

## Title 13

### PUBLIC SERVICES

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## Chapter 13.04

### Water Department

#### Sections:

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- 13.04.020 Board may appoint commissioner of water.
- 13.04.030 Inspection of mains and repairs—Notice required.
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- 13.04.085 Water service restrictions.
- 13.04.090 Use of water suspended in case of fire.
- 13.04.095 Waste of water prohibited.
- 13.04.100 Power of board of trustees.

#### **13.04.010 Water department created.**

A water department of the town is created and established, subject to such rules and regulations as may be from time to time prescribed by the board of trustees of the town. (Ord. 246 §157, 1988; prior code §13-1)

#### **13.04.020 Board may appoint commissioner of water.**

The town board may appoint a commissioner of water who shall, under direction of the board, carry out the policies, rules and regulations of the water department. (Ord. 246 §158, 1988; prior code §13-2)

#### **13.04.030 Inspection of mains and repairs--Notice required.**

All work done in the laying of service pipes and in making connections with the mains or repairs thereto, shall be left open for the inspection of the commissioner of water or other person designated by the board, and notice shall be given at the time such work is completed and a reasonable time allowed for his examination. (Ord. 246 §159, 1988; prior code §13-3)

#### **13.04.040 Commissioner of water to inspect--Record to be maintained.**

It shall be the duty of the commissioner of water, the town clerk, or the person designated by the board of trustees to superintend, inspect, reject or accept all connections made with the mains and all service pipes, and to see that the provisions of this chapter are complied with therein, to inspect the premises on which and the buildings for which water may be furnished, to keep a correct account of all expenditures made by him, and an inventory of all property in his hands belonging to the town, and the disposition thereof, to keep a book of accounts showing what applications for permits to tap the mains have been issued. (Ord. 246 §160, 1988; prior code §13-4)

#### **13.04.050 Right of inspection.**

The commissioner of water, or any person so authorized by the board of trustees, shall have the right at all reasonable hours, to have full and free access to all parts of premises and buildings where water is delivered

or consumed, to examine the water pipes and fixtures, to examine whether there is any unnecessary waste of water, and as to the use made of the water, and upon his demand, the owner, lessee, or occupant shall be required to fix all leaky pipes or faucets on the property to the satisfaction of the board of trustees. (Ord. 246 §161, 1988; prior code §13-5)

**13.04.060 Separate connection required.**

Each water user in the town shall have a separate connection from the water main of the town water system. It is unlawful for any person to supply water to the occupant of any property which is not connected with the water system, unless so ordered by the board of trustees. (Prior code §13-6)

**13.04.070 No damages for failure to supply.**

Neither the town, nor any officer, employee or agent of the town, shall be liable to any person or entity, including but not limited to any consumer of water or any beneficiary of water, by reason of provision of such water or the failure of such supply by the town, or accident to the water system, or any damage approximate, consequential or remote by reason of the water system or its components. (Ord. 246 §162, 1988; prior code §13-7)

**13.04.080 Interruption of services—No damages.**

The commissioner of water shall have the right at any time without notice to shut off the water in the town mains, or any of them, for the purpose of making repairs, connections, extensions or for other useful or necessary purposes, including the right to shut off water for a breach or violation of any provision of this part. No water user or property owner shall be entitled to any damages or to have any portion of payment refunded for any interruption of water supply however the same may be occasioned. Neither the town, nor any officer, employee or agent of the town shall be liable to any person or entity, including but not limited to, any consumer of water or any beneficiary of water, for any interruption of water supply. (Ord. 246 §163, 1988; prior code §13-8)

**13.04.085 Water service restrictions.**

In case of water shortage, scarcity or emergency, the board of trustees shall have the power and authority to establish by resolution any restrictions deemed necessary upon the use of water for nondomestic purposes, including but not limited to irrigation. (Ord. 644 §1, 2007)

**13.04.090 Use of water suspended in case of fire.**

In case of fire in the town, or in case of the sounding of the fire bell, it is unlawful for any person to open or permit to remain open on his or her premises, any hydrant or connection with the water main, for the purpose of irrigation, sprinkling or power, from the time the alarm is sounded until such fire shall be extinguished. (Prior code §13-9)

**13.04.095. Waste of water prohibited.**

A. Wasting of water is prohibited and all consumers shall prevent unnecessary waste of water and keep all water outlets closed when not in actual use. Hose bibs, hydrants, urinals, water closets, bathtubs and other openings must not be left running for any purpose other than the use for which they were intended.

B. Any consumer, user or other person violating any provision of this section or of any resolution of the board of trustees adopted pursuant to section 13.04.085 shall be guilty of a municipal offense and shall be punished by a fine but not imprisonment. The amount of such fine shall be determined by the municipal court. Upon a second and each subsequent conviction for such an offense, and in addition to such fine, the town may discontinue water service to the property served, or the town may install a flow restriction device upon the service line to the property served to limit water service to that necessary for health and sanitary purposes only. No such discontinuance of or restriction upon water service shall extend for more than ten days for each conviction. At least ten days' notice and an opportunity to be heard before the director of operations shall be given prior to each discontinuance or restriction of water service pursuant to this section.

C. Watering or irrigating at any time or in any manner prohibited by a resolution of the board of trustees adopted pursuant to Section 13.04.085 shall constitute prima facie evidence of waste of water. (Ord. 712 §1, 2009; Ord. 644 §2, 2007)

#### **13.04.100 Power of board of trustees.**

The board of trustees shall have the power and authority to make, change or revise rates and charges for the use of water, to make rules and regulations consistent with the provisions of this chapter and to take and direct all steps and proceedings fully to carry out the intent and purpose of this chapter. (Ord. 246 §164, 1988; prior code §13-10)

### **Chapter 13.08**

#### **Water Charges and Rates**

##### **Sections:**

- 13.08.010 Water connection charges.
- 13.08.020 Water service charges.
- 13.08.030 Service charge outside town limits.
- 13.08.040 Collection procedures—Late fee.
- 13.08.050 Funds collected paid to treasurer.
- 13.08.060 Shut-off for nonpayment.
- 13.08.070 Time limitation on tapping.
- 13.08.080 Charges for water service reinstatement.
- 13.08.090 Charge for service calls after hours.
- 13.08.100 Charge for service when meters are read for the first time after estimations.
- 13.08.110 Deposits.

#### **13.08.010 Water connection charges.**

A. There is imposed a capital investment charge, repair charge and connection charge for residential, commercial and industrial uses, payable upon issuance of a building permit by the town. Such charges shall be paid to the town in an amount as established from time to time by resolution of the board of trustees.

B. In addition to the charges set forth in Subsection A above, there shall be transferred to the town the following:

1. One acre-foot unit of Colorado Big Thompson ("CBT") water for each single-family dwelling and one-half acre-foot unit of CBT water for each living unit in a duplex, triplex, fourplex or larger building used for multi-family dwellings, as set forth in Paragraph 6, below.

2. Two and one-half acre-foot units of CBT water for every acre of irrigated landscape area to be served by the town water system and located within the development.

3. For commercial, industrial or other nonresidential development, an amount of water equal to the estimated total annual potable water demand requirement for such uses, as calculated by the town, plus an additional twenty percent.

4. In the sole and absolute discretion of the board of trustees and in lieu of acre-foot units set forth in paragraphs 1, 2 and 3 above, an amount equivalent to one hundred ten percent of the then-current purchase price of such units as determined by the town. The town shall set these funds aside for future purchase of acre-foot units of CBT water.

5. The transfer required by this subsection shall be made prior to final approval of any subdivision plat for the property served. If no subdivision plat is required, then such water shall be deliverable at the time of building permit and shall be transferred to the town prior to the issuance of a building permit. All water transferred hereunder shall be free and clear of liens and encumbrances.

6. Effective January 3, 2008, the water dedication requirements of paragraphs 1, 2 and 3, above, shall be satisfied by a combined dedication of water rights and payment of cash in lieu of dedication at the ratio of seventy-five percent dedication and twenty-five percent cash-in-lieu payment. The cash-in-lieu payment shall be made at a rate as determined by the board of trustees from time to time by resolution to be equivalent to one hundred ten percent of the then-current purchase price of such units. The town shall set these cash-in-lieu funds aside for future purchase of CBT units or other water rights.

C. There shall be a limit on the number of living units allowed per tap size in residential units as follows:

<i>Meter Size</i>	<i>Number of Units</i>
5/8"	1
3/4"	2-4
1"	5-6
1½"	7-12
2"	13-23

D. No water tap or connection shall be made to the town water system unless a permit is first obtained from the town clerk for such tap or connection and all applicable charges set forth in this chapter have been paid. All fees and charges shall be paid at the time of the issuance of the building permit at the then effective rate.

E. All connections or taps shall be made by a licensed plumber and shall be at the sole expense of the applicant. The applicant shall furnish at its sole expense all materials and labor necessary for the tap or connection, except that the town shall furnish the necessary water meter, the price of which is included in the fee set forth in Subsection A above, and except that the town shall also furnish the necessary meter pit, meter pit cover, radio read meter, setter(so) and, where applicable, pressure reducing valves, the actual costs of

which shall be paid to the town by the applicant at the time of payment of the capital investment charge. The town clerk shall maintain and make available upon request the estimated costs of these components.

F. All connections or taps shall be made in conformance with the specifications as may be promulgated by the board of trustees and shall be made under the supervision of the building inspector, or other designee of the board of trustees.

G. After such tap or connection is made and accepted, the town shall be the owner of and shall maintain the line from the water main to the meter, and the applicant shall own and maintain the line from the meter to the premises.

H. Each irrigation system for a private residential lot or commercial landscape area that is installed after April 25, 2003 shall include an automatic electromechanical interrupt which engages to interrupt the irrigation system during a rainfall event. Such device shall be a Hunter model Rain-Clik or similar device approved by the department of public works. The installation of such device shall be a condition of the issuance of the tap serving the irrigation system, and installation shall be completed prior to commencing use of the tap.

I. Each irrigation system for a public or private park or open space area that is installed after April 25, 2003 shall include an automatic electromechanical interrupt which engages to interrupt the irrigation system during a rainfall event or during wind speeds in excess of 10 mph. Such device shall be a Hunter model Rain-Clik or similar device approved by the department of public works. The installation of such device shall be a condition of the issuance of the tap serving the irrigation system, and installation shall be completed prior to commencing use of the tap. (Ord. 661 §2, 2007; Ord. 520 §2, 2003; Ord. 466 §2, 2001; Ord. 413 §1, 1999; Ord. 387 §1, 1998; Ord. 323 §1, 1996; Ord. 286 §2, 1991; Ord. 230 §1, 1986; Ord. 213 §1, 1985; Ord. 181 §1, 1982; Ord. 140 §1, 1980; Ord. 129 §1, 1979; prior code §13-11)

#### **13.08.020 Water service charges.**

There are imposed and charged rates and rentals for the use of water measured through a meter, per month, from any of the water lines, water mains or water system of the town, to be paid to the town in an amount as established from time to time by resolution of the board of trustees. (Ord. 323 §2, 1996; Ord. 284 §1, 1991; Ord. 228 §1, 1986; Ord. 217 §1, 1986; Ord. 188 §1, 1982; Ord. 174 §1, 1981; Ord. 162 §1, 1981; Ord. 133 §1, 1980; prior code §13-12)

#### **13.08.030 Service charge outside town limits.**

There shall be assessed and charged for each license or permit for the use of water outside the limits of the town, an amount or amounts as determined by resolution of the board of trustees of trustees. (Prior code §13-13)

#### **13.08.040 Collection procedures—Late fee.**

A. Water charges shall be due no later than the close of business on the twentieth day of the month in which the water billing is mailed to the customer. If the charges remain unpaid at the close of the business day on the last business day of the month, the account shall be deemed delinquent and interest shall be assessed at the rate of one and one-half percent per month. A late fee of five dollars shall also be assessed on overdue amounts of twenty dollars or more.

B. A shut-off notice shall be given to each water customer who is delinquent and water service shall be terminated for the water customer receiving such shut-off notice after ten days from the date of notice unless:

1. The delinquent bill, including interest, is paid prior to the expiration of ten days; or
2. The customer has appeared before the town clerk and shown good cause why the charges are not due within the ten-day time period.

C. All water service and connection charges shall be charged against the owner of the property served, shall be a lien upon the respective lots or parcels of land where the water is used from the time when due, and shall be a perpetual charge against the lots or parcels until paid. In the event said charges shall not be paid when due for property within the town limits, the town clerk shall certify such delinquent charges to the county treasurer and the charges shall be collected in the same manner as though they were part of the taxes. (Ord. 606 §1, 2006; Ord. 592 §1, 2005; Ord. 571 §7, 2005; Ord. 224 §1, 1986; prior code §13-44)

**13.08.050 Funds collected paid to treasurer.**

All money collected for water rentals by the town clerk shall be paid to the town treasurer and kept in a fund designated by the board of trustees. (Prior code §13-15)

**13.08.060 Shut-off for nonpayment.**

The proper officials of the town are given power and authority to enter upon the premises of any consumer who shall have failed to pay his or her water rent, and shut off the water as in their judgment they deem necessary. (Prior code §13-16)

**13.08.070 Time limitation on tapping.**

A. Each water tap permit issued by the town pursuant to this title shall expire one hundred eighty days after the issuance of the permit unless the tap applied for has been physically made during the one-hundred-eighty-day time period and unless the construction of the premises for which the tap has been issued has been commenced.

B. The holder of any water tap permit may apply for an extension of the one-hundred-eighty-day time period. Extensions may be granted only by the board of trustees of the town for good cause established by the permit holder. Any extension shall be limited in time to an additional one-hundred-eighty-day period and only one extension shall be granted for any particular tap.

C. If a water tap permit expires, all charges paid to the town to serve the permit to the applicant shall be forfeited and are nonrefundable. (Ord. 140 §2, 1980; prior code §13-17)

**13.08.080 Charges for water service reinstatement.**

If the water supply to any premises served by the town is shut off pursuant to the code of the town because of the failure of the owner, lessee, renter, user or possessor of the premises to abide by the provisions of the code, a charge of forty dollars shall be charged before the water supply is restored. (Ord. 571 §8, 2005; prior code §13-18)

**13.08.090 Charge for service calls after hours.**

Effective March 1, 1991, any person who requests, in connection with water service, a service call, by town personnel before or after normal business hours as established from time to time by the board of trustees of the town, shall be charged an after-hours service call charge in the amount of thirty dollars. (Ord. 284 §2, 1991)

**13.08.100 Charge for service when meters are read for the first time after estimations.**

All usage in excess of five thousand gallons for the first reading after meters have been estimated will be charged at the lowest increment as referred to in Section 13.08.020 of this chapter. (Ord. 286 §1, 1991)

**13.08.110 Deposits.**

A refundable deposit, payable upon application for water service, is required as a condition of providing water service to any customer. The required deposit shall be in an amount determined by the board of trustees from time to time by resolution. No interest shall accrue to the customer on such deposit and the deposit shall not prevent shut-off for nonpayment pursuant to the provisions in this chapter. Upon disconnection of water service or closure of the customer's account, the customer may request the deposited funds be applied to unpaid bills, late fees and interest owed on the account, or, if no amount is outstanding on the account at the time of disconnection or account closure, the deposit will be refunded in full to the customer. (Ord. 663 §1, 2007)

**Chapter 13.10**

**Water Activity Enterprise**

**Sections:**

- 13.10.010 Definitions.
- 13.10.020 Establishment of enterprise.
- 13.10.030 Governing body.
- 13.10.040 Maintenance of enterprise status.
- 13.10.050 Issuance of bonds.

**13.10.010 Definitions.**

As used in this chapter, unless the context otherwise requires:

A. "Grant" means the cash payment of public funds made directly to a municipal activity enterprise by the state or a local governmental entity or district, including the town, which cash payment is not required to be repaid. "Grant" does not include public funds paid or advanced to a municipal activity enterprise by the state or local governmental entity or district, including the town, in exchange for an agreement by a municipal activity enterprise to provide service including the provision of water, the capacity of project works, materials or other water activities; nor does "grant" include refunds made in the current or next fiscal year, gifts, any payments directly or indirectly from federal funds or earnings on federal funds, collections from another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards or property sales.

B. "Water activity" shall be defined as set out in Section 37-45.1-102, C.R.S.

C. "Water activity enterprise" means that water activity business wholly owned by the town which receives under ten percent of its annual revenues in grants from all Colorado state and local governments combined and which is authorized to issue its own revenue bonds pursuant to this chapter or any other applicable law. (Ord. 297 §1, 1993)

#### **13.10.020 Establishment of enterprise.**

A. There is hereby recognized, established and designated the "Town of Firestone Water Activity Enterprise" (the "enterprise"). The enterprise shall consist of the business represented by all of the town's water and sewer facilities and properties, now owned or hereafter acquired, whether situated within or without the town boundaries, including all present or future improvements, extensions, enlargements, betterment, replacements or additions thereof or thereto. The enterprise shall have all of the authority, powers, rights, obligations and duties as may be provided or permitted by the laws of the state and the Colorado Constitution, and as may be further prescribed by ordinance or resolution of the town.

B. The enterprise shall continue to be a wholly owned business of the town and shall not be combined with any municipal activity enterprise owned by another district. The enterprise may continue to conduct the activities and provide the services as provided for in the ordinances of the town and the regulations adopted pursuant thereto. This paragraph shall not limit the authority of the enterprise to contract with any other person or entity, including other districts or enterprises. (Ord. 297 §2, 1993)

#### **13.10.030 Governing body.**

A. The governing body of the enterprise (the "governing body") shall be the board of trustees of the town, and shall be subject to all of the applicable laws, rules and regulations pertaining to the board of trustees. Whenever the board of trustees is in session, the governing body shall also be deemed to be in session. It shall not be necessary for the governing body to meet separately from the regular and special meetings of the board of trustees, nor shall it be necessary for the governing body to specifically announce or acknowledge that actions taken thereby are taken by the governing body of the enterprise. The governing body may conduct its affairs in the same manner and subject to the same laws which apply to the board of trustees for the same or similar matters; provided that in accordance with Section 37-45.1-104(2), C.R.S., the governing body may authorize the issuance of bonds by adoption of a resolution.

B. The governing body of the enterprise may exercise the town's legal authority relating to water activities, but no enterprise may levy a tax which is subject to Section 20(4) of Article X of the Colorado Constitution. (Ord. 297 §3, 1993)

#### **13.10.040 Maintenance of enterprise status.**

The enterprise shall at all times and in all ways conduct its affairs so as to continue to qualify as a "water activity enterprise" as defined in Section 35-45.1-102, C.R.S., and as an "enterprise" as defined in Article X, Section 20, Colorado Constitution. Specifically, but not by way of limitation, the enterprise is not authorized, and shall not receive ten percent or more of its annual revenue in grants from all Colorado state and local governments combined. (Ord. 297 §4, 1993)

### **13.10.050 Issuance of bonds.**

The enterprise maintained pursuant to this chapter, through the board of trustees, may issue or reissue revenue bonds, notes or other obligations payable solely from the revenues derived or to be derived from the functions, services, benefits or facilities of the enterprise or from any other available funds of the enterprise, in accordance with and through provisions of Section 37-45.1-104, C.R.S.; provided, however, that the powers provided in said section shall not modify, limit or affect the powers conferred by any other law either directly or indirectly. (Ord. 297 §5, 1993)

## **Chapter 13.11**

### **Stormwater Activity Enterprise and Stormwater Utility Service Fees**

#### **Sections:**

- 13.11.010 General purpose and policy.
- 13.11.020 Definitions.
- 13.11.030 Stormwater activity enterprise.
- 13.11.040 Stormwater utility service fee.
- 13.11.050 Use of service fees.
- 13.11.060 Administrative and judicial review.
- 13.11.070 Enforcement and penalties.

#### **13.11.010 General purpose and policy.**

A. This chapter is adopted to further the purpose of the town to design, construct, install, improve, operate, maintain, repair and replace stormwater facilities for its own use and for the use of public and private users within and outside the territorial boundaries of the town and to establish a methodology and requirement for the payment of reasonable stormwater utility service fees for property owners to pay for a share of the costs of stormwater facilities reasonably necessary to manage stormwater.

B. Furthermore, this chapter will promote the general public health, safety and welfare by reducing the potential for the movement of emergency vehicles to be impeded or inhibited during storm or flooding periods; by minimizing storm and flood losses, inconvenience and damage resulting from runoff; by promoting activities which improve the water quality of runoff in the town; and by protecting the continued operation of other public utility services.

C. Notwithstanding the above, floods from runoff may occur that exceed the capacity of stormwater facilities constructed and maintained by funds made available pursuant to this chapter. This chapter does not imply that property subject to the fees and charges established herein will be free from stormwater flooding or flood damage. This chapter shall not create or imply any liability on the part of the town or any officer or employee thereof for any flood damage. Further, this chapter does not purport to reduce the need for any property owner to obtain flood insurance. (Ord. 709 §1, 2009)

#### **13.11.020 Definitions.**

For the purposes of this chapter, the following words and terms shall be defined as follows, unless the context in which they are used clearly indicates otherwise:

- A. "Director" means the director of finance of the town or such person's designee.
- B. "Development" means any man-made change to real property, including but not limited to buildings or other structures, streets, parking lots, mining, dredging, filling, grading, paving or excavating.
- C. "Impervious surface" means surfaces on or in real property where the rate of infiltration of stormwater into the earth has been reduced by the works of man. For purposes of this chapter, buildings, man-made structures, driveways, patio areas, roofs, concrete or asphalt sidewalks, parking lots or storage areas and other bricked, oiled, macadam or hard-surfaced areas which impede passage of stormwater into the earth's surface are deemed to be impervious.
- D. "Person" means an individual, corporation, limited liability company, governmental agency, district, political subdivision, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest or any other entity.
- E. "Project costs" means all costs of administration, coordination, management, design, planning, engineering, construction, reconstruction, installation, repair, replacement, improvement and operation and maintenance of stormwater facilities, including but not limited to those costs to comply with federal, state or town laws regulating stormwater facilities or runoff, and also including but not limited to associated costs for acquisition of rights-of-way and other interests in land for stormwater facilities, contingencies, financing, legal, accounting and other professional services.
- F. "Runoff" means that part of snowfall, rainfall or other stormwater that is not absorbed, transpired, evaporated or left in surface depressions and that then flows controlled or uncontrolled into a street, storm sewer, watercourse or body of water.
- G. "Service fee" means the stormwater utility service fee established in this chapter.
- H. "Stormwater facilities" means any one or more of the following devices used in the collection, treatment or disposition of storm, flood or surface drainage waters, including all man-made structures or natural watercourses for the conveyance of runoff: detention areas, berms, swales, improved watercourses, channels, bridges, gulches, wetland areas, streams, gullies, flumes, culverts, gutters, pumping stations, pipes, ditches, siphons, catch basins, manholes, fittings, flared end sections, wingwalls, headwalls and street facilities; all inlets and outlet structures; collection, drainage or disposal lines; intercepting sewers; disposal plants; settling basins; emergency spillways; outfall sewers; all pumping, power and other equipment and appurtenances; any other drainage facility that collects, conveys, deposits, detains, retains and/or discharges stormwater; all extensions, improvements, remodeling, additions and alterations thereof; and any and all rights or interests in such stormwater facilities.
- I. "Watercourse" means a stream having a body or banks and usually discharging into some other stream or body of water. (Ord. 709 §1, 2009)

#### **13.11.030 Stormwater activity enterprise.**

There is established a stormwater activity enterprise in the town, which is created as and deemed to be a "water activity enterprise," as defined in Section 35-45.1-102, C.R.S., and an "enterprise," as defined in Article X, Section 20 of the Colorado Constitution. Through said enterprise, the town will design, construct, install, improve, operate, maintain, repair and replace stormwater facilities and pay other project costs and

perform other functions or duties authorized by law. Such stormwater facilities shall be owned by the town and operated in accordance with all applicable laws. (Ord. 709 §1, 2009)

#### **13.11.040 Stormwater utility service fee.**

A. Fee established. There is hereby imposed on the owner of each and every lot or parcel of land within the town a stormwater utility service fee (the "service fee"). The amount of such service fee shall be as set by resolution of the board of trustees from time to time and shall include a "base fee" and a "developed fee" as follows:

1. Base fee. A base fee shall be imposed on the owner of each and every lot or parcel of land within the town, except as provided in Subsection C. below.

2. Developed fee. In addition to the base fee, a developed fee shall be imposed on the owner of each and every lot or parcel of land containing an impervious surface, except as provided in Subsection C.

B. Basis for fee. The basis for the amount of the service fee is the extent to which each lot or parcel of land, whether undeveloped or developed, within the town makes use of the stormwater facilities. The service fee is also based on the cost of including the lot or parcel in the property and billing records, plans and monitoring activities of the stormwater activity enterprise. The service fee is deemed reasonable and necessary to pay for the project costs of existing and future stormwater facilities.

C. Exemptions. All railroad rights-of-way; public highways, roadways, streets and alleys; and all facilities and land owned by the town, county, state and federal government and any water district, sanitation district, fire protection district, school district or library district shall be exempt from the service fee and all other charges imposed by this chapter.

D. How fee collected. The service fee shall be billed and collected monthly for developed single-family detached and duplex attached residential fee classifications and shall be billed and collected on a monthly, quarterly or semi-annual billing basis, as determined by the director, for all other fee classifications. The service fee shall be billed and collected with the town water bill or, in the event the lot or parcel is not served under a water account, then by separate billing. All billings and notices regarding the service fee shall be effective upon mailing said billing or notice to the address of the property that is being served or to the last known address of the property owner of the property being served as shown in the most current of the records of the town or county assessor. Regardless of the person to whom the bill is initially directed, the owner of the property is ultimately responsible for the payment of the service fee. All services fees are due upon the date stated in the bill. Failure to receive a bill is not a defense to nonpayment.

E. Fee classifications. For purposes of imposing the stormwater service fee, all lots and parcels within the town are classified into the following two classes: single-family detached, and duplex attached residential and all others. Said two classes are to be further classified as developed or undeveloped, and single-family detached residential lots are to be further classified by lot size. The director is directed to prepare a list of lots and parcels within such classifications and assign thereto the appropriate fee.

F. Changes in property. The owner of any non-single-family detached or duplex attached residential property shall notify the director when any undeveloped, grassed, landscaped or cultivated portion of the owner's property has been modified in any manner so as to create additional impervious area of ten percent of the total impervious surface area or one thousand square feet of impervious surface area, whichever is less.

The owner shall provide such notice within thirty days of the modification. The town shall have the right to assess additional stormwater service fees attributable to such modification from and after the date such modifications are completed.

G. Additional fees. If any fees remain unpaid after the due date stated on the bill, the account shall be deemed delinquent, and interest shall be assessed at the rate of one and one-half percent per month. A late fee of five dollars shall also be assessed on overdue amounts of twenty dollars or more. The service fee shall also be subject to additional charges for delinquent payment, uncollectible checks, liens and any other penalties, which shall be the same as those imposed in connection with town water utility charges.

H. Relation to impact fees. The service fee set forth in this section shall be in addition to any drainage impact fees required to be paid pursuant to Chapter 3.20 of this code. (Ord. 709 §1, 2009)

### **13.11.050 Use of service fees.**

The town's stormwater activity enterprise shall hold all funds received by the town under this chapter in a separate stormwater activity enterprise account and make expenditures thereof only for stormwater facilities or other authorized purposes of the stormwater activity enterprise. Additionally, the town may pledge service fees collected under this chapter and those anticipated to be collected to the retirement of the principal and interest of revenue or general obligation bonds issued by the town for financing of the costs of any stormwater facilities or other authorized purpose of the stormwater activity enterprise or for the purpose of refunding any obligations issued or otherwise contracted for such purpose. The town may also pledge service fees collected under this chapter and those anticipated to be collected to participate with any public entity or private party having a common interest in stormwater facilities that benefit the town. (Ord. 709 §1, 2009)

### **13.11.060 Administrative and judicial review.**

A. Right to petition. A property owner may petition the director for a revision or modification of the service fee no later than thirty days after having been billed for such charge. Any such petition may only be filed once in connection with the issue or issues presented in the petition, except upon a showing of changed circumstances sufficient to justify the filing of an additional petition. The basis for the petition is limited to the following issues:

1. For properties other than single-family detached and duplex attached residential, the impervious surface area on the property has been improperly measured or calculated.
2. The property is exempt from the service fee pursuant to Subsection 13.11.040.C. above.
3. The property has been improperly assessed the developed fee.

B. In writing. Any petition by a property owner shall be in writing, shall include the name, address and telephone number of such property owner, the address of the property subject to the petition and a concise statement of the fact giving rise to the petition and the relief requested by the petition. A petition brought under Paragraph A.1. of this section shall also be accompanied by a current lot survey or improvement location certificate prepared by a licensed surveyor that shows the property boundaries and surveyed limits of the impervious surface on the property. Any other relevant information in support of the petition shall be submitted with the petition.

C. Informal meeting. The director may attempt to resolve the issues raised in the petition via a telephone conference, or the director may recommend an informal meeting with the property owner. The director shall make a final decision on the petition within thirty days of receipt of the petition and may confirm or modify the service fee or determination in accordance with the facts submitted. Such decision by the director shall be in writing, and notice thereof shall be mailed to or served upon the petitioner within ten days from the date of the director's action. Service by certified mail, return receipt requested, to the address of the property owner stated in the petition shall be conclusive evidence of notice for the purpose of this chapter. Such action by the director shall be considered final, and the remaining total liability, if any, shall be paid on or before thirty days after the date of the decision. Any review of the director's final action shall be by the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. (Ord. 709 §1, 2009)

### **13.11.070 Enforcement and penalties.**

A. Owner liable for fee. In the event any owner or owners of any lot or parcel of land within the boundaries of the town shall neglect, fail or refuse to pay the service fees fixed and imposed pursuant to this chapter, such owner shall be liable to the town therefor, and the town may pursue any remedy available at law or equity to enforce and collect the service fees. The town may also recover, in addition to all fees and charges due, all court costs, attorney fees and interest on the amount owing.

B. Lien declared; certification. The board of trustees hereby finds and determines that it is the policy of the town that all stormwater facilities supplied and furnished by the town and supported by the service fee shall be deemed to be supplied and furnished to the real property so served without regard to the actual person, business, organization or entity billed for stormwater facilities. Accordingly, in addition to other civil collection procedures, all fees and charges, together with all interest and penalties for default in payment and all costs in collecting the same, until paid, shall constitute a perpetual lien on the property, on a parity with the tax lien of general, state, county, city, town or school taxes, and no sale of such property to enforce any general, state, county, city, town or school tax or other liens shall extinguish the perpetual lien for such fees, charges, interest, penalties and costs. All delinquent service fees, together with accrued interest and penalties, and all costs of collection incurred, shall be certified by the town to the county treasurer, pursuant to Section 31-20-105, C.R.S., as amended, and collected and paid over to the county treasurer in the same manner as taxes.

C. Delinquency charges. Delinquent charges and fees may be collected as any other utility bill owed to the town at the option of the town.

D. Remedies cumulative. No remedy provided herein shall be exclusive, but the same shall be cumulative; and the taking of any action hereunder shall not preclude or prevent the taking of any other action hereunder or the pursuit of any other judicial or administrative remedy, including, without limitation, civil action for collection and action for injunctive relief to enjoin any violation of this chapter. (Ord. 709 §1, 2009)

## **Chapter 13.12**

### **Emergency Telephone Service**

#### **Sections:**

- 13.12.010 Created.
- 13.12.020 Emergency telephone tax.
- 13.12.030 Tax collection.

**13.12.010 Created.**

The mayor is authorized to sign the intergovernmental agreement attached to the ordinance codified in this chapter creating an emergency telephone service authority in order to establish and maintain an emergency service system in the County of Weld, Colorado, to include the portions of this town lying within the County of Weld, Colorado. (Ord. 241 §1, 1988)

**13.12.020 Emergency telephone tax.**

There is imposed pursuant to Section 29-11-101, C.R.S., as amended, upon all telephone exchange access facilities within that portion of the town, located within Weld County, an emergency telephone charge in an amount not to exceed two percent of the tariff rates as approved by the public utilities commission or fifty cents, whichever is less. Upon authority, the town board may, by resolution, raise or lower the emergency telephone charge, but in no event shall such charge exceed the amount of two percent of the tariff as approved by the public utilities commission. (Ord. 241 §2, 1988)

**13.12.030 Tax collection.**

Telephone service suppliers providing telephone service in the town are authorized to collect the emergency telephone charge imposed by this chapter in accordance with Section 29-11-101, C.R.S., as amended, and to provide those funds to the Weld emergency telephone service authority as provided in the intergovernmental agreement. (Ord. 241 §3, 1988)

## **Chapter 13.16**

### **Cable Television Franchises**

**Sections:**

- 13.16.010 Grant of franchise -- Term.

**13.16.010 Grant of franchise -- Term.**

A. Pursuant to the ordinance codified herein, the town 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 town clerk.

B. The term of the franchise granted by the town shall be for a period of ten years from January 14, 2000, the effective date of the Agreement. (Ord. 429 §3, 1999)

## Chapter 13.20

### Gas Franchise

#### Sections:

- 13.20.010 Short title.
- 13.20.020 Definitions.
- 13.20.030 Grant of franchise.
- 13.20.040 Supply, construction and design.
- 13.20.050 Indemnity.
- 13.20.060 Relocation of facilities.
- 13.20.070 Nonexclusivity of franchise.
- 13.20.080 Service standards.
- 13.20.090 Continuation of service.
- 13.20.100 Franchise fee.
- 13.20.110 Franchise fee payment not in lieu of other fees or permits.
- 13.20.120 Surcharge fees.
- 13.20.130 Town's right to condemn.
- 13.20.140 Term of franchise.
- 13.20.150 Right to removal of facilities.
- 13.20.160 Assignment.
- 13.20.170 Forfeiture.
- 13.20.180 Severability.
- 13.20.190 Reserved rights.
- 13.20.200 Regulation.
- 13.20.210 No third party beneficiaries.
- 13.20.220 Amendments to franchise.

#### **13.20.010 Short title.**

This chapter shall be known and may be cited as the "SourceGas Distribution Franchise Ordinance." (Ord. 638 §1, 2007)

#### **13.20.020 Definitions.**

For the purpose of this chapter, the following terms shall have the meaning given herein:

"Board" or "board of trustees" means the board of trustees of the town of Firestone, Colorado.

"Facility" or "facilities" means all apparatuses reasonably necessary for the grantee to provide gas service into, within and throughout the town, including but not limited to plants, works, systems, distribution structures, equipment, pipes, mains, gas compressors, meters, meter reading devices, communications and data transfer equipment and gas regulator stations.

"Firestone Trail" means the abandoned Union Pacific Railroad right-of-way further described in those certain instruments recorded at Reception No. 2538622 and 25386323 in the office of the Weld County Clerk and Recorder.

"Grantee" or "company" means SourceGas Distribution LLC, formerly known as Kinder Morgan, Inc., its successors and assigns, the grantee of rights under this franchise.

"Person" means any person, firm, partnership, association, corporation, company or organization of any kind.

"Residents" means all persons, businesses, industries, governmental agencies and any other entities whatsoever, presently located or hereinafter to be located, in whole or in part, within the territory of the town.

"Streets" refers to and are streets, alleys, viaducts, bridges, roads, lanes and other public rights-of-way in the town, excluding any easements the terms of which do not permit the use thereof by the company, and excluding the Firestone Trail.

"Town" means the town of Firestone, Colorado, the grantor of rights under this franchise. (Ord. 638 §2, 2007)

#### **13.20.030 Grant of franchise.**

The town hereby grants to the grantee the nonexclusive right to use the streets within the town to furnish, transmit, transport and distribute gas – whether natural, artificial or a combination thereof – within and through the town. The town also hereby grants to the grantee the nonexclusive right, privilege and authority to locate, install, build, construct, acquire, purchase, extend, maintain and operate into, within and through said streets within the town as the same now exist or may hereafter be extended, all facilities reasonably necessary for the period and upon the terms and conditions hereinafter specified to furnish, sell and distribute gas to the town and the inhabitants thereof for heating, cooking or other purposes. These rights shall extend to all areas of the town as now constituted and to any and all such new streets as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of said town. (Ord. 638 §3, 2007)

#### **13.20.040 Supply, construction and design.**

The grantee shall locate its facilities within the town in a manner to meet with the approval of the town. All excavation and construction work performed by the grantee shall be done in accordance with all ordinances, resolutions, rules, regulations and standards of the town and further in such manner as to cause minimum interference with the town's use of streets 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 or other public ways and places. All work on grantee facilities in the streets is subject to inspection and approval by the town to ensure that said work has been performed in accordance with applicable town ordinances, resolutions, rules, regulations and standards. Such inspections and approvals may include, but are not limited to, proposed locations for facilities in the streets, disturbance of pavements, sidewalks and surfaces of the streets or adjoining landscaping. Should it become necessary for the grantee, in exercising its rights and performing its duties hereunder, to interfere with then-existing streets or other public or private improvements, including but not limited to water mains, sewers, landscaping or other improvements, the grantee shall repair promptly any damage to said improvements or streets at its own expense in a workmanlike manner subject to the approval by the town and in accordance with the provisions of this code. If the grantee fails to repair the streets or improvements which are damaged through the action

of the grantee, the town may make such repairs and charge the reasonable cost thereof to the grantee. (Ord. 638 §4, 2007)

#### **13.20.050 Indemnity.**

The grantee shall indemnify, defend and hold harmless the town from and against all liability or damage and all claims, demands or liens arising out of the grantee's operations within the town or related to or arising out of the exercise by the grantee of any rights and privileges hereby granted; and for this purpose the grantee shall maintain public liability insurance in an amount not less than one million dollars and upon request shall furnish a certificate of insurance to the town so showing. The town shall provide prompt written notice to the grantee of the pendency of any action against the town arising out of such exercise by the grantee of said rights and privileges and be permitted at its own expense to appear and defend or assist in the defense of the same. The obligation of this Section 13.20.050 shall not extend to any liability or damage and all reasonable expenses accruing against the grantee arising out of the negligence, recklessness or willful and wanton misconduct of the town, its officers, employees, agents, representatives or contractors. (Ord. 638 §5, 2007)

#### **13.20.060 Relocation of facilities.**

A. If at any time it shall be necessary to change the position of any gas main or service connection of the grantee to permit the town to lay, make or change street grades, pavements, sanitary or storm sewers, water mains or other town public works, such changes shall be made by the grantee at its own expense. Such relocation shall be completed within a reasonable time, not to exceed one hundred twenty days from the date on which the town requests that such relocation work commence, unless weather, scope of the project, availability of materials or other causes beyond the parties' control prevents completion in this period. The grantee shall bear all costs associated with relocation of any gas main or service connection that is the result of public works construction, including but not limited to the alteration of street alignment, grades or pavement. The town shall make reasonable efforts to confer, in its usual course of managing public works projects, with the grantee in regards to impending public works projects that may require relocation of grantee facilities and seek the grantee's input during the initial planning and engineering phase of any such town project. The town shall make reasonable efforts to mitigate the financial impact of any such project on the grantee.

B. The town may request that the grantee relocate its facilities in less than ninety days if needed by the town. Should the town request such an expedited relocation for reasons other than safety or emergency circumstances that require immediate action to prevent loss of life or significant damage to property or preserve integrity of an asset, the grantee and the town shall confirm the time frame within which the grantee will relocate the facilities, and assess whether the grantee will incur any additional costs in the relocation as a result of the town's expedited schedule. If the grantee will incur additional costs directly related to relocating the facilities within the time frame needed by the town for such expedited relocation, the town will pay these additional costs, provided that the grantee and town agree to the amount of the additional costs prior to the relocation. Any expedited relocation as a result of a safety or emergency circumstance that requires immediate action to prevent loss of life or significant damage to property or preserve the integrity of an asset will be at the grantee's cost.

C. The town will not oppose just and reasonable recovery of substantial costs the grantee incurs in complying herewith that the grantee requests from the Public Utilities Commission of the state of Colorado (PUC). (Ord. 638 §6, 2007)

**13.20.070 Nonexclusivity of franchise.**

This franchise and the right to use and occupy said streets shall not be exclusive, and the Town reserves the right to grant the use of said streets to any person during the period of this franchise. (Ord. 638 §7, 2007)

**13.20.080 Service standards.**

A. The grantee shall maintain and operate its facilities and render efficient service in accordance with the rules and regulations of the PUC and the terms and conditions of the town code, other regulations and this franchise.

B. Maps. The grantee shall prepare and submit to the town a map showing the location of its distribution system, 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 and filed with the town clerk's office by May 1 of each year, when necessary. If the grantee fails to keep such map current and provide the required information, the town may cause such work to be done and charge all costs thereof to the grantee.

C. Plans. Before commencement of installation of pipes in the town, the grantee shall prepare and submit to the town a map showing the 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. In addition, the grantee shall submit a construction plan, including a construction schedule, showing the streets and alleys where excavations will be simultaneously open at any given time, making provision for traffic routing in the event of interruption, setting forth the places where pavement cuts are expected, and where underground boring will occur for pipe installation. Construction may then proceed upon approval of said map and plan and the issuance of a street cut permit by the town. Nothing herein shall be construed to limit application of the town's ordinances pertaining to installation of pipelines, conduits, transmission lines and cables as well as ordinances pertaining to excavation to the activities of the grantee, except as provided herein.

D. Use of trenches. If the grantee opens a trench to install its facilities, the grantee shall provide reasonable advance notice to the town so as to permit the town to install town facilities in the same trench at the town's expense. The town shall share in the cost of the trenching if used by the town on a pro rata basis. The town's installation of its facilities shall not interfere with the grantee's facilities or delay the commencement or completion of the grantee's construction project within the streets.

E. Use of Firestone Trail. This franchise does not authorize use by the grantee of the Firestone Trail. Any proposed use of the Firestone Trail by the grantee shall be subject to approval or rejection by the board in its discretion and, if approved, shall be addressed in an easement agreement or other agreement executed on behalf of the town and the grantee.

F. Access to premises. To the extent allowed by law, the grantee shall have the right to enter the premises of consumers at reasonable times for the purpose of reading meters, inspecting gas appliances, pipes and equipment and for the purpose of ascertaining loads, making necessary tests and installing, disconnecting or removing meters. (Ord. 638 §8, 2007)

**13.20.090 Continuation of service.**

If, during the term of this franchise, there occurs a failure or partial failure of the supply of natural gas available to the grantee because of depletion of such supply, the grantee shall take all reasonable steps to obtain an additional natural gas supply from other sources to be delivered to the grantee and, if unable to procure the same, it is hereby authorized to supply artificial or mixed gas for the unexpired term of this franchise. If the grantee, 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. 638 §9, 2007)

**13.20.100 Franchise fee.**

A. In consideration of the rights and privileges herein granted, the grantee shall assess, effective the first billing cycle after this franchise becomes effective, to residential and commercial customers of the grantee within the town of Firestone, Colorado, a franchise tax or fee equivalent to \$0.0235 per ccf (100 cubic feet) for gas delivered to residential and commercial customers within the town on grantee's distribution system. The Grantee shall pay to the town treasurer an amount equal to the franchise fee or tax funds collected by the grantee hereunder. Payments to the town of the franchise fee collected shall be made quarterly within sixty days of each calendar quarter, and each such payment shall be accompanied by a statement supporting the payment.

B. Such payment shall be in lieu of any and all other fees (including pipeline, conduit, transmission line, cable and excavation permit fees), charges, licenses, taxes or assessments which the town may impose for the rights and privileges herein granted or for the privilege of doing business within the town and for the use of the streets, and in the event any such fee, charge, license, tax or assessment shall be imposed by the town, the payment to be made in accordance with the provisions of this section shall be refunded in an amount equal to the annual burden of such fee, charge, license tax or assessment imposed upon the grantee. Ad valorem property taxes imposed generally upon all real and personal property within the town shall not be deemed to affect the obligation of the grantee under this section.

C. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this section, the director of operations or the director's designee shall have access to the books, accounts and other records of the grantee for the purpose of checking the gross revenue received and volume of gas sold and delivered from operations within the town.

D. If at any time during the term of this franchise the manner in which the franchise fee is calculated, collected or paid is changed, whether by action of the grantee, the PUC or any entity having jurisdiction thereof, the grantee agrees to cooperate with the town in modifying the franchise to assure that the grantee collects and the town receives an amount in franchise fees or some other form that is the same amount or more than the amount of franchise fees collected by the grantee and paid to the town as of the date of such change and required modification, to the extent permitted by law. (Ord. 712 §1, 2009; Ord. 638 §10, 2007)

**13.20.110 Franchise fee payment not in lieu of other fees or permits.**

Payment of the franchise fee by the grantee as accepted by the town does not exempt the grantee from sales tax, license fees, sales and use taxes, head taxes, building permit fees, land use fees, development impact fees or other fees and charges that are required to be paid pursuant to ordinances of general application that are not pursuant to the rights and privileges herein granted or for the privilege of doing business within the

town and for the use of the streets. The Grantee shall be responsible for obtaining all applicable town approvals and permits for the installation of pipelines, conduits, transmission lines and cables, and for excavation, although the permit fee for such excavation or installation of pipelines, conduits, transmission lines or cables shall not be applicable pursuant to Section 13.20.100 herein. (Ord. 638 §11, 2007)

**13.20.120 Surcharge fees.**

The grantee shall be permitted to surcharge the franchise fee to the residents of the town who use facilities of the grantee in the streets to obtain gas. The grantee shall not be permitted to surcharge residents of the town any other payments it makes to the town. Franchise fees charged to the town for gas service provided to the town for its own consumption shall be rebated to the town quarterly and included in the quarterly payment pursuant to Section 13.20.100. (Ord. 638 §12, 2007)

**13.20.130 Town's right to condemn.**

The town shall have the right to condemn the facilities of the grantee or to otherwise restrict the grantee's opportunity to conduct business in the town as provided by Section 31-15-707, C.R.S., or other applicable law. (Ord. 638 §13, 2007)

**13.20.140 Term of franchise.**

This franchise shall be in full force and effect from and after its passage, approval and publication as by law required and upon acceptance thereof in writing by the grantee within thirty days of final passage, and the terms, conditions and covenants hereof shall remain in full force and effect for a period of twenty years from and after the date of final passage of the ordinance codified herein. Unless additional time to provide written acceptance of the franchise is requested in writing by the grantee and approved by the town, the failure of the grantee to provide written acceptance of this franchise within thirty days of final passage shall be deemed an acceptance of such franchise. (Ord. 638 §14, 2007)

**13.20.150 Right to removal of facilities.**

Upon the termination of this franchise, if the grantee has not acquired an extension or renewal thereof and accepted same, the grantee may remove its facilities from the streets and other public places of the town, provided that the town has had ample time and opportunity to purchase, condemn or replace said facilities. In so removing its facilities, the grantee shall, at its own expense and within a reasonable time not to exceed one hundred eighty days, restore all property affected by removal operations to their pre-existing condition, to the satisfaction of the town. (Ord. 202 §15, 1984)

**13.20.160 Assignment.**

The grantee may assign this franchise, or the rights granted hereunder, without first obtaining the written consent of the town, except in the circumstance that the company offers to sell or enters into a contract to sell only the system subject to this franchise. Town consent to assignment shall not be unreasonably withheld, and this section 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. 638 §16, 2007)

#### **13.20.170 Forfeiture.**

If the grantee fails to perform any of the terms and conditions of this franchise, the town may notify the grantee of the specific failure and shall allow the grantee a reasonable time within which to remedy the failure, not to exceed one hundred twenty days or additional days if agreed to by the parties. The town 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 grantee shall have had an opportunity to be heard and to correct or justify the alleged breach. Upon failure of the grantee to exercise reasonable diligence to correct such condition, the town may declare this franchise forfeited and notify the grantee in writing. In the event that this franchise is forfeited, then the grantee agrees to continue to render service as theretofore provided until the town makes alternative arrangements for such services. Neither the town nor the grantee shall be in breach or forfeiture of this franchise if failure to perform is due to uncontrollable forces, which shall include but not be limited to accidents, acts of God, floods, storms, fires, sabotage, terrorist attack, labor disputes, riots, war, forces of nature and other causes or contingencies of whatever nature beyond the reasonable control of the parties affected, which could not reasonably have been anticipated and avoided. (Ord. 638 §17, 2007)

#### **13.20.180 Severability.**

If any section, subsection, sentence, clause, phrase or portion of this franchise is for any reason held invalid, unconstitutional or unenforceable 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. The town board declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid. (Ord. 638 §18, 2007)

#### **13.20.190 Reserved rights.**

The right is hereby reserved by the town to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power to protect the health, safety and welfare of the public, including but not limited to ordinances to control and regulate the use of the streets and the space above and beneath the streets. Neither the town nor the grantee waives any rights under the statutes and constitution of the state of Colorado or of the United States except as otherwise specifically set forth herein. (Ord. 638 §19, 2007)

#### **13.20.200 Regulation.**

This franchise and the respective rights and obligations of the parties hereunder are subject to all present and future valid governmental legislation or regulation, whether federal or state, of duly constituted authorities which have jurisdiction over this franchise, one or both of the parties or any transaction hereunder. (Ord. 638 §20, 2007)

#### **13.20.210 No third party beneficiaries.**

Nothing contained in this franchise shall be construed to provide rights to third parties. (Ord. 638 §21, 2007)

### **13.20.220 Amendments to franchise.**

This franchise may be amended only by a writing signed by both the grantee and the town, which is approved in the same manner as is required for the passage for the ordinance adopting this franchise. (Ord. 638 §22, 2007)

## **Chapter 13.24**

### **Electric Franchise**

#### **Sections:**

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- 13.24.020 Grant of franchise.
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### **13.24.010 Definitions.**

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

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

B. "Company" means United Power, Inc., and its successors and assigns.

C. "Trustees" or "board of trustees" means the legislative body of the town of Firestone.

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

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

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

G. "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.

H. "Revenues" means the gross amount of money which the company receives from (1) its customers within the town 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 (2) the wheeling of electricity to customers within the town.

I. "Streets and other public places" means streets, alleys, viaducts, bridges, roads, lanes, easements, public ways and other public places in the town.

J. "Franchise" means the rights granted by this chapter. (Ord. 285 §1, 1991)

**13.24.020 Grant of franchise.**

The town hereby grants to United Power, Inc., for the period specified and subject to the conditions, terms and provisions contained in this chapter, a nonexclusive right to furnish, sell and distribute electricity to the town and to all persons, businesses and industry within the town; a nonexclusive right, subject to the ordinances, rules and regulations of the town, including without limitation the zoning, subdivision and building ordinances of the town, to acquire, construct, install, locate, maintain, operate and extend into, within and through the town all facilities reasonably necessary to provide electricity to the town and to all persons, businesses and industry within the town; 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 chapter. (Ord. 285 §1, 1991)

**13.24.030 Term of franchise.**

The franchise granted by this chapter shall take effect on adoption and approval of the ordinance codified herein, and shall supersede the franchise granted to United Power, Inc., or its predecessor by Ordinance No. 26 which, by virtue of Ordinance Nos. 263, 264, 272, 279 and 283, otherwise expires on January 31, 1991. This franchise shall expire on December 31, 2010. (Ord. 285 §1, 1991)

**13.24.040 Franchise fee.**

In consideration for the franchise granted by this chapter, which provides for the company's use of streets and other public places, which are valuable public properties acquired and maintained by the town 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 town a sum equal to three percent of its annual revenues. (Ord. 285 §1, 1991)

**13.24.050 Payment schedule.**

For the franchise fee owed on revenues received after the effective date of this chapter, payment shall be made in monthly installments not more than thirty 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 chapter. All payments shall be made to the town clerk. The town 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 chapter. (Ord. 285 §1, 1991)

**13.24.060 Reimbursement by company.**

The company shall reimburse the town for the costs of upgrading the electricity distribution facilities of the town 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. 285 §1, 1991)

**13.24.070 Franchise fee not in lieu of other fees.**

Payment of the franchise fee by the company is accepted by the town in lieu of any utility occupation tax or other compensation for the privilege of using the streets and other public places of the town 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 town. (Ord. 285 §1, 1991)

#### **13.24.080 Change of franchise fee and other franchise terms.**

Once during each calendar year of the franchise term, the board of trustees, upon giving thirty days' notice to the company of its intention to do so, may review and change the franchise and fee or other consideration the town may be entitled to receive as a part of the franchise; provided, however, that the board of trustees may only change the franchise fee or other consideration to be received by the town under the terms of this chapter to the equivalent of the franchise fee or other consideration paid by the company to any city and town in the State of Colorado in which the company supplies electric service under franchise, license or permit. The company shall report to the town within thirty 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 chapter could have a financial impact on the consideration to be paid by the company to the town. If the board of trustees decides that such terms shall be included in this chapter, 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 town shall not be higher than the highest consideration paid by the company to any municipality within the State of Colorado. For purposes of this section, consideration means the franchise fee established in Section 13.24.050 and also includes any other provision which the board of trustees in its sole discretion determines to be of financial benefit to the town. (Ord. 285 §1, 1991)

#### **13.24.090 Contract obligation.**

This chapter constitutes a valid and binding contract between the company and the town. In the event that the franchise fee specified in this chapter 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 town, 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 town shall have the right to impose occupation and license fees and permit charges reasonably equivalent on an annual rate to said franchise fee. (Ord. 285 §1, 1991)

#### **13.24.100 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 town and by the public. (Ord. 285 §1, 1991)

#### **13.24.110 Compliance with PUC regulations.**

The company shall comply with all applicable rules and regulations adopted by the Public Utilities Commission. (Ord. 285 §1, 1991)

#### **13.24.120 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 town, except such prior approval shall not be required where such installation, maintenance, renovation or replacement 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 days prior to any construction of any facility within a street or other public place, the company shall advise the town, and upon request of the town, shall provide the town with a copy of the plans for such construction for the town's review and comment. Reasonable changes requested by the town shall be incorporated into such plans. Company facilities shall not interfere with the town's water mains, sewer mains, storm drainage facilities or any other municipal use of the town'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 town. (Ord. 285 §1, 1991)

#### **13.24.130 Excavation and construction.**

A. The company shall comply with all applicable town 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 town 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 town and compliance by the company with such reasonable remedial action as may be required by the town pursuant to said inspection.

C. The company shall comply with any town 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 town 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 town's request, the town may cause repairs to be made and the company shall be responsible for payment of the cost of such repairs. (Ord. 285 §1, 1991)

#### **13.24.140 Relocation of company facilities.**

If at any time the town requests the company to relocate any distribution facility installed or maintained in streets or other public places in order to permit the town 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 13.24.290, any relocation of overhead lines of at least one block or seven hundred fifty feet in length shall be placed underground by the company, if requested by the town. Any relocation shall be completed within one hundred twenty days, unless a longer time is agreed to by the town. 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 town to make any payment for the relocation of the company's facilities. (Ord. 285 §1, 1991)

**13.24.150 Service to new areas.**

If during the term of this franchise the boundaries of the town 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 chapter, including payment of franchise fees. (Ord. 285 §1, 1991)

**13.24.160 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. 285 §1, 1991)

**13.24.170 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. 285 §1, 1991)

**13.24.180 Regulation by the town.**

The town expressly reserves, and the company expressly recognizes, the right and duty of the town to adopt, from time to time, such ordinances, rules and regulations in the exercise of its police power as the town 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 town ordinances, rules and regulations. Nothing herein shall waive the company's right to challenge the validity of any such ordinance, rule or regulation. (Ord. 285 §1, 1991)

**13.24.190 Inspection, audit and quality control.**

The town shall have the right to inspect at all reasonable times any portion of the company's system used to serve the town and any customers within the town. The town also shall have the right to inspect and conduct an audit of company records relevant to compliance with any terms of this chapter at all reasonable times. The company agrees to cooperate with the town in conducting any inspection or audit and to correct any discrepancies affecting the town's interest in a prompt and efficient manner. (Ord. 285 §1, 1991)

**13.24.200 Warranties and obligations regarding company facilities.**

The company hereby warrants to the town 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 town, 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 town that the company's facilities will be of sufficient capacity, quality, redundancy and durability to provide adequate and efficient electric service to the town and to customers within the town. 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. 285 §1, 1991)

#### **13.24.210 Adequate supply.**

A. The company shall at all times take all reasonable and necessary steps to assure an adequate supply of electricity to the town and to customers within the town.

B. If the supply of electricity to the town or any customer within the town 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 town for any damages, including consequential damages, to the town which result from any such interruption caused by the negligence or other fault of the company.

C. The company shall provide to the town a telephone number which is not available to the public that will permit the town 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 town. (Ord. 285 §1, 1991)

#### **13.24.220 Technological improvements.**

The company shall introduce and install generally, as soon as practicable, technological advances in its equipment and service in the town when such advances are technically and economically feasible and are safe and beneficial to the town and to customers within the town. Upon request by the town, the company shall review and promptly report advances which have occurred in the electric utility industry that have been incorporated into the company's operations in the town in the previous year or will be so incorporated in the next six months. Furthermore, upon request by the town, the company shall inform the town 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 town. In addition, upon request by the town, the company shall report to the town 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 town or for use of others as the town may franchise, license or permit. The town may use such facilities for its own use without cost to the town, except such additional costs which are reasonably incurred by the company as the result of the town's use. The town 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 own facilities. Upon request of the town, the company shall provide a detailed report for the town's use of such communications system. Nothing contained herein shall be construed to authorize the company to engage in telecommunications activities, nor shall this chapter be construed as a franchise for said telecommunications activities within the town. (Ord. 285 §1, 1991)

#### **13.24.230 Changing conditions.**

The company and the town recognize that many aspects of the electric utility businesses 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 town 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 or to effect a proper accommodation of any such developments. (Ord. 285 §1, 1991)

#### **13.24.240 Town use.**

The town shall be permitted to make all reasonable use for town purposes of any electrical distribution facilities of the company, including underground facilities, without cost to the town, 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. 285 §1, 1991)

#### **13.24.250 Underground conduit.**

In addition to any other rights of the town hereunder, in the event the company installs new electric conduit or replaces existing electric conduit and the town 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 town, provided that such town activity shall not unreasonably interfere with company facilities or delay the project. The town and the company shall cooperate to minimize installation costs of underground electric conduit and to minimize cutting the streets. (Ord. 285 §1, 1991)

#### **13.24.260 Town not required to advance funds.**

The company shall extend its facilities to provide electric service to the town for municipal uses within the town limits or for any major municipal facility outside the town limits and within the company's certificated area without requiring the town to advance any funds in aid of construction more than ten days in advance of construction. (Ord. 285 §1, 1991)

#### **13.24.270 Annexation to the town.**

When any property owned by the company becomes eligible for voluntary annexation to the town 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 town, 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 town that are no more stringent than those imposed generally upon property owners seeking annexation of their land to the town. 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 chapter, 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. 285 §1, 1991)

#### **13.24.280 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 town in accordance with the company's tariffs and as required by any ordinances, rules or regulations of the town. (Ord. 285 §1, 1991)

**13.24.290 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 of the preceding year's electric revenues derived from customers within the town for the purpose of undergrounding its overhead distribution facilities in the town in connection with the public projects to be undertaken by the town; provided that the undergrounding shall extend for a minimum distance of one block or seven hundred fifty 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 town to be in the general public interest. In no event shall any overhead conversion expense be charged against the one percent fund herein provided for unless the project to be so funded shall have been initiated by the town.

B. Any unexpended portion of the one percent of electric revenue shall be carried over to succeeding years. Upon request by the town, the company agrees to anticipate amounts to be available for up to three years in advance to be used to underground its overhead distribution facilities in such public projects mutually agreed to with the town. Any amounts so advanced shall be credited against amounts to be expended in succeeding years until such credit advance is eliminated. (Ord. 285 §1, 1991)

**13.24.300 Review of matters.**

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

A. 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 undergrounding.

B. The status of technology in the field of electric undergrounding.

C. Construction and operation and maintenance costs of underground lines versus overhead lines.

D. The coordination of company construction, excavation, maintenance and repair activities within the town.

E. Public projects anticipated by the town. (Ord. 285 §1, 1991)

**13.24.310 Cooperation with other utilities.**

When undertaking a project of undergrounding, the town 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. 285 §1, 1991)

**13.24.320 Company obligations to the town.**

Except for the town's negligent or willful acts, the company shall defend, indemnify and hold harmless the town, 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 town or the exercise by the company of any rights or obligations contained in this chapter 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 chapter, or for an interpretation of this chapter, the prevailing party shall be entitled to recover all costs related thereto, including reasonable attorney's fees. (Ord. 285 §1, 1991)

**13.24.330 Notice to company.**

The town will provide notice to the company of the pendency of any claim or action against the town arising out of the exercise by the company of its franchise rights. The company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. (Ord. 285 §1, 1991)

**13.24.340 Payment of expenses incurred by town in relation to ordinance.**

At the town's option, the company shall pay in advance or reimburse the town for publication and election costs incurred with respect to the ordinance codified in this chapter. (Ord. 285 §1, 1991)

**13.24.350 Transfer or assignment.**

The company shall not lease, transfer, assign or otherwise alienate the rights under the franchise granted by this chapter or any portion thereof without first having obtained the approval of the town by ordinance, which approval shall not be unreasonably withheld. In the event any transfer or assignment of such rights occurs without such approval, the town may declare the franchise granted by this chapter forfeited. Any transfer or assignment of rights under the franchise granted by this chapter shall be subject to the condition that the transferee shall promptly pay to the town a transfer fee in an amount equal to a prorated share of one million dollars, which prorated share shall be calculated by multiplying one million dollars times a fraction of which the population of the town 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 town 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 town if the board of trustees determines that such a waiver would be in the best interests of the town. 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 town or from customers within the town through electricity rates charged to the town or to such customers, or by any surcharge by the transferee. (Ord. 285 §1, 1991)

**13.24.360 Town's right to purchase or condemn.**

The rights of the town and the company with respect to the right of the town to construct, purchase or condemn public utility facilities, as provided by the state Constitution and statutes, are hereby expressly reserved. The town shall have the option to purchase or condemn in whole the company's distribution facilities within town limits then utilized in serving persons, businesses and industry of the town during the

5th, 10th, 15th or last year of this franchise, provided that the town give the company one year's written notice of its intent to purchase or condemn. (Ord. 285 §1, 1991)

**13.24.370 Negotiated purchase price or condemnation award.**

Upon the exercise of the town'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. 285 §1, 1991)

**13.24.380 Limitations on company removal.**

If at the time of termination of the franchise granted under this chapter no renewal has been negotiated between the town and the company, the company shall not be required to remove its distribution facilities immediately from the streets and other public places. At the town's request and within a reasonable time not to exceed nine 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 town at the termination of the franchise. Further, the company, at the request of the town, shall remove at the company's expense all underground distribution facilities which are not purchased by the town within nine months after the receipt by the company of a written notice from the town 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 town. (Ord. 285 §1, 1991)

**13.24.390 Forfeiture.**

If the company fails to perform any of the terms and conditions of this chapter required herein to be performed by the company, the town, acting by and through its board of trustees, may determine after hearing that such failure is of a substantial nature. Upon receiving notice of such determination, the company shall have six months' time in which to remedy the violations. In the event said failure is such that it cannot be reasonably corrected within six months, the town shall provide such reasonable time as is necessary in lieu thereof. If after such time corrective actions have not been successfully taken, the town, acting by and through its board of trustees, shall determine whether any or all rights and privileges granted the company under this chapter shall be forfeited. (Ord. 285 §1, 1991)

**13.24.400 Judicial review.**

Any such declaration of forfeiture shall be subject to judicial review as provided by law. (Ord. 285 §1, 1991)

**13.24.410 Other legal remedies.**

Nothing herein contained shall limit or restrict any legal rights that the town or the company may possess arising from any such alleged violations. (Ord. 285 §1, 1991)

**13.24.420 Continued obligations.**

Upon forfeiture, the company shall continue to provide service to the town and to customers within the town until the town makes alternative arrangements for such service. If the company fails to provide continued service, it shall be liable for damages to the town and to customers within the town. (Ord. 285 §1, 1991)

**13.24.430 Amendments.**

At any time during the term of the franchise granted by this chapter, the town, acting by and through its board of trustees, or the company may propose amendments hereto by giving thirty 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 13.24.090. (Ord. 285 §1, 1991)

**13.24.440 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 town, or the laws of the state of Colorado. (Ord. 285 §1, 1991)

**13.24.450 Representatives.**

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 chapter. 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 town's mayor and to the company's general manager. Currently the names and addresses are as follows:

For the town:

Rick Patterson  
P. O. Box 100  
Firestone, CO 80520

For the company:

David I. Dunnell  
18551 East 160th Avenue  
P. O. Box 929  
Brighton, CO 80601

In addition, the company shall provide to the town at least annually, and more often if requested by the town, a current chain of command chart showing all executives, managers and supervisors of the company, along with their names, titles and telephone numbers. (Ord. 285 §1, 1991)

**13.24.460 Severability.**

Should any one or more provisions of this chapter 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. 285 §1, 1991)

**13.24.470 Entire agreement.**

This chapter constitutes the entire agreement of the parties. There have been no representations made other than those contained in this chapter. (Ord. 285 §1, 1991)

**13.24.480 Street light charge.**

There is hereby imposed a uniform service charge for the provision of street lights of three dollars per month upon each residence, business and other establishment having a water service account with the town. Such charge shall be assessed upon each monthly water service bill of the town and payable at the same time as such water service bill. (Ord. 571 §9, 2005)