

CHAPTER 5

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ARTICLE 1

Franchises Generally

Sec. 5-1-10. General powers.

The Town shall have and exercise with regard to all utilities and franchises, all municipal powers, including without limitation all powers now existing and which may be hereafter provided by the state constitution and state statutes. The right of the Town to construct, purchase or condemn any public utility, work or way is expressly reserved. Except as otherwise provided by the state constitution or this Code, all powers concerning the granting, amending, revoking or otherwise dealing in franchises shall be exercised by the Town Council. (Prior code 13-1-1)

Sec. 5-1-20. Water rights.

The Town shall have the power to buy, sell, exchange, lease, own and control water rights. (Prior code 13-1-2)

Sec. 5-1-30. Utility rates and service areas.

The Town Council shall by ordinance establish rates for services provided by municipally owned utilities. If the Town Council desires to extend the municipal water utility transmission lines beyond Town boundaries, it shall do so by ordinance. (Prior code 13-1-3; Ord. 4 §1, 2009)

Sec. 5-1-40. Granting of franchises.

No franchise shall be granted except by ordinance. (Prior code 13-1-4)

Sec. 5-1-50. Franchise records.

The Town Council shall cause to be kept in the office of the Town Clerk an indexed franchise record in which shall be transcribed copies of all franchises heretofore and hereafter granted. The index shall give the name of the grantee and any assignees. The record, a complete history of all such franchises, shall include a comprehensive and convenient reference to all actions at law affecting the same, and copies of all annual reports and such other matters of information and public interest as the Town Council may from time to time require. (Prior code 13-1-5)

Sec. 5-1-60. Existing franchises.

All franchise ordinances of the Town in effect at the time that this Code is adopted shall remain in full force and effect according to their provisions and terms until the expiration date provided in such ordinance or until modified by another franchise as provided in Section 5-1-40 above. (Prior code 13-1-6)

ARTICLE 2

Cable TV Franchise

Division 1

General Provisions

Sec. 5-2-05. Definitions.

For the purposes of this Agreement, the following terms, phrases, words and their derivations shall have the meanings 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 means the availability of a channel or channels on the cable system for noncommercial use by various agencies, institutions, organizations, groups and individuals, including the Town and its designees, to acquire, create, receive and distribute cable service and other signals as permitted under applicable law.

a. *Educational access* means access where schools are the primary users of the programming and service.

b. *EG access* means educational and governmental access collectively.

c. *Governmental access* means access where governmental institutions or their designees are the primary users of the programming and service.

Access channel means any channel, or portion thereof, designated for access purposes or otherwise made available to facilitate or transmit access programming or service.

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, other than subscriber premises equipment.

Affiliate, when used in connection with the Grantee, means any corporation, person or entity who owns or controls, is owned or controlled by, or is under common ownership or control with, the 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 the Grantee, but not collected after reasonable efforts have been made by the Grantee to collect the charges.

Basic service means the cable service tier, which includes, at a minimum, the retransmission of local broadcast signals and access channels.

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, fiber optics or any other means.

Cable Acts mean the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as they may be amended.

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

Cable operator means any person or group of persons, including the Grantee, who provide cable service over a cable system and directly or through one (1) or more affiliates own a significant interest in such cable system or who otherwise control or are responsible for, through any arrangement, the management and operation of such a cable system.

Cable service means: (1) the one-way transmission of video programming or other programming service to subscribers; and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable system means any facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include: (1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (2) a facility that serves subscribers without using any public right-of-way; (3) 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 service; (4) an open video system that complies with federal statutes; or (5) 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 a cable system and which is capable of delivering a television channel or channels (as defined by the Federal Communications Commission by regulation or other applicable federal law).

Designated access provider means the entity or entities designated by the Town to manage or co-manage access channels and facilities. The Town may also be a designated access provider.

Downstream means the transmission from the headend to remote 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.

Expanded basic service means the tier of optional video programming services, 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.

Franchise means the nonexclusive authorization for the construction or operation of a cable system as is granted by this Agreement.

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

Gross revenues means any and all revenue received by the Grantee or its affiliates from the operation of the cable system to provide cable services in the Town. Gross revenues include, by way of illustration and not limitation, monthly fees charged subscribers for basic and expanded basic service; any other tiers of cable service; premium services; installation, disconnection, reconnection and change-in-service fees as applicable; leased access channel fees; all cable service lease payments derived by the cable system; late fees and administrative fees; payments or other consideration received by the Grantee from programmers for carriage of programming on the cable system; revenues from rentals or sales of converters or other cable system equipment; advertising revenues less agency fees; revenues from program guides; revenues from data transmissions to the extent those transmissions are deemed to be a cable service under federal law or, if applicable, as provided by state law (subject to a final nonappealable action, if any); additional outlet fees if any; revenues from cable internet service to the extent that service is considered a cable service under federal law; or, if applicable as provided by state law (subject to a final nonappealable action, if any); franchise fees; revenue from interactive services to the extent they are considered cable services; and revenue from home shopping and other revenue-sharing arrangements. Gross revenues shall include revenue received by any entity other than the Grantee where necessary to prevent evasion or avoidance of the obligation under this Agreement to pay the franchise fees. Gross revenues shall not include: (1) the capital grant under Section 5-2-395 of this Article; (2) 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; or (3) any taxes on services furnished by the Grantee which are imposed directly on any subscriber or user by the State, the Town or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. The franchise fees are not such a tax and are therefore included in the gross revenue calculation.

Headend means a facility, for signal reception and dissemination, on a cable system, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors and all other related equipment and facilities.

Interconnect or interconnection means the linking of the cable system's access channels with the access channels of another geographically contiguous or neighboring cable system, including technical, engineering, physical and other necessary components to complete and adequately maintain such linking, in a manner that permits the transmission and receiving of access programming between the cable system and another cable system.

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

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

Person means any individual, sole proprietorship, partnership, association, limited liability company, 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.

School means any state-accredited K-12 educational institution, public or private, and higher education institutions.

State means the State of Colorado.

Street 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 are located within the franchise area: streets, roads, highways, avenues, bridges, lanes, rights-of-way and similar public property and areas.

Subscriber means any person who elects to subscribe to, for any purpose, cable service provided by the 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 the Grantee's cable system.

a. *Commercial subscriber* means any subscriber other than a residential subscriber.

b. *Residential subscriber* means any person who receives cable service delivered to single residences or units or multiple dwelling units.

Subscriber network means that portion of the cable system used primarily by the Grantee for the transmission of cable services to residential subscribers.

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 periodic subscription fee is charged.

Town Council means the Crested Butte Town Council, or its successor (the governing body of the Town).

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

Upgrade means improvements and additions to the cable system.

Upstream means the carrying of a transmission to the headend from remote points on the cable system. (Ord. 31 §2, 2003)

Sec. 5-2-10. Grant of authorization.

(a) The Town hereby grants to the Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the streets within the franchise area to construct, operate, maintain, reconstruct, upgrade and repair a cable system for the purpose of providing cable services through the cable system, and subject to the terms and conditions set forth in this Agreement. The Grantee represents that it has the authority to enter into this Agreement and that it is entering into this Agreement in the ordinary course of its business (notwithstanding the Grantee's pending bankruptcy proceeding under Chapter 11 of the United States Bankruptcy Code).

(b) This Agreement is intended to convey limited rights and interests only as to those streets in which the Town has an actual interest. It is not a warranty of title or interest in any street; it does not provide the Grantee with any interest in any particular location within the street; and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not deprive the Town of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the Town's streets covered by this Agreement, including without limitation the right to perform work on its streets or appurtenant facilities, including constructing, altering, paving, widening, grading or excavating thereof.

(c) Nothing in this Agreement shall be deemed to waive the requirements of the Town Charter or any ordinances of general applicability or resolutions or ordinances enacted pursuant to the Town's police powers.

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

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the Town that may be required by the laws of the Town;

(2) Any permit, agreement or authorization required by the Town for users in connection with operations on or in streets or public property including, by way of example and not limitation, excavation permits; or

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

(e) This Agreement is not a bar to the imposition of any lawful conditions on the Grantee with respect to noncable services, telecommunications service or information services, whether similar, different or the same as the conditions specified herein, or does not relieve the Grantee of its obligation to comply with any authorizations that may be lawfully required.

(f) The Grantee promises and guarantees, as a condition of exercising the privileges granted by this Agreement, that any affiliate of the Grantee directly involved in the offering of cable service in the franchise area, or directly involved in the management or operation of the cable system in the

franchise area will also comply with the terms and conditions of this Agreement. (Ord. 31 §3.1, 2003)

Sec. 5-2-15. Use of streets.

(a) Subject to the Town's supervision and control, the Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, under, upon, across and along the streets within the franchise area such wires, cables, ducts, conduits, vaults, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a cable system for the provision of cable service within the franchise area. With regard to the Grantee's use of the streets, the Grantee shall comply with all generally applicable laws, including but not limited to the following: construction codes, federal, state and local laws, ordinances, resolutions, regulations and procedures, now in effect or enacted hereafter.

(b) Grantee must follow Town-established requirements for placement of cable system facilities in the streets, including the specific location of facilities in the streets, and must in any event install cable system facilities in a manner that minimizes interference with the use of the streets by others, including others that may be installing communications facilities. Within limits reasonably related to the Town's role in protecting public health, safety or welfare, the Town may require that cable system facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular street; may deny access if the Grantee is not willing to comply with the Town's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the Town, or which is installed without prior Town approval of the time, place or manner of installation, and charge the Grantee for all the costs associated with removal; and may require the Grantee to cooperate with others to minimize adverse impacts on the streets through joint trenching and other arrangements. (Ord. 31 §3.2, 2003)

Sec. 5-2-20. Police powers.

(a) The Grantee's rights hereunder are subject to the police powers of the Town to adopt and enforce resolutions and ordinances necessary for the safety, health and welfare of the public, and the Grantee agrees to comply with all laws of general applicability enacted, or hereafter enacted, by the Town or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Town shall have the right to adopt, from time to time, such resolutions and ordinances as may be deemed necessary in the exercise of its police power.

(b) Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter. (Ord. 31 §3.3, 2003)

Sec. 5-2-25. Duration.

The term of this Agreement and all rights, privileges, obligations and restrictions pertaining hereto shall commence on the effective date and be for a term of eleven (11) years, unless terminated sooner as hereinafter provided. (Ord. 31 §3.4, 2003)

Sec. 5-2-30. Effective date.

The effective date of this Agreement shall be March 1, 2004. (Ord. 31 §3.5, 2003)

Sec. 5-2-35. Agreement nonexclusive.

This Agreement shall be nonexclusive and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by the Town to any person to use any street or other public property for any purpose whatsoever, including the right of the Town to use *the* same for any purpose it deems fit, including the same or similar purposes allowed the Grantee hereunder. The Town may at any time grant additional authorizations to use the streets for any purpose whatsoever. (Ord. 31 §3.6, 2003)

Sec. 5-2-40. Grant of other agreements.

In the event the Town enters into a franchise, permit, license, authorization or other agreement of any kind with any person other than the Grantee to enter into the Town's streets for the purpose of constructing or operating a cable system or providing cable service to any part of the franchise area in which the Grantee is actually providing cable service under the terms and conditions of this Agreement, the material provisions in total thereof shall be no more favorable or less burdensome than those contained herein, so that one (1) operator will not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. (Ord. 31 §3.7, 2003)

Sec. 5-2-45. Effect of acceptance.

By accepting the Agreement, the Grantee: (1) acknowledges and accepts the Town's legal right to issue and enforce the Agreement; (2) accepts and agrees to comply with each and every provision of this Agreement; and (3) agrees that the Agreement was granted pursuant to processes and procedures consistent with applicable local, state and federal law. (Ord. 31 §3.8, 2003)

Sec. 5-2-50. Periodic reviews.

(a) Periodic reviews may be held upon request by the Town, but no more frequently than once a year, throughout the term of this Agreement.

(b) All periodic reviews shall be open to the public and shall be announced by the Town at least one (1) week in advance, in a newspaper of general circulation in the franchise area.

(c) Topics of discussion at any periodic review may include, but are not limited to, cable service rates; franchise fees; liquidated damages; free or discounted cable services; application of new technologies; system performance; cable services provided; programming offered; customer complaints; privacy; amendments to this Agreement; judicial and FCC rulings; line extension policies; and the Town's or the Grantee's rules; provided that nothing in this Subsection shall be construed as requiring the renegotiation of this Agreement.

(d) During periodic reviews under this Agreement, the Grantee shall fully cooperate with the Town and shall provide such information and documents as the Town may reasonably require to perform the periodic review. (Ord. 31 §3.9, 2003)

Division 2
Franchise Fee and Financial Controls

Sec. 5-2-70. Franchise fee.

In consideration of permission to use the Town's streets, the Grantee shall pay as a franchise fee to the Town, throughout the duration of this Agreement, an amount equal to five percent (5%) of the Grantee's gross revenues. Accrual of such franchise fees shall commence as of the effective date of this Agreement. The franchise fees are in addition to all other fees, assessments, taxes or charges of general applicability that the Grantee may be required to pay under any federal, state or local law. (Ord. 31 §4.1, 2003)

Sec. 5-2-75. Payments.

The Grantee's franchise fee payments to the Town shall be computed quarterly. Each quarterly payment shall be due and payable no later than thirty (30) days after the last day of the preceding quarter, which ends respectively on March 31, June 30, September 30 and December 31. (Ord. 31 §4.2, 2003)

Sec. 5-2-80. Acceptance of payment and recomputation.

No acceptance of any payment shall be construed as an acknowledgement by the Town that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Town may have for further or additional sums payable or for the performance of any other obligation of the Grantee. (Ord. 31 §4.3, 2003)

Sec. 5-2-85. Quarterly franchise fee statements.

Each franchise fee payment shall be accompanied by an accurate statement of gross revenues and the computation of the payment amount for the applicable quarter. (Ord. 31 §4.4, 2003)

Sec. 5-2-90. Annual franchise fee reports.

The Grantee shall, no later than thirty (30) days after the end of each calendar year, furnish to the Town a statement showing the total amount of gross revenues and all payments, deductions and computations for the period covered by the figures. Such statement shall be reviewed and approved by appropriate accounting personnel of the Grantee prior to submission to the Town. (Ord. 31 §4.5, 2003)

Sec. 5-2-95. Audits.

(a) On an annual basis, upon thirty (30) days' prior written notice, the Town shall have the right to conduct an independent audit of the Grantee's records reasonably related to the administration or enforcement of this Agreement. The Town may hire an independent certified public accountant to audit the Grantee's financial records, in which case the Grantee shall provide all necessary records to the independent certified public accountant. In any event, if an audit shows that franchise fees have been underpaid by five percent (5%) or more, the Grantee shall pay the total cost of the audit.

(b) Following expiration of the time periods provided by the applicable statutes of limitation, there shall be an accord and satisfaction with respect to those franchise fee payments previously made by the Grantee. (Ord. 31 §4.6, 2003)

Sec. 5-2-100. Interest on late payments.

In the event that a franchise fee payment or other sum is not received by the Town on or before the due date, or is underpaid, the Grantee shall pay, in addition to the payment or sum due, interest from the due date at a rate equal to twelve percent (12%) per annum. (Ord. 31 §4.7, 2003)

Sec. 5-2-105. Alternative compensation.

In the event the obligation of the Grantee to compensate the Town through franchise fee payments is lawfully suspended or eliminated, in whole or part, then the Grantee shall pay to the Town such other compensation as is required by law. (Ord. 31 §4.8, 2003)

Sec. 5-2-110. Maximum legal compensation.

The parties acknowledge that, at present, applicable federal law limits the Town to collection of a maximum permissible franchise fee of five percent (5%) of gross revenues in a twelve-month period. In the event that, at any time throughout the term of this Agreement, the Town is authorized to collect an amount in excess of five percent (5%) of gross revenues in a twelve-month period, then this Agreement shall be amended by the parties consistent with such change to provide that such excess amount shall be added to the franchise fee payments to be paid by the Grantee to the Town hereunder. (Ord. 31 §4.9, 2003)

Sec. 5-2-115. Additional commitments not franchise fee payments.

No term or condition in this Agreement, including the funding required by Section 5-2-395, shall in any way modify or affect the Grantee's obligation to pay franchise fees. Although the total sum of franchise fee payments and additional commitments set forth elsewhere in this Agreement may total more than five percent (5%) of gross revenues in any twelve-month period, the Grantee agrees that the additional commitments herein are not franchise fees as defined under federal law, nor are they to be offset or credited against any franchise fee payments due to the Town, nor do they represent an increase in franchise fees to be passed through to subscribers. (Ord. 31 §4.10, 2003)

Sec. 5-2-120. Financial records.

The Grantee agrees to meet with the Town upon request to review the Grantee's methodology of record-keeping, financial reporting, the computing of franchise fee obligations and other procedures, the understanding of which the Town deems necessary for reviewing reports and records and enforcement purposes. (Ord. 31 §4.11, 2003)

Sec. 5-2-125. Tax liability.

The franchise fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the Town, the State or the United States, including, without limitation, sales, use and other taxes, business license fees or other

payments. Payment of the franchise fees under this Agreement shall not exempt the Grantee from the payment of any other license or permit fee, tax or charge on the business, occupation, property or income of the Grantee that may be imposed by the Town or other governmental body. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against the Grantee solely because of its status as a cable operator. (Ord. 31 §4.12, 2003)

Sec. 5-2-130. Filing on termination.

If this Agreement terminates for any reason, the Grantee shall file with the Town, within ninety (90) calendar days of the date of the termination, a financial statement, certified by a financial officer of the Grantee, showing the gross revenues received by the Grantee since the end of the previous calendar year. The Town reserves the right to satisfy any remaining financial obligations of the Grantee to the Town by drawing upon the letter of credit or bonds. (Ord. 31 §4.13, 2003)

*Division 3
Administration and Regulation*

Sec. 5-2-155. Authority.

(a) The Town is vested with the power to regulate, in the public interest, the Grantee's rights and privileges permitted by this Agreement, or to delegate that power, or any part thereof, to the extent permitted under applicable law, to any agent, in its sole discretion.

(b) Nothing in this Agreement shall limit nor expand the Town's right of eminent domain under state law. (Ord. 31 §5.1, 2003)

Sec. 5-2-160. Rates and charges.

The Town shall have the authority to regulate the Grantee's rates and charges in accordance with applicable laws and regulations. (Ord. 31 §5.2, 2003)

Sec. 5-2-165. No rate discrimination.

(a) All of the Grantee's rates and charges shall be published (in the form of a publicly available rate card), and shall be nondiscriminatory as to all persons and organizations of similar classes, under similar circumstances and conditions. The Grantee shall apply its rates in accordance with governing law, with similar rates and charges for all subscribers receiving similar cable service, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, physical or mental disability, or geographic location in the franchise area. The Grantee shall make available equivalent cable service to all commercial subscribers as authorized by applicable laws. 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, the disabled or economically disadvantaged citizens, including but not limited to discounted basic and expanded basic tier rates, installation and repair charges and converters; or

(3) The establishment of different and nondiscriminatory rates and charges and classes of service for commercial subscribers, as allowed by federal law and regulations.

(b) The Grantee shall provide, upon request from the Town, a complete schedule of current rates and charges for any and all leased access channels, or portions of such channels. The schedule shall include a description of the price, terms and conditions for the use of leased access channels. (Ord. 31 §5.3, 2003; Ord. 4 §1, 2009)

Sec. 5-2-170. Late fees.

(a) For purposes of this Section, any assessment, charge, cost, fee or sum other than collection fees that the Grantee imposes upon a subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with applicable law.

(b) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory, and such policies, and practices, and any fees imposed pursuant to this Section, shall apply equally in all parts of the Town without regard to the neighborhood or income level of the subscriber. (Ord. 31 §5.4, 2003)

Sec. 5-2-175. Force majeure.

(a) In the event the Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by a reason beyond the control of the Grantee, the Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Agreement or to procure a substitute for such obligation which is satisfactory to the Town. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.

(b) If the Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Agreement, the Grantee shall provide documentation as reasonably required by the Town to substantiate the Grantee's claim. If the Grantee has not yet cured the deficiency, the Grantee shall also provide the Town with its proposed plan for remediation, including the timing for such cure. (Ord. 31 §5.5, 2003)

*Division 4
Financial and Insurance Requirements*

Sec. 5-2-205. Insurance requirements.

(a) The Grantee must carry adequate insurance during the entire term of this Agreement to protect the Town against claims for injuries to persons or damages to property which in any way relate to, arise from or are connected with this Agreement or involve the Grantee, its agents, contractors, subcontractors or their employees.

(b) The Grantee, its agents, contractors and subcontractors must keep insurance policies in effect at their expense in accordance with the minimum insurance limits herein set forth by the Town.

(1) Commercial general liability: two million dollars (\$2,000,000.00) general aggregate limit per occurrence;

(2) Automobile liability: one million dollars (\$1,000,000.00) combined single limit per accident;

(3) Excess liability coverage: ten million dollars (\$10,000,000.00) per occurrence;

(4) Workers' compensation: in compliance with state law; and

(5) Employers' liability: one million dollars (\$1,000,000.00) per accident. (Ord. 31 §6.1, 2003)

Sec. 5-2-210. Deductibles and self-insured retentions.

If the Grantee changes its policies to include a self-insured retention, the Grantee shall give notice of such change to the Town. The Town's approval may be given if the self-insured retention is consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit the Grantee's liability to the Town.

(1) Endorsements:

a. All policies shall contain or shall be endorsed so that:

1. The Town, its officers, officials, boards, commissions, employees, agents and Town Council 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, the Grantee under this Agreement, or in any way connected with the construction, operation, maintenance, upgrade, repair or ownership of the cable system;

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

3. The 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.

b. All policies shall not be suspended, voided, canceled or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company until after at least thirty (30) days' prior written notice has been given to the Town Manager.

(2) If an insurance policy is reduced, canceled or terminated so as to be out of compliance with the requirements of this Agreement, the Grantee shall provide a replacement policy. The Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Agreement and, in the case of commercial general liability insurance, for at least one (1) year after expiration of this Agreement.

(3) The insurance obtained by the Grantee shall be placed with insurers authorized to do business in the State with a Best's rating of no less than "B++."

(4) The Grantee shall annually furnish to the Town 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, and are subject to approval by the Town. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement and the Town's laws. (Ord. 31 §6.2, 2003)

Sec. 5-2-215. Indemnification.

(a) The Grantee shall, at its sole cost and expense, indemnify, hold harmless and defend the Town, Town Council and its other elected officials, officers, boards, commissions, agents and employees against any and all claims, damages, suits, demands, actions, liabilities, causes of action, proceedings, judgments, settlements or equitable relief arising out of the installation, construction, operation, maintenance, upgrade or repair of the cable system, or in any way arising out of the Grantee's enjoyment or exercise of this Agreement. Without limiting in any way the Grantee's obligations hereunder, this indemnity obligation also includes, but is not limited to, the Town's expenses for attorneys' fees and costs and for other related disbursements incurred by the Town. By way of example and not limitation, the Grantee's indemnification obligations pertain to damages:

(1) To persons or property, in any way arising out of or through the acts or omissions of the Grantee, its contractors, subcontractors and their officers, employees or agents, or to which the Grantee's negligence shall in any way contribute;

(2) Arising out of any claim for invasion of the right of privacy; for defamation of any person; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the cable system; or for violation of any other right of any person;

(3) Arising out of the Grantee's failure to comply with the provisions of any federal, state or local law, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies; and

(4) Arising from any third-party suit, action or litigation, whether brought by a competitor to the Grantee or by any other person, whether such person does or does not have standing to bring such suit, action or litigation, including but not limited to whether it a) challenges the authority of the Town to issue this Agreement; or b) alleges that, in issuing this Agreement, the Town has acted in a disparate or discriminatory manner.

(b) The Town shall give the Grantee prompt written notice of any claim or demand or of the commencement of any action, suit or other proceeding covered by the indemnity in this Subsection. In the event any such claim arises, the Town or other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, at its expense. (Ord. 31 §6.3, 2003)

Sec. 5-2-220. Letter of credit.

(a) Within thirty (30) days of the effective date of this Agreement, the Grantee shall provide a letter of credit from a financial institution in the amount of twelve thousand five hundred dollars (\$12,500.00). In the event of any change in control of the Grantee or sale or transfer of this Agreement or cable system, the Town may require the new controlling entity or franchisee to increase the amount of the letter of credit to twenty-five thousand dollars (\$25,000.00).

(b) The form of the letter of credit shall be subject to the approval of the Town. The letter of credit may be drawn upon by the Town to compensate itself for any damages, costs or expenses arising out of this Agreement, subject to providing the Grantee with notice and a reasonable opportunity to cure. In particular, but without limitation, such letter of credit may be drawn on in the case of any default by the Grantee or failure of the Grantee to pay any franchise fees, claims, damages or taxes due under this Agreement. Upon drawing on the letter of credit for any reason, the Town shall notify the Grantee. The Grantee shall, within five (5) business days of receipt of such notification, restore the letter of credit to its original full amount. Failure of the Grantee to so restore the letter of credit shall be a material violation of this Agreement.

(c) The rights reserved to the Town with respect to the letter of credit are in addition to all other rights of the Town, whether reserved by this Agreement or authorized by law or equity, and no action, proceeding or exercise of a right with respect to such letter of credit shall constitute a waiver of any other right the Town may have. Maintenance of the letter of credit shall not be construed to excuse unfaithful performance by the Grantee or limit the liability of the Grantee to the amount of the letter of credit or otherwise limit the Town's recourse to any other remedy available at law or in equity. (Ord. 31 §6.4, 2003)

Sec. 5-2-225. Bonds.

(a) The Grantee shall be required to obtain bonds in accordance with the Town's bonding requirements of general applicability. The Grantee shall pay all premiums and costs associated with maintaining any bonds, and shall keep the same in full force and effect for the time period required.

(b) The Grantee's maintenance of the bonds shall not be construed to excuse unfaithful performance by the Grantee or limit the liability of the Grantee to the amount of the bonds or otherwise limit the Town's recourse to any other remedy available at law or in equity. (Ord. 31 §6.5, 2003)

*Division 5
Customer Service*

Sec. 5-2-255. Customer service standards.

The Grantee shall adhere to the customer service standards adopted from time to time by the Town. The Town reserves the right to separately and independently adopt and enforce additional customer services standards at any time. The Grantee shall furnish such information, as reasonably requested by the Town, to enable the Town to evaluate compliance with the customer service standards then in effect. (Ord. 31 §7.1, 2003)

Sec. 5-2-260. Subscriber privacy.

The Grantee will comply with the privacy rights of subscribers in accordance with federal, state and local laws. (Ord. 31 §7.2, 2003)

Sec. 5-2-265. Customer service center and complaints.

Throughout the term of this Agreement, the Grantee must maintain, at a minimum, one (1) customer service center conveniently located in the Town which will be open during normal business hours, as defined by applicable law, to provide subscribers the opportunity to make bill payments and submit complaints. The Grantee shall maintain sufficient telephone lines and other equipment and hire personnel so that customer complaints, service requests, information requests and other concerns can be received by the Grantee or an agent of the Grantee on a twenty-four-hour, seven-day-a-week basis at a local or toll-free telephone number. The telephone system shall be staffed by highly trained customer service representatives who are authorized to respond to and resolve any kind of billing or other inquiry. During normal business hours, subscribers will be able to speak with actual customer service representatives. The customer service center shall be equipped to log, track and report on all customer service issues, complaints and concerns. (Ord. 31 §7.3, 2003)

Sec. 5-2-270. Subscriber contracts.

The Grantee shall not enter into a contract with any subscriber that is in any way inconsistent with the terms of this Agreement or the customer service standards. Upon request, the Grantee will provide to the Town a sample of the subscriber contract or service agreement then in use. (Ord. 31 §7.4, 2003)

*Division 6
Reports and Records*

Sec. 5-2-305. Open records.

(a) The Grantee shall accord the Town reasonable access to relevant system and financial records and books necessary for the enforcement of this Agreement. Such records and books will be made available in the Town or in the City of Gunnison. The Town may, in writing, request copies of any such records or books and the Grantee shall provide such copies within thirty (30) days of the transmittal of such request.

(b) The Grantee shall at all times maintain and allow the Town access to and the right to review a full and complete set of plans, records and "as built" maps showing the location of all cable system equipment installed or in use in the franchise area, exclusive of subscriber drops and equipment provided in subscribers' homes. (Ord. 31 §8.1, 2003)

Sec. 5-2-310. Confidentiality.

The Town agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent the Grantee makes the Town aware of such confidentiality. The Grantee shall be responsible for clearly and conspicuously stamping the

word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If the Town believes it must release any such confidential books and records in the course of enforcing this Agreement or for any other reason, it shall advise the Grantee in advance so that the Grantee may take appropriate steps to protect its interests. If the Town receives a demand from any person for disclosure of any information designated by the Grantee as confidential, the Town shall, so far as consistent with applicable law, advise the Grantee and provide the Grantee with a copy of any written request by the person demanding access to such information within a reasonable time. (Ord. 31 §8.2, 2003)

Sec. 5-2-315. Complaint file and reports.

(a) The Grantee shall keep an accurate and comprehensive file of customer complaints regarding the cable system and the Grantee's actions in response to those complaints. Subject to privacy interests, those files shall remain open to the Town for inspection during normal business hours. Within ten (10) days of a request by the Town, the Grantee shall provide a report regarding specific customer complaints. Upon request, the Grantee shall provide an executive summary quarterly (within thirty [30] days of the end of the preceding quarter) to the Town, which shall include the nature and type of customer complaints, a summary of unplanned service interruptions, significant construction activities affecting the quality of the services provided over the cable system and such other reasonable information that is associated with this Agreement.

(b) The Grantee, at the Town's request, shall also provide to the Town annual subscriber reports which indicate the total number of subscribers by service categories in such format as the Grantee customarily prepares such reports. (Ord. 31 §8.3, 2003)

Sec. 5-2-320. Records required.

The Grantee shall at all times maintain and furnish to the Town upon request:

(1) A complete set of up-to-date and detailed strand maps showing the location of all cable system equipment and facilities in the streets, but excluding details on proprietary electronics contained therein and subscriber drops. These maps shall be certified as accurate by the Grantee;

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

(3) A log of cable services added or dropped, channel changes and total homes passed for the previous twelve (12) months; and

(4) A list of current cable services, rates and the channel lineup. (Ord. 31 §8.4, 2003)

Sec. 5-2-325. Copies of other submissions.

Upon request, the Grantee shall submit to the Town copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Grantee or its affiliates, to any federal, state or local courts, regulatory agencies and other governmental bodies if such

documents directly relate to or could affect the operation of the Grantee's cable system within the Town. (Ord. 31 §8.5, 2003)

Sec. 5-2-330. Failure to report.

The failure or neglect of the Grantee to file any of the reports or filings required under this Agreement or such other reports as the Town may reasonably request (not including errors made in good faith), may, at the Town's option, be deemed a breach of this Agreement. (Ord. 31 §8.6, 2003)

Sec. 5-2-335. False statements.

Any intentionally false or misleading material statement or representation in any report required by this Agreement may be deemed a material violation of this Agreement and may subject the Grantee to all remedies, legal or equitable, which are available to the Town under this Agreement or otherwise. (Ord. 31 §8.7, 2003)

*Division 7
Programming and Access*

Sec. 5-2-355. Broad programming categories.

The Grantee's cable system shall provide the widest diversity of cable television programming possible. The Grantee shall provide at least the following broad categories of programming to the extent such categories are reasonably available:

- (1) Educational programming;
- (2) National and state news, weather and information;
- (3) Sports;
- (4) General entertainment (including movies);
- (5) Children/family-oriented;
- (6) Arts, culture and performing arts;
- (7) Science/documentary; and
- (8) Access programming. (Ord. 31 §9.1, 2003)

Sec. 5-2-360. Deletion of broad programming categories.

The Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the Town. (Ord. 31 §9.2, 2003)

Sec. 5-2-365. Ascertainment of programming and customer satisfaction.

Upon request of the Town, but not earlier than five (5) years after the effective date of this Agreement, the Town and the Grantee shall cooperatively work together to conduct a survey of the Grantee's subscribers. All costs related to the survey will be shared equally between the parties, but such costs will not exceed five thousand dollars (\$5,000.00) without the prior written approval of both parties. The survey may cover such items as programming, response to community needs, rates, satisfaction and dissatisfaction with cable services offered by the Grantee, customer service and other cable television-related matters. The Grantee shall also consult and cooperate with the Town in developing and implementing an ascertainment methodology. The final form and content of the survey shall be subject to the approval of the Town and the Grantee, such approval not to be unreasonably withheld by either party. The Grantee shall provide the results of such survey to the Town within one (1) month after completing the survey. Nothing herein shall be construed to limit the right of the Town to conduct other surveys at its own expense. (Ord. 31 §9.3, 2003)

Sec. 5-2-370. Obscenity.

The Grantee shall not transmit, or permit to be transmitted, over any channel subject to its editorial control, any programming which is obscene under, violates any provision of or is not protected by the Constitution of the United States. The 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 the Grantee's officers or employees or agents have permitted programming which is obscene to be transmitted over any channel which is subject to the Grantee's editorial control. The Grantee shall comply with all relevant provisions of federal law relating to obscenity. (Ord. 31 §9.4, 2003)

Sec. 5-2-375. Parental control device.

Upon request by any subscriber and at a reasonable supplemental cost (if not already included as part of the subscriber's equipment), the 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. The Grantee shall inform its subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. (Ord. 31 §9.5, 2003)

Sec. 5-2-380. Continuity of service.

(a) It shall be the right of all subscribers to continue to receive cable service from the Grantee insofar as their financial and other obligations to the Grantee are satisfied. The Grantee shall use its best efforts to ensure that all subscribers receive continuous, uninterrupted cable service.

(b) Whenever it is necessary to schedule an interruption of service for more than four (4) hours during normal business hours for the purpose of making repairs, installations or adjustments, the Grantee shall use its best efforts to notify subscribers through a character generator notification twenty-four (24) hours in advance of the scheduled shutoff. Any such scheduled interruption shall occur, where possible, at such times as will cause the least inconvenience to subscribers and the Town. Any shutoff or interruption which deprives subscribers of cable service for a period in excess of four (4) hours between the hours of 8:00 a.m. and 10:00 p.m. shall entitle such subscribers to a prorated credit on their next billing statement. (Ord. 31 §9.6, 2003)

Sec. 5-2-385. Access channels.

The Grantee shall, at its expense, continue to carry the existing access channels consistent with its practices in effect on the effective date of this Agreement. Those practices shall include the Grantee's providing two (2) downstream EG access channels (one [1] each for educational and governmental access use) in a manner consistent with federal law. In addition, the Grantee will take whatever steps are necessary to meet and accommodate the needs of other local access programming, taking into account demonstrated local needs and desires (including but not limited to making channel space available on an as-needed basis). The Grantee shall also make available, at its expense, a character generator which will be used by the Grantee to transmit messages for the Town on the governmental access channel. The access capacity can be used to transmit signals in any format and can be used to transmit audio, video or other information. During times when the governmental access channel is not carrying video programming, the Grantee shall provide public radio programming, at its expense, on the governmental access channel. Digital access channels, if any, shall meet the same technical standards as commercial digital channels. An access channel provided hereunder is a channel made available by the Grantee for the purpose of cablecasting noncommercial programming by or for the Town's residents or its governmental or educational institutions. The Town agrees not to use the access channels to provide commercial or revenue-generating services or services that may compete, directly or indirectly, with services provided by the Grantee; provided, however, that the Town may cablecast acknowledgments of funding sources and publicize the underwriting of programming costs. (Ord. 31 §10.1, 2003)

Sec. 5-2-390. Management and control of access channels.

(a) The Town may authorize a designated access provider to control and manage the use of any and all access facilities provided by the Grantee under this Agreement, including, without limitation, the operation of access channels. To the extent of such designation by the Town, as between the designated access provider and the Grantee, the designated access provider shall have sole and exclusive responsibility for operating and managing such access facilities. The Town or its designee may formulate rules for the operation of the access channels and shall work cooperatively with the Grantee in the formulation of such access rules. Nothing herein shall prohibit the Town from authorizing itself to be a designated access provider.

(b) The Grantee shall cooperate with the Town and designated access provider in the use of the cable system and access facilities for the provision of access programming. The Grantee shall enter into such operating agreements with a designated access provider as may be necessary to facilitate and coordinate the provision of access programming, provided that such operating agreements shall not be inconsistent with the terms of this agreement and shall be subject to approval by the Town. (Ord. 31 §10.2, 2003)

Sec. 5-2-395. Capital grant.

(a) Within one hundred twenty (120) days of a request by the Town, the Grantee shall provide to the Town a capital contribution payment of twelve thousand five hundred dollars (\$12,500.00) or, alternatively (at the Town's discretion), not more than twelve thousand dollars' worth of equipment that is needed to cablecast matters of public interest, such as Town Council meetings. The payment is to be used by the Town for access equipment and/or the construction of access-related facilities.

(b) If equipment is requested, the parties shall work in good faith and cooperate with one another in order to reach an agreement regarding the type of equipment that is needed to cablecast matters of public interest, such as Town Council meetings. Such agreement will not be unreasonably withheld by either party.

(c) The Town acknowledges that, under federal laws, rules or regulations, certain external costs, namely access costs described herein, are eligible for "pass-through" to subscribers as separate itemizations on the subscribers' bills. (Ord. 31 §10.3, 2003; Ord. 4 §1, 2009)

Sec. 5-2-400. Underutilized access channels.

(a) The Grantee and the Town agree that it is their mutual goal to fully and efficiently use the access channel capacity of the cable system, which may include allowing the Grantee to use underutilized time on an access channel. If the Grantee believes that any access channel has underutilized time, the Grantee may file a request with the Town to use that time. In response to the request, the Town 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 Town 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 access channel space can be compatibly shared between the designated access provider and the Grantee and/or if several designated access providers can combine their programming onto a single access channel. The Town shall render its decision regarding the matter within sixty (60) days of receiving the request. Should the Town find that the access channel or portion of the access channel may be used by the Grantee, then the Grantee may begin using such time ninety (90) days after receipt of the written decision. The 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 the Grantee pursuant to this Section, a designated access provider may request that the Town return such channel or portion of the channel for access purposes. In response to the request, the Town 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 designated access provider's ability and resources to acquire or produce the proposed access programming. The Town 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 access channel space can be compatibly shared between the designated access provider and the Grantee and/or if several designated access providers can combine their programming onto a single access channel. The Town shall render its decision regarding the matter within sixty (60) days of receiving the request. Should the Town 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 the Grantee shall surrender the access channel or requested time on the access channel as applicable within ninety (90) days of receiving the written decision. The designated access provider's request shall not be unreasonably denied. (Ord. 31 §10.4, 2003)

Sec. 5-2-405. Interconnections.

The Grantee acknowledges that it is the Town's goal to further the community's needs and interests by providing for the interconnection of access channels between the Town and surrounding communities. The Grantee will continue its current practice, at its expense, to provide access programming from the City of Gunnison. Also, upon request of the Town, the Grantee will, at the Grantee's expense, provide an access interconnection with Crested Butte. The Town shall have the right to use any access programming provided to it through an interconnect. At such time as the Town desires to cablecast its own governmental access programming, then the governmental access programming from the City of Gunnison will be preempted as necessary, by the Grantee at the Grantee's expense. (Ord. 31 §10.5, 2003; Ord. 4 §1, 2009)

Sec. 5-2-410. Repair and replacement.

The Grantee shall provide routine maintenance and repair and replace all of the Grantee's transmission equipment as necessary to carry a quality signal from the access facilities to subscribers. (Ord. 31 §10.6, 2003)

Sec. 5-2-415. Additional access channel capacity and facilities.

(a) Upon the Town's request as established by the triggers set forth in Section 5-2-425 of this Agreement, the Town may require the Grantee, at the Grantee's expense, to activate one (1) additional access channel for a maximum of three (3) access channels.

(b) Initially and throughout the term of this Agreement, the Grantee shall provide at its expense operating upstream channels sufficient to enable character-generated, prerecorded and live cablecasts from the locations referenced below to enable the distribution of access programming to residential subscribers.

(c) In support of access, the Grantee will provide and maintain, at its expense, return capability from the Town Hall. In further support of access programming, the Grantee will also provide and maintain return capability from at least one (1) other location in the Town to be designated by the Town. (Ord. 31 §10.7, 2003)

Sec. 5-2-420. Relocation of access channels.

The Grantee shall provide the Town with a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred twenty (120) days' notice, prior to the time access channel designations are changed. The Grantee shall consult with the Town prior to making a final determination regarding any changes in access channel designations. Any new access channel designation provided pursuant to this Agreement shall be in full compliance with FCC signal quality and proof of performance standards. (Ord. 31 §10.8, 2003)

Sec. 5-2-425. Triggers for expansion of access channels.

When a channel for a particular type of access programming meets the criteria set forth below, the Town may require the Grantee to provide one (1) additional activated access channel at the Grantee's expense.

(1) Educational or governmental access channel: If either of the two (2) EG access channels are in use for locally scheduled original programming (excluding character-generated programming) during eighty percent (80%) of the time on weekdays between the hours of 8:00 a.m. and 10:00 p.m. for eight (8) consecutive weeks, the Grantee will provide one (1) additional channel within one hundred twenty (120) days after written request by the Town. The Town must provide the Grantee with reasonable documentation of such utilization and increased demand.

(2) For the purpose of this Section:

Locally scheduled means that the scheduling, selection and/or playback of original programming on a per-program basis is determined in consultation with, or pursuant to the operating procedures of the designated access provider.

Original programming means programming in its initial cablecast on the cable system or in its first or second repeat. (Ord. 31 §10.9, 2003)

Sec. 5-2-430. Access channels on lowest tier.

Any access channel provided to subscribers under this Agreement shall be included by the Grantee as a part of its basic service on its cable system. (Ord. 31 §10.10, 2003)

Sec. 5-2-435. Change in technology.

In the event the Grantee makes any change in the cable system and related equipment and facilities, or in the Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of access services or programming, the Grantee shall, at its expense, take necessary technical steps and 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. (Ord. 31 §10.11, 2003)

Sec. 5-2-440. Technical quality.

The Grantee shall maintain all access channels at the same level of technical quality and reliability as other channels. (Ord. 31 §10.12, 2003)

Sec. 5-2-445. Service connections to schools and Town facilities.

(a) Cable service. The Grantee will provide, at its expense, cable drops and basic service and expanded basic service to each presently existing elementary and secondary public school, fire station, police station, library and certain Town facilities (which Town facilities are specifically listed in Exhibit A to the ordinance codified herein which exhibit is incorporated herein by reference), and to not more than three (3) future locations for each of the foregoing, within the geographical limits of the Town. Such locations must be within one hundred fifty (150) feet of the Grantee's distribution plant or, in the case of existing facilities, those locations which are already served by the Grantee. The Grantee will bring its cable drops to a specified exterior demarcation point mutually agreed upon by the Grantee and such location. Outlets of basic service and expanded basic service provided in accordance with this Section may be used to distribute cable services throughout such buildings,

provided such distribution can be accomplished without causing cable system disruption and general technical standards are maintained.

(b) Cable internet service connections. The Grantee agrees to provide on a voluntary initiative basis one (1) free high-speed cable modem connection and all necessary equipment relating thereto for the public schools and library. There shall be no usage fee for such high-speed cable internet service. The user facility shall be responsible for the provision, maintenance and replacement of personal computers required to utilize such service. (Ord. 31 §11, 2003)

*Division 8
Street Use and Construction*

Sec. 5-2-505. Right to construct.

Subject to applicable laws, regulations, rules, resolutions and ordinances of the Town and the provisions of this Agreement, the Grantee may perform all construction in the streets for any facility needed for the installation, maintenance, upgrade, extension or repair of the cable system. (Ord. 31 §12.1, 2003)

Sec. 5-2-510. Meetings.

The Grantee will regularly attend and participate in meetings of the Town, of which the Grantee is made aware, regarding streets and other matters that may impact the cable system. (Ord. 31 §12.2, 2003)

Sec. 5-2-515. Joint trenching/boring.

Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, the Grantee shall work with other providers (such as, but not limited to, telecommunications, gas and electric companies), licensees, permittees and franchisees so as to reduce so far as possible the number of street cuts within the Town. (Ord. 31 §12.3, 2003)

Sec. 5-2-520. General standards.

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be durable and installed in accordance with sound engineering practices. The 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 Agreement or applicable law. (Ord. 31 §12.4, 2003)

Sec. 5-2-525. Permits required for construction.

Prior to doing any work in the streets or on other public property, the Grantee shall apply for and obtain appropriate permits from the Town. As part of the permitting process, the Town may impose such conditions and regulations as are necessary for the purpose of protecting any street, the proper restoration of streets and structures, the protection of the public and the continuity of pedestrian or vehicular traffic. Such conditions may also include requiring the provision of a construction schedule

and maps showing the location of the facilities to be installed in the streets. The Grantee shall pay all applicable fees for the requisite Town permits received by the Grantee. (Ord. 31 §12.5, 2003)

Sec. 5-2-530. Emergency permits.

In the event that emergency repairs are necessary, the Grantee shall immediately notify the Town of the need for such repairs. The Grantee may initiate such emergency repairs and shall apply for appropriate permits within twenty-four (24) hours after discovery of the emergency. (Ord. 31 §12.6, 2003)

Sec. 5-2-535. Movement of facilities during emergencies.

During emergencies, the Town may move the Grantee's facilities without prior notice. (Ord. 31 §12.7, 2003)

Sec. 5-2-540. Compliance with applicable codes and standards.

(a) The Grantee shall comply with all applicable Town construction codes, including, without limitation, all building codes, zoning codes and regulations.

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

(c) The Grantee shall comply with all federal, state and Town safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair or removal of its cable system. By way of illustration and not limitation, the Grantee shall comply with Occupational Safety and Health Administration (OSHA) standards. (Ord. 31 §12.8, 2003)

Sec. 5-2-545. Minimal interference.

Work in the streets, 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. The 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 Town, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the streets by, or under, the Town's authority. The cable system shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with new improvements the Town may deem proper to make or to unnecessarily hinder or obstruct the free use of the streets or other public property, and shall not interfere with the use of public places by the public during construction, repair, operation, maintenance, upgrade or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the Town may require the removal or relocation of the Grantee's lines, cables, equipment and other appurtenances from the property in question at the Grantee's expense. (Ord. 31 §12.9, 2003)

Sec. 5-2-550. Prevent injury.

The Grantee shall provide and use any equipment and facilities necessary to control and carry the Grantee's signals so as to prevent injury to the Town's property or property belonging to any person. The Grantee, at its own expense, shall maintain, repair, update, change and improve its facilities to keep them in good repair and safe and presentable condition. (Ord. 31 §12.10, 2003)

Sec. 5-2-555. One call compliance.

The Grantee will comply with the State's "one call" requirements regarding underground equipment locations and installations. The Grantee shall further comply with and adhere to local procedures, customs and practices relating to underground safety requirements. (Ord. 31 §12.11, 2003)

Sec. 5-2-560. Notice regarding streets.

The Grantee shall give reasonable notice to private property owners of construction work in adjacent streets. (Ord. 31 §12.12, 2003)

Sec. 5-2-565. Underground construction.

(a) The Grantee shall utilize existing conduit wherever possible.

(b) In areas where electric and telephone lines or wires are already installed underground at the time of cable system construction, all cable system lines shall also be placed underground with other wireline service at no expense to the Town or subscribers. Related cable system equipment, such as pedestals and power supplies, must be placed in accordance with the Town's applicable code requirements and rules.

(c) This Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on any equipment of the Town or any other entity.

(d) The Grantee and the Town recognize that situations may occur in the future where the Town may desire to place its own cable or conduit in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the Town in any construction by the Grantee that involves trenching or boring, provided that the Town has notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the Town to install cables and conduits in the Grantee's trenches and bores. The Town shall be responsible for maintaining its respective cables and conduits in the Grantee's trenches and bores under this Subsection.

(e) In cases where the undergrounding of cables is required pursuant to this Agreement, the Grantee agrees to complete said undergrounding within thirty (30) days, subject to weather and seasonal constraints. The Grantee shall not leave an active or inactive cable lying on the ground, on public or private property for more than one hundred eighty (180) days without written permission from the Town, provided, however, that in cases where winter conditions (snow, frozen terrain, severe cold, etc.) or other unusual circumstances reasonably prohibit the undergrounding of newly installed cable within thirty (30) days, the Grantee shall notify the Town in writing of the problem,

along with a date by which the undergrounding would be completed, said date to be no later than June 30 of each year.

(f) All cables currently lying on the ground, upon the effective date of this Agreement, whether on public or private property, when otherwise required to be undergrounded or mounted and secured above the ground pursuant to this or the previous franchise agreement with the Grantee, shall be undergrounded or properly mounted and secured above the ground or removed from said property no later than June 30, 2004.

(g) There shall be no charge to the Town by the Grantee for compliance with the terms and conditions of this Section. (Ord. 31 §12.13, 2003; Ord. 4 §1, 2009)

Sec. 5-2-570. Repair and restoration of property.

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

(b) Whenever the Grantee disturbs or damages any street, other public property or any private property, the Grantee shall promptly restore the street or property to at least its prior condition, including revegetation as applicable, at its own expense to the reasonable satisfaction of the property owner.

(c) The Grantee warrants any restoration work performed by or for the Grantee in the streets or on other public property. If restoration is not satisfactorily and timely performed by the Grantee, the Town may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health, welfare or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall reimburse the Town. (Ord. 31 §12.14, 2003)

Sec. 5-2-575. Discontinuing use.

Whenever the Grantee intends to discontinue using any facility within the streets, the Grantee shall notify the Town of its intent regarding such discontinuance. The Grantee may remove the facility or request that the Town allow it to remain in place. Notwithstanding the Grantee's request that any such facility remain in place, the Town may require the Grantee to remove the facility from the street or modify the facility to protect the public health, welfare, safety or convenience, or otherwise serve the public interest. The Grantee shall use its best efforts to complete such removal or modification in accordance with a schedule set by the Town. Until such time as the Grantee removes or modifies the facility as directed by the Town, or until the rights to and responsibility for the facility are accepted by another person having authority to construct and maintain such facility, the Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the street, in the same manner and degree as if the facility were in active use, and the Grantee shall retain all liability for such facility. (Ord. 31 §12.15, 2003)

Sec. 5-2-580. Relocation or removal.

(a) The Grantee shall, at its expense, relocate within or remove its facilities from the streets or other public property when reasonably necessary for purposes of public welfare, health or safety.

(b) Except during an emergency, the Town shall notify the Grantee of the need for relocation or removal and shall specify the date by which relocation or removal shall be completed. The Grantee shall complete the relocation or removal by the date specified, unless the Town establishes a later date for completion, after a showing by the Grantee that the relocation or removal cannot be completed by the date specified using best efforts and meeting safety and service requirements. The Town shall provide not less than five (5) business days' notice, and allow the 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 Town that requires the removal or relocation of the Grantee's facilities or equipment, the Town shall provide at least thirty (30) days' written notice to the Grantee. Following notice by the Town, the Grantee shall relocate within or remove its facilities or equipment from any street or any other property of the Town. If the Town requires the Grantee to relocate its facilities located within the streets, the Town shall make a reasonable effort to provide the Grantee with an alternate location within the streets. If funds are generally made available to users of the streets for such relocation, the Grantee shall be entitled to its pro rata share of such funds.

(c) If the Grantee fails to complete this work within the time prescribed and to the Town's satisfaction, the Town may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the Town due to the Grantee's delay. In such event, the Town shall not be liable for any damage to any portion of the Grantee's cable system. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall reimburse the Town. (Ord. 31 §12.16, 2003)

Sec. 5-2-585. Movement of cable system facilities for other franchise or permit 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 franchise or permit holder, the Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The Grantee may require that the expense of such removal, replacement, modification or disconnection of the cable system be paid by the benefited entity, and the Grantee may require a reasonable deposit of the estimated payment in advance. (Ord. 31 §12.17, 2003)

Sec. 5-2-590. Temporary changes for other permittees.

At the request of any person holding a valid permit and upon reasonable advance notice, the Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The Grantee may require that the expense of such temporary changes be paid by the permit holder, and the Grantee may require a reasonable deposit of the estimated payment in advance. (Ord. 31 §12.18, 2003)

Sec. 5-2-595. Reservation of Town's use of streets.

Nothing in this Agreement shall prevent the Town from constructing sewers; grading, paving, repairing or altering any street; installing, 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 the Grantee's cable system. (Ord. 31 §12.19, 2003)

Sec. 5-2-600. Inspection of construction and facilities.

The Town may inspect any of the Grantee's facilities, equipment or construction at any time during normal business hours upon at least twenty-four (24) hours' notice or, in case of an emergency, at any time upon demand without prior notice. The Town shall have the right to charge generally applicable inspection fees therefor. If an unsafe condition is found to exist, the Town, in addition to taking any other action permitted under applicable law, may order the Grantee to make the necessary repairs and alterations forthwith to correct the unsafe condition by a time the Town establishes. The Town has the right to correct, inspect, administer and repair the unsafe condition if the Grantee fails to do so after notice and a thirty-day opportunity to cure (and without a cure period in emergency situations), and to charge the Grantee therefor. (Ord. 31 §12.20, 2003)

Sec. 5-2-605. Stop work.

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

(b) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the person doing the work, or posted on the work site;
- (3) Be sent to the 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. 31 §12.21, 2003)

Sec. 5-2-610. Work of contractors and subcontractors.

The Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the Town's regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by the Grantee. The 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 Agreement and applicable law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is the Grantee's responsibility to ensure that contractors, subcontractors or other persons performing work on the Grantee's behalf are

familiar with the requirements of this Agreement and applicable laws governing the work performed by them. (Ord. 31 §12.22, 2003)

Sec. 5-2-615. Maintenance.

The Grantee's cable system and appurtenances shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with new improvements the Town may deem proper to make or to unnecessarily hinder or obstruct the free use of the streets or other public property. (Ord. 31 §12.23, 2003)

Sec. 5-2-620. Marking of facilities.

(a) The Grantee shall maintain its facilities in good order so as to present a neat and unobtrusive appearance and shall paint all necessary aboveground facilities in a light green color, except that the color of major structures such as antenna support structures shall not necessarily be light green but shall be subject to the approval of the Town's Board of Zoning and Architectural Review. Aboveground facilities shall be properly marked with poles which are at least six (6) feet high and are attached so that they can stand vertically in the winter months and shall be maintained by the Grantee during months when snow accumulations cover said facilities, and such markers shall be promptly removed by the Grantee each spring when no longer necessitated by snow conditions.

(b) The Grantee shall reasonably locate each and every structure or piece of equipment of the cable system and shall catalogue each such location. The Grantee shall utilize such catalogue and state-of-the-art technology to identify any such location within one (1) day, which will then permit the access of excavation, repair or maintenance vehicles or enable the commencement of efforts by the Grantee to do so as the need may arise from time to time for testing, maintenance or repair. (Ord. 31 §12.24, 2003; Ord. 4 §1, 2009)

Sec. 5-2-625. Street vacation.

(a) If any street or portion thereof used by the Grantee is vacated by the Town during the term of this Agreement, unless the Town specifically reserves to the Grantee the right to continue its installation in the vacated street, the Grantee shall, without delay or expense to the Town, remove its facilities from such street, restore, repair or reconstruct the street where such removal has occurred, and place the street in such condition as may be required by the Town. Notwithstanding the foregoing, in the event a street is to be vacated by the Town, the Town will use its good faith efforts to reserve an easement or make available an alternative location for the Grantee's facilities.

(b) In the event of failure, neglect or refusal of the Grantee, after thirty (30) days' notice by the Town, to restore, repair or reconstruct such street, the Town may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by the Town, shall be paid by the Grantee within thirty (30) days of receipt of an invoice. (Ord. 31 §12.25, 2003)

Division 9
System Configuration, Service Availability

Sec. 5-2-655. Cable system characteristics.

(a) As of the effective date of this Agreement, the Grantee represents and warrants that its cable system has a capacity of eight hundred sixty (860) MHz and is capable of delivering a minimum of one hundred thirty-five (135) channels of programming to subscribers in the Town. The Grantee will comply with all federal requirements regarding digital transmission of broadcast signals.

(b) The Grantee's cable system shall be and remain two-way capable, and be a hybrid fiber coaxial system using a fiber-area topology which includes the use of fiber trunks and a sufficient number of optical transition nodes serving the subscribers in the Town.

(c) As designed and maintained, the facilities and equipment of the cable system must be able to deliver high quality signals, regardless of the particular manner in which the signal is transmitted.

(d) The 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 Agreement or applicable law.

(e) Equipment must be installed so that all closed-captioned programming received by the cable system shall include the closed-caption signal.

(f) The Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular area within the Town.

(g) The Grantee acknowledges that the cable system design and performance requirements set forth in this Agreement are enforceable, and the Grantee will not challenge such requirements in any judicial or administrative proceeding. (Ord. 31 §13.1, 2003)

Sec. 5-2-660. Comparable cable services.

(a) The Grantee shall use its best efforts to ensure that the cable services that are provided over the cable system in the Town are reasonably comparable to those provided in the City of Gunnison. If certain cable services are not also being offered on the Grantee's cable system in the Town, the Grantee shall explain to the Town in writing why such cable services are not offered in the Town and shall estimate the cost to supply such cable services within the franchise area. The Grantee shall be responsible for offering all such cable services expeditiously and as soon as economically practical.

(b) The Town may hold a hearing at any time to review whether or not the cable system and the cable services offered by the Grantee are meeting demonstrated community needs and interests, taking into account the cost of meeting those needs and interests. The parties recognize that, as of the effective date of this Agreement, the Town is not permitted to require the provision of specific video programming pursuant to this Section. (Ord. 31 §13.2, 2003)

Sec. 5-2-665. Emergency alert capability.

(a) The Grantee shall provide an operating Emergency Alert System ("EAS") in accordance with federal laws, including FCC regulations.

(b) The Town shall only allow its appropriately trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any inappropriate use thereof.

(c) The 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. The Grantee will advise the Town of the testing schedule, and the Town may be present for the tests. (Ord. 31 §13.3, 2003)

Sec. 5-2-670. Technical standards.

The performance of the cable system shall meet or exceed all applicable technical standards required by law, including, without limitation, federal laws and FCC technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The Town shall have the full authority permitted by applicable law to enforce compliance with those technical standards. (Ord. 31 §13.4, 2003)

Sec. 5-2-675. Cable system performance testing.

(a) The Grantee shall, at its expense, perform all tests on the cable system required by the FCC and shall maintain written records of its test results. Copies of such test results will be provided to the Town upon request.

(b) All required technical performance tests may be witnessed by representatives of the Town.

(c) The Grantee shall promptly take such measures as are necessary to correct any technical or performance deficiencies fully and to prevent their recurrence as far as possible. The Grantee's failure to correct technical or performance deficiencies identified through this testing process shall be a material violation of this Agreement. The Grantee shall be provided with written notice and a thirty-day opportunity to cure any technical or performance deficiency except in the event of an emergency. Sites shall be retested following correction. (Ord. 31 §13.5, 2003)

Sec. 5-2-680. Additional tests.

Where there exists other evidence that in the judgment of the Town casts doubt upon the technical quality of the cable system, the Town shall have the right and authority, upon thirty (30) days' prior written notice, to require the Grantee to test, analyze and report on the performance of the cable system. The Grantee shall fully cooperate with the Town in performing such testing and shall prepare 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 by the Town. (Ord. 31 §13.6, 2003)

Sec. 5-2-685. Equivalent service.

(a) The Grantee shall ensure that all residential dwelling units in the franchise area have equivalent availability to cable service from the Grantee's cable system under nondiscriminatory rates, and reasonable terms and conditions in accordance with this Division. The Grantee shall not arbitrarily refuse to provide cable service to any person within the franchise area.

(b) This Agreement is granted for the entire franchise area. The Grantee upon request will make service available to all residences within the franchise area in the event that:

(1) Such part of the franchise area has a density of at least twenty-five (25) dwelling units, per linear strand mile of cable as measured from existing cable system plant;

(2) Any such dwelling unit requesting service can be provided with service by a standard installation which will be no more than one hundred fifty (150) feet from the existing distribution system; and (3) such part of the franchise area is not being served by a cable operator other than the Grantee or its affiliates, an open video system operator or a satellite master antenna television system. For unusual circumstances, such as the existence of more than one hundred fifty (150) feet from the existing distribution system to connection of service to customers, or a density of less than twenty-five (25) dwelling units per linear strand mile of cable as measured from existing cable system plant, service may be made available on the basis of a capital contribution in aid of construction, including the cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and potential customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of dwelling units per linear strand mile of cable as measured from existing cable system plant and whose denominator equals twenty-five (25). Potential customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance. (Ord. 31 §14.1, 2003)

Sec. 5-2-690. Service request.

(a) The Grantee shall provide cable service within seven (7) days of a request by any potential residential subscriber within the Town. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee, receipt of a written request by the Grantee or receipt by the Grantee of a verified verbal request. The Grantee shall provide such service:

- (1) With no line extension charge (subject to the above density requirement);

(2) At a nondiscriminatory installation charge for a standard installation, consisting of a one-hundred-fifty-foot drop connecting to the exterior demarcation point for residential subscribers, with additional charges for nonstandard installations computed according to a nondiscriminatory methodology for such installations, which is used by the Grantee and provided in writing to the Town; and

(3) At nondiscriminatory monthly rates for residential subscribers.

(b) The Grantee shall provide cable service to multiple dwelling units in accordance with an agreement with the property owner or owners, this Agreement and all applicable laws. (Ord. 31 §14.2, 2003)

Sec. 5-2-695. Standby power.

The Grantee shall provide standby power-generating capacity at the headend capable of ten (10) hours of emergency operation. The Grantee shall maintain standby power system supplies, rated for at least two (2) hours' duration, throughout key locations in the trunk and distribution networks. In addition, throughout the term of this Agreement, the Grantee shall have a plan in place, along with all resources necessary for implementing such a plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to the Town within thirty (30) days of a request therefor. (Ord. 31 §15, 2003)

Division 10

Agreement Violations, Bankruptcy, Immunities

Sec. 5-2-715. Procedure for remedying violations.

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

(1) Respond to the Town, contesting the Town's assertion that a violation has occurred, and request a hearing in accordance with Subsection (b) below;

(2) Cure the violation; or

(3) Notify the Town that the Grantee cannot cure the violation within the thirty-day period because of the nature of the violation, and state in writing what steps the Grantee shall take to cure the violation, including the Grantee's projected completion date for such cure. In such case, the Town shall set a hearing date in accordance with Subsection (b) below.

(b) In the event that the Grantee contests the violation or notifies the Town that it cannot cure the violation within the thirty-day cure period, the Town Council shall set a public hearing within twenty (20) days of the Town's receipt of such notice to review the matter.

(c) The Town shall notify the Grantee of the hearing date in writing. At the hearing, the Grantee shall be provided due process, including an opportunity to be heard and to present evidence in its defense. The Town Council shall also hear any other person interested therein.

(d) If, after the public hearing, the Town Council determines that a violation still exists, the Town may utilize one (1) or more of the following remedies:

(1) Order the Grantee to correct or remedy the violation within a reasonable time frame as the Town shall determine;

(2) Establish the amount of liquidated damages as set forth in Section 5-2-725 below;

(3) Revoke this Agreement; or

(4) Pursue any other legal or equitable remedy available under this Agreement or applicable law. (Ord. 31 §16.1, 2003)

Sec. 5-2-720. Revocation.

In addition to all other rights and powers retained by the Town under this Agreement or otherwise, the Town reserves the right to terminate this Agreement and all rights and privileges of the Grantee hereunder in the event of a material violation of its terms and conditions. A material violation shall include, but not be limited to, the following:

(1) Violation of any material provision of this Agreement;

(2) Attempt to evade any material provision of this Agreement or to practice any fraud or deceit upon the Town or subscribers;

(3) Failure to restore service after forty-eight (48) continuous hours of interrupted service system-wide, except when approval of such interruption is obtained from the Town;

(4) Material misrepresentation of fact in the negotiation of this Agreement;

(5) Breach of any material representation or warranty contained in this Agreement;

(6) Subject to applicable law, if a successor or assignee of the Grantee (or a subsequent successor or assign) becomes insolvent, makes an assignment for the benefit of its creditors or becomes the subject of a bankruptcy proceeding; or

(7) If the Grantee breaches a material provision of the customer service standards, if any. (Ord. 31 §16.2, 2003)

Sec. 5-2-725. Liquidated damages.

(a) Because the failure of the Grantee to comply with certain provisions of this Agreement will result in injury to the Town, and because it will be difficult to estimate the extent of such injury in certain instances, the Town and the Grantee agree to liquidated damages for the following violations.

These amounts represent both parties' best estimate of the damages resulting from the specified violation.

(1) For material departure from the FCC technical performance standards: two hundred fifty dollars (\$250.00) per day.

(2) For failure to provide continuous cable service within the franchise area: one hundred dollars (\$100.00) per day.

(3) For failure to provide any channel or capability for access use of the cable system: one hundred dollars (\$100.00) per day.

(4) For each material violation of the customer service standards, if any: one hundred dollars (\$100.00) per day.

(5) For failure to provide reports or notices as required by this Agreement: fifty dollars (\$50.00) per day.

(6) For all other material violations of this Agreement, for which actual damages may not be ascertainable: one hundred dollars (\$100.00) per day.

(b) The Town will provide written notice of a violation, and the Grantee will have thirty (30) days to cure the violation (or more, if approved by the Town). Liquidated damages shall be assessed in the event that a cure has not timely occurred.

(c) The liquidated damages set forth above may be reduced at the discretion of the Town Council, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one (1) or more of the following factors:

(1) Whether the violation was unintentional;

(2) Whether substantial harm resulted;

(3) Whether there is a history of prior violations of the same or other requirements;

(4) Whether there is a history of overall compliance; and

(5) Whether the violation was voluntarily disclosed, admitted or cured.

(d) The collection of liquidated damages by the Town shall in no respect affect the Grantee's obligation to comply with all of the provisions of this Agreement and applicable law. (Ord. 31 §16.3, 2003)

Sec. 5-2-730. Removal of facilities.

(a) In the event of termination, expiration, nonrenewal or revocation of this Agreement, the Town may order the removal of the aboveground cable system facilities (and such underground facilities as required by the Town) from the franchise area at the Grantee's sole expense within a reasonable period of time as determined by the Town in consultation with the Grantee. In removing

its plant, structures and equipment, the Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all streets, other public places and private property in as good a condition as that prevailing prior to the Grantee's removal of its equipment.

(b) If the Grantee fails to complete any required removal to the satisfaction of the Town, the Town may cause the work to be done and the Grantee shall reimburse the Town for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the Town may recover the costs from the letter of credit or bond(s) provided by the Grantee. (Ord. 31 §16.4, 2003)

Sec. 5-2-735. Bankruptcy.

At the option of the Town, if permitted by applicable bankruptcy law, this Agreement may be revoked after the initiation of a bankruptcy proceeding which occurs subsequent to the effective date of this Agreement by or against the Grantee; or after the appointment of a receiver or trustee to take over and conduct the business of the Grantee after the effective date of this Agreement, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless: (1) the receivership or trusteeship is vacated within a reasonable amount of time; or (2) the receiver or trustee has fully complied with all the terms and provisions of this Agreement and has timely remedied all violations under the Agreement. Additionally, the receiver or trustee shall have executed an agreement by which the receiver or trustee assumes and agrees to be bound by each and every term and provision of this Agreement. (Ord. 31 §17.1, 2003)

Sec. 5-2-740. Foreclosure.

If there is a foreclosure or other involuntary sale of the whole or any material part of the cable system of the Grantee, the Town may serve notice of revocation on the Grantee and to the purchaser at the sale, and the rights and privileges of the Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:

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

(2) The purchaser has agreed with the Town to assume and be bound by all of the terms and conditions of this Agreement. (Ord. 31 §17.2, 2003)

Sec. 5-2-745. Immunities.

The rights of the Town under this Agreement are in addition to and shall not be read to limit any immunities the Town may enjoy under federal, state or local law. (Ord. 31 §18, 2003)

*Division 11
Purchase, Abandonment or Transfer of Cable System*

Sec. 5-2-765. Purchase of cable system.

(a) If at any time this Agreement is lawfully revoked, terminated, expires or is not renewed, the Town shall have the option to purchase the cable system.

(b) In any case where the Town elects to purchase the cable system, the purchase shall be closed within one hundred twenty (120) days of the date of the Town's audit of a balance sheet and profit and loss statement of the Grantee's cable system. The Grantee shall deliver appropriate bills of sale and other instruments of conveyance in connection therewith.

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

(1) In the case of a denial of franchise renewal, at fair market value determined on the basis of the Grantee's cable system valued as a going concern, but with no value allocated to the Agreement itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance or other obligation of the Grantee that the Town may assume.

(2) In the case of franchise revocation for cause, the equitable price of the Grantee's cable system. (Ord. 31 §19, 2003)

Sec. 5-2-770. Alternative remedies.

No provision of this Agreement shall be deemed to bar the Town from seeking appropriate judicial relief. Neither the existence of other remedies identified in this Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Town to recover monetary damages for violations by the Grantee, or to seek and obtain judicial enforcement of the Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity. (Ord. 31 §20, 2003)

Sec. 5-2-775. Abandonment definition.

The Grantee will be deemed to have abandoned the cable system temporarily if the Grantee fails to provide cable service over a substantial portion of the franchise area for forty-eight (48) hours. The Grantee will be deemed to have abandoned cable system facilities permanently if the Grantee discontinues using such facilities for at least one (1) year, unless the written consent of the Town is received. (Ord. 31 §21.1, 2003)

Sec. 5-2-780. Effect of abandonment.

If the Grantee temporarily or permanently abandons its cable system at any time during the term of this Agreement, the Town, at its option, may: (1) operate the cable system; (2) designate another entity to operate the cable system; or (3) obtain an injunction requiring the Grantee to continue operations. If the Town operates or designates another entity to operate the cable system, the Grantee shall reimburse the Town or its designee for all costs, expenses and damages incurred. If the Grantee permanently abandons any of its cable system facilities, then, at the Town's sole discretion, such facilities may become the property of the Town. (Ord. 31 §21.2, 2003)

Sec. 5-2-785. Renewal of Agreement.

(a) The Town and the Grantee agree that any proceedings undertaken by the Town that relate to the renewal of this Agreement shall be governed by and comply with the provisions of Section 626 of the Cable Acts, unless the procedures or substantive protections set forth therein shall be deemed to be preempted and superseded by any subsequent provision of federal or state law.

(b) In addition to the procedures set forth in said Section 626(a), the Town agrees to notify the 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 the Grantee under this Agreement. Notwithstanding anything to the contrary set forth herein, the Grantee and the Town agree that at any time during the term of this Agreement, while affording the public adequate notice and opportunity for comment, the Town and the Grantee may agree to undertake and finalize negotiations regarding renewal of this Agreement and the Town may grant a renewal thereof. The Grantee and the Town consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Acts. (Ord. 31 §22.1, 2003)

Sec. 5-2-790. Transfer of ownership or change in control.

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

(b) The Grantee shall promptly notify the Town of any actual or proposed change in, transfer of or acquisition by any other party of control of the Grantee. The word control, as used herein, is not limited to majority stock ownership but includes actual working control in whatever manner exercised. With the following exception, every change, transfer or acquisition of control of the Grantee shall make this Agreement subject to cancellation unless and until the Town shall have consented in writing thereto. The prior approval of the Town shall not be required for a change in control that occurs as a result of the Grantee's reorganization under the pending bankruptcy proceeding under Chapter 11 of the United States Bankruptcy Code.

(c) The parties to the sale or transfer or change in control shall make a written request to the Town for its approval of a sale or transfer or change in control and furnish all information required by law.

(d) In seeking the Town's consent to any change in ownership or control, the proposed transferee or new controlling entity shall indicate whether, as applicable, 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 or misrepresentation entered against it 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 or new controlling entity, along with any other data that the Town may reasonably require; and

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

(e) The Town shall act on the request within one hundred twenty (120) days of the request, provided that it has received all information required by law, such as, but not limited to, an FCC Form 394. Subject to the foregoing, if the Town fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Town agree to an extension of time.

(f) Within thirty (30) days of any transfer or sale or change in control, if approved or deemed granted by the Town, the Grantee shall file with the Town a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or change in control, certified and sworn to as correct by the Grantee and the transferee or new controlling entity. In case of a sale or transfer of ownership, the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Agreement. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Agreement and will not be required to file an additional written acceptance.

(g) In reviewing a request for sale, transfer or change in control, the Town may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and the Grantee shall assist the Town in so inquiring. The Town may condition said sale or transfer or change in control 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 such person or entity shall effect changes as promptly as practicable in the operation of the cable system, if any changes are necessary, to cure any violations or defaults presently in effect or ongoing.

(h) Notwithstanding anything to the contrary in this Section, the prior approval of the Town shall not be required for any sale, assignment or transfer of the Agreement or cable system to an intra-company affiliate; provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Town and must agree in writing to comply with all of the provisions of the Agreement. Further, the Grantee may pledge the assets of the cable system for the purpose of financing without the consent of the Town; provided that such pledge of assets shall not impair or mitigate the Grantee's capabilities and responsibilities to meet all of its obligations under the provisions of this Agreement. (Ord. 31 §22.2, 2003)

Division 12
Miscellaneous Provisions

Sec. 5-2-805. Severability.

If any section, subsection, paragraph or provision of this Agreement is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, paragraph or provision of this Agreement, all of which will remain in full force and effect for the term of the Agreement. (Ord. 31 §23, 2003)

Sec. 5-2-810. Equal employment and nondiscrimination.

Throughout the term of this Agreement, the Grantee shall fully comply with all equal employment and nondiscrimination provisions and requirements of federal, state and local laws and, in particular, FCC rules and regulations relating thereto. (Ord. 31 §24.1, 2003)

Sec. 5-2-815. Local employment efforts.

The Grantee shall use reasonable efforts to utilize qualified local contractors, including minority business enterprises and woman business enterprises, whenever the Grantee employs contractors to perform work under this Agreement. (Ord. 31 §24.2, 2003)

Sec. 5-2-820. Notices.

(a) Throughout the term of the Agreement, the Grantee shall maintain and file with the Town a designated local address for the service of notices by mail. Notices from the Town to the Grantee shall be sent, postage prepaid, to such address, and such notices shall be effective upon the date of mailing. At the effective date of this Agreement, such address shall be:

General Manager
Southwest Colorado Cable, Inc.
412 West Tomichi Avenue
Gunnison, Colorado 81230

(b) All notices to be sent by the Grantee to the Town under this Agreement shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the effective date of this Agreement, such address shall be:

Town Manager
Town of Crested Butte
P.O. Box 39
Crested Butte, Colorado 81224

(Ord. 31 §24.3, 2003)

Sec. 5-2-825. Binding effect.

This Agreement shall be binding upon the parties hereto, and their permitted successors and assigns. (Ord. 31 §24.4, 2003)

Sec. 5-2-830. Time limits strictly construed.

Whenever this Agreement sets forth a time for any act to be performed by the Grantee, such time shall be deemed to be of the essence, and any failure of the Grantee to perform within the allotted time may be considered a breach of this Agreement. (Ord. 31 §24.5, 2003)

Sec. 5-2-835. Authority to amend.

In addition to the mandatory amendment provision of Section 5-2-110 of this Article, this Agreement may also be amended at any time by written agreement between the parties. This Agreement shall not be unilaterally amended by the Town, except as a result of the Town's police powers to protect the health, safety or general welfare of the community. (Ord. 31 §24.6, 2003)

Sec. 5-2-840. Governing laws.

This Agreement shall be governed in all respects by all applicable present and future federal, state and local laws. (Ord. 31 §24.7, 2003)

Sec. 5-2-845. Drafting of Agreement.

Both parties acknowledge that they actively participated in the drafting of this Agreement, and as such, the Agreement shall not be construed more stringently against one (1) party as compared with the other. (Ord. 31 §24.8, 2003)

Sec. 5-2-850. Captions.

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provision of this Agreement. (Ord. 31 §24.9, 2003)

Sec. 5-2-855. Costs and expenses to be borne by Grantee.

The Grantee shall be responsible for the costs and expenses of publication of this Agreement and any newspaper notices pertaining to this Agreement. (Ord. 31 §24.10, 2003)

Sec. 5-2-860. Attorneys' fees.

If any action or suit arises in connection with this Agreement, the prevailing party (either the Town or the Grantee, as the case may be) shall be entitled to recover all of its reasonable attorneys' fees, costs and expenses in connection therewith, in addition to such other relief as the court may deem proper. (Ord. 31 §24.11, 2003)

Sec. 5-2-865. Venue.

Venue for any judicial dispute between the Town and the Grantee arising under or out of this Agreement shall be in the District Court in Gunnison, Colorado, or the United States District Court for the District of Colorado in Denver, Colorado. (Ord. 31 §24.12, 2003)

Sec. 5-2-870. Guarantee.

The performance of the Grantee (and, as applicable, any future successors and assigns) shall be guaranteed in all respects by an entity that is acceptable to the Town. Any signed guarantee must be in a form which meets with the Town's approval. (Ord. 31 §24.13, 2003)

Sec. 5-2-875. 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 that would indicate any such relationship with the other. (Ord. 31 §24.14, 2003)

Sec. 5-2-880. Waiver.

The failure of the Town at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the Town hereafter to enforce the same, nor shall the waiver by the Town of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision. (Ord. 31 §24.15, 2003)

Sec. 5-2-885. Actions of Town or Grantee.

In any action by the Town or the Grantee mandated or permitted under the terms hereof, it shall act in a reasonable, expeditious and timely manner. (Ord. 31 §24.16, 2003)

Sec. 5-2-890. Entire Agreement.

This Agreement and the exhibit attached to the ordinance codified herein represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written negotiations between the parties. (Ord. 31 §24.17, 2003; Ord. 4 §1, 2009)

ARTICLE 3

Electric Franchise

Division 1

Grant of Franchise, Fees

Sec. 5-3-10. Grant of franchise.

The Town grants to the Gunnison County Electric Association, Inc. ("GCEA"), for the period specified in and subject to the conditions, terms and provisions contained in this franchise, the right to furnish, sell and distribute electricity to the Town and to all residents of the Town. Subject to the conditions, terms and provisions contained in this franchise, the Town also grants to GCEA the right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to furnish, sell and distribute electricity within and through the Town and the right to make reasonable use of the streets, alleys and other public rights-of-way and public easements as may be reasonably necessary to carry out the terms of this franchise. These rights shall extend to all areas of the Town as it is now constituted and to additional areas within the Town's boundaries as the Town may increase in size by annexation or otherwise. (Ord. 2 §1, 1998)

Sec. 5-3-20. Effective date and duration.

Upon execution hereof by GCEA, this franchise shall take effect for a period of fifteen (15) years retroactive to February 12, 1997, and expiring on February 12, 2012, unless extended by agreement of the Town and GCEA. (Ord. 2 §1.1, 1998)

Sec. 5-3-30. Annual funding.

The Town and GCEA recognize that efficiency and service to the public may require that streetlight installation be implemented pursuant to a long-term master plan which will benefit from additional planning and varying expenditure levels from year to year. In order to assist the Town with the orderly and efficient implementation of its long-term master plan, GCEA and the Town agree as follows:

(1) In consideration of the grant of the franchise, GCEA will initially fund up to six thousand dollars (\$6,000.00) per year for new lighting fixtures as selected by the Town over the term of the franchise, which term shall commence in the year 1999 and shall terminate in the year 2011. Such fixtures may include streetlights and school crosswalk and public walkway lighting fixtures, and the cost of such fixtures shall be no more than one thousand five hundred dollars (\$1,500.00) each. This allowance shall be adjusted annually by the Town as measured by the Consumer Price Index Urban (Denver) CPI published by the Bureau of Labor Statistics, 911 Walnut Street, 15th Floor, Kansas City, Missouri 64106, or any successor, comparable index.

(2) If any portion of an annual allocation of six thousand dollars (\$6,000.00) is unused, GCEA will allow that year's allocation to be carried over for the following two (2) calendar years. At the end of the respective carryover period or at the conclusion of this franchise, the unused portion of each allocation will expire. For example, any unused 1999 allocation may be carried over until December 31, 2001, at which time it will expire if not used. Any allocations that have not been used as of December 31, 2011, the termination of the this franchise, shall expire.

(3) A maximum of an eighteen-thousand-dollar credit may be accumulated at any one (1) time for streetlighting work. This figure accounts for the current year's allocation and the maximum carryovers from the previous two (2) years.

(4) The carryover option described in Subsection (2) above will apply to the 1999 streetlight allocation.

(5) GCEA will account for the allocations on a first-in/first-out basis by using all available, unexpired carryover allocations for streetlight requests before using the current year's allocation.

(6) The Town, at its option, may use the current allocation and all available, unexpired reserve allocations during any calendar year. If the Town's streetlighting expenditures exceed the available balance of current and unexpired reserve allocations, the Town shall pay the excess cost.

(7) GCEA agrees to provide to the Town an annual written summary and accounting, no later than January 31 of each year, of all lighting credits used by the Town in the previous calendar year and the balance of lighting credits carried over for the benefit of the Town. (Ord. 2 §2.1, 1998 (Addendum); Ord. 4 §1, 2009)

Sec. 5-3-40. Provision of electricity.

GCEA will provide, at its expense, all electrical energy necessary to service the Town for street, school crosswalk and public walkway lighting purposes only. (Ord. 2 §2.2, 1998)

Sec. 5-3-50. Reserve fund.

GCEA will forthwith establish a reserve fund in the amount of sixty-three thousand seven hundred fifty dollars (\$63,750.00) to assist the Town over the term of this franchise in the conversion of overhead electrical facilities, within the Town, to underground facilities, or for other Town lighting projects agreed to by GCEA, if requested by the Town. The Town warrants that it currently has no plan for conversion of overhead electrical facilities to underground facilities. This provision shall not be construed to bind either party or infer a position by either party as to who is responsible for the expense of undergrounding electrical facilities. The reserve fund shall be deposited in an interest-bearing account with a lending institution designated by the Town. All interest earned shall be included in the fund. (Ord. 2 §2.3, 1998)

Sec. 5-3-60. Ornamental lighting.

If the Town wishes to install ornamental lighting, GCEA will do so and bill the Town for GCEA's actual cost of installation. This cost may be paid in whole or in part with the six thousand dollars (\$6,000.00) per year funded to the Town as set forth in Section 5-3-30 above. However, the cost of underground electrical conduit for the installation of ornamental lighting will be borne by GCEA. Said installation shall be made within a reasonable time as GCEA's work load permits. Any ornamental street lighting shall be installed in accordance with the then-current edition of the National Electrical Code. (Ord. 2 §2.4, 1998)

Sec. 5-3-70. No surcharge of franchise fee.

It is the intention and agreement of the Town and GCEA that so long as the Town accepts the municipal street lighting fixtures, electrical energy and reserve funds as set forth in this franchise, the consumers of energy located within the Town will not be surcharged to reimburse GCEA for such franchise fees. In the event that GCEA is ordered, by an entity of competent jurisdiction, to place a surcharge upon customers of GCEA located in the Town to pay for such franchise fees as described herein, the Town may, at its option, reopen and renegotiate the terms of this Division in order to avoid such a surcharge. (Ord. 2 §2.5, 1998)

Division 2
Supply, Construction and Design

Sec. 5-3-110. Supply of electricity.

GCEA shall take all reasonable and necessary steps to provide an adequate supply of electricity to its customers within the Town at the lowest reasonable cost consistent with long-term, reliable supplies. If the supply of electricity to said customers should be interrupted, GCEA shall take all necessary and reasonable actions to restore such supply within the shortest practicable time. The kind and quality of service shall conform to standard electrical engineering and operating practices and

shall be, at a minimum, equivalent to that furnished to other comparable municipalities in the State. The distribution of electrical energy by GCEA shall conform with the standards promulgated by the PUG and with the tariff provisions of GCEA setting standards for such distribution, as they may be amended from time to time. (Ord. 2 §3.1, 1998)

Sec. 5-3-120. Restoration of service.

In the event GCEA's electric system, or any part thereof, is partially or wholly destroyed or incapacitated, GCEA shall use due diligence to restore its system to satisfactory service within the shortest practicable time. (Ord. 2 §3.2, 1998)

Sec. 5-3-130. Obligations regarding GCEA facilities.

GCEA shall install, maintain, repair, renovate and replace its facilities with due diligence in a good and workmanlike manner. GCEA's facilities will be of sufficient quality and durability to provide efficient and reliable electric service to the Town and its residents and property owners. GCEA shall use due care not to interfere with the Town's water mains, sewer mains or other municipal utilities use and shall minimize any disruption of the use of streets and other public places, and shall be responsible for repairing, at its expense, all damage done to municipal facilities and rights-of-way by the improper or unauthorized actions or inactions of GCEA. Similarly, GCEA shall use due care not to interfere with the rights or reasonable convenience of property owners whose property adjoins the public rights-of-way, and shall be responsible for repairing, at its expense, all damage done to such private property by the improper or unauthorized action or inactions of GCEA. GCEA shall also erect, locate and maintain its facilities in such a way so as to minimize interference with trees and other natural features. GCEA facilities shall be installed in public easements as approved by the Town, so as to cause a minimal amount of interference with such property. (Ord. 2 §3.3, 1998)

Sec. 5-3-140. Excavation and construction.

All excavation and construction work done by GCEA shall be done in accordance with all Town laws and regulations in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. All public and private property disturbed by GCEA excavation or construction activities shall be timely restored by GCEA, at its expense, to substantially its former condition. (Ord. 2 §3.4, 1998)

Sec. 5-3-150. Relocation of GCEA facilities.

Any relocation of GCEA's facilities shall be in accordance with GCEA's tariffs and policies, and this franchise. (Ord. 2 §3.5, 1998)

Sec. 5-3-160. Service to new areas.

If the boundaries of the Town are expanded during the term of this franchise, GCEA shall timely extend service to users in the expanded area, in accordance with GCEA's extension policy and this franchise. (Ord. 2 §3.6, 1998)

Sec. 5-3-170. Planned power outages.

In the event the planned activities of GCEA necessitate a partial or complete power outage in the Town, GCEA agrees to inform the Town Manager or the Town Manager's designee no less than seven (7) days prior to such outage, or as soon as reasonably possible following the decision by GCEA, in order to minimize disruption to the community. (Ord. 2 §3.7, 1998)

*Division 3
Compliance*

Sec. 5-3-210. Town regulations.

The Town expressly reserves, and GCEA expressly recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances and rules and regulations as may be deemed necessary by the Town in the reasonable exercise of its taxation power and its police powers for the protection of the health, safety and welfare of its citizens. (Ord. 2 §4.1, 1998)

Sec. 5-3-220. Relocation or undergrounding of existing facilities.

The Town may elect to use monies in the reserve fund, pursuant to Section 5-3-50 of this Agreement, to pay part of the cost to relocate or to underground existing facilities which unreasonably interfere with the reasonable use of private real property. When the owner of private real property desires the relocation or undergrounding of existing facilities, the Town and GCEA shall review such application to determine if relocation is warranted. If so determined, GCEA shall prepare an itemized estimate of the costs of such relocation and provide it to the Town for its review. The Town and GCEA shall then negotiate in good faith to determine the scope and estimated costs of the project. Costs of such projects "as built" shall be divided equally among GCEA, the Town through its reserve fund if agreed to at its sole discretion, and the owner of the affected property, if any, unless otherwise agreed. Any facility shall be eligible for cost-sharing relocation pursuant to this Section only one (1) time during the term of this franchise. (Ord. 2 §4.2, 1998)

Sec. 5-3-230. Consultation with Town regarding construction and design.

Prior to construction of any transmission lines or generating plant, substation or similar structure within the Town, GCEA shall provide the Town with reasonable notice of its intent to construct and shall furnish to the Town a copy of the plans for such facilities. Upon reasonable notice from the Town, GCEA agrees to meet with the Town prior to construction of such facilities to discuss the perceived impacts such construction may have and to pursue the possible mitigation of those impacts. Any buildings or similar structures shall be subject to approval by the Board of Zoning and Architectural Review. (Ord. 2 §4.3, 1998; Ord. 4 §1, 2009)

Sec. 5-3-240. Compliance with PUC regulations.

The electrical energy which GCEA distributes shall conform with the standards promulgated by the PUC in its *Rules Regulating the Service of Electric Utilities*, or any successor standards, and with

standard-setting tariff provisions of GCEA, as the same may be amended from time to time. (Ord. 2 §4.4, 1998)

Sec. 5-3-250. Inspection.

The Town and its designees shall have the right to inspect at all reasonable times any portion of GCEA's system used to serve the Town and its residents. The Town and its designees shall also have access at all reasonable times to GCEA records for the purpose of determining GCEA compliance with this franchise. GCEA agrees to cooperate with the Town in conducting such inspections and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner. (Ord. 2 §4.5, 1998)

*Division 4
Miscellaneous Provisions*

Sec. 5-3-310. Town use of GCEA facilities.

The Town shall have the right to use all poles and suitable overhead structures constructed by GCEA within the Town for public governmental uses, which uses shall not include the distribution or transmission of electricity. Such uses by the Town shall be without cost; provided GCEA shall be indemnified and shall assume no liability nor shall it be put to any additional expense in connection with the use of said poles and structures by the Town, and said use shall be in such a manner as not to constitute a safety hazard or to interfere unnecessarily with GCEA's use of same, and shall comply with the National Electric Safety Code. GCEA shall allow others holding a franchise, except for electric service, from the Town to so utilize such poles and suitable overhead structures upon reasonable terms and conditions to be agreed upon by GCEA and such holder of a franchise from the Town. (Ord. 2 §5.1, 1998)

Sec. 5-3-320. Underground conduit.

If GCEA installs new electric underground conduit or opens a trench or replaces such conduit, GCEA shall provide adequate advance notice of such activity to permit additional installation of conduit and pull wire for the Town and other overhead users. If the Town desires to have additional conduit and pull wire installed for its use, it will so notify GCEA and provide similar conduit and pull wire to GCEA at the Town's expense. GCEA agrees to install such conduit and pull wire for the Town, and the Town shall pay the prorated amount of GCEA's actual cost attributable to installing the Town's conduit and pull wire. *Actual cost* shall not include GCEA's cost of opening and closing the trench. (Ord. 2 §5.2, 1998)

Sec. 5-3-330. Publication costs.

GCEA shall pay in advance or timely reimburse the Town for its publication costs associated with the ordinance approving this franchise. (Ord. 2 §6.1, 1998)

Sec. 5-3-340. Underground electrical distribution lines in new areas.

GCEA shall place newly constructed electrical distribution lines underground to serve new areas in accordance with GCEA's tariffs and policies and the Town's ordinances and regulations. (Ord. 2 §7.1, 1998)

Sec. 5-3-350. Compliance with policy.

GCEA shall forthwith file with the Town Clerk its extension policy as filed with the Public Utilities Commission of Colorado, and GCEA shall not make or refuse to make any extension except as permitted by said policy. In addition, upon acceptance of this franchise, GCEA, at its own expense, shall have copies of its extension policy as filed with the Public Utilities Commission of Colorado available for distribution upon request of any person. (Ord. 2 §8.1, 1998)

Sec. 5-3-360. Approval required.

Neither party shall sell or otherwise transfer any rights or obligations pursuant to this franchise without the prior written approval of the other, which approval shall not be unreasonably withheld. The grounds for any disapproval shall be set forth in writing. (Ord. 2 §9.1, 1998)

Sec. 5-3-370. Benefit of other franchises.

GCEA shall advise the Town within sixty (60) days of the execution of a subsequent franchise agreement entered into by GCEA and any other municipality within the State, or any change to any existing franchise agreement. If any change occurs in the terms of an existing franchise by GCEA with any other municipality, or GCEA enters into any new franchise agreement with any other municipality, the Town may review and request an amendment of any term or provision of this franchise, including the consideration to be received by the Town as a part of this franchise. GCEA shall not be obligated to amend the terms of this franchise unless such change is to the equivalent provision contained in a new or amended franchise entered into by GCEA with any other municipality in the State. (Ord. 2 §10.1, 1998)

Sec. 5-3-380. Requests for amendments.

The Town and GCEA recognize and agree that substantial, industry-wide changes regarding the sale and distribution of electrical energy may occur during the term of this franchise. At any time during the term of this franchise, either party may propose amendments to this franchise by giving thirty (30) days' written notice to the other party. Thereafter, both parties will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendments. (Ord. 2 §10.2, 1998)

Sec. 5-3-390. Fees and costs awarded.

Should either party bring an action to enforce or interpret the terms and provisions hereof, or the rights of the parties, the prevailing party in any such action shall be entitled to all of its costs, including without limitation expert and other witness fees and reasonable attorneys' fees incurred in such action. (Ord. 2 §11.1, 1998)

Sec. 5-3-400. Successors and assigns.

The rights, privileges, franchises and obligations granted and contained in this franchise shall inure to the benefit of and be binding upon the parties, their successors and assigns. Any such assignment shall be subject to the provision requiring prior written approval as set forth in Section 5-2-360 above. (Ord. 2 §12.1, 1998)

Sec. 5-3-410. Representatives.

Each party shall designate from time to time, in writing, representatives for itself who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail or hand-delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed by written notice to either party, delivered in person or by certified mail to the other party. Until any such changes are made, notices shall be sent to the Town Manager and to GCEA's General Manager. Currently the addresses are as follows:

For the Town of Crested Butte:

Town Manager
Town of Crested Butte
P.O. Box 39
Crested Butte, CO 81224-0039

For GCEA:

General Manager
Gunnison County Electric Assn, Inc.
P.O. Box 180
Gunnison, CO 81230-0180

(Ord. 2 §12.2, 1998)

Sec. 5-3-420. Severability.

In the event any one (1) or more of the provisions of this franchise or the enforcement thereof, shall be determined by a court with jurisdiction to be illegal, unlawful or unconstitutional, the same shall not be construed to alter, annul or repeal or otherwise affect any of the remaining terms, provisions, restrictions, requirements or conditions of this franchise. (Ord. 2 §12.3, 1998)

Sec. 5-3-430. Entire agreement.

This franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this franchise. (Ord. 2 §12.4, 1998)

Sec. 5-3-440. Dispute resolution.

Disagreements required by this franchise to be arbitrated, or other matters, if agreed by the Town and GCEA, shall be resolved according to the following procedures:

(1) Each party shall appoint a representative who shall attempt to negotiate a mutually satisfactory resolution. If such representatives are unable to resolve the matter, they shall appoint an arbitrator who shall determine the matter. If the parties cannot agree on the appointment of an arbitrator, they shall apply to the Gunnison County District Court and request the appointment of a qualified arbitrator.

(2) The arbitrator shall utilize such procedures as the arbitrator desires and the arbitration decision shall be final and binding.

(3) The parties shall share the costs of the arbitrator. (Ord. 2 §12.5, 1998)

Sec. 5-3-450. Changes in utility regulation.

In the event new federal or state legislation materially affects the terms and conditions of this franchise, the parties agree to renegotiate the affected terms and conditions in good faith. The parties acknowledge that regulatory and legislative changes in the electric utility, gas utility and other energy industries are currently being discussed nationwide and statewide; that some changes in utility industry sectors have already been implemented; and that other changes may be made in the future, during the term of this franchise. One (1) likely scenario is the implementation of open access to electric customers, and other energy customers, making such customers available to all utilities, thus eliminating or limiting territorial protections. Under this scenario, one (1) utility may contract to sell a type of energy to a customer, while another utility transports the energy to the customer for a fee charged to the other utility or the customer. The parties agree that, insofar as future changes in the utility laws will allow, and so long as GCEA remains an electric cooperative and nonprofit corporation, GCEA shall always retain the right to bill customers for utility transportation services and energy sales within the Town if it is the provider of either the energy product or the transportation of such product. The parties agree that this will provide the most efficient and convenient utility service to the residents of the Town and provide assurance to the Town of the collection of a franchise fee or other in-kind consideration for each component charged for the sale and delivery of energy products within the boundaries of the Town. (Ord. 2 §12.6, 1998)

Sec. 5-3-460. Indemnification.

GCEA shall indemnify, defend and save the Town harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operation of GCEA within the Town pursuant to this franchise. GCEA shall pay all reasonable expenses, including without limitation reasonable attorney and expert witness fees, arising therefrom. The Town will provide prompt, written notice to GCEA of the pendency of any claim or action against the Town arising out of the exercise by GCEA of its rights under this franchise. GCEA will be permitted, at its own expense, to appear and defend or to assist in the defense of any such claim. Notwithstanding any provision to the contrary, GCEA shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim or demand is successful which arises out of any claim or demand arising out of, or in connection with, any negligent act or failure to act by the Town or any of its officers, employees or agents. (Ord. 2 §12.7, 1998)

Sec. 5-3-470. Town Council approval.

This grant of franchise shall not become effective unless adopted by ordinance by the Town Council of Crested Butte, Colorado. (Ord. 2 §13.1, 1998)

Sec. 5-3-480. GCEA approval.

GCEA shall execute this franchise within thirty (30) days after its receipt of written notice that the ordinance adopting this franchise has been approved by the Town Council. (Ord. 2 §13.2, 1998)

ARTICLE 4

Gas Franchise

Sec. 5-4-10. Grant of franchise.

The Town hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this Article, the nonexclusive right and authority to furnish, sell and distribute gas to the Town and to all persons, businesses and industries within the Town; the right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to provide gas to the Town and to all persons, businesses and industries within the Town and in the territory adjacent thereto; and the right to make reasonable use of all streets and other public places as may be necessary to carry out the terms of this Article. However, the Company shall have no right to construct any building, well, manufacturing facility, plant or gas compressor upon any streets and other public places, and aboveground facilities shall be limited to block valves and regulator stations. (Ord. 10 §2.1, 1990; Ord. 4 §1, 2009)

Sec. 5-4-20. Term of franchise.

The term of this franchise shall be for twenty (20) years, beginning June 26, 1990, and expiring June 25, 2010. (Ord. 10 §2.2, 1990)

Sec. 5-4-30. Definitions.

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

Company refers to and is Greeley Gas Company and its successors and assigns.

Council or *Town Council* refers to and is the legislative body of the Town of Crested Butte.

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

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

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

Public Utilities Commission refers to and is the Public Utilities Commission of the State of Colorado or other authority succeeding to the regulatory powers of the Public Utilities Commission.

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

Streets and other public places refer to and are streets, alleys, viaducts, bridges, roads, lanes, easements and other public ways in the Town.

Town refers to and is the Town of Crested Butte, Gunnison County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the Town (Ord. 10 Art. I, 1990; Ord. 4 §1, 2009)

Sec. 5-4-40. Franchise fee.

(a) In consideration for the grant of this franchise, the Company shall collect and remit to the Town a sum equal to three percent (3%) of the revenues derived annually from the sale of gas within the Town. Annual franchise fee payments shall be made on or before March 1 for the preceding calendar year ending December 31. Payments at the beginning and end of the franchise shall be prorated.

(b) Upon request, the Company shall inform the Town of any Colorado municipal franchise agreement which it executes or obtains by transfer subsequent to this agreement which includes a franchise fee payment to a municipality that is greater than the fee being paid at that time under this franchise. At the Town's option, the Town may increase the franchise fee paid by the Company to the Town hereunder to match the higher fee being paid to such subsequent municipality. (Ord. 10 §3.1, 1990)

Sec. 5-4-50. Franchise fee payment in lieu of other fees.

Payment of the franchise fee by the Company and posting of the performance guarantee required hereunder are accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax, assessment or excise upon the pipes, mains, meters or other personal property of the Company, or on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any property tax, sales and use tax, business and occupational license fees, or from any other fees or taxes applied generally to businesses conducted within the Town. (Ord. 10 §3.2, 1990)

Sec. 5-4-60. Conduct of business.

The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise; provided, however, that such rights, regulations, terms and conditions shall not be in conflict with the laws of the State. (Ord. 10 §4.1, 1990)

Sec. 5-4-70. Tariffs on file.

The Company shall keep on file in its nearest office copies of all its tariffs currently in effect and on file with the Public Utilities Commission. Said tariffs shall be available for inspection by the public. (Ord. 10 §4.2, 1990)

Sec. 5-4-80. Compliance with PUC regulations.

The Company shall comply with all rules and regulations adopted by the Public Utilities Commission. Should the Company, during the term of this franchise, receive from the Public Utilities Commission notice of any violation or noncompliance with rules and regulations of the service within the Town, the Company shall provide to the Town, within thirty (30) days of the date the same is received, copies of said notice of violation or noncompliance. In addition, the Company shall provide to the Town copies of any correspondence or notices of action on behalf of the Company to rectify such violation or noncompliance at the same time that such correspondence or notice of action is filed with the Public Utilities Commission. (Ord. 10 §4.3, 1990)

Sec. 5-4-90. Compliance with Company tariffs.

The Company shall furnish gas within the Town to the Town and to all persons, businesses and industries within the Town at the rates and under the terms and conditions set forth in its tariffs on file with the Public Utilities Commission. In the event local supplies of natural gas become available in reliable quantities and are lower priced than other gas supplies used to serve the Town, the Company shall pursue in good faith the purchase of such local supplies, subject to prior contractual commitments and operational and safety concerns. (Ord. 10 §4.4, 1990)

Sec. 5-4-100. Applicability of Company tariffs.

The Town and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the Public Utilities Commission are controlling over any consistent provision in this franchise dealing with the same subject matter. (Ord. 10 §4.5, 1990)

Sec. 5-4-110. Location of facilities.

Company facilities shall not interfere with water mains, sewer mains, drainage improvements or other municipal uses of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and conditions. Prior to commencing work upon the installation of the facilities contemplated hereby by the Company, the Company shall prepare a plan of all facilities to be installed within the streets and other public places within the Town, which plan shall be submitted to

the Town and, in consultation with the Town, such plan shall be revised to, insofar as practicable, avoid interference with the use of any streets and other public places within the Town, and any proposed water mains, sewer lines, drainage lines and all other public utilities, whether operated by the Town or by others, during the installation, maintenance and operation of the facilities to be constructed hereunder. (Ord. 10 §5.1, 1990)

Sec. 5-4-120. Excavation, construction, maintenance and removal.

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

(b) Whenever it becomes necessary to disturb the surface of any street or other public place within the Town, the Company shall comply with the requirements of this Code related to such activity, except that the necessity for issuance of individual permits, payment of permit fees and cash deposits shall be waived in consideration of the posting of the performance guarantee hereinafter required of the Company. (Ord. 10 §5.2, 1990; Ord. 4 §1, 2009)

Sec. 5-4-130. General obligations regarding Company facilities.

(a) Coordination of installation and maintenance. Insofar as practicable, the Company shall coordinate its installation and maintenance work with other utilities and the Town in order to minimize interruptions in service.

(b) Storage of equipment. The Company shall not use any easement or right-of-way within the Town for the storage of equipment or materials, and shall only occupy the same for so long as is reasonable necessary to complete its work thereon.

(c) Appearance of facilities. Whenever appropriate, the Company shall landscape, fence and paint all its aboveground facilities so as to present a neat and unobtrusive appearance.

(d) Service standards.

(1) The Company shall serve the Town in a responsive, available and accountable manner.

(2) The Company shall maintain a system to receive calls by local telephone with a telephone listing in the local phone book, and personnel located within forty-five (45) motor vehicle travel miles of the Town by all-weather roads to respond to requests for service or emergency repair on a twenty-four-hour basis.

(3) The Company shall precede planned major interruptions of service by notice given to customers twenty-four (24) hours in advance and plan such interruption during periods of minimum use of the system insofar as possible.

(4) The Company will provide, upon request, a copy of its internal standards handbook. (Ord. 10 §5.3, 1990)

Sec. 5-4-140. Emergencies.

If there is an emergency affecting Company operations or service, the Company shall maintain ongoing communication with the Town as to the nature of the problem and its anticipated duration and resolution. The Company shall develop a plan to facilitate such communication. At all times, the Company shall have on file with the Town a twenty-four-hour telephone number which the Town can use to obtain information in the event of an emergency, and shall use other available methods as needed to facilitate communications with the Town. In addition, the Company shall make appropriate information available to residents as to any problem and its anticipated duration and resolution. (Ord. 10 §5.4, 1990)

Sec. 5-4-150. Safety regulations by Town.

The Town reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety and welfare of the public, provided that such regulations are not destructive of the rights granted herein. The Company agrees to comply with all such regulations in the construction, maintenance and operation of its facilities and in the provision of gas within the Town. (Ord. 10 §5.5, 1990)

Sec. 5-4-160. Relocation of Company facilities.

If at any time the Town requests the Company to relocate any distribution gas main or service connection installed or maintained in streets or other public places in order to permit a change in street grades, pavements, sewers, water mains, drainage improvements or other Town works, such relocation shall be made by the Company at its expense. The Company is not obligated hereunder to relocate any facilities at its expense which are installed in private easements obtained by the Company, the underlying fee of which was, at some point subsequent to installation, transferred to the Town. Following relocation, all property shall be restored as soon as practicable to substantially its former condition by the Company at its expense. (Ord. 10 §5.6, 1990)

Sec. 5-4-170. Service to new areas.

If, during the term of this franchise, the boundaries of the Town are expanded, the Company shall extend service to the newly incorporated areas. Service to annexed areas shall be in accordance with the terms of this franchise. (Ord. 10 §5.7, 1990)

Sec. 5-4-180. Maps.

The Company shall prepare and submit to the Town a map showing the location and size of mains and the location of main shut-off valves and gates. The map shall indicate the location of such facilities as actually constructed and shall be kept current by addition to the information hereby

required on an annual basis. In advance of the attachment of any new customer, the Company shall provide written notice to the Town of the street address of such new customer and a plan describing the location of the facilities to be installed to serve such new customer. The Town agrees that any such maps, plans or information shall not be used by it, or disseminated to the public, for use in locating underground facilities. (Ord. 10 §5.8, 1990)

Sec. 5-4-190. Restoration of service.

In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time. If the supply of gas is limited or interrupted, the Company shall take all necessary actions to restore such supply as soon as practicable. (Ord. 10 §5.9, 1990)

Sec. 5-4-200. Supply and quality of service.

The Company shall make available an adequate supply of gas to provide service in the Town. If at any time the gas to be delivered by the Company to the Town will include a gas mixture heavier than air, the Company shall provide reasonable notice to the Town of the use of such gas. The Company's facilities shall be of sufficient quality and durability to provide adequate and efficient gas service to the Town. (Ord. 10 §5.10, 1990)

Sec. 5-4-210. Inspection, audit and quality control.

The Town shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the Town and its residents. The Town also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Article at all reasonable times. The Company agrees to cooperate with the Town in conducting the inspection and/or audit and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner. No acceptance of any payment from the Company to the Town hereunder shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable under this franchise or for the performance of any other obligation hereunder. Notwithstanding the foregoing, nothing herein shall be construed to waive any statute of limitations which may apply to any such payment. (Ord. 10 §5.11, 1990)

Sec. 5-4-220. Guarantee of performance.

Upon acceptance of this franchise by the Company, the Company shall obtain a certificate of deposit for five thousand dollars (\$5,000.00) in the name of the Town and the Company, to be placed in an interest-bearing escrow account with a local financial institution. The interest on the account shall accrue to the Company. The escrow instructions shall specify that the purpose of the certificate of deposit is to ensure the faithful performance of the Company of all provisions of this franchise; compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the Town having jurisdiction over its acts; default or forfeiture under this franchise; and the payment by the Company of any claims, liens and taxes due to the Town which arise by reason of the construction, operation, maintenance or removal of the system. The escrow instructions shall also specify that no funds shall be disbursed to the Town from the principal of the certificate of deposit without the written agreement of the Company. If such written agreement is not provided within twenty-one (21) days subsequent to the Town's written notification of the Company's

noncompliance, the parties shall submit the controversy to a mutually acceptable independent third party, whose decision shall be binding. If the parties can not agree upon an independent third party, the controversy shall be submitted to a third party appointed by the District Court Judge. All costs associated with such third-party review shall be borne by the unsuccessful party. (Ord. 10 §5.12, 1990)

Sec. 5-4-230. Indemnification and insurance.

The Company shall save the Town harmless from all liability or damage and all reasonable expenses necessarily accruing against the Town arising out of the intentional misconduct or the negligent exercise by the Company of the rights and privileges hereby granted. The Company shall carry liability insurance in the amount of not less than ten million dollars (\$10,000,000.00) per occurrence and aggregate. The Company liability insurance policy shall name the Town as an additional insured and shall require notification to the Town at least thirty (30) days prior to any cancellation of insurance or material adverse change in coverage. The Company shall furnish evidence from its insurance carrier which demonstrates compliance with this Section to the Town Attorney, as a confidential document, upon request to the Town. The Company shall also carry workers' compensation insurance at applicable statutory levels. The Company has the option of becoming self-insured during the term of this franchise. If the Company so decides, the parties agree to reopen this Section as it relates to insurance, to draft a provision which, as near as practicable, achieves the original intent of this provision. (Ord. 10 §6.1, 1990)

Sec. 5-4-240. Notice to Company.

The Town will provide notice to the Company of the pendency of any claim or action against the Town arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. (Ord. 10 §6.2, 1990)

Sec. 5-4-250. Assignment.

Nothing in this Article shall prevent the Company from assigning its rights under this franchise, provided that the Town consents to such assignment. Consent hereunder shall not be unreasonably withheld. Nothing herein shall be construed to require the Town's consent to a corporate reorganization not involving a third party. (Ord. 10 §7.1, 1990)

Sec. 5-4-260. Purchase or condemnation.

The right of the Town to construct, purchase or condemn utility facilities and the rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes, are expressly recognized. In the event that this franchise terminates and the parties hereto have not reached an agreement to continue service, the Town shall have ninety (90) days to decide upon its course of action. If the Town decides to purchase the facilities, the parties shall negotiate in good faith to determine a mutually acceptable purchase price. No value shall be given to the rights granted under this franchise. If the parties can not agree upon a purchase price within ninety (90) days after beginning negotiations, the Town may commence condemnation proceedings. (Ord. 10 §8.1, 1990)

Sec. 5-4-270. Sale to third party.

If the Town fails to initiate negotiations for purchase of the facilities within ninety (90) days after termination of this franchise, the Company may sell the facilities to a qualified purchaser other than an entity affiliated with or controlled by the Company or its owners. Alternatively, the Company may elect to remove the facilities. (Ord. 10 §8.2, 1990)

Sec. 5-4-280. Removal.

If the Company has not sold the facilities within nine (9) months after termination of this franchise, the Town may order the Company to remove the distribution facilities, subject to approval by the Public Utilities Commission. The Company shall have nine (9) months, after receiving such order from the Town and approval by the Public Utilities Commission, to remove the distribution facilities or to abandon them in place. The removal of Company facilities shall be done at the expense of the Company and in accordance with the provisions on excavation, construction, maintenance and removal contained in Sections 5-4-110 through 5-4-220 above. If the Company has not removed the distribution facilities within the prescribed time period, the Company shall be deemed to have abandoned the facilities and title shall thereupon vest in the Town, without any obligation from the Town to the Company. (Ord. 10 §8.3, 1990)

Sec. 5-4-290. Termination.

This Article and the rights, authority and franchise herein granted, shall terminate and be of no further force and effect upon the happening of one (1) of the following conditions:

(1) Unless within ten (10) days after the effective date of this franchise, the Company shall file with the Town Clerk a written acceptance hereof.

(2) If the Company has not substantially completed the installation of gas mains in the Town by November 30, 1990, the Town may terminate this franchise upon written notice by the Town given to the Company of the Town's intention to cancel or terminate this franchise. However, the November 30, 1990, date shall be extended by the addition of any time reasonably lost due to litigation instituted by others; due to the action of the Town, its officials or governing board, or of any other governmental body or authority; or due to strikes or other causes reasonably beyond the control of the Company. For purposes of this Paragraph, *substantially completed* shall mean the completion of ninety percent (90%) or more of the mains located within the Town, as determined by the distribution facilities plan prepared by the Company and filed prior to the formal approval of this franchise by the Town Council.

(3) If the Town declares a forfeiture pursuant to this franchise.

(4) Expiration of the term of this franchise. (Ord. 10 §9.1, 1990; Ord. 4 §1, 2009)

Sec. 5-4-300. Forfeiture.

Both the Company and the Town recognize that there may be circumstances whereby compliance with this franchise is impossible or is delayed. In those instances, the Company shall use its best efforts to comply in a timely manner and to the extent possible. If the Company fails to perform any

of its obligations under this franchise, the Town Council may determine, after hearing, whether such failure is of a substantial nature. Upon receiving notice of such determination, the Company shall have a reasonable time, not to exceed six (6) months, in which to remedy the violation, unless the parties otherwise agree in writing. If after such reasonable time corrective actions have not been successfully taken, the Town Council may declare the franchise forfeited by resolution. This shall not limit or restrict any other rights or remedies available to the Town or the Company at law or in equity. (Ord. 10 §9.2, 1990)

Sec. 5-4-310. Interim service.

In the event that this franchise terminates prior to the date of expiration, the Company shall continue to supply gas to the Town under the terms of this franchise until the distribution facilities are purchased, condemned, sold or removed. (Ord. 10 §9.3, 1990)

Sec. 5-4-320. Binding agreement.

This franchise shall be in full force and effect from and after its final passage and publication as required by law and, upon acceptance by the Company, shall be held to constitute a binding contract between the Town and Company, subject to its terms and conditions. (Ord. 10 §10.1, 1990)

Sec. 5-4-330. Breach of contract.

If the Company fails to fulfill any substantial obligation under this Article, the Town will have a breach of contract claim against the Company, in addition to any other remedy provided by law. (Ord. 10 §10.2, 1990)

Sec. 5-4-340. Representatives.

Each party shall have a representative to whom notices shall be sent regarding this franchise. The Town's representative shall be the Town Manager, and the Company's representative shall be its President. Notices, including notice of any change of representative, shall be in writing and forwarded by certified mail or hand delivery to the designated representative. (Ord. 10 §10.3, 1990)

Sec. 5-4-350. Cost.

The Company shall assume the costs of publication of this franchise ordinance as may be required by law. (Ord. 10 §10.4, 1990)

Sec. 5-4-360. No waiver.

Neither the Town nor the Company shall be excused from complying with any provision of this franchise by any failure of the other to insist upon or to seek compliance with such provisions. (Ord. 10 §10.5, 1990)

Sec. 5-4-370. Time of essence.

Whenever this franchise sets forth any time for any act to be performed by or on behalf of either party, such time shall be deemed to be of the essence, and any failure by that party to perform within the time set forth shall constitute a material breach under the terms of this Article and shall entitle the

other party to invoke all penalties and remedies prescribed in this Article, as well as all other legal or equitable remedies available to the party seeking enforcement. (Ord. 10 §10.6, 1990)

Sec. 5-4-380. Litigation.

In the event of litigation to enforce or interpret the provisions of this franchise or any document relating hereto, the prevailing party shall be entitled to all costs and expenses relating thereto, including reasonable attorney's fees. (Ord. 10 §10.7, 1990)

Sec. 5-4-390. Third parties.

Nothing in this franchise shall be construed to benefit third parties. (Ord. 10 §10.8, 1990)

Sec. 5-4-400. Severability.

If any provision of this Article is determined to be illegal or unenforceable, all other provisions shall remain effective. In such case, the parties shall proceed with due diligence to attempt to draft provisions that will achieve the original intent. (Ord. 10 §10.9, 1990)

ARTICLE 5

Emergency Telephone Charge

Sec. 5-5-10. Delegation of authority.

The Town Council hereby delegates its authority under Section 29-11-203(3), C.R.S., to annually establish a rate of charge for provision of the 911 emergency telephone service, to the governing board of the Gunnison/Hinsdale Combined Emergency Telephone Service Authority and said governing board is also hereby delegated the authority to collect the emergency telephone service charge in amounts deemed appropriate by it, not to exceed the amount authorized by Section 29-11-102(a), C.R.S. (Ord. 3 §2, 1998; Ord. 4 §1, 2009)

Sec. 5-5-20. Emergency telephone charge imposed.

The governing body of the Gunnison/ Hinsdale Combined Emergency Telephone Service Authority is hereby authorized to annually establish and collect an emergency telephone service charge upon all telephone exchanges served by the Authority and upon wireless users in an amount not to exceed one dollar (\$1.00) per month, as authorized by Section 29-11-102(b)(2), C.R.S., such charge to commence January 1, 2003. Upon recommendation of the Authority, the Town Council may, by resolution, authorize the Authority to raise or lower the emergency telephone charge, but in no event shall such charge exceed the amount of two percent (2%) of the tariff as approved by the Public Utilities Commission. (Ord. 1 §1, 2003; Ord. 4 §1, 2009)