

CHAPTER 5

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ARTICLE 1

Cable Television Systems

Sec. 5-1. Grant of franchise.

Pursuant to the ordinance codified herein, the city granted to TCI Cablevision of Colorado, Inc., a wholly owned subsidiary of AT&T Corp., a nonexclusive and revocable authorization to make reasonable and lawful use of the public streets, easements and other rights-of-way to construct, operate, maintain, reconstruct, rebuild and upgrade a cable television system for the purpose of providing cable services subject to the terms and conditions set forth in the Cable Television Franchise Agreement, copies of which are on file in the office of the city clerk. (Ord. 538 §3, 2000)

Sec. 5-2. Term of franchise

The term of the franchise granted by the city shall be for a period of ten (10) years from January 24, 2000, the effective date of the Agreement. (Ord. 538 §3, 2000)

Secs. 5-3—5-39. Reserved.

ARTICLE 2

Electric Franchise

Sec. 5-40. Definitions.

For the purpose of this article, 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 *may* is permissive. Words not defined in this section shall be given their common and ordinary meaning.

City means the city of Dacono, and includes the territory as currently is, or may in the future be, included within the boundaries of the city of Dacono, and where the context so requires, includes the officers, employees and legal representatives acting for and on behalf of the city of Dacono, Colorado.

City council means the legislative body of the city of Dacono.

Company means the United Power, Inc., and its successors and assigns.

Distribution facilities means those facilities reasonably necessary to provide electricity into, within and through the city.

Electricity means all electric energy and electric service provided to the city and to all persons, businesses and industry within the city.

Facilities means all components of the company which are reasonably necessary to provide electricity into, within and through the city and includes plants, works, systems, substations, transmission and distribution structures, fixtures, lines, equipment, pipes, mains, conduits, transformers, underground lines, meters, wires, cables and poles.

Franchise means the rights granted by this article.

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 of the state of Colorado.

Revenues means the gross amount of month which the company receives from:

a. Its customers within the city for the sale of electricity under lawfully adopted rates, temporary or permanent, and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments; and

b. The wheeling of electricity to customers within the city.

Streets and other public places means streets, alleys, viaducts, bridges, roads, lanes, easements, public ways and other public places in the city. (Ord. 404 §1, 1991)

Sec. 5-41. Grant of franchise.

The city of Dacono hereby grants to United Power, Inc., for the period specified and subject to the conditions, terms and provision contained in this article, a nonexclusive right to furnish, sell and distribute electricity to the city and to all persons, businesses and industry within the city; a nonexclusive right, subject to the ordinances, rules and regulations of the city, including without limitation the zoning, subdivision and building ordinances of the city, to acquire, construct, install, locate, maintain, operate and extend into, within and through the city all facilities reasonably necessary to provide electricity to the city and to all persons, businesses and industry within the city; and a nonexclusive right to make reasonable use of the streets and other public places as may be necessary to carry out the terms of this article. (Ord. 404 §1, 1991)

Sec. 5-42. Term of franchise.

The franchise granted by this article shall take effect on adoption and approval and shall supersede the franchise granted to Union Rural Electric Association, Inc., including its successors and assigns, by the city's Ordinance No. 103, which otherwise expired on November 21, 1992. This franchise shall expire twenty (20) years after the date of final adoption of this article. (Ord. 404 §1, 1991)

Sec. 5-43. Franchise fee.

In consideration for the franchise granted by this article, which provides for the company's use of streets and other public places, which are valuable public properties acquired and maintained by the city at great expense to its residents, and in recognition that the grant to the company of the use of those streets and other public places is a valuable privilege, the company shall pay to the city a sum equal to three percent (3%) of its annual revenues. (Ord. 404 §1, 1991)

Sec. 5-44. Payment schedule.

For the franchise fee owed on revenues received after the effective date of this article, payment shall be made in monthly installments not more than thirty (30) days following the close of the month for which payment is to be made. If necessary, initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this article. All payments shall be made to the city clerk. The city shall have reasonable access to the books of the company for the purpose of auditing or checking to insure that the franchise fee has been correctly computed and paid, and for any other purpose reasonably relating to any other matter covered by this article. (Ord. 404 §1, 1991)

Sec. 5-45. Reimbursement by company.

The company shall reimburse the city for the costs of upgrading the electricity distribution facilities of the city building or facility that uses electricity where such upgrading is caused or occasioned by the company's decision to increase the voltage of delivered electrical energy. (Ord. 404 §1, 1991)

Sec. 5-46. Franchise fee not in lieu of other fees.

Payment of the franchise fee by the company is accepted by the city in lieu of any utility occupation tax or other compensation for the privilege of using the streets and other public places of the city as granted under this franchise, but such payment shall not exempt the company from any other lawful fees, charges or taxes that are or may become generally applicable to other persons conducting business within the city. (Ord. 404 §1, 1991)

Sec. 5-47. Change of franchise fee and other franchise terms.

Once during each calendar year of the franchise term, the city council, upon giving thirty (30) days' notice to the company of its intention to do so, may review and change the franchise fee or other consideration the city may be entitled to receive as a part of the franchise; provided, however, that the city council may only change the franchise fee or other consideration to be received by the city under the terms of this article to the equivalent of the franchise fee or other consideration paid by the company to any city or town in the state in which the company supplies electric service under franchise, license or permit. The company shall report to the city within thirty (30) days of execution of a franchise, license or permit or of any change in a franchise, license or permit in any other municipality, the terms of which if included in this article could have a financial impact on the consideration to be paid by the company to the city. If the city council decides that such terms shall be included in this article, it shall have the power to provide for such change by the adoption of an amendatory ordinance; provided that the total consideration paid to the city shall not be higher than the highest consideration paid by the company to any municipality within the state. For purposes of this section, consideration means the franchise fee established in Section 5-43, and also includes any other provision which the city council in its sole discretion determines to be of financial benefit to the city. (Ord. 404 §1, 1991)

Sec. 5-48. Contract obligation.

This article constitutes a valid and binding contract between the company and the city. In the event that the franchise fee specified in this article is determined to be illegal, unconstitutional or void by a court of competent jurisdiction or other authority having jurisdiction, the company shall be contractually bound to pay the city, on the same schedule as provided herein for the franchise fee, an aggregate

amount which would have been paid as a franchise fee. In addition, if the franchise fee is declared invalid, the city shall have the right to impose occupation and license fees and permit charges reasonably equivalent on an annual rate to said franchise fee. (Ord. 404 §1, 1991)

Sec. 5-49. Copies of tariffs.

The company shall keep on file in its offices 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 city and by the public. (Ord. 404 §1, 1991)

Sec. 5-50. Compliance with PUC regulations.

The company shall comply with all applicable rules and regulations adopted by the Public Utilities Commission. (Ord. 404 §1, 1991)

Sec. 5-51. Installation and maintenance of company facilities.

The installation, maintenance, renovation and replacement of any significant facilities by the company shall be subject to the prior approval of and to inspection by the city, except such prior approval shall not be required where such installation, maintenance, renovation or replacement is necessitated by an emergency concerning which the company did not have and could not reasonably have had prior notice. All company facilities installed on streets and other public places shall be located and operated so as to cause a minimal amount of interference with such property. At least thirty (30) days prior to any construction of any facility within a street or other public place, the company shall advise the city and, upon request of the city, shall provide the city with a copy of the plans for such construction for the city's review and comment. Reasonable changes requested by the city shall be incorporated into such plans. Company facilities shall not interfere with the city's water mains, sewer mains, storm drainage facilities or any other municipal use of the city's streets and other public places. The company shall erect and maintain its facilities in such a way as to minimize interference with trees and other natural features. The company shall keep in good working order all facilities constructed, erected or used within the city. (Ord. 404 §1, 1991)

Sec. 5-52. Excavation and construction.

(a) The company shall comply with all applicable city requirements for construction, excavation, maintenance and repair work, and shall be responsible for obtaining and for causing any contractor or subcontractor of the company to obtain all applicable permits. The city shall have the right to inspect all construction, excavation, maintenance or repair work done by or on behalf of the company.

(b) All construction, excavation, maintenance and repair work done by or on behalf of the company shall be done in a timely and expeditious way and in a manner which minimizes the inconvenience to the public and to individuals. Any streets or other public places, or any other property disturbed by company construction, excavation, maintenance or repair work, shall be restored as soon as reasonably possible by the company, at its expense, to substantially its former condition and shall be subject to inspection by the city and compliance by the company with such reasonable remedial action as may be required by the city pursuant to said inspection.

(c) The company shall comply with any city request for reasonable and prompt action to remedy any damage to any public or private property adjacent to streets or other public places where the company is performing construction, excavation, maintenance or repair work. If the city determines that any disturbance of or damage to any public or private property occurring in the performance of such construction, excavation, maintenance or repair work poses a threat to the health, safety or welfare of the public and the company fails to make repairs promptly upon the city's request, the city may cause repairs to be made and the company shall be responsible for payment of the cost of such repairs. (Ord. 404 §1, 1991)

Sec. 5-53. Relocation of company facilities.

If at any time the city requests the company to relocate any distribution facility installed or maintained in streets or other public places in order to permit the city to make any public use of such streets or other public places, to construct any public improvement, to build any public project, to protect the public health, safety, welfare or convenience, or for any other municipal purpose, such relocation shall be made by the company at its expense. Using the funds allocated pursuant to Section 5-68, any relocation of overhead lines of at least one (1) block or seven hundred fifty (750) feet in length shall be placed underground by the company, if requested by the city. Any relocation shall be completed within one hundred twenty (120) days, unless a longer time is agreed to by the city. Following relocation, the property, including any legally existing encroachments on the property, shall be restored to its former condition by the company at its expense. Nothing herein contained shall be construed to impose any obligation upon the city to make any payment for any relocation of the company's facilities. (Ord. 404 §1, 1991)

Sec. 5-54. Service to new areas.

If during the term of this franchise the boundaries of the city are expanded, the company shall extend service, at the earliest practicable time, to the newly incorporated areas if such areas are within the company's certificated service area. Service to annexed areas shall be in accordance with the terms of this article, including payment of franchise fees. (Ord. 404 §1, 1991)

Sec. 5-55. Restoration of service.

In the event the company's electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the company shall use due diligence to restore its system to satisfactory service within the shortest practicable time. (Ord. 404 §1, 1991)

Sec. 5-56. Continued compliance with air and water pollution laws.

The company shall use its best efforts to comply at all times with the standards required by applicable federal and state air and water pollution laws. (Ord. 404 §1, 1991)

Sec. 5-57. Regulation by the city.

The city expressly reserves, and the company expressly recognizes, the right and duty of the city to adopt, from time to time, such ordinances, rules and regulations in the exercise of its police power as the city deems necessary to ensure the health, safety and welfare of the public. The company and any contractor or subcontractor of the company shall comply with all lawful city ordinances, rules and

regulations. Nothing herein shall waive the company's right to challenge the validity of any such ordinance, rule or regulation. (Ord. 404 §1, 1991)

Sec. 5-58. 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 any customers within the city. The city 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 city in conducting any inspection or audit and to correct any discrepancies affecting the city's interest in a prompt and efficient manner. (Ord. 404 §1, 1991)

Sec. 5-59. Warranties and obligations regarding company facilities.

The company hereby warrants to the city that it will install, repair, renovate and replace its facilities in a good and workmanlike manner, in a timely and expeditious manner, in a manner which minimizes inconvenience to the public and individuals, in a cost-effective manner, and in a manner consistent with all applicable ordinances, rules and regulations of the city, and shall include the use of first class techniques and equipment. If the company uses private contractors in such installation, repair, renovation or replacement, it shall use qualified and properly licensed private contractors. In addition, the company hereby warrants to the city that the company's facilities will be of sufficient capacity, quality, redundancy and durability to provide adequate and efficient electric service to the city and to customers within the city. The company shall require warranties customary for the industry from its third party suppliers of any equipment incorporated into the company's facilities and shall fully enforce all such warranties. (Ord. 404 §1, 1991)

Sec. 5-60. Adequate supply.

(a) The company shall at all times take all reasonable and necessary steps to assure an adequate supply of electricity to the city and to customers within the city.

(b) If the supply of electricity to the city or any customer within the city is interrupted, the company shall immediately take all necessary and reasonable actions to restore such supply at the soonest possible time. The company shall compensate the city for any damages, including consequential damages, to the city which result from any such interruption caused by the negligence or other fault of the company.

(c) The company shall provide to the city a telephone number which is not available to the public that will permit the city to obtain status reports from the company on a twenty-four-hour basis concerning any interruption of the supply of electricity in any portion of the city. (Ord. 404 §1, 1991)

Sec. 5-61. Technological improvements.

The company shall introduce and install generally, as soon as practicable, technological advances in its equipment and service in the city when such advances are technically and economically feasible and are safe and beneficial to the city and to customers within the city. Upon request by the city, the company shall review and promptly report advances which have occurred in the electric utility industry that have been incorporated into the company's operations in the city in the previous year or will be so

incorporated in the next six (6) months. Furthermore, upon request by the city, the company shall inform the city of any "state of the art" advances which have occurred in the electric utility industry and which are available for consideration by the company for incorporation in the company's operations in the city. In addition, upon request by the city, the company shall report to the city any plans to include technological advances relating to communications systems such as fiber optics which may utilize facilities already in place for the transmission of communications signals, and which facilities may be installed by the company for its own use, the use of the city or for the use of others as the city may franchise, license or permit. The city may use such facilities for its own use without cost to the city, except such additional costs which are reasonably incurred by the company as the result of the city's use. The city shall not use such facilities for commercial uses without agreement of the company for the consideration to be paid the company for such use, nor for uses which will impair the company's use of its facilities. Upon request of the city, the company shall provide a detailed report for the city's use of such communications systems. Nothing contained herein shall be construed to authorize the company to engage in telecommunications activities, nor shall this franchise be construed as a franchise for said telecommunications activities within the city. (Ord. 404 §1, 1991)

Sec. 5-62. Changing conditions.

The company and the city recognize that many aspects of the electric utility business are currently the subject of discussion, examination and inquiry by different segments of the industries and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the company conducts its business and meets its service obligations. In recognition of the present state of uncertainty respecting these matters, the company and the city each agree, on request of the other during the term of this franchise, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this franchise, to amend this franchise or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments. (Ord. 404 §1, 1991)

Sec. 5-63. City use.

The city shall be permitted to make all reasonable use for city purposes of any electrical distribution facilities of the company, including underground facilities, without cost to the city; provided that such use does not unreasonably interfere with the use of such facilities for distribution of electrical energy or create an unreasonable hazard. Such use may include, by way of explanation but not by way of limitation, the attachment of traffic control signs, fire alarm or police signal systems or the attachment of cables for transmitting television or radio signals, or any other use of the system or any part thereof. The company shall not be responsible for any modifications to the system or for payment of any costs necessitated by such use. (Ord. 404 §1, 1991)

Sec. 5-64. Underground conduit.

In addition to any other rights of the city hereunder, in the event the company installs new electric conduit or replaces existing electric conduit and the city wants additional electric conduit installed, it will so notify the company and timely provide electric conduit at its expense to the company which will install it without further cost to the city, provided that such city activity shall not unreasonably interfere with company facilities or delay the project. The city and the company shall cooperate to minimize installation costs of underground electric conduit and to minimize cutting the streets. (Ord. 404 §1, 1991)

Sec. 5-65. City not required to advance funds.

The company shall extend its facilities to provide electric service to the city for municipal uses within the city limits or for any major municipal facility outside the city limits and within the company's certificated area without requiring the city to advance any funds in aid of construction more than ten (10) days in advance of construction. (Ord. 404 §1, 1991)

Sec. 5-66. Annexation to the city.

When any property owned by the company becomes eligible for voluntary annexation to the city and is not simultaneously eligible for voluntary annexation to another municipal corporation, the company shall petition to annex the same upon request made by the city, provided that no condition of such annexation shall impair the company's ownership or then existing use of its property and water or water rights for public utility purposes. Except as herein provided, the company agrees to meet all terms and conditions imposed upon the annexation by the city that are no more stringent than those imposed generally upon property owners seeking annexation of their land to the city. The company shall be exempted from a public donation of land, money or water rights arising from such mandatory annexation under this section to the extent that the land being annexed is committed, dedicated and being utilized by facilities directly involved in generating, transmitting or distributing electric energy or gas services under this article, and provided further that said exemption from public donation shall not extend to any unimproved land or land not so committed, dedicated and currently used. (Ord. 404 §1, 1991)

Sec. 5-67. Underground distribution lines in new areas.

Upon payment of the appropriate charges, the company agrees to place newly constructed electric distribution facilities underground to serve new developments within the city in accordance with the company's tariffs and as required by any ordinances, rules or regulations of the city. (Ord. 404 §1, 1991)

Sec. 5-68. Overhead conversion at expense of company.

(a) To assist in the development of a program to underground existing overhead electric distribution lines, the company agrees to allocate an annual amount equivalent to one percent (1%) of the preceding year's electric revenues derived from customers within the city for the purpose of undergrounding its overhead distribution facilities in the city in connection with the public projects to be undertaken by the city; provided that the undergrounding shall extend for a minimum distance of one (1) block or seven hundred fifty (750) feet, whichever is less. Public projects shall be those public improvement programs undertaken where the replacement of the company's existing overhead distribution lines (including feeder lines) with underground distribution facilities is determined by the city to be in the general public interest. In no event shall any overhead conversion expense be charged against the one percent (1%) fund herein provided for unless the project to be so funded shall have been initiated by the city.

(b) Any unexpended portion of the one percent (1%) of electric revenue shall be carried over to succeeding years. Upon request by the city, the company agrees to anticipate amounts to be available for up to three (3) years in advance to be used to underground its overhead distribution facilities in such public projects mutually agreed to with the city. Any amounts so advanced shall be credited against

amounts to be expended in succeeding years until such credit advance is eliminated. (Ord. 404 §1, 1991)

Sec. 5-69. Review of matters.

Representatives of the city and the company shall meet periodically, when requested by the city, to review the city or company matters affecting the other. Such review may include the following:

- (1) Undergrounding programs, including conversions, public projects and replacements, which have been accomplished or are underway by the company, together with the company's plans for additional grounding;
- (2) The status of technology in the field of electric undergrounding;
- (3) Construction and operation and maintenance costs of underground lines versus overhead lines;
- (4) The coordination of company construction, excavation, maintenance and repair activities within the city; and
- (5) Public projects anticipated by the city. (Ord. 404 §1, 1991)

Sec. 5-70. Cooperation with other utilities.

When undertaking a project of undergrounding, the city and company shall work with other utilities or companies which have their lines overhead to have all lines undergrounded as part of the same project. When other utilities or companies are placing their lines underground, the company shall work with these utilities and companies and undertake to underground company facilities as part of the same project where feasible and in accordance with the company's tariffs. In each instance, each utility and company shall pay its appropriate share of the costs. (Ord. 404 §1, 1991)

Sec. 5-71. Company obligations to the city.

Except for the city's negligent or willful acts, the company shall defend, indemnify and hold harmless the city, its officers and its employees from and against any and all claims or losses of whatsoever nature, including attorney's fees, arising from or in any way connected with the operations of the company within the city or the exercise by the company of any rights or obligations contained in this article or the franchise granted hereunder, including any third party claims, administrative hearings and litigation. No expenses incurred by the company under this section shall be surcharged by the company. In the event of litigation concerning any breach of this article, or for an interpretation of this article, the prevailing party shall be entitled to recover all costs related thereto, including reasonable attorney's fees. (Ord. 404 §1, 1991)

Sec. 5-72. 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. 404 §1, 1991)

Sec. 5-73. Payment of expenses incurred by city in relation to ordinance.

At the city's option, the company shall pay in advance or reimburse the city for publication and election costs incurred with respect to this article. (Ord. 404 §1, 1991)

Sec. 5-74. Transfer or assignment.

The company shall not lease, transfer, assign or otherwise alienate the rights under the franchise granted by this article or any portion thereof without first having obtained the approval of the city by ordinance, which approval shall not be unreasonably withheld. In the event any transfer or assignment of such rights occurs without such approval, the city may declare the franchise granted by this article forfeited. Any transfer or assignment of rights under the franchise granted by this article shall be subject to the condition that the transferee shall promptly pay to the city a transfer fee in an amount equal to a prorated share of one million dollars (\$1,000,000.00), which prorated share shall be calculated by multiplying one million dollars (\$1,000,000.00) times a fraction of which the population of the city is the numerator and the population of the city and county of Denver is the denominator, or in an amount equal to all reasonable legal costs and other expenses incurred by the city as a result of the transfer, whichever is the greater amount. The population shall be determined on the basis of the best population estimate available as of the effective date of the transfer and obtained from the federal or state government. The payment of the transfer fee may be waived by the city if the city council determines that such a waiver would be in the best interests of the city. The transfer fee will be further prorated on an equitable basis in the case of a partial assignment. The transfer fee shall not be recovered from the city or from customers within the city through electricity rates charged to the city or to such customers, or by any surcharge by the transferee. (Ord. 404 §1, 1991)

Sec. 5-75. City's right to purchase or condemn.

The rights of the city and the company with respect to the right of the city to construct, purchase or condemn public utility facilities, as provided by the Colorado Constitution and statutes, are hereby expressly reserved. The city shall have the option to purchase or condemn in whole the company's distribution facilities within city limits then utilized in serving persons, businesses and industry of the city during the 5th, 10th, 15th or last year of this franchise, provided that the city give the company one (1) year's written notice of its intent to purchase or condemn. (Ord. 404 §1, 1991)

Sec. 5-76. Negotiated purchase price or condemnation award.

Upon the exercise of the city's option to purchase, the parties shall negotiate in good faith to determine the facilities' fair market value at the time of such purchase or condemnation, excluding all value of the franchise or right-of-way granted hereunder. (Ord. 404 §1, 1991)

Sec. 5-77. Limitations on company removal.

If at the time of termination of the franchise granted under this article no renewal has been negotiated between the city and the company, the company shall not be required to remove its distribution facilities immediately from the streets and other public places. At the city's request and within a reasonable time not to exceed nine (9) months, the company shall remove at the company's expense from the public streets and other public places all overhead distribution facilities belonging to the company which are not purchased by the city at the termination of the franchise. Further, the company, at the request of the

city, shall remove at the company's expense all underground distribution facilities which are not purchased by the city within nine (9) months after the receipt by the company of a written notice from the city that said underground facilities constitute a hazardous condition or interfere with a municipal use of the subsurface of said streets and other public places. All public property shall be restored by the company to its former condition after said removal. The company need not remove any property from said public streets and other public places which it shall continue to use and maintain pursuant to contractual arrangements with the city. (Ord. 404 §1, 1991)

Sec. 5-78. Forfeiture.

If the company fails to perform any of the terms and conditions of this article required herein to be performed by the company, the city, acting by and through its city council, may determine after hearing that such failure is of a substantial nature. Upon receiving notice of such determination, the company shall have six (6) months' time in which to remedy the violations. In the event said failure is such that it cannot be reasonably corrected within six (6) months, the city shall provide such reasonable time as is necessary in lieu thereof. If after such time corrective actions have not been successfully taken, the city, acting by and through its city council, shall determine whether any or all rights and privileges granted the company under this article shall be forfeited. (Ord. 404 §1, 1991)

Sec. 5-79. Judicial review.

Any such declaration of forfeiture shall be subject to judicial review as provided by law. (Ord. 404 §1, 1991)

Sec. 5-80. Other legal remedies.

Nothing herein contained shall limit or restrict any legal rights that the city or the company may possess arising from any such alleged violations. (Ord. 404 §1, 1991)

Sec. 5-81. Continued obligations.

Upon forfeiture, the company shall continue to provide service to the city and to customers within the city until the city makes alternative arrangements for such service. If the company fails to provide continued service, it shall be liable for damages to the city and to customers within the city. (Ord. 404 §1, 1991)

Sec. 5-82. Amendments.

At any time during the term of the franchise granted by this article, the city, acting by and through its city council, or the company may propose amendments hereto by giving thirty (30) days' written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will negotiate in good faith and within a reasonable time in an effort to agree upon mutually satisfactory amendment(s). Amendment(s) hereto shall be made only by ordinance. The word *amendment* as used in this section does not include a change authorized in Section 5-47. (Ord. 404 §1, 1991)

Sec. 5-83. Conduct of business.

The company, from time to time, may establish 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 provisions of this franchise, the ordinances, rules and regulations of the city, or the laws of the state. (Ord. 404 §1, 1991)

Sec. 5-84. Representatives.

(a) Each party shall designate from time to time in writing a representative to whom notices shall be sent regarding any action to be taken under this article. All notices provided for herein shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the names and addresses are changed at the written request of either party. Until any such change shall hereafter be made, notices shall be sent to the city's mayor and to the company's general manager. Currently, the names and addresses are as follows:

For the city:

Linda Stepien
Mayor, City of Dacono
512 Cherry Street
P. O. Box 186
Dacono, CO 80514

For the company:

David I. Dunnell
General Manager
United Power, Inc.
18551 East 160th Avenue
P. O. Box 929
Brighton, CO 80601

(b) In addition, the company shall provide to the city, at least annually, and more often if requested by the city, a current chain of command chart showing all executives, managers and supervisors of the company, along with their names, titles and telephone numbers. (Ord. 404 §1, 1991)

Sec. 5-85. Severability.

Should any one (1) or more provisions of the ordinance codified in this article be determined to be illegal or unenforceable, all other provisions, nevertheless, shall remain effective; provided, however, that the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties hereunder. (Ord. 404 §1, 1991)

Sec. 5-86. Entire agreement.

The ordinance codified in this article constitutes the entire agreement of the parties. There have been no representations made other than those contained in this article. (Ord. 404 §1, 1991)

Sec. 5-87. Approval filed with city.

The company shall file with the city clerk its written approval of the franchise granted by this article and of all of the terms and conditions thereof at least ten (10) days prior to the city council meeting at which the ordinance codified in this article is to be heard on first reading. The company shall file with the city clerk its written ratification thereof within ten (10) days after the approval of said ordinance on second reading. The acceptance and ratification shall be in a form and content approved by the city attorney. If the company fails to timely file its written acceptance or ratification as provided in this section, the franchise granted by this article shall become null and void. (Ord. 404 §1, 1991)

Secs. 5-88—5-89. Reserved.

ARTICLE 3

Gas Service

Sec. 5-90. Definitions.

For the purposes of this article, the following terms shall have the meaning given herein:

City is the grantor of rights under this franchise.

Company is the Rocky Mountain Natural Gas Company, Inc., the grantee of rights under this franchise. (Ord. 282 §2, 1983; Ord. 374 §1, 1990)

Sec. 5-91. Grant of authority.

There is hereby granted to the company the right, privilege and authority to locate, build, construct, acquire, purchase, extend, maintain and operate into, within and through said city a plant or plants and works, for the purchase, manufacture, transmission and distribution of gas, either natural, artificial or mixed, with the right and privilege for the period and upon the terms and conditions hereinafter specified to furnish, sell and distribute gas to the city, and the inhabitants thereof, for heating, cooking or other purposes, by means of pipes, mains or otherwise, over, under, along, across and through any and all streets, alleys, viaducts, bridges, roads, lanes and other public ways and places in said city and over, under, along, across and through any extension, connection with or continuation of the same and/or over, under, along, across and through any and all such new streets, alleys, viaducts, bridges, roads, lanes and other public ways and places as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of said city; provided, however, that the company shall have no right to construct any building, well or manufacturing facility upon any such street, gas easement or other public property. (Ord. 282 §3, 1983)

Sec. 5-92. Public ways and places.

The company is further granted the right, privilege and authority to excavate in, occupy and use any and all streets, alleys, viaducts, bridges, roads, lanes, parkways and other public ways and places under the supervision of the properly constituted authority for the purpose of bringing gas into, within and through the city, and supplying gas to the city and the inhabitants thereof and in the territory adjacent thereto, provided, however, that the company shall locate its plants, works, transmission and distribution structures, equipment, mains and pipes within the city in a manner to meet with the approval of the city and further, in locating said facilities, shall do so in such manner as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said streets, alleys, or other public ways and places. Should it become necessary for the company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalks, graveled or paved streets, roads or alleys, or any other public or private improvement, the company shall repair at its own expense in a workmanlike manner, subject to the approval by the city, such sidewalk, graveled or paved street, road, alley or other improvement after the installation of its pipes or other structures. The company shall use due care not to interfere with or damage any water mains, sewers or other structures now in place or which may hereafter be placed in said streets, alleys or other public places, and said company shall, at its own expense, repair in a workmanlike manner subject to the approval of the city, any of such water mains, sewers or other structures which are damaged through the action of the company; provided, however, that the city may make such repairs and charge the reasonable cost thereof to the company. This grant of authority shall apply to all streets and alleys presently platted or otherwise of record, all gas easements presently owned by or dedicated to the city or the public within the city limits, and to other property presently owned by the city within the city limits, and to future streets, alleys, gas easements and other property later acquired by or dedicated to the city and located within the city limits. The company shall be responsible to remedy any defects in repair work done by the company for a period of two (2) years after completion. The city shall have the right to inspect and supervise any work on city property and improvements. All such repairs, installations, removals, trenching and other work shall be done in accordance with this code. (Ord. 282 §4, 1983)

Sec. 5-93. Not exclusive.

The right to use and occupy said streets, alleys, public ways and places shall not be exclusive, and the city reserves the right to grant the use of said streets, alleys, public ways and places to any person during the period of this franchise. (Ord. 282 §7, 1983)

Sec. 5-94. Maintenance by company.

The company shall so maintain its structures, apparatus, mains, pipe and other equipment as to afford all reasonable protection against injury or damage to persons or property therefrom, and the company shall save the city harmless from all liability or damage and all reasonable expenses necessarily accruing against the city arising out of the exercise by the company of the rights and privileges hereby granted; and for this purpose the company shall maintain public liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00), with an umbrella for not less than one million dollars (\$1,000,000.00), and shall furnish a certificate to the city so showing; provided that the company shall have had notice of the pendency of any action against the city arising out of such exercise by the company of said rights and privileges and be permitted at its own expense to appear and defend or assist in the defense of the same. (Ord. 282 §5, 1983)

Sec. 5-95. Service changes.

If at any time it shall be necessary to change the position of any gas main or service connection of the company to permit the city to lay, make or change street grades, pavements, sewers, water mains or other city works, such changes shall be made by the company at its own expense. (Ord. 282 §6, 1983)

Sec. 5-96. Service standards.

The company shall maintain and operate its plants and system and render efficient service in accordance with the rules and regulations of the Public Utilities Commission of the state and the terms and conditions of this section, including specifically, but without limitation, the following requirements:

(1) Heating value. Gas sold, supplied and delivered under this franchise shall be maintained at a monthly average of not less than nine hundred (900) British Thermal Units of heat value per cubic foot. A cubic foot of gas means that amount of gas which, when saturated with water vapor at a temperature of sixty (60) degrees Fahrenheit and subject to an absolute pressure equal to thirty (30) inches of mercury, at thirty-two (32) degrees Fahrenheit (14.73 pounds per square inch), occupies a volume of one (1) cubic foot. Gas sold under this franchise shall be accurately measured utilizing metering equipment of a type approved by the Public Utilities Commission of the state, which shall also be subject to approval of the city. The company will provide the city with copies of calorimeter and pressure reports on request.

(2) Natural Gas. Natural gas shall be furnished to the city in its natural state as it is produced at the wells, without dilution, except that the company shall remove such noxious gasses therefrom and add such odorizing agent as may be required by law or regulations of proper authorities.

(3) Expense of Adjustment. If, after natural gas has been made available, it should later be necessary to revert to manufactured, artificial or other suitable, or mixed gas, the company shall defray all necessary expenses incident to the adjustment of domestic, commercial and governmental appliances, including the changing or redrilling of orifices and burners.

(4) Maintenance of System. The company shall maintain its gas plant equipment and distribution system in good condition and repair at all times.

(5) Maps. The company shall prepare and submit to the council a map showing the location of its distribution systems, showing location, size and depth of lines, locations of shutoff valves and gates, and all appurtenances incident to the distribution system, so far as such facilities can reasonably be projected. The map shall be kept current by addition of the information hereby required as the system is extended or revised. If the company fails to keep such map current and provide the required information, the city can cause such work to be done, and charge all costs thereof to the company.

(6) The company shall make adequate provision for providing service to customers, and it shall be the responsibility of the company at the company's cost to extend gas lines to the property lines of customers who have ordered gas. (Ord. 282 §8, 1983)

Sec. 5-97. Depletion of supply.

If, during the term of this franchise, there occurs a failure or partial failure of the supply of natural gas available to the company because of depletion of such supply, the company shall take all reasonable steps to obtain an additional natural gas supply from other sources to be delivered to the company, and if unable to procure same, it is hereby authorized to supply artificial or mixed gas for the unexpired term of this franchise. If the company, within a reasonable period after failure of the supply of natural gas, shall fail to supply to its customers artificial and/or mixed gas, the franchise rights granted herein shall terminate. (Ord. 282 §9, 1983)

Sec. 5-98. Gas furnished to city.

The company shall furnish gas within the corporate limits of the city or any addition thereto, to the city and to the inhabitants thereof, and to any person or persons or corporation doing business in the city, or any addition thereto, at the rates and under the terms and conditions set forth in the Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies, filed with or fixed by the Public Utilities Commission of the state, or by any other competent authority having jurisdiction in the premises. (Ord. 282 §10, 1983)

Sec. 5-99. Uniform rates, charges and service.

The company shall not, as to rates, charges, services, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled. (Ord. 282 §11, 1983)

Sec. 5-100. Industrial gas.

The rates to be charged by said company for industrial gas used in the city may be lower and different from those charged for gas used for other purposes, provided that contracts for industrial gas contain a "cut off" clause which recognizes the preferred right of the other uses over industrial uses. (Ord. 282 §12, 1983)

Sec. 5-101. Enlargements and extensions.

The company shall from time to time, during the term of this franchise, make such enlargement and extensions of its distribution system as the business of the company and the growth of the city justify, in accordance with its Standards for Service, Rules and Regulations, and Service Connection and Extension Policies for gas service concurrently in effect and on file with the Public Utilities Commission of the state or other competent authority having jurisdiction in the premises. (Ord. 282 §13, 1983)

Sec. 5-102. Rules and regulations.

The company, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of gas and payment therefor, and the

interference with or alteration of any of the company's property upon the premises of its customers as shall be necessary to insure a continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefor, provided that the company shall keep on file in the office of the city clerk of the city and in its office in Denver, Colorado, available to the public, copies of its Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies concurrently in effect and as filed with the Public Utilities Commission of the state or other competent authority having jurisdiction in the premises. The city shall have access at all reasonable times to all company records, reports and plans. (Ord. 282 §14, 1983)

Sec. 5-103. Occupational tax.

(a) As a further consideration for this franchise and accepted by the city in lieu of all occupation and license taxes and all other special taxes, assessments or excises upon the pipes, mains, meters, or other property of the company, or other levies that might be imposed, either as an occupation tax, license tax, permit fee or charge, or for the inspection of pipes, mains, meters or other property of the company, or otherwise, the company shall pay to the city a sum equal to three percent (3%) of its annual gross revenue derived from the sale of gas within the corporate limits of the city, including the revenue received from the sale of industrial gas, and excluding the amount received from the city itself for gas service furnished it and after adjustment for the net write-off of uncollectible amounts and corrections of bills theretofore rendered. Payments of the franchise charge shall be made on or before the first day of March of each year for the calendar year next previous. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this paragraph, the city clerk, and/or any committee appointed by the council shall have access to the books of said company for the purpose of checking the gross income received from operations within the city. It is understood that payment of such franchise charge does not excuse the company from payment of either sales and use taxes or property taxes, as such taxes are levied from time to time, or from obtaining an excavation permit, at no charge to the company, if required by city regulations. In the event the company makes payments to any other municipality pursuant to a franchise, occupation tax or similar taxes, which in the aggregate are more than three percent (3%) gross revenues of sales to customers within such municipality, the charges due hereunder to the city shall be increased to an equivalent amount computed on a percentage basis, if any portion of the payments to the other municipality are directly or indirectly expensed or charged to customers within the city.

(b) In addition, the city reserves the right to review and adjust the percentage received by the city as a franchise tax on a yearly basis in the months of May and June for the life of the franchise. Any adjustment in the percentage shall become effective on the next following anniversary date of the franchise. The adjustment procedure shall be contingent upon: being in compliance with federal and state law; and the application of the franchise tax to customers within the city only. (Ord. 282 §15, 1983)

Sec. 5-104. City option to purchase system.

There has heretofore been in effect for twenty-five (25) years a franchise to the company, and therefore, during the term of the instant franchise, the city shall have the right, option and privilege of purchasing the company's entire plant and distribution system operating in the city for a purchase price representing the fair market value of the system (the entire system shall include all additions and extensions to the original system). If the parties are not able to agree to the fair market value, such value shall be determined through binding arbitration. In case of such arbitration, each party shall

choose one arbitrator, and the two arbitrators so chosen shall choose a third arbitrator, who shall be chairman of the arbitration panel. The costs of arbitration shall be divided equally between the parties. The company and the city agree to negotiate means to limit severance damages, including acquisition of the system and customers outside the city by the city as reasonable. (Ord. 282 §16, 1983)

Sec. 5-105. Purchase price.

The purchase price of the system herein set forth is a method of acquisition of the system by the city, which is alternative to any other lawful means of acquiring title to the system by the city, and said right and privilege of purchasing the company's entire system shall be in addition to all of the rights and privileges granted and reserved to the city by the laws of the state in all matters relating to franchise. The council may authorize the acquisition of such property outside the city limits by condemnation or otherwise, as granted by the Colorado constitution regardless of whether the system within the city is acquired pursuant to this section by condemnation or otherwise. In the event the city acquires this distribution system, the company will sell the city gas for resale upon terms as may be agreed to. (Ord. 282 §17, 1983)

Sec. 5-106. Voter approval.

This ordinance shall be in full force and effect from and after its passage, voter approval and publication, as by law required, upon acceptance thereof in writing by the company, with thirty (30) days after final passage, and the terms, conditions and covenants hereof shall remain in full force and effect for a period of ten (10) years from and after the effective date following final passage. (Ord. 282 §18, 1983)

Sec. 5-107. Expiration, removal of system.

Upon the expiration of this franchise, if the company shall not have acquired an extension or renewal thereof and accept the same, it may have, and it is hereby granted, the right to enter upon the streets, alleys, bridges, viaducts, roads, lanes and other public places of the city, for the purpose of removing them from any or all of its plants, structures, pipes, mains or equipment pertaining thereto, at any time after the city has had ample time and opportunity to purchase, condemn or replace them. In so removing said pipes, mains or other property, the company shall, at its own expense, and in a workmanlike manner, refill any excavations that shall be made by it in the graveled or paved streets, alleys, bridges, viaducts, roads, lanes and other public places after the removal of its mains, pipes or other structures. (Ord. 282 §19, 1983)

Sec. 5-108. Rates.

Rates charged by the company for service hereunder shall be fair and reasonable and designed to meet all necessary costs of service, including a fair rate of return on the net valuation of its properties devoted thereto, under efficient and economical management. The company agrees that it shall be subject to all authority now or hereafter possessed by any regulatory body having jurisdiction to fix just, reasonable and compensatory gas rates. The company further agrees that the system shall be so designed, constructed and sources of gas utilized as to provide the most economic development and favorable rate structure possible, taking into account deliverability of gas, reserves and other pertinent conditions. (Ord. 282 §20, 1983)

Sec. 5-109. Assignment.

The company shall not assign this franchise, or the rights granted hereunder, without first obtaining approval of the voters of the city; provided, however, that this condition shall not be construed to restrict or prevent the issuance of bonds, debentures or other evidence of indebtedness, or the issue of additional stock, needed or useful for the purpose of financing the system or any portion thereof. (Ord. 282 §21, 1983)

Sec. 5-110. Bond.

Within fifteen (15) days after the Public Utilities Commission of the state has granted to the company a Certificate of Public Convenience and Necessity and after appeal rights have expired, the company shall deposit with the city clerk a bond in the penal sum of ten thousand dollars (\$10,000.00) executed by the company with surety to be approved by the city, conditioned upon compliance with the terms and conditions of this ordinance and further conditioned that the company and its surety shall pay to the city all costs, expenses and damages resulting to the city from the failure of the company to comply with the terms and conditions of this ordinance, and further conditioned that the city shall recover all costs and expenses incurred in enforcing collection of said bond. Such bond shall be maintained in full force and effect during the period of this franchise, and additional security may be required from time to time, or security may be adjusted, revised or substituted upon consent of the city. (Ord. 282 §22, 1983)

Sec. 5-111. Forfeiture.

The city reserves the right to declare a forfeiture of this franchise for the breach of a substantial and material provision thereof. No forfeiture shall be declared until the company shall have had the opportunity to be heard and to correct the alleged breach. Upon failure of the company to exercise reasonable diligence to correct such condition, the city may declare this franchise forfeited. In the event that this franchise is forfeited, then the company agrees to continue to render service as theretofore, for a period of six (6) months, to give the city time to decide upon its course of action. (Ord. 282 §23, 1983)

Sec. 5-112. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion thereof. (Ord. 282 §24, 1983)

Sec. 5-113. Reserved rights.

The right is hereby reserved by the city to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power; provided that such regulations shall be reasonable and not destructive of the right herein granted, and not in conflict with the laws of the state, or with orders of other authorities having jurisdiction in the premises, except as permitted in the exercise of the city's "home rule" powers granted by Article XX of the Colorado Constitution. This franchise shall be subject to all valid and effective provisions of the city Charter whether enumerated herein or not. (Ord. 282 §25, 1983)

Secs. 5-114—5-129. Reserved.

ARTICLE 4

Emergency Telephone Service

Sec. 5-130. Establishment.

The mayor is authorized to sign the intergovernmental agreement creating the Weld 911 Emergency Telephone Service Authority Board to establish and maintain an emergency telephone service system within the county, including the city. (Ord. 347 §1, 1988)

Sec. 5-131. Telephone charge.

There is hereby imposed, pursuant to Section 29-11-101, 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 state Public Utilities Commission, or fifty cents (\$0.50), whichever is less. Upon recommendation of the Weld 911 Emergency Telephone Service Authority Board, the city council may, by ordinance, raise or lower the emergency telephone charge, but in no event shall such charge exceed the amount of two percent (2%) of said tariff rates as approved by the state Public Utilities Commission. Ord. 347 §2, 1988)

Sec. 5-132. Collection of charge.

Telephone service suppliers providing telephone service in the city are hereby authorized to collect the emergency telephone charge imposed by this ordinance in accordance with Section 29-11-101, C.R.S., and to provide those funds to the Weld 911 Emergency Telephone Service Authority Board as provided in the attached intergovernmental agreement. (Ord. 347 §3, 1988)

Secs. 5-133—5-149. Reserved.