distribution facilities in the City; provided that the undergrounding shall extend for a minimum distance of one (1) block or seven hundred fifty (750) feet, whichever is less, or as may be mutually agreed by the parties. No relocation expenses which the Company would be required to expend pursuant to Section 5-3-240 of this Article shall be charged to this allocation.

(b) Any unexpended portion of the one percent (1%) of such adjusted electric gross revenues may be carried over to succeeding years and, in addition, upon request by the City, the Company agrees to anticipate amounts to be available under Subsection (a) above for up to three (3) years in advance. Any amounts so advanced shall be charged against otherwise available amounts which would have been expended in succeeding years until such advance is eliminated.

(c) The final decision as to which projects are selected for undergrounding rests with the City, subject to the provisions of this Section. The specific scheduling of such projects rests with the Company, which shall make every reasonable effort to complete such projects within the time requested by the City.

(d) Funds to be expended pursuant to this Section shall not be used in any project or situation for which and to such extent there are federal or state funds otherwise available for undergrounding, but shall rather be used in projects and situations for which no federal or state funds are available; provided, however, that there shall be no limitation on the use of funds for "matching" purposes with federal or state monies. (Ord. 2002-24 §9.1)

**Sec. 5-3-420. System-wide undergrounding.**

If the Public Utilities Commission requires a system-wide program of undergrounding electric distribution facilities at the Company's expense, the City shall not be responsible for paying the costs of any undergrounding pursuant to such program. (Ord. 2002-24 §9.2)

**Sec. 5-3-430. Review of undergrounding projects.**

The City and the Company shall mutually plan in advance the scheduling of approved undergrounding projects to be undertaken according to this Article as part of the review and planning for other Company construction projects. The City and the Company agree to meet, as required, to review the progress of the current undergrounding projects designated by the City and to review planned future undergrounding projects. The Company need not approve an undergrounding project if it would create a significant risk to safety or operational integrity, but it shall provide to the City written notification of any such nonapproval and the basis for nonapproval. (Ord. 2002-24 §9.3)

**Sec. 5-3-440. Cooperation with other utilities.**

When undertaking a project of undergrounding, the City and the Company shall work with other utilities or companies which have overhead lines to attempt to underground all such lines as part of the same project. When other utilities or companies are placing their lines underground, the Company shall cooperate with those utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. Notwithstanding the foregoing, nothing in this Section shall require the Company to pay for undergrounding of its distribution lines except as required by Section 5-3-240 of this Article. (Ord. 2002-24 §9.4)

*Division 5  
Administrative Provisions*

**Sec. 5-3-510. Consent of City required.**

The Company shall not transfer or assign any rights under this Franchise to an unaffiliated third party, except by merger with such third party, and except when the transfer is made in response to legislation or regulatory requirement, unless the City shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld. (Ord. 2002-24 §10.1)

**Sec. 5-3-520. Transfer fee.**

In order that the City may share in the value this Franchise adds to the Company's operations, any transfer or assignment of rights under this Franchise requiring the approval of the City under Section 5-3-510 above shall be subject to the condition that the transferee shall promptly pay to the City a transfer fee, which shall be calculated by multiplying one million dollars (\$1,000,000.00) by a fraction of which the numerator equals the then population of the City, and the denominator equals the then population of the City and County of Denver. Such transfer fee shall not be recovered from a surcharge placed only on the rates of the City residents. The City in its sole discretion may waive the transfer fee or the requirement that it not be recovered solely from a surcharge on City residents. (Ord. 2002-24 §10.2)

**Sec. 5-3-530. City's right to condemn.**

During the term of this Franchise, the City agrees not to condemn the facilities of the Company or to otherwise restrict the Company's opportunity to conduct business in the City, except as specifically provided in Section 31-15-707, C.R.S. (Ord. 2002-24 §11.1)

**Sec. 5-3-540. Operation of municipal utility or competing distributors.**

If, during the term of this Franchise, the City operates a municipal utility or issues to another entity a franchise to use the streets for the placement of electric and/or gas facilities, the Company shall no longer be required to collect and pay franchise fees under Division 1 of this Article unless the same terms and conditions of this Franchise apply to the service provided by the City or by the other entity. In addition, the following Sections of this Agreement shall no longer apply to the Company unless similar provisions are applicable to all other electric and gas distributors, including the City: Sections 5-3-50, 5-3-60, 5-3-80, 5-3-90, 5-3-100, 5-3-120, 5-3-210, 5-3-220, 5-3-230, 5-3-240, 5-3-310, 5-3-320, 5-3-330, 5-3-360, 5-3-370, 5-3-380, 5-3-390, 5-3-410, 5-3-440, 5-3-510, 5-3-520. (Ord. 2002-24 §11.2)

**Sec. 5-3-550. Uncontrollable forces.**

Neither the City nor the Company shall be in breach of this Franchise if the failure to perform is due to uncontrollable forces, which shall include but not be limited to accidents, breakdown of equipment, acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government and other causes or contingencies of whatever nature beyond the reasonable control of the party affected, which could not reasonably have been anticipated and avoided. (Ord. 2002-24 §12.1)

**Sec. 5-3-560. Breach.**

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 City Council, after hearing, may determine that such failure is of a substantial nature, and shall notify the Company of the specific failures. Upon receiving notice of such determination, the Company shall have a reasonable time in which to remedy the failures. If the Company does not remedy the failures, the City Council may terminate this Franchise. (Ord. 2002-24 §13.1; Ord. 2007-O-14 §1)

**Sec. 5-3-570. Judicial review.**

Any termination of this Franchise shall be subject to judicial review as provided by law. (Ord. 2002-24 §13.2)

**Sec. 5-3-580. Amendments to Franchise.**

This Franchise may be amended only by a writing signed by both the Company and the City, which is approved in the same manner as is required for the passage of the ordinance adopting this Franchise. (Ord. 2002-24 §14.1)

*Division 6  
Miscellaneous Provisions*

**Sec. 5-3-610. Successors and assigns.**

The rights, privileges, franchises and obligations, in whole or in part, granted and contained in this Franchise shall inure to the benefit of and be binding upon the Company, its successors, assigns, affiliates and subsidiaries. (Ord. 2002-24 §15.1)

**Sec. 5-3-620. Third parties.**

Nothing contained in this Franchise shall be construed to provide rights to third parties. (Ord. 2002-24 §15.2)

**Sec. 5-3-630. Representatives.**

Both parties shall designate, from time to time, in writing, representatives for the Company and the City to whom notices shall be sent regarding any action to be taken under this Franchise. Notice shall be in writing and shall be delivered in person or by certified mail to the persons and addresses hereinafter stated, unless the persons and addresses are changed at the written request of either party. Until any such change shall be made, notices shall be sent as follows:

To the City:

City of Centennial  
Attention: City Manager  
12503 E. Euclid Avenue  
Centennial, Colorado 80111

With a copy to:

Collins Cockrel & Cole  
City of Centennial City Attorney  
390 Union Blvd., Suite 400  
Denver, Colorado 80228

To the Company:

Xcel Energy  
Attention Thomas Ashburn

Community Services Manager  
2070 S. Valencia Street  
Denver, Colorado 80231

(Ord. 2002-24 §15.3)

**Sec. 5-3-640. Surcharge to City residents.**

The Company shall be permitted to surcharge to residents of the City the franchise fee payments it makes to the City. The Company shall be permitted to surcharge to residents of the City any other payments it makes to the City only to the extent and in the manner permitted by law or as otherwise ordered by the PUC. (Ord. 2002-24 §15.4)

**Sec. 5-3-650. 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 substitute term that will achieve the original intent of the parties hereunder. (Ord. 2002-24 §15.5)

**Sec. 5-3-660. Entire agreement.**

This Franchise constitutes the entire agreement of the parties with respect to the matters contained herein and supersedes any and all prior written or oral agreements, negotiations, correspondence, understandings and communications with respect to this Franchise. (Ord. 2002-24 §15.6)

**Sec. 5-3-670. Section headings.**

The section headings in this Franchise are for reference only and convey no substantive rights or impose no substantive obligations on the parties. (Ord. 2002-24 §15.7)

**Sec. 5-3-680. Responsibility for language.**

The City and the Company hereby acknowledge that each bears co-extensive and identical responsibility for the language in this Franchise. In case of ambiguity or alleged ambiguity, there shall be no presumptions based upon responsibility for drafting this Franchise. (Ord. 2002-24 §15.8)

**Sec. 5-3-690. No waiver of rights.**

Neither the City nor the Company waives any rights under the statutes and Constitution of the State or of the United States except as otherwise specifically set forth herein. (Ord. 2002-24 §15.9)

**Sec. 5-3-700. Prevailing party.**

In any judicial or administrative action to enforce any of the terms or conditions of this Franchise, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney fees, incurred in such action. (Ord. 2002-24 §15.10)