

CHAPTER 5

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ARTICLE 1

Cable Television Franchise

Sec. 5-1-10. Definitions.

For the purpose of this franchise, unless the context otherwise requires, the following terms, phrases, abbreviations and their derivatives shall have the meaning herein given. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular and words in the singular number include the plural.

Basic service means cable service which includes, at a minimum, the retransmission of local television broadcast signals and local access programming, but does not include premium services for which additional fees are charged.

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

Cable system means a system composed of, without limitation, antennas, cables, wires, lines, towers, wave guides or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing radio, television or any other electronic service to and from persons, subscribers and locations in the franchise area.

City means the City of Cripple Creek, Colorado, a Colorado municipal corporation.

City Council means the Cripple Creek City Council.

FCC means the Federal Communications Commission, and any successor agency.

Franchise means the contract, executed by the City and Grantee, containing the specific provisions of the authorization granted, including exhibits, references, specifications, requirements and other related matters.

Franchise area means that area within the corporate limits of the City as now or hereafter constituted.

GAAP means generally accepted accounting principles.

Grantee means US Cable of Coastal-Texas, LP, its successors and assigns.

Gross revenues means all revenue derived directly or indirectly by Grantee, its affiliates, subsidiaries, parent and any person in which Grantee has a financial interest, from or in connection with the provision of cable service pursuant to this franchise, including but not limited to basic service, monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, fees for optional premium services, converter rentals, installation, disconnection, reconnection, remote control rental fees, late fees, administrative fees, consideration received by Grantee from programmers for carriage of programming on the cable system and accounted for as revenue under

GAAP, revenues from program guides, revenues from the sale or carriage of other cable services to the extent such services are considered cable services under federal law. *Gross revenues* shall not include any late charges, taxes or franchise fees on services furnished by Grantee herein imposed directly upon any subscriber or user by the State, City or other governmental unit and collected by Grantee on behalf of any governmental unit. This definition of *gross revenues* is intended to be as inclusive as possible consistent with existing applicable law.

Person means any individual, firm, partnership, corporation, association, company or entity of any kind.

Right-of-way means the surface of and the space above and below any public street, way, place, road, court, sidewalk, parkway, drive, easement and similar public property and areas, by whatever name called or hereafter existing as such within the franchise area.

Subscriber means any person who is lawfully receiving and paying for cable service. (Ord. 2001-01 §1; Ord. 2007-04 §1)

Sec. 5-1-20. Grant of authority.

(a) Grant of authority. There is hereby granted by the City to Grantee the right and privilege to construct, operate and maintain a cable system in the City for the purpose of providing cable service; and, for that purpose, to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any right-of-way now laid out or dedicated and all extensions thereof and additions thereto in the franchise area, such poles, wires, cable conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the cable system; and, in addition, so to use, operate and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or other grantee franchised or permitted to do business in the City.

(b) Nonexclusive grant. The right to use and occupy said rights-of-way for the purpose herein set forth shall not be exclusive to Grantee, and the City reserves the right to grant similar franchises in said rights-of-way to other persons on similar terms and conditions no more favorable or less burdensome than as those in this franchise.

(c) Term. The franchise shall commence on the effective date of the franchise and shall continue in force and effect for fifteen (15) years after said effective date. Upon expiration of this renewal term, the franchise may be renewed or extended for an additional term of ten (10) years. Grantee may request a renewal, and the City Council shall act upon such request, in accordance with applicable federal or state regulations.

(d) Each and every term, provision or condition herein is subject to the provisions of state and federal law, and the ordinances and regulations enacted by the City pursuant to its police powers, including the Municipal Code.

(e) This franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation for use of the rights-of-way, should Grantee provide service other than cable service, to the extent permitted by federal law.

(f) No rights shall pass to Grantee by implication. By way of example but not limitation, this franchise shall not include or be a substitute for: any other permit or authorization required for the privilege of transacting and carrying on a business within the City; any taxes imposed on Grantee for the privilege of transacting and carrying on a business within the City; or any other permit or authorization required by the City for use of the rights-of-way, such as a street-cut permit. (Ord. 2001-01 §2; Ord. 2007-04 §1)

Sec. 5-1-30. Conditions of street occupancy.

(a) All transmission and distribution structures, poles, lines and equipment installed or erected by Grantee within the franchise area shall be so located as to cause minimum interference with the proper use of streets and other rights-of-way and with the rights and reasonable convenience of property owners to adjoin any of said rights-of-way. Grantee shall install and maintain its wires, cables, fixtures, facilities and other equipment in such a manner that they will not interfere with any installation of the City or any public utility.

(b) In the case of disturbance of any street or paved area, Grantee shall, at its own expense and in a manner approved by the City, restore such street or paved area to as good condition as before said disturbance.

(c) All poles or other fixtures placed in any right-of-way by Grantee shall be placed in such manner as not to interfere with the usual travel on such right-of-way.

(d) Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from any right-of-way any facilities of Grantee when required by the City by reason of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation of sewers, drains, water pipes or any other type of structures or improvements by the City or its subcontractors.

(e) Grantee shall, on the request of any person holding a building permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings, provided that: (1) the expense of such temporarily raising or lowering of wires is paid by said person, including, if required by Grantee, making such payment in advance; and (2) Grantee is given not less than five (5) business days advance notice to arrange for such temporary wire changes.

(f) Grantee shall have the authority to trim trees overhanging any streets in the franchise area so as to prevent branches from coming in contact with Grantee's wires and cables. The City shall also have the option to do such trimming and charge back reasonable costs to Grantee. Such work shall not interfere with Grantee's operation of the cable system and the City shall be responsible for any material damage to cable lines during this process.

(g) Subject to any applicable state or federal regulations or tariffs, the City shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for Grantee in any right-of-way, provided that: (1) such use by the City does not interfere with the new use by Grantee; and (2) the City holds Grantee harmless against and from all claims, demands, causes of actions, suits, actions, proceedings, damages and costs of liabilities of every kind and nature whatsoever arising out of such use by said City of said poles or conduits.

(h) Grantee shall arrange with all utility companies, telephone companies or other parties whose property is used, such as poles or transmission facilities, and shall comply with such reasonable rules and regulations for installation, as said company or companies may require. (Ord. 2001-01 §3)

Sec. 5-1-40. Safety requirements.

(a) Grantee shall, at all times, use reasonable care and commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. Grantee shall comply with all applicable federal, state and local regulations governing construction.

(b) The cable system shall be constructed and operated in compliance with all applicable City, State and national building and electrical codes.

(c) All structures and all lines, equipment and connections in, over, under and upon all streets or public ways of the franchise area shall be kept and maintained in a safe and suitable condition and in good order and repair. (Ord. 2001-01 §4)

Sec. 5-1-50. Service.

(a) The cable system in place shall serve all portions of the franchise area where it is presently economically and technically feasible to provide service. Upon request by the City, Grantee and the City shall discuss and mutually agree to promptly extend service to additional locations within the franchise area, provided that such extensions shall have at least thirty-five (35) occupied dwelling units per linear mile of cable. Grantee may, but is not required to, extend its lines to other locations within the franchise area. In areas where there are fewer than thirty-five (35) homes per cable mile, Grantee may charge line extension fees or deposits in addition to its standard rates; and no such extension shall create an obligation to extend lines into other similar areas.

(b) Cable service shall be provided to any person who requests service and is located within one hundred fifty (150) feet of feeder cable which exists at the time of request. The charges for any person so situated shall not be in excess of reasonable rates and fees. No person, firm or corporation that is so situated shall be arbitrarily refused cable service.

(c) In the event additional adjacent territory is incorporated within the City limits, by annexation or otherwise, Grantee's rights and duties under this franchise shall be deemed to include such additional territory. (Ord. 2001-01 §5)

Sec. 5-1-60. Operational standards.

Grantee shall deliver signals to subscribers as specified by FCC rules and regulations. (Ord. 2001-01 §6)

Sec. 5-1-70. Discriminatory practices prohibited.

Grantee shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage, provided that nothing in this franchise shall be deemed to prohibit the establishment of

a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled, and provided further that connection and service charges may be waived or modified during promotional campaigns of Grantee. (Ord. 2001-01 §7)

Sec. 5-1-80. Rates.

Grantee shall maintain on file with the City Clerk a schedule setting forth all rates and charges to be made to subscribers for cable service, including connection and service charges. Notice of changes in rates and charges shall be filed with the City Clerk at least thirty (30) days in advance of the effective date thereof. No approval of any rate changes by City Council shall be required. Grantee shall comply with all federal and state regulations governing cable rates and changes to rates. (Ord. 2001-01 §8)

Sec. 5-1-90. Franchise fee payments.

(a) Within thirty (30) days of the end of the calendar quarters ending March 31, June 30, September 30 and December 31, Grantee shall pay the City a franchise fee. The franchise fee shall be three percent (3%) of the gross revenues received during the quarter. Sales taxes, franchise fees or other taxes or fees levied on subscribers as a separate charge and collected by Grantee shall not be included in gross revenues. Grantee may charge the franchise fee to its subscribers as a separate line item on bills. Grantee shall provide a quarterly summary report showing gross revenues received during the preceding quarter.

(b) The City shall have access to Grantee's records, upon written request, to verify the amount due to the City as reported by Grantee.

(c) If any payment is not received within thirty (30) days of the due date, Grantee shall pay interest on the amount due at the rate of eight percent (8%) per annum, compounded daily, calculated from the date the payment was due until the date the City receives the payment.

(d) The parties acknowledge that, at present, applicable federal law allows the City to collect a maximum franchise fee of five percent (5%), but that the City is electing to charge a franchise fee of three percent (3%). At any time during this franchise, the City may elect to collect a franchise fee of five percent (5%), or the maximum amount allowed by federal law at the time if the maximum allowable amount exceeds five percent (5%), provided the Grantee is provided with at least ninety (90) days' prior written notice. (Ord. 2001-01 §9)

Sec. 5-1-100. Indemnification.

(a) Grantee shall, at all times, indemnify, protect and hold the City harmless from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs and attorneys' fees, which may occur to or be suffered or claimed by any person caused by Grantee, its agents, employees, assigns or representatives in the ownership, construction, repair, replacement, maintenance and operation of the cable system. The City shall give Grantee reasonable notice of any such claims, actions and suits, in writing. Nothing in this franchise relieves any person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing work in connection with grading, regrading or changing

the line of a street or public place or with the construction or reconstruction of a sewer or water system.

(b) The City shall, with respect to each claim:

(1) Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;

(2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

(3) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in and control, compromise, settlement, resolution or other disposition of such claims or proceeding, subject to Paragraph (2) above.

(c) The City shall not and does not by reason of this franchise assume any liability of Grantee whatsoever for injury to persons or damage to property. (Ord. 2001-01 §10)

Sec. 5-1-110. Insurance.

(a) Grantee shall maintain in full force and effect public liability and property damage insurance in a solvent insurance company authorized to do business in the State, at no less than the following amounts:

(1) Three hundred thousand dollars (\$300,000.00) property damage in any one (1) accident;

(2) Five hundred thousand dollars (\$500,000.00) for personal injury to any one (1) person; and

(3) One million dollars (\$1,000,000.00) for personal injury in any one (1) accident; or such greater amount as the City Council shall from time to time reasonably require. The City may require that any and all investigation of claims made by any person against the City arising out of any use or misuse of privileges granted to Grantee hereunder shall be made by, or at the expense of, Grantee or its insurer.

(b) Grantee may bring its obligation to carry any insurance required hereby within the coverage of any so-called blanket policy or policies of insurance now or hereafter carried; however, the interest of the City shall be as fully protected thereby as if Grantee had obtained individual policies of insurance.

(c) Such insurance shall name the City, its officers, officials and employees as additional insureds. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Grantee shall maintain continuous, uninterrupted insurance coverage, in at least the amounts required, for the duration of this franchise. If the insurance is cancelled or materially altered so as to be out of compliance with this Section, Grantee shall provide a replacement policy. Self-insurance is not permitted for this franchise. Grantee shall furnish the City with certificates of insurance and endorsements. (Ord. 2001-01 §11)

Sec. 5-1-120. Default/revocability of franchise.

(a) In case of the failure of Grantee to perform and carry out any of the provisions of this franchise for which redress is not otherwise adequate assurance of performance, after thirty herein provided, the City, acting by its City Council, may revoke the franchise pursuant to the procedures outlined in this Section.

(b) After notice of such violation, Grantee shall have sixty (60) days in which to remedy the violation or provide adequate assurance of performance. After the expiration of such sixty-day period, if Grantee has failed to correct such violation or provide (30) days' prior written notice to Grantee as provided in this Section, the City Council may conduct a public hearing where Grantee shall be provided an opportunity to be heard regarding the alleged violation. Grantee shall also be permitted to respond to the allegations in writing prior to or at the public hearing.

(c) The City shall provide Grantee with written notice of its decision, together with written findings of fact supplementing said decision. After the public hearing and upon written determination by City to revoke the franchise, Grantee may appeal said decision with an appropriate state or federal court or agency. During the appeal period, the franchise shall remain in full force and effect unless the term thereof sooner expires.

(d) In addition to all other remedies contained herein, the City shall have all other remedies at law and equity to enforce the provisions hereof, including injunctive relief and damages. In addition to all other damages as may be provable by the City in connection with any default by Grantee, Grantee agrees to liquidated damages for anticipated lost revenues to the City, in an amount equal to the average monthly income of the City from this franchise prior to the breach by Grantee, multiplied by the number of months remaining on the term of this franchise.

(e) The notice required by this Section shall state clearly the action or proposed action to be taken, the time provided for response, the person in authority to whom such responses should be addressed, and such other procedures as may be specified by the City. If a hearing is to be held, the notice shall give the date and time of such hearing, whether public participation will be allowed and the procedures by which such participation may be obtained. Grantee shall have the right to be present at all proceedings conducted under this Section. (Ord. 2001-01 §12)

Sec. 5-1-130. Procedure upon termination.

(a) Grantee, upon termination of this franchise, shall be given reasonable notice of the time limit in which Grantee shall, at its own expense, remove all poles, wires, cables, facilities and related equipment from the rights-of-way.

(b) Upon termination, Grantee is hereby granted the right to enter upon the rights-of-way to remove its poles, wires, cables, facilities and related equipment. In so removing said facilities, Grantee shall refill, at its expense, any excavation that it shall make and shall leave said rights-of-way in as good of condition as that prevailing prior to the Grantee's removal of the facilities. (Ord. 2001-01 §13)

Sec. 5-1-140. Approval of transfer.

Grantee shall not sell or transfer its plant or cable system to another, other than a parent company or a wholly owned subsidiary of Grantee, nor transfer any rights under this franchise to another, without prior approval of City Council. No sale or transfer of Grantee's assets used in the performance of this franchise shall be effective until the vendee, assignee or lessee has been filed in the office of the City Clerk and instrument duly executed reciting the fact of such sale, assignment or lease, accepting the terms of the franchise and agreeing to perform all the conditions thereof. Such approval shall not be unreasonably withheld, provided that the assignee shall have the performance and financial capability at least equal to Grantee. Neither this Section nor other sections of this franchise shall preclude the mortgaging, hypothecating or assigning of rights in the system or the pledge of stock by Grantee for the purpose of financing, and consent of the City shall not be required for such transactions. This Section shall apply to voluntary transfers as well as involuntary transfers by operations of law. (Ord. 2001-01 §14; Ord. 2007-04 §1)

Sec. 5-1-150. Theft of service.

Grantee shall establish procedures for monitoring theft of its services. Should such theft of services be detected by Grantee, all violators shall be promptly prosecuted by Grantee's filing of the appropriate complaints with local, county or other authorities. (Ord. 2001-01 §15; Ord. 2007-04 §1)

Sec. 5-1-160. Miscellaneous provisions.

(a) When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the City Clerk.

(b) Grantee shall assume the cost of publication of this franchise and the ordinance approving the franchise. A bill for publication costs shall be presented to Grantee by the City Clerk.

(c) Grantee shall provide, without charge, one (1) standard aerial drop and basic service to each City governmental office building, as directed by City Council. The distribution of the cable feasibility inside such buildings and the extent thereof shall be at the option, duty and expense of the building owner.

(d) Each party hereby agrees, upon forty-eight (48) hours' prior notice, to provide the other party with maps, as may be available, or other pertinent information regarding the location of utility, water, sewer, cable or other underground transmission liens to facilitate repair work performed by either party.

(e) Grantee shall not be responsible for any interruptions of signals or service arising from any act of God, strikes, riots or acts of a common enemy, or for any other reason beyond the control of Grantee. (Ord. 2001-01 §16; Ord. 2007-04 §1)

Sec. 5-1-170. Compliance with applicable laws, ordinances and FCC rules and regulations.

(a) Grantee shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the City. The City reserves the right to adopt, from time to time, in addition to

the provisions herein contained, such ordinances as may be necessary to the exercise of police power by the City.

(b) Grantee shall comply with all applicable federal and state regulations. All registrations, annual reports and/or responses to requests by the FCC for action or information from Grantee shall be copied to the City by Grantee, if required by FCC regulations or requested by the City. (Ord. 2001-01 §17)

Sec. 5-1-180. Line severing.

If at any time Grantee's cable and/or other equipment is disturbed, damaged or severed, the cost of repair shall be paid by the party responsible for said damage. Grantee may charge the responsible party for the time and materials expended for repair of said damage. (Ord. 2001-01 §18)

Sec. 5-1-190. Customer service.

(a) Throughout the term of this franchise, Grantee shall comply with the Customer Service Standards set forth in Appendix 5-A to this Chapter, as those Standards may be amended by the FCC.

(b) Grantee shall fully comply with any provisions of federal, state or local law regarding the privacy of subscribers.

(c) Grantee shall not enter into a contract with any subscriber which is inconsistent with any term of this franchise, or any provision of the Customer Service Standards. (Ord. 2001-01 §19; Ord. 2007-04 §1)

Sec. 5-1-200. Non-Grantee installation and construction.

In the event that any person should desire to have a building, structure or other project designed, wired, equipped and/or constructed by a person other than Grantee, for the purpose of having such building, structure or project connected to the cable system owned by Grantee, to any plans, designs and completed projects relating to the distribution of television signals shall be subject to inspection and approval by Grantee before cable television service may commence. Grantee may refuse to provide cable service to any building, structure or project if the design, construction, cable or equipment is incapable of enabling the facilities to meet required technical standards in accordance with FCC regulations. (Ord. 2001-01 §20)

Sec. 5-1-210. Channel requirements; technical standards.

(a) Grantee shall include a minimum of thirty-five (35) channels of video programming in basic service. Within one hundred twenty (120) days of the effective date of this franchise, Grantee shall add two (2) additional channels, for a minimum of thirty-seven (37) channels; the channels added shall be determined by Grantee in consultation with the City.

(b) Within one hundred eighty (180) days of the effective date of this franchise, Grantee shall activate a local bulletin board channel to be programmed by the City. This may include a "return line" from City Hall to the headend, and a character generator device with a keyboard in the City Hall. Equipment for the local bulletin board shall be provided by Grantee at no charge to the City.

The City shall be solely responsible for the upkeep and content of programming of this bulletin board. The local bulletin board shall be used by the City to communicate community news, events, activities, etc., and shall not be used for profit. Grantee shall be entitled to a reasonable amount of space on the channel to communicate with its subscribers or to promote its services.

(c) Grantee shall conduct performance tests in accordance with the requirements of any FCC rules, as these requirements may apply from time to time.

(d) Grantee further agrees to use reasonable efforts, based upon reasonable need, the state of the art and the economics and practicability involved, to improve and upgrade its cable system (including, without limitations, the increasing of channel capacity and services). The terms *reasonable need*, *the state of the art* and *the economics and practicability* shall be interpreted to conform, so much as is reasonably practical and possible, to the interpretation accorded to these terms by the FCC as its rules may apply, or be extended from time to time to these terms. (Ord. 2001-01 §21; Ord. 2007-04 §1)

Sec. 5-1-220. No contest to validity of franchise.

Grantee shall not contest the validity of this franchise or the ordinance approving the franchise, and agrees to pay the costs of defending any litigation relating to the award of this franchise, except in litigation between Grantee and the City. (Ord. 2001-01 §22)

Sec. 5-1-230. General provisions.

(a) Effective date. This franchise shall take effect on the effective date of the ordinance approving the franchise.

(b) Federally required modifications. Any modification resulting from amendment of the Rules and Regulations of the FCC shall be incorporated into this franchise as of the date such modifications become obligatory under FCC regulations; or, in the event of no obligatory date being established, within one (1) year of adoption or at the time of renewal, whichever comes first.

(c) Severability. If any part of this franchise is, for any reason, held invalid by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The invalidity of any portion of this franchise shall not abate, reduce or otherwise affect any consideration or other obligation required of Grantee. All agreements and parts of agreements in conflict with the provisions of this franchise are hereby repealed. (Ord. 2001-02 §23)

ARTICLE 2

Electric Franchise

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

There is hereby granted to Aquila, its successors and assigns, hereinafter referred to as the "Grantee," the right, privilege and franchise to construct, erect, build, own, operate and maintain, within the City, such mechanical, electrical or other appliances, plant and apparatus as may be

necessary for the generation, transmission, transforming or distribution of electricity for illuminating, power and heating purposes, and any other purpose to which the same may be applicable, with the right and privilege for the period and upon the terms and conditions herein specified, to construct, maintain and operate a transmission line or lines for the purposes of conducting into, from or through the City electricity generated there or elsewhere, and to sell or furnish electricity to the City and the inhabitants thereof, and to distribute the same by means of wires, cable, conduits and lines of poles with wires strung thereon, over, upon, along, under and across the streets, alleys, bridges and public ways and places that may hereafter be laid out, opened or constructed. (Ord. 1990-3 §1; Ord. 2007-04 §1)

Sec. 5-2-20. Location of equipment.

(a) All poles erected and all conduits installed and maintained by the Grantee shall be kept in good repair and shall be located upon, under and along said public streets, alleys and public places, those placed in the streets to be located at the outer edge of the sidewalk and inside the curb line, and those placed in the alleys to be located close to the line of the lots abutting thereon, and in a manner as approved by the City.

(b) All electric transmission and distribution structures, conductors and equipment installed in the City shall be in compliance with the Electrical Code as adopted by the City in Chapter 18 of this Code. In erecting poles, installing conduits and stringing wires, all work shall be done in such manner, and said poles, wires, cables, conduits and lines shall be so arranged, as to give the people of the City the least possible inconvenience to the free use and occupancy of said streets, alleys, sidewalks and public grounds, and so as to interfere as little as possible with the laying of water pipes or the construction of sewers and drains.

(c) Excavations occasioned in doing such work shall be refilled, regarded and repaired by the Grantee at its own cost and expense, in a good substantial workmanlike manner.

(d) The Grantee shall be and remain solely and exclusively responsible for all damage or damages to persons or property that may occur by reason of any negligence or unskillfulness in any and all construction, maintenance, repair or operation of any and all installations and facilities of the Grantee, and the Grantee shall hold and save harmless the City from and against any and all loss or damage of any kind and description by reason thereof. Any cutting and trimming of trees that may be necessary for the stringing or the protection of wires or lamps shall be done under the supervision of the City. (Ord. 1990-3 §2; Ord. 2007-04 §1)

Sec. 5-2-30. Relocation of wires.

Any person or corporation desiring to move a building or other structure along, or to make any unusual use of the streets, alleys and public ways of the City which shall interfere with the poles, wires or other fixtures of the Grantee, shall first give notice and shall pay to the Grantee a sum sufficient to cover the expense and damage incident to the cutting, altering and moving of the wires or other fixtures of the Grantee before a permit is given by the City therefor. The Grantee, upon presentation of said permit, shall within twenty-four (24) hours thereafter provide for and do such cutting, altering and moving of the wires or other fixtures of the Grantee as may be necessary to allow such moving or other unusual use of the streets, alleys and public ways of the City. (Ord. 1990-3 §3)

Sec. 5-2-40. Term of franchise.

This franchise, and the rights, privileges and franchises hereby granted, shall be and remain in full force and effect for the period of twenty-five (25) years from and after its effective date, provided that the Grantee shall, before such effective date, have filed with the City Clerk its written acceptance of this franchise, and in case of failure of the Grantee to file such acceptance within the time so limited, this franchise and the rights, privileges and franchises hereby granted shall be and become null and void, however, the rights, privileges and franchises granted by this franchise are granted upon the express condition that the City shall have the right and power to purchase or to condemn at the time or times, under the conditions and in the manner provided by the now-existing laws of the State, all works and plants erected hereunder and all property of the Grantee actually used or useful for the convenience of the City. (Ord. 1990-3 §4)

Sec. 5-2-50. Franchise fee.

(a) The Grantee shall pay to the City three percent (3%) of all collected gross earnings derived by the Grantee from all electricity sold by it during the term of this franchise to inhabitants of said City for light, heat and power purposes, and any other purposes to which the same may be applicable, payment to be made to the City Treasurer on or before the first day of February of each year for the percentage due the City, provided always that the income derived from the sale of electricity to the City for street lighting or other purposes shall not be considered part of said earnings or included therein.

(b) Said payment shall be in lieu of all pole, wire, meter, occupation, privilege, franchise, license or other similar tax now or hereafter assessed or levied against the Grantee by the City for any purpose whatever. Should the City at any time impose any such tax, the obligation hereby imposed upon the Grantee to pay the amount of three percent (3%) as provided in this Section, shall cease without affecting the remainder of this franchise. (Ord. 1990-3 §5; Ord. 2007-04 §1)

Sec. 5-2-60. Definition of terms.

The rights, privileges, franchises and easements hereby granted shall inure to the benefit of West Plains Energy, its successors and assigns, and whenever the word "Grantee" is used herein, the same shall refer and apply to West Plains Energy, its successors and assigns, as if said Company, its successors and assigns, were mentioned in each instance; and wherever the word "City" is used, it shall be deemed and taken to mean the "City of Cripple Creek. (Ord. 1990-3 §6; Ord. 2007-04 §1)

ARTICLE 3

Gas Franchise

Sec. 5-3-10. Definitions.

For the purposes of this franchise, the following words and phrases shall have the meaning given in this Section. 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 the word *may* is permissive. Words not defined in this Section shall be given their common and ordinary meanings.

City means the City of Cripple Creek, Teller County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the City.

Company means Colorado Natural Gas, Inc., a Colorado corporation, and its successors and assigns.

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

Distribution facilities means only those facilities reasonably necessary to provide natural gas within the City.

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

Natural gas means such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured and/or any other mixture thereof.

Public Utilities Commission means the Public Utilities Commission of the State of Colorado or other authority succeeding to the regulatory powers of the Public Utilities Commission.

Revenues means those amounts of money which the Company receives from its customers within the City for the sale of gas under rates, temporary or permanent, authorized by the Public Utilities Commission.

Streets and other public places means streets, alleys, viaducts, bridges, lanes, easements, public ways and other public places in the City. (Ord. 1995-10 Art. I; Ord. 2007-04 §1)

Sec. 5-3-20. Grant of franchise.

The City hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this franchise, the right to furnish, sell and distribute natural gas to the City and to all persons, businesses and industries within the City; the right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City all facilities reasonably necessary to provide natural gas to the City and to all persons, businesses and industries within the City and in the territory adjacent thereto; and the right to make use of all streets and other public places as may be necessary to carry out the terms of this franchise. (Ord. 1995-10 §2.1)

Sec. 5-3-30. Term of franchise.

The term of this franchise shall be for twenty-five (25) years, beginning July 5, 1995, and expiring July 4, 2020. (Ord. 1995-10 §2.2)

Sec. 5-3-40. Termination for failure to commence construction and complete system.

In the event construction of the natural gas distribution system is not commenced on or before the close of business on July 1, 1998, and at all times thereafter the Company does not diligently and continuously pursue construction to completion thereafter; and/or natural gas service is not available to the businesses and residents of the City by December 1, 1998, this franchise shall be deemed terminated. The deadline set forth above shall be extended by the City Council if the delay in having natural gas available is due to federal, state, or county permitting delays and not attributable to the lack of diligence on the part of the Company in applying for and diligently pursuing the issuance of any and all necessary permits and/or licenses. Said extension shall be for a period of time up to, but not exceeding one (1) year. The length and conditions of said extension shall be at the sole discretion of the City Council. (Ord. 1995-10 §2.3; Ord. 1996-08 §1; Ord. 1997-03 §1; Ord. 2007-04 §1)

Sec. 5-3-50. Evaluation and performance sessions.

(a) The City and the Company shall hold scheduled performance evaluation sessions within thirty (30) days of the second anniversary date of the activation of the first customer, and every five (5) years thereafter or more often, or as may be required by federal and state law. All evaluation meetings shall be open to the public. The Company shall be solely responsible for notifying the City, in writing, at least sixty (60) days in advance, of each of the specified performance evaluation meetings, and no notice to the Company shall be required.

(b) Special evaluation sessions may be held at any time during the term of the franchise at the request of the City or the Company.

(c) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in the City. No newspaper notice shall be required as to any adjourned sessions. The Company shall notify its customers of all evaluation sessions, including any adjourned meetings, by letter, mailed to the customers' billing addresses at least five (5) weeks prior to each session.

(d) Topics which may be discussed at any scheduled or special evaluation sessions may include, but are not limited to, service, rate structures, penalties, state-of-the-art and applications of new technologies, system performance, services provided, customer complaints, privacy, amendments to this franchise, modifications to this franchise, judicial rulings and Company or City rules.

(e) During a review and evaluation by the City, the Company shall fully cooperate with the City and shall provide information and documents as the City may need to reasonably perform its review.

(f) If, at any time during its review, the City determines that reasonable evidence exists of inadequate natural gas distribution system performance, it may require the Company to perform tests and analysis directed toward the suspected inadequacies. All such tests shall be done at the Company's sole expense. The Company shall fully cooperate with the City in performing the testing and shall prepare results and a report, if requested, within thirty (30) days after notice. The City may require the test to be supervised at the Company's expense by a professional engineer to be approved by the City, not on the permanent staff of the Company. The engineer shall sign all records of special tests and forward to the City the records with a report interpreting the results of the test and recommending actions to be taken. (Ord. 1995-10 §2.4; Ord. 2007-04 §1)

Sec. 5-3-60. Forfeiture and termination.

(a) In addition to all other rights and powers retained by the City under this franchise or otherwise, the City Council reserves the right to forfeit and terminate the franchise and all rights and privileges of the Company under it in the event of a substantial breach of its terms and conditions. A substantial breach by the Company shall include, but shall not be limited to, the following:

(1) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the City Council made pursuant to this franchise.

(2) Attempt to evade any material provision of this franchise or practice any fraud or deceit upon the customers or upon the City government.

(3) Failure to begin or complete system construction or system extension.

(4) Failure to provide the services promised in this franchise.

(5) Failure to restore system-wide service after twelve (12) consecutive hours of interrupted service, except when approval of the interruption is obtained from the City Council.

(6) Material misrepresentation of fact in the application for or negotiation of the franchise.

(b) The above shall not constitute a substantial breach if the violation occurs but it is without fault of the Company, or if it occurs as a result of circumstances beyond its direct control, such as war, civil disturbance, natural catastrophe and other acts of God, or failure of timely receipt of licenses from utility companies. The Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

(c) The City may make a written demand that the Company comply with any provision, rule, order or determination under or pursuant to this franchise. If the violation by the Company continues for a period of thirty (30) days following written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may consider the issue of terminating the natural gas distribution system franchise, provided that the City shall cause to be served upon the Company, at least twenty (20) days prior to the date the City is to consider the issue of termination, a written notice of intent to request termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the City is to consider.

(d) The City Council or its duly designated representative shall hear and consider the issue and shall hear any person interested in it, and the City Council shall determine in its discretion whether or not any violation by the Company has occurred.

(e) If the City Council determines that the violation by the Company was the fault of the Company and within its control, the City Council may, by resolution, declare that this franchise shall be forfeited and terminated unless there is compliance within such period as the City Council may fix, but not less than ten (10) days, provided that no opportunity for compliance need be granted for fraud or misrepresentation.

(f) The issue of forfeiture and termination shall automatically be placed upon the Council agenda at the expiration of the time set for compliance. The City Council then may terminate the franchise forthwith upon finding that the Company has failed to achieve compliance, or may further extend the period at its discretion.

(g) If the City terminates the franchise, the City shall retain any and all rights to condemn or acquire the natural gas distribution system as provided by Colorado law. If the City declines to condemn or acquire the natural gas distribution system after termination or expiration of the franchise, the Company shall have the right to find a buyer for the system, which buyer must be acceptable to the City, in its sole and subjective discretion. The Company will have two (2) years from the termination or expiration date in which to find such a buyer and provide the City with a fully executed contract for the purchase and sale of the natural gas distribution system. The buyer would then have one (1) year in which to obtain the Public Utilities Commission's approval to operate the system. The Company may request extensions of these time frames, provided that the Company provides evidence of due diligence on its part in finding a buyer and completing the PUC approval process, which extension of time may be granted by the City, in its sole and subjective discretion. Nothing herein contained shall be construed as requiring the City to grant any request for extension of time to obtain a buyer and/or to have the buyer approved by the PUC. (Ord. 1995-10 §2.5; Ord. 2007-04 §1)

Sec. 5-3-70. Franchise fee.

In consideration for the grant of this franchise, the Company shall collect and remit to the City a sum equal to two percent (2%) of the revenues derived annually from the sale of natural gas within the City, excluding the amount received from the City itself for natural gas service furnished to it. 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 at the end of the franchise shall be prorated. (Ord. 1995-10 §3.1; Ord. 2007-04 §1)

Sec. 5-3-80. Payment in lieu of other fees.

Payment of the franchise fee by the Company is accepted by the City in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax, assessment or excise upon the pipes mains, meters or other personal property of the Company or on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its real property or any other tax not related to the franchise or the physical operation thereof. (Ord. 1995-10 §3.2; Ord. 2007-04 §1)

Sec. 5-3-90. Conduct of business.

The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws, statutes, rules, regulations and/or ordinances of the United States, the State, the County and/or the City. (Ord. 1995-10 §4.1; Ord. 2007-04 §1)

Sec. 5-3-100. 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. 1995-10 §4.2)

Sec. 5-3-110. Compliance with PUC regulations.

The Company shall comply with all rules and regulations adopted by the Public Utilities Commission. (Ord. 1995-10 §4.3)

Sec. 5-3-120. Compliance with Company tariffs.

The Company shall furnish natural gas within the City and to all persons, businesses and industries within the City at the rates and under the terms and conditions set forth in its tariffs on file with the Public Utilities Commission. (Ord. 1995-10 §4.4)

Sec. 5-3-130. Heating value.

The natural gas to be supplied hereunder shall contain a monthly average gross heating value of not less than the heating values set forth in applicable and effective rules and regulations as are from time to time filed with the Public Utilities Commission. (Ord. 1995-10 §4.5; Ord. 2007-04 §1)

Sec. 5-3-140. Location of facilities.

The Company facilities shall not interfere with the City's water mains, sewer mains, any other utilities including electrical, telephone or cable television, or other municipal use of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition. (Ord. 1995-10 §5.1)

Sec. 5-3-150. Excavation and construction.

(a) All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner so as to give the least possible inconvenience to the public and/or individuals to the free use and occupancy of the streets, alleys, sidewalks and other public places. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable federal, state, county and local regulations, ordinances and/or 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 approximately its former condition. The Company shall comply with the City's request for reasonable and prompt action to remedy all damage to private parties adjacent to streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The City 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 amount of time. All construction shall be completed in a manner and upon a schedule approved by the City.

(b) Any excavations occasioned in doing such work shall be refilled, regraded and repaired by the Company, at its sole cost and expense, in a good, substantial, workmanlike manner.

(c) The Company shall be and remain solely and exclusively responsible for all damages to persons or property that may occur by reason of any negligence or unskillfulness in any construction, maintenance, repair or operation of any and all installations of facilities of the Company, and the Company shall hold and save harmless the City from and against any and all loss or damage of any kind and designation by reason thereof. (Ord. 1995-10 §5.2)

Sec. 5-3-160. Relocation of Company facilities.

If at any time the City requests the Company to relocate any distribution gas main or service connection installed or maintained in streets or any other public places in order to permit the City to change street grades, pavements, sewers, water mains or other City works, such relocation shall promptly be made by the Company at its expense. Following relocation, all property shall be restored to substantially its former condition by the Company at its expense. (Ord. 1995-10 §5.3)

Sec. 5-3-170. Service to new areas.

If, during the terms of this franchise, the boundaries of the City are expanded, the Company shall extend service to the newly incorporated areas, in accordance with the "Main Extension Policy" filed with the Public Utilities Commission, as amended from time to time. Service to annexed areas shall be in accordance with the terms of this franchise. (Ord. 1995-10 §5.4)

Sec. 5-3-180. Restoration of service.

In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time. (Ord. 1995-10 §5.5)

Sec. 5-3-190. Supply and quality of service.

The Company shall make available an adequate supply of natural gas to provide service to the City. The Company's facilities shall be of sufficient quality, durability and redundancy to provide adequate and efficient service to the City. (Ord. 1995-10 §5.6)

Sec. 5-3-200. Safety regulations by City.

The City 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 transmission of natural gas within the City. (Ord. 1995-10 §5.7)

Sec. 5-3-210. Inspection, audit and quality control.

The City shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the City and its residents. The City also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this franchise at all

reasonable times. The Company agrees to cooperate with the City in conducting the inspection and/or audit and to correct any discrepancies affecting the City's interest in a prompt and efficient manner. (Ord. 1995-10 §5.8)

Sec. 5-3-220. Service calls and complaint procedure.

(a) The Company shall establish, operate and maintain within the City or within the City of Victor, Colorado, a business office and/or maintenance and repair facility for receiving inquiries, requests and complaints concerning all aspects of the establishment, construction, maintenance and operation of the system, for the payment of subscribers' service charges, and for providing facilities for the production of programming.

(b) The Company shall have a listed, local, manned telephone number for service calls, and telephone service shall be available twenty-four (24) hours a day, seven (7) days a week. The number shall be made available to customers and the general public. The Company shall provide an unlisted, local, manned telephone number to the City and utility companies to enable the City or utility companies to reach the Company in case of emergency on a twenty-four-hour, seven-day-a-week basis.

(c) The Company shall respond to and resolve customers' complaints or requests for service in connection with repairs, maintenance and malfunctions of system facilities. The Company shall respond as quickly as possible to complaints and requests, but shall in any case respond within six (6) hours. Complaints or requests which may pose a potential health and safety hazard will be responded to immediately. In connection with billing complaints, the Company shall respond within seven (7) business days.

(d) The Company shall prepare and file with the City copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints. As customers are connected or reconnected to the system, the Company shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address or and local telephone number of the employee or agent to whom inquiries or complaints are to be addressed, and furnish information concerning the City office responsible for the administration of the franchise, including but not limited to the address and telephone number of the office.

(e) When there have been similar complaints made, or where there exists other evidence which, in the judgment of the City, casts doubt on the reliability or quality of the natural gas distribution system, the City shall have the right to require that the Company test, analyze and report on the performance of the system. The Company shall fully cooperate with the City in performing testing and shall prepare results and a report, if requested, within thirty (30) days after notice. The report shall include the following information:

- (1) The nature of the complaint or problem which precipitated the special tests;
- (2) What system component was tested;
- (3) The equipment used and procedures employed in testing;

- (4) The method, if any, in which the complaint or problem was resolved; and
- (5) Any other information pertinent to the tests and analysis which may be required.

Where there are recurring service problems, the City may require that the tests be supervised, at the Company's expense, by an independent professional engineer, not on the permanent staff of the Company. The engineer shall sign all records for special tests and forward to the City the records with a report interpreting the results of the tests and recommending actions to be taken.

(f) The Company shall keep full records in connection with all inquiries, complaints and requests in connection with the system. The records shall identify the person contacting the Company and the person responding on behalf of the Company, the subject matter of the contact, the date and time it was received, the resolution of the matter in question or the action taken by the Company in connection with the contact, the date and time of the action, and such other information as may be deemed pertinent by the Company. These records shall be made available for periodic inspection by the City.

(g) The Company shall service or replace all equipment provided by it without charge to the customer, but the Company may charge a customer for service to or replacement of any equipment damaged due to the negligence of the customer.

(h) The City may review and monitor unresolved customer complaints. (Ord. 1995-10 §5.9; Ord. 2007-04 §1)

Sec. 5-3-230. Continuity of service mandatory.

(a) It shall be the right of all customers to continue receiving service insofar as their financial and other obligations to the Company are honored. If the Company elects to overbuild, rebuild, modify or sell the system, or the City gives notice of intent to terminate or fails to renew this franchise, the Company shall act to ensure that all customers receive continuous, uninterrupted service regardless of the circumstances. If the Company fails to provide this service, the City retains the right to provide the service.

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

(c) If the Company fails to operate the system for five (5) consecutive days without prior approval of the City, the City may, at its option, operate the system or designate an operator until the Company restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the Company, the City shall be entitled to revenue derived from its operation, and the Company shall reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City during its period of operation that are the result of the Company's failure to perform. (Ord. 1995-10 §5.10)

Sec. 5-3-240. City held harmless.

The Company shall save the City harmless from all liability or damage and all reasonable expenses necessarily accruing against the City arising out of, or in any way connected with, the construction, maintenance, repair and/or operation of the natural gas distribution system and/or the negligent exercise by the Company of the rights and privileges hereby granted. (Ord. 1995-10 §6.1)

Sec. 5-3-250. Notice to Company.

The City will provide notice to the Company of the pendency of any claim or action against the City arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. (Ord. 1995-10 §6.2)

Sec. 5-3-260. Assignment.

The Company may assign its rights under this franchise only with the prior written consent of the City to an assignee acceptable to the City, which consent shall not be unreasonably withheld. The assignee shall meet the requirements of the Public Utilities Commission. (Ord. 1995-10 §7.1; Ord. 2007-04 §1)

Sec. 5-3-270. Saving clause.

If any portion of this franchise is declared illegal or void by a court of competent jurisdiction, the remainder of the franchise shall survive and not be affected thereby. (Ord. 1995-10 §7.2)

Sec. 5-3-280. Amendment.

The City expressly reserves the right to amend this franchise, from time to time, in any manner necessary for the public safety or welfare or to protect the public interests. (Ord. 1995-10 §7.3; Ord. 2007-04 §1)

Sec. 5-3-290. Expiration of franchise; purchase or condemnation.

(a) If, at the time of expiration of the franchise, no extension or renewal has been negotiated between the City and the Company, the City shall retain any and all rights to condemn or acquire the natural gas distribution system as provided by state law. If the City declines to condemn or acquire the natural gas distribution system after termination or expiration of the franchise, the Company shall have the right to find a buyer for the system, which buyer must be acceptable to the City, in its sole and subjective discretion. The Company will have two (2) years from the termination or expiration date in which to find such a buyer and provide the City with a fully executed contract for the purchase and sale of the natural gas distribution system. The buyer will then have one (1) year in which to obtain Public Utilities Commission approval to operate the system. The Company may request extensions of these time frames, provided that the Company provides evidence of due diligence on its part in finding a buyer and completing the PUC approval process, which extension of time may be granted by the City, in its sole and subjective discretion. Nothing herein contained shall be construed as requiring the City to grant any request for an extension of time to obtain a buyer and/or to have the buyer approved by the PUC. In the event an acceptable buyer cannot be found and PUC-approved

within the time frames set forth above, the Company shall have the right to remove its distribution facilities from the streets and other public places, but only after the City has had sufficient time to purchase or condemn said facilities. In removing its facilities, the Company shall remove in a workmanlike manner, at the Company's expense, from the streets and other public places all distribution facilities belonging to the Company which are not purchased by the City at the expiration of the franchise. All public property shall be restored by the Company to its former condition, to the extent practicable, after said removal.

(b) The City shall retain any and all rights to condemn or acquire the natural gas distribution system as provided by state law.

(c) The Company shall be and remain solely and exclusively responsible for all damages to persons or property that may occur by reason of any negligence or unskillfulness in any construction, maintenance, repair or operation of any installation of facilities of the Company, and said Company shall hold and save harmless the City from and against any and all loss or damage of any kind and designation by reason thereof. (Ord. 1995-10 §8; Ord. 2007-04 §1)

Sec. 5-3-300. Liability and insurance.

(a) Prior to commencement of construction, but in no event later than sixty (60) days after the receipt by the Company of the certificate from the Public Utilities Commission to operate a natural gas distribution system in the Cripple Creek area, continuously throughout the duration of the franchise and any extensions or renewals of it, the Company shall furnish to the City certificates of insurance, approved by the City, for all the types of insurance required under this Section. Failure to furnish the certificates of insurance timely shall constitute a material breach of the franchise within the meaning of Section 5-3-60 above.

(b) The Company shall maintain, throughout the term of the franchise, general liability insurance insuring the Company in the minimum amount of:

- (1) Five million dollars (\$5,000,000.00) for property damage per occurrence;
- (2) Five million dollars (\$5,000,000.00) for property damage aggregate;
- (3) Five million dollars (\$5,000,000.00) for personal bodily injury to any one (1) person; and
- (4) Five million dollars (\$5,000,000.00) bodily injury aggregate per single accident or occurrence.

The general liability insurance must include coverage for all of the following: comprehensive form; premises operations; explosion and collapse hazard; underground hazard; products/ completed operations hazard; contractual insurance; broad form property damage; and personal injury. The figures may be increased at the request of the City to compensate for inflation.

(c) The Company shall maintain, throughout the term of the franchise, automobile liability insurance for owned, nonowned or rented vehicles in the minimum amount of:

(1) One million dollars (\$1,000,000.00) for bodily injury and consequent death per occurrence;

(2) One million dollars (\$1,000,000.00) for bodily injury and consequent death to any one (1) person; and

(3) Five hundred thousand dollars (\$500,000.00) for property damage per occurrence.

(d) The Company shall maintain, throughout the term of the franchise, worker's compensation and employer's liability insurance, valid in the State of Colorado, in the minimum amount of:

(1) Statutory limit for worker's compensation; and

(2) One hundred thousand dollars (\$100,000.00) for employer's liability.

(e) Any insurance policy obtained by the Company in compliance with this Section shall be filed and maintained with the City Clerk during the term of the franchise, and may be changed from time to time to reflect changing liability limits. The Company shall immediately advise the City of any litigation that may develop that would affect this insurance.

(f) Neither the provisions of this Section nor any damages recovered by the City under it shall be construed to limit the liability of the Company under any franchise issued under this agreement or for damages.

(g) All insurance policies maintained pursuant to this franchise shall contain the following endorsement:

"It is agreed that this insurance policy may not be cancelled by the insurance company nor the intention not to renew be stated by the insurance company until thirty (30) days after receipt by the City Administrator, by registered mail, of a written notice of its intention to cancel or not to renew."

(h) All contractual liability insurance policies maintained pursuant to this franchise shall include the provisions of the following hold harmless clause:

"The Company agrees to indemnify the City of Cripple Creek, its agents, servants and employees from any lawsuit and expenses, including court costs and reasonable attorneys' fees, for any injury or death to any person, or any damage to any property, which may arise in connection with the work covered by this Agreement. The above indemnity shall apply except if the injury, death or damage is caused directly by the negligence or other fault of the City of Cripple Creek, its agents, servants or employees or any other person indemnified under this provision."

(i) All insurance policies provided under the provisions of this Agreement shall be written by companies authorized to do business in the State and approved by the State Department of Insurance.

(j) At any time during the term of this franchise, the City may request, and the Company shall comply with the request, to name the City as an additional named insured for all insurance policies written under the provisions of this franchise. (Ord. 1995-10 §9.1; Ord. 2001-15 §1)

ARTICLE 4

Emergency Telephone Charge

Sec. 5-4-10. Imposition of charge.

There is hereby imposed, pursuant to Article 11 of Title 29, C.R.S., upon all telephone exchange access facilities within the City, an emergency telephone charge in an amount not to exceed two percent (2%) of the tariff rates, as approved by the Public Utilities Commission, or fifty cents (\$.50) per month, whichever is less. (Ord. 1989-7 §1)

Sec. 5-4-20. Change of fee.

Upon recommendation of the Emergency Telephone Service Authority, the City Council may by resolution raise or lower the emergency telephone charge, but in no event shall such charge exceed the amount of two percent (2%) of the tariff rate as approved by the Public Utilities Commission. (Ord. 1989-7 §2)

Sec. 5-4-30. Collection of fee.

Telephone service suppliers providing telephone service in the City are hereby authorized to collect the emergency telephone charge imposed by this Article in accordance with Article 11 of Title 29, C.R.S., and remit charges collected to the Emergency Telephone Service Authority as provided for in the Intergovernmental Agreement Concerning the Implementation of an "E911 Emergency Telephone Service" (the "E911 Agreement"), authorized by the City Council by a resolution dated November 1, 1989. (Ord. 1989-7 §3; Ord. 2007-04 §1)

Sec. 5-4-40. Duration of charge.

This Article shall be in full force and effect from and after its passage and publication as provided by law, provided that the collection of the emergency telephone charge hereby imposed and remission of charges collected to the Emergency Telephone Service Authority as provided for in the E911 Agreement shall occur only after the Emergency Telephone Service Authority as authorized pursuant to the E911 Agreement enters into an agreement as necessary with the service supplier providing for the collection and remission of such emergency telephone charge to the Emergency Telephone Service Authority, to be used in accordance with the E911 Agreement and in accordance with the other applicable provisions of Article 11 of Title 29, C.R.S. (Ord. 1989-7 §4)

APPENDIX 5-A

CABLE TELEVISION FRANCHISE

CUSTOMER SERVICE STANDARDS

The City and Grantee hereby agree that the City may enforce the customer service obligations set forth in 47 C.F.R. § 76.309, as amended, against Grantee. Following is the current text of 47 C.F.R. § 76.309:

(a) A cable franchise authority may enforce the customer service standards set forth in Paragraph (c) of this Section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in Paragraph (c) of this Section;

(2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in Paragraph (c) of this Section and are contained in current franchise agreements;

(3) The State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any state or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in Paragraph (c) of this Section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability:

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers twenty-four (24) hours a day, seven (7) days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers:

(i) Refunds. Refund checks will be issued promptly, but no later than either:

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions:

(i) Normal business hours. The term *normal business hours* means those hours during which most similar businesses in the community are open to serve customers. In all cases, *normal business hours* must include some evening hours at least one (1) night per week and/or some weekend hours.

(ii) Normal operating conditions. The term *normal operating conditions* means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) Service interruption. The term *service interruption* means the loss of picture or sound on one (1) or more cable channels. (Ord. 2001-01 Exh. A)