

CHAPTER 5

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ARTICLE I**Franchise Negotiation Costs****Sec. 5-1-10. Record of expenses.**

During franchise negotiations, the Town shall maintain an account of all expenses incurred, including but not limited to staff personnel costs including overtime, expert consulting fees, publishing fees, legal fees and other related expenses. (Prior code 12-4-1)

Sec. 5-1-20. Monthly billing of expenses.

The Town shall bill the franchisee monthly for all expenses incurred related to the negotiation of the franchise. The amount billed to the franchisee shall include but not be limited to Town staff personnel costs, including overtime, expert consulting fees, publishing fees, legal fees and other related expenses. (Prior code 12-4-2)

Sec. 5-1-30. Payment of expenses by franchisee.

The franchisee shall pay to the Town all such expenses incurred within thirty (30) days of the mailing of the bill, unless the franchisee protests the reasonableness of the costs in the manner set forth in Section 5-1-40 below. Failure to pay shall constitute a material breach of the negotiation process or the terms of the franchise. If a franchise has been awarded prior to a refusal to pay billed expenses, the Board of Trustees may void the franchise as provided in the franchise agreement. If a franchise has not been awarded prior to the refusal to pay billed expenses, the Town is under no obligation to resume negotiations until such payment is made. (Prior code 12-4-3; Ord. 316 §1, 1997)

Sec. 5-1-40. Protest of expenses charged to franchisee.

If the franchisee disputes the reasonableness of the charges, it may seek review of the assessment by filing a protest with the Board of Trustees within thirty (30) days of the mailing of the bill. The protest shall state the grounds on which the protest is based. The Town Clerk shall schedule the matter for public hearing before the Board of Trustees on the next available Board agenda and notify the franchisee of the date and time for the hearing by certified mail, return receipt requested. Said hearing shall be for the purpose of hearing the protest as to the reasonableness of the expenses incurred. At the hearing, the franchisee may present evidence regarding the reasonableness of the charges. The franchisee shall bear the burden of proof. At the hearing, the franchisee and the Town staff shall have the opportunity to present evidence in the form of documents, exhibits and witnesses. The Board of Trustees shall have all the powers to ensure a fair and efficient hearing, but shall not be bound by the Colorado Rules of Evidence. The hearing shall be open to the public. The Board of Trustees may approve the assessment or make modifications based upon the evidence presented. Any action by the Board of Trustees shall be final and payment must be made within seven (7) days. Nonpayment shall constitute a material breach of the negotiation process or the terms of the franchise. If a franchise has been awarded prior to a refusal to pay billed expenses, the Board of Trustees may void the franchise as provided in the franchise agreement. If a franchise has not been awarded prior to the refusal to pay billed expenses, the Town is under no obligation to resume negotiations until such payment is made. (Prior code 12-4-4; Ord. 316 §1, 1997)

Sec. 5-1-50. Recovery of litigation expense.

Any entity challenging the validity, legality or constitutionality of this Article, if unsuccessful, shall reimburse the Town for all costs incurred, including attorneys' fees, in such litigation. (Prior code 12-4-5; Ord. 316 §1, 1997)

Sec. 5-1-60. Recovery of negotiation expenses.

Notwithstanding any of the remedies contained herein, the Town Attorney, acting on behalf of the Board of Trustees, may institute appropriate action in a court of competent jurisdiction to recover reasonable expenses incurred by the Town in the negotiation of the franchise, including but not limited to staff personnel costs, including overtime, expert consulting fees, publishing fees, legal fees and other related expenses. (Prior code 12-4-6)

ARTICLE II**Cable Television Franchise***Division 1
Franchise Provisions***Sec. 5-2-10. Definitions.**

For the purposes of this Article, the following terms, phrases, words and their derivations shall have the meanings given herein:

Access channels means those channels set aside for specific access purposes, including but not limited to the following:

a. *Education access channel* means a specially designated channel for use by local educational authorities.

b. *Local government access channel* means a specially designated channel for local government use.

c. *Leased access channel* means the use on a fee-for-service basis of the cable television system by business enterprises (whether profit, nonprofit or governmental) to render services to the citizens of the Town and shall include without limitation all use pursuant to Section 612 of the Cable Communications Policy Act of 1984 (47 U.S.C. § 521 et seq.).

d. *Public access channel* means a specially designated noncommercial public access channel available on a first-come, nondiscriminatory basis for which the system shall maintain and have available for free public use at least the minimal equipment and facilities necessary for the production of programming for such a channel.

Application includes all written proposals, in whatever form, made by an applicant to the Town concerning construction, rendition of services, maintenance or any other matter pertaining to the cable television system contemplated herein.

Basic service means all subscriber services provided by the Grantee, including the delivery of broadcast signals, covered by the regular monthly charge paid by all subscribers, excluding additional service for which a separate charge is made, and shall include but not be limited to the following:

- a. All signals of over-the-air television broadcasters required by the F.C.C. to be carried by a community antenna television system as defined by the F.C.C.;
- b. Such public, education, local government, local organization and leased access channel signals as may be required pursuant to this Article; and
- c. Additional services proposed by the Grantee in its application, or as it may hereafter be provided.

Cable television system, CATV system or community antenna television means a system of antenna, cables, wires, lines, towers, wave guides or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electric signals located in the Town.

Channel means a band of frequencies six (6) megahertz (MHz) wide.

Financial interest as used in the definition of gross revenue above, shall include but not be limited to:

- a. Any contract in which the Grantee or any named owner thereof is to receive a percentage of the gross revenues and/or a percentage of the net income of the other party to the transaction by reason of the activities encompassed by said contract;
- b. Any debt relationship in which the Grantee or any named owner thereof as debtor borrows funds at a rate more advantageous than that generally available to similarly situated entities of similar creditworthiness;
- c. Any debt relationship in which the Grantee or any named owner thereof as creditor receives a rate of interest exceeding that which would otherwise be paid by a similarly situated debtor of similar creditworthiness;
- d. Any option or warrant to purchase the stock or any other equity interest in an entity or entity related to an entity which generates revenues arising from or attributable to the operation of the CATV system;
- e. Any debt relationship which has conversion privileges to a form of equity of the nature described in the preceding Subsection; and
- f. The phrase *arising from or attributable to operation of a CATV system* as used in the definition of *gross revenues* below shall include but not be limited to:

1. Any activity, product or service which generates revenue of any type whatsoever and which is offered to the subscribers of the system by means of the system or any related service;
2. Any activity, product or service which is revenue producing and is offered to the subscribers of the system by any medium other than the system, including but not limited to direct mail and home delivery if the system's subscriber list or any portion thereof is utilized for purposes of solicitation;
3. Any activity, product or service in the production or provision of which any of the assets of the system, including but not limited to cable, production facilities and administrative facilities are included, unless reasonable consideration is paid to the system for such utilization; and
4. Any television programming or other services offered to the citizens of the Town within the term of the franchise by any means of delivery whatsoever where such programming or services are or could be offered by means of the system.

Grantee means the holder of a cable television system franchise granted by the Town.

Gross revenue means any and all revenue derived directly or indirectly by the Grantee, its affiliates, subsidiaries, parent and any person in which the Grantee has a financial interest (or which has a financial interest in the Grantee) arising from or attributable to the operation of a CATV system in the Town. *Gross revenues* shall include, but not be limited to:

- a. Revenue from all charges for services provided to subscribers of entertainment and nonentertainment services (including basic subscriber service fees, tiered service fees, premium or pay-per-view programming service fees, leased access channel fees, converter rentals);
- b. Revenue from all charges for the insertion of commercial advertisements upon the CATV system;
- c. Revenue from all charges for the leased use of studios;
- d. Revenue from all charges for the installation, connection, disconnection and reinstatement of equipment necessary for the utilization of the CATV system and the provision of subscriber and other services;
- e. The sale, exchange or use or cablecast of any programming developed for community use or institutional users.

Gross revenues shall include value at retail price levels, the value of any goods, services or other remuneration in nonmonetary form, received by the Grantee or others described above in consideration for performance the Grantee or others described above of any advertising or other service in connection with the CATV system. *Gross revenues* shall not include any taxes on services furnished by the Grantee, imposed directly upon any subscriber or user by the State, Town or other governmental unit and collected by the Grantee on behalf of said government unit, and shall not include refunds or credits to the Town or subscribers in the Town.

Initial service area means all that area within the Town at the time the franchise is granted having a ratio equivalent to thirty-five (35) occupied dwelling units per street mile or such larger area as may be set forth in the application for franchise.

Leased access means the use on a fee-for-service basis of the cable television system by business enterprises (whether profit, nonprofit or governmental) to render services to the citizens of the Town and shall include without limitation all use pursuant to Section 612 of the Cable Communications Policy Act of 1984 (47 USC 521, *et seq.*).

Programmer means any person who is or who produces or otherwise provides program material for transmission by audio, video, digital or other signals, either live or from recorded tapes, to subscribers, by means of the cable television system.

Return signals means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system. *Return signals* may include "Class IV Channels" as defined by the F.C.C.

Street means the surface of and the space above and below any public street, road, highway, freeway, land, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or other easement now or hereafter held by the Town for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the Town which shall, within their proper use and meaning, entitle the Town and the Grantee to the use thereof for the purpose of installing or transmitting signals over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, applications, attachments and such other property as may be ordinarily necessary and pertinent to a cable television system.

Subscriber or user means any person or entity receiving for any purpose any service of the Grantee including without limitation the conventional cable television system service of retransmission of television broadcast, radio signals, Grantee's original broadcasting and the local government, education, public access and leased channels and other services, including without limitation the leasing of channels, data and facsimile transmission, pay television and police, fire and similar public service communication and services associated with the production and presentation of access channel programming.

Two-way capability means the technical capacity for return communications. (Ord. 180 §1, 1989; Ord. 241 §1, 1993; Ord. 316 §1, 1997)

Sec. 5-2-20. Police powers.

Nothing in this Article or in any agreement awarding a franchise in accordance herewith shall be construed as an abrogation by the Town of any of its police powers. (Ord. 180 §1, 1989)

Sec. 5-2-30. Franchise required.

No CATV system shall be allowed to occupy or use any right-of-way of the Town or be allowed to operate in the Town without a CATV franchise granted pursuant to this Article. (Ord. 180 §1, 1989)

Sec. 5-2-40. Application form and content.

(a) Any person who desires a franchise pursuant to this Article may file with the Town Clerk a written application therefor. The application shall be in the form provided by the Town and shall be subscribed and verified by the applicant. Sufficient copies of the application shall be provided to the Town Clerk for distribution to all required parties.

(b) Statements and representations set forth in the application shall be deemed and construed to be warranties as to accuracy, which shall be fully enforceable as if the same were set forth in this Article as requirements and standards imposed upon the Grantee in the event the franchise is granted.

(c) The application form shall be adopted by resolution of the Board of Trustees but in any event shall require the following;

(1) The name and address of the applicant and the date of the application.

(2) A description of the applicant's organizational structure, identifying by name and address its owners and principal officers (including corporate directors).

(3) A statement describing all intra-company relationships of the applicant, including parent, subsidiary and affiliated companies.

(4) A statement identifying each existing franchise for CATV held by the applicant, and as to each such franchise the date it was issued, the date the system was constructed and the name, address and telephone number of a government official knowledgeable of the applicant and its performance in such franchise area.

(5) A statement detailing prior CATV experience of the applicant and identifying the applicant's officers, management and staff proposed to be associated with its operations in the Town.

(6) A statement, including maps as may be appropriate, of the applicant's construction plans, including without limitation the following:

a. Identification of the initial service area and criteria and timetable for extension of service to new areas.

b. Construction timetable for the initial service area, including a firm completion date.

c. Description of network configuration.

d. Identification of specific areas proposed for underground and for aboveground installation of cables.

(7) A technical description of the network, including without limitation statements as to the following:

a. Channel capacity.

- b. Two-way and return signal capability.
- c. Technical performance standards.
- d. Emergency communication capabilities, including override capability.

(8) A description of the proposed operation of the applicant, including without limitation statements as to the following:

- a. Location of the business office from which the applicant proposes to conduct its operations in the Town.
- b. Programming material to be provided, including broadcast TV and radio stations, satellite programming, and automated and nonautomated programming, if any, to be provided locally by the applicant.
- c. The availability of public, education and government access channels.
- d. Rules of operation for any public access channels proposed and an explanation of any assistance, in terms of personnel or equipment, to be provided by the Grantee for programming or programming assistance for proposed public access channels and for the required educational and local government access channels.
- e. Subscriber rates and charges for all services, including a statement of any services to be provided free-of-charge, together with a description of the criteria to be used by the applicant in making changes in any such rates and charges.
- f. Average repair service interval (i.e., time between time of notification to the applicant and completion of repairs) for subscribers in the Town.

(9) The name and address of the applicant's principal or primary source of financing for its operations in the Town and the dollar amount of credit which such lender has committed in writing to provide for such operations.

(10) A statement as to whether the applicant or any of its principals have ever been a party to a civil proceeding in which it was held that there were unfair or uncompetitive business practices, antitrust violations, violations of securities laws or false or misleading advertising committed by the applicant or any of its principals; whether the applicant or any of its principals have been found in violation of any franchise; and whether the applicant or any of its principals have ever initiated litigation against a franchising authority or had a franchising authority initiate litigation against them.

(11) Such other and further information as the applicant deems appropriate.

(d) The following attachments shall accompany the application:

(1) Copies of financial statements for the applicant's two (2) most recent fiscal years unless the applicant has not been in existence at least two (2) years, in which case the applicant shall furnish the same for the entire period that the applicant has been in existence. The financial

statements shall be certified as to their accuracy by the applicant's chief financial officer or accountant.

(2) A certified check made payable to the Town in the amount of seven hundred fifty dollars (\$750.00), which check will be deposited to an account of the Town as a deposit against all costs and expenses incurred by the Town in considering the application as provided by this Article. Such expenses shall include without limitation consultants' expenses, reasonable value of services performed by the Town's employees, agents or contractors, legal fees, the costs of elections, if any, advertising and publication charges. Any funds remaining after all expenses have been paid will be refunded to the applicant. All expenses incurred by the Town over and above the seven-hundred-fifty-dollar initial deposit shall be billed to the applicant and become due immediately upon billing. (Ord. 180 §1, 1989)

Sec. 5-2-50. Procedure for grant, change or renewal of franchise.

(a) When an applicant for a franchise files its application with the Town Clerk, the Town Clerk shall transmit copies thereof to the Mayor and each member of the Board of Trustees, the Superintendent of the Maintenance Department, the Town Engineer, the Town Manager, the Town Attorney and any other person selected or designated by the Town to give professional assistance and advice in connection with the consideration of the application. In addition, the Town Clerk shall maintain at least one (1) copy of the application in the Town Clerk's office to be available for inspection by members of the public during the Town Clerk's regular office hours.

(b) If the application and all attachments, together with any supplementary materials requested by the Town, are found to be in proper form and complete in all respects, the Board of Trustees shall fix a date for public hearing on the application. Such hearing shall be held within one hundred twenty (120) days of the application submittal, unless more time is required because of failure of the applicant to make timely submission of additional or corrected information or materials. The public hearing shall be for the purpose of receiving evidence and comments from the applicant, members of the public and any other interested persons. Written notice of such hearing shall be posted for at least thirty (30) days prior to the date thereof in the Town Clerk's office and shall further be published in a newspaper of general circulation in the Town once a week for the three (3) successive weeks next preceding the week in which the hearing is to be held.

(c) Any franchise granted pursuant to this Article shall be granted by ordinance after the public hearing provided in Subsection (b) above.

(d) Applications for modification or renewal of any franchise granted pursuant to this Article shall be considered in accordance with the procedure above specified for consideration of applications of new franchises.

(e) No applicant, successful or otherwise, shall have any recourse against the Town to recover any losses, expenses or alleged damages claimed to have been caused by or incurred in connection with such applicant's complying or attempting to comply with any of the requirements of this Article concerning application for grant, modification or renewal of a franchise. (Ord. 180, 1989; Ord. 316 §1, 1997)

Sec. 5-2-60. Grant, acceptance and effective date of franchise.

(a) A franchise for CATV service granted pursuant to this Article shall grant to the Grantee the nonexclusive right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under streets, highways, sidewalks, easements, dedications and other public property now in existence and as may be created or established during its term such poles, wires, cable, underground conduits, manholes and other television conductors and fixtures as may be necessary for the maintenance and operation of the CATV system for the interception, sale, transmission and distribution of television programs and other audio/visual electrical signals, and the right to transmit the same to and from the inhabitants of the Town on the terms and conditions hereinafter set forth. The grant of any franchise shall not relieve the Grantee of the obligation to secure consent of other utilities prior to using any of the poles of such utilities.

(b) The franchise shall take effect and be in force from and after the effective date of the ordinance granting the franchise and after the Company has taken all of the actions prescribed by this Section. The term of the franchise shall be ten (10) years, commencing upon the effective date of the franchise.

(c) Within sixty (60) days after adoption of the ordinance granting the franchise by the Board of Trustees and the approval thereof by the Mayor, the Grantee shall make all filings required of it by the provisions of this Section, and in the event of failure on the part of the Grantee to make such filings, it shall be conclusively presumed that the Grantee has abandoned such franchise, and the Board of Trustees may, by ordinance, declare this franchise to be absolutely null and void, *ab initio*.

(d) Any franchise granted and regulated hereunder, together with the rights, privileges and authority granted thereby, shall take effect and be in force from and after the effective date of the ordinance granting the franchise and after the Grantee has taken all of the following actions:

(1) File with the Town Clerk an unconditional acceptance of the franchise grant and enter into and execute such documents as required by the Town consistent with the terms and provisions of this Article. Said acceptance shall be in a form prescribed by the Town and shall contain provisions that the Grantee, by its acceptance, agrees to provide all services specifically set forth in its application and further, that its application is incorporated by reference into and made a part of the franchise and this Article. In the event of conflict between the application and the provisions of this Article, that provision which provides the greatest benefit to the Town, in the opinion of the Board of Trustees, shall prevail. Any acceptance filed by the Grantee pursuant to this Section shall be in writing, duly executed and acknowledged by and on behalf of the Grantee before a notary public or other officer authorized by law to administer oaths.

(2) File certificates of insurance with the Town Clerk as set forth in Section 5-2-300 of this Article.

(3) File with the Town Clerk the letter of credit or cash deposit required in Sections 5-2-240 and 5-2-320 of this Article.

(4) Reimburse the Town for the remaining balance of any costs incurred in investigating the Grantee's application and conducting the public hearing in connection with the grant of the franchise as provided by Section 5-2-40(d)(2) of this Article.

(5) Pay to the Town an advance franchise fee of one thousand dollars (\$1,000.00) to be credited against sums due under Section 5-2-70 of this Article.

(e) In the event the Grantee fails within sixty (60) days of the effective date of the ordinance granting the franchise to comply in full with Subsection (c) above, it shall be conclusively considered that the Grantee has abandoned its application and rights to such grant and to any and all appurtenant rights and the Grantee shall have no further right, privilege or authority whatsoever under this Article. In the event that the applicant has paid the initial franchise fee of one thousand dollars (\$1,000.00), the same shall be refunded except to the extent necessary to discharge in full any unpaid costs of awarding the franchise.

(f) The Grantee, by acceptance of any franchise awarded pursuant to this Article, acknowledges that it has relied upon its own investigation and understanding of the power and authority of the Town to grant such a franchise.

(g) The franchise governed by this Article shall not be exclusive, and the Town reserves the right to grant a similar franchise to any other person or firm.

(h) There is hereby granted to Mead Entertainment & Information Cable, Inc., a Colorado corporation, the right to install, operate and maintain a cable television system and to have a nonexclusive franchise to furnish and sell cable television services to all persons and businesses within the Town. Mead Entertainment & Information Cable, Inc., shall hereinafter be referred to as "the Company," and this term shall be deemed synonymous and interchangeable with the term "Grantee" as used in this Article. The Company shall have the right to use all streets, alleys and utility easements in the Town and in any area annexed to the Town as may be necessary to provide such cable television services to its customers within the Town. (Ord. 180 §1, 1989; Ord. 241 §§2, 3, 1993; Ord. 242 §§1, 16, 1993; Ord. 316 §1, 1997)

Sec. 5-2-70. Franchise fee.

(a) The Company shall pay to the Town for use of the streets and other facilities of the Town, during the term of its franchise, a sum equal to five percent (5%) of its gross revenues earned in the Town. *Gross revenues* shall be as defined by Section 5-2-10 of this Code. The Company shall make payments to the Town not later than April 15 of each year. The audit of the gross revenues and the franchise fees paid thereon as defined by this Section shall be presented to the Town not later than March 15 of each year. Franchise fees paid to the Town pursuant to this Section shall be considered in addition to and exclusive of any and all taxes, business license fees or other levies or assessments which are now or which may hereinafter be authorized by the laws of the United States, State or Town.

(b) The franchise shall set forth the manner in which franchise payments shall be made. Not later than the date of each payment, each Grantee shall file with the Town Clerk a written statement signed under penalty of perjury by an officer of the Grantee, which identifies in detail the sources and amounts of gross revenues received by the Grantee during the time period for which payment is made.

(c) No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim

which the Town may have for further or additional sums payable under the provisions of this Section or for any other performance or obligation of the Grantee hereunder.

(d) If the franchise is terminated or forfeited prior to the end of its term, the Grantee shall submit to the Town an audited statement showing its gross revenues earned in the Town since the end of the period covered by the most recently filed annual statement until the date the Grantee's operations cease in the Town. Such statement shall be submitted no later than thirty (30) days following the cessation of the Grantee's operations in the Town.

(e) In the event that any payment is not made on or before the applicable date fixed in Subsections (a) and (b) above, the Grantee shall be subject to the penalty provided for in Section 5-2-260 of this Article.

(f) Not less than annually, the Grantee shall provide the Board of Trustees with an unqualified certification of an independent certified public account certifying the accuracy of the franchise fee payments paid within the preceding twelve (12) months pursuant to this Section. Said certification shall be prepared in accordance with generally accepted accounting standards as established by the Financial Accounting Standards Board (FASB).

(g) The Town shall have the right to inspect the Grantee's records showing the gross revenues from which its franchise payments are computed. The right of audit and recomputation of any and all amounts paid under this franchise shall be always accorded to the Town.

(h) Payments of compensation made by the Grantee to the Town pursuant to the provisions of this Article shall be considered in addition to and exclusive of any and all taxes, business license fees or other levies or assessments which are now or which may hereafter be authorized by the laws of the United States, the State or the Town. (Ord. 180 §1, 1989; Ord. 242 §3, 1993; Ord. 316 §1, 1997; Ord. 383, §1, 2000)

Sec. 5-2-80. Initial service area.

It is agreed by the Company to define the initial service area to mean all residences and businesses within the corporate boundaries of the Town on the effective date of the franchise. (Ord. 242 §4, 1993; Ord. 316 §1, 1997)

Sec. 5-2-90. Completion of construction.

The Company agrees to complete the construction of those facilities necessary to provide the required services to the initial service area within eighteen (18) months of the award of the franchise. Failure to complete construction within this time period shall be cause for the imposition of penalties in accordance with Section 5-2-260. (Ord. 242 §5, 1993; Ord. 316 §1, 1997)

Sec. 5-2-100. Construction standards.

(a) All construction by the Grantee, both initial and for purposes of extending, maintaining, repairing and removing the network, shall comply with all applicable state, federal and local laws,

statutes, rules and regulations, present and future¹. All such construction shall be done in an orderly and workmanlike fashion, and no Grantee or any of its agents, employees or contractors may enter upon or in any way injure any real property within the Town lying outside of any recorded or otherwise clearly recognized easement for public utilities or public rights-of-way without the express consent of the owner of such property. All equipment and apparatus of the Grantee shall be approved by the Town, acting through the Superintendent of the Maintenance Department, and the Grantee shall repair any disturbance or excavation so that the pavement, sidewalk, curb, gutter or other street installation is returned to at least as good a condition as existed prior to said disturbance or excavation.

(b) Initial construction and construction of any extensions shall additionally comply with the following rules:

(1) All transmission and distribution structures, lines and equipment erected by the Grantee within the Town shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of said streets, alleys or other public ways and places. All construction shall be underground where both telephone and electrical power are underground. All trunk and feeder line underground construction shall have a minimum depth of eighteen (18) inches, and all drop and lateral drop conduits shall have a minimum depth of twelve (12) inches in all Town rights-of-way. All paved streets shall be bored rather than trenched when conditions allow. Any unusual circumstances that might require a modification of the aforementioned construction requirements will be brought to the attention of the Town. Where one (1) or both of such utilities are on poles, the Grantee will use the poles of such utility whenever possible. The Grantee shall be solely responsible for securing the necessary pole permits from the utilities. Where the Grantee installs its own poles, it shall do so in the manner least likely to obstruct the easements or to endanger persons or property located therein or nearby, and only upon the specific approval of the Superintendent of the Maintenance Department as to location of all such poles.

(2) The Grantee shall keep accurate maps and records of all of its facilities and furnish copies of such maps and records as and when requested by the Town.

(c) All maintenance construction shall comply additionally with the following rules:

(1) The Town shall give the Grantee notice of plans for street improvement where paving or resurfacing of a permanent nature is involved in sufficient time for the latter to make any additions, alterations or repairs to its facilities it deems necessary before the commencement of work.

(2) The Grantee shall, upon a forty-eight-hour written advance notice by the Town, at its expense, protect, support, temporarily disconnect, relocate or remove any of its property when required by the Town by reason of traffic conditions, public safety, street vacation, street

¹ Uniform Building Code; National Electrical Code; National Bureau of Standards Handbook 81 (Part 2); Structural Standards for steel antenna towers and antenna supporting structures, EIA Standards RS-222-C as published by the Engineering Department of the Electronic Industries Association, 2001 L Street N.W., Washington, D.C. 20006; Bell Telephone System Code of Pole Line Construction; applicable F.C.C. or other federal, state and local regulations and technical standards; 14 C.F.R. § 77.1. et seq.; 47 C.F.R. § 17.1 et seq.; Mead Municipal Code, Chapter 1.

construction, change in establishment of street grade, installation of sewers, drains, water pipes, tracks or any other type of structural improvement by any public agency.

(3) The Grantee shall, upon a forty-eight-hour written advance notice by any person holding a building moving permit, temporarily raise or lower its wires to permit the moving of said building. The expense of such temporary removal, raising or lowering and reconnecting of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance.

(4) The Grantee shall, upon a forty-eight-hour written advance notice by any person holding a building permit, and at no cost to the building permit holder, locate and mark the location of underground cables and other facilities of the company.

(5) The Grantee shall have the authority to trim trees overhanging street edges, alleys, sidewalks and any other public place so as to prevent branches of the same from coming in contact with its wires and cables. All trimming is to be done at the expense of the Grantee. The Grantee shall make every effort to preserve the health and aesthetic appearance of trees or shrubbery trimmed. It may contract for such services with any person licensed by the Town. Except in cases of emergency, the Grantee shall notify the owner of any property which may be affected by such trimming operations at least ten (10) days prior to the commencement of the work. All cuttings and other refuse shall be removed by the Grantee at its expense. Each Grantee shall be responsible for, indemnify, defend and hold harmless the Town and its officers, agents and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation or any injury to any tree or trees proximately caused by the Grantee or its officers, agents, employees, contractors or subcontractors.

(d) The Grantee shall additionally at all times conduct its construction operations in such a way as to comply with all applicable provisions of its application for franchise.

(e) Construction and maintenance. In addition to those requirements contained in this Section, the Company shall, during the initial construction or during any extensions of the system, make every reasonable effort to contact the resident and give twenty-four (24) hours' notice prior to any work being done on the resident's property. If personal contact with the resident cannot be made, a "door-hanger" notice shall be posted on the property giving notice of the work intended and the name and telephone number of a Company representative who will be available to answer the resident's questions. Following the initial construction or extension of the system, the Company shall make every reasonable effort to contact the resident prior to any maintenance or repair work being done on the resident's property. (Ord. 180 §1, 1989; Ord. 241 §4, 1993; Ord. 242 §10, 1993; Ord. 316 §1, 1997)

Sec. 5-2-110. Technical standards.

(a) The CATV system shall be installed and maintained in accordance with the highest standards promulgated by the Federal Communications Commission and other regulatory bodies having jurisdiction over the system and in such a way that the subscriber may receive the best form of service. Each Grantee shall provide to the Town, upon request, written reports of the Grantee's annual proof of performance tests conducted pursuant to F.C.C. standards and requirements. It shall additionally meet the following minimum specifications and requirements:

(1) It shall be and remain capable of using all band equipment and of passing the entire VHF and FM spectrum and capable of converting UHF for the distribution to subscribers on the VHF band.

(2) It shall be and remain capable of transmitting and passing the entire color television signal spectrum without the introduction of material degradation of color fidelity and intelligence.

(3) It shall be designed and rated for twenty-four-hour-a-day continuous operation.

(4) It shall be and remain capable of producing a picture upon an operable television screen in black and white or color (the Grantee may use a television set maintained by it for any test of this requirement) that is undistorted and free from ghost images and accompanied by proper sound.

(5) It shall transmit or distribute signals of adequate strength and produce pictures with sound in operable television receivers to current F.C.C. standards without causing cross modulation in the cable amplifiers or interference with other electrical or electronic systems.

(6) It shall have a capacity of at least thirty-five (35) potential channels.

(7) It shall operate throughout the temperature range of minus thirty degrees Fahrenheit (-30°F) to one hundred ten degrees Fahrenheit (110°F) without degradation of audio or video fidelity.

(8) It shall provide the capability of two-way transmission, although the two-way capability shall not be required to be activated until such time as deemed appropriate by the Board of Trustees, and only after giving one hundred eighty (180) days' advanced notice of such requirement to the Grantee.

(9) It shall provide an emergency alert override system which shall at all times be capable of overriding simultaneously on all channels with audio and/or audio and video character (letter) announcements of an emergency and notification that emergency information and instructions are being broadcast on the educational/local government channel. Provision of the emergency alert override system shall be made within twelve (12) months of the completion of the initial service area.

(b) The Grantee shall additionally at all times maintain its technical standards in such a way as to comply with all applicable provisions of its application for the franchise and meet or exceed all applicable Federal Communications Commission technical standards. (Ord. 180 §1, 1989; Ord. 241 §5, 1993)

Sec. 5-2-120. Required services.

(a) The Grantee shall provide a minimum of the following services within the geographic area specified in Subsections (b) and (c) of this Section:

(1) All signals of over-the-air television broadcasters required by F.C.C. rules and regulations to be carried by a CATV system as defined by the F.C.C.

(2) The Company will allocate three (3) channels for noncommercial educational, local

government and public access.

a. One (1) channel shall be located on the low range channel numbers of the tuner. At least one (1) channel of this type shall be at all times ready and available to the Town or its designate to broadcast information or instructions in times of emergency pursuant to the provisions of Section 5-2-140 of this Article. This channel shall be designated as the "Mead channel." Access to this channel may be on a tape delay basis with the exception of emergency messages broadcast by the Town. This channel may be shared among noncommercial educational, local government and public access programming. This channel, including all equipment, supplies and technical assistance to be furnished in connection therewith, shall be ready and available for operation within sixty (60) days of the activation date of the system. In connection with this service, the Grantee shall provide sufficient equipment and technical assistance for production of audio and character generation at the Grantee's expense. The specific amount of equipment and level of technical assistance to be provided shall be determined by the Town after consultation with the Grantee and shall be incorporated in specific terms into this Article. This channel may be shared among noncommercial educational, local government and public access programming.

b. A second of these specially designated channels may be a shared channel and is to be provided and made available within one hundred eighty (180) days after the Town delivers written notice of its desire for the same to be activated. In connection with this service, the Grantee shall provide sufficient equipment and technical assistance for production of programming at the Grantee's expense. The specific amount of equipment and level of technical assistance to be provided shall be determined by the Town after consultation with the Grantee and shall be incorporated in specific terms into the ordinance granting the franchise.

c. At such time as the Board of Trustees determines that an additional channel of this kind is necessary, the Grantee shall activate the third such channel, together with required equipment and technical assistance. Activation shall be within one hundred eighty (180) days after written notice is given to the Grantee by the Town.

d. All broadcast or cablecast services set forth in the Grantee's application for franchise.

e. The Company will furnish at its sole expense the following equipment for use in the production and transmission of programs over the local access channel and the Mead channel:

1. Technical brochures, including pictures, describing this equipment are to be attached and made part of this Section. The Company warrants that the above named equipment is state-of-the-art and is sufficient to provide local access programming for the "Mead Channel".

2. In any event, all equipment provided by this Section shall remain the property of the Company and at all times during the term of the franchise the Company shall at its sole expense insure, repair and maintain the same; provided, however, that such equipment shall be operated by the Company or by Company-trained personnel.

3. As a result of the Mead Cable Commission's triennial evaluation of the system, the Company shall replace individual pieces of equipment as is reasonably necessary to keep

and maintain a physical plant for local programming whose technical quality is at least as close to current state-of-the-art as the equipment constituting the initial plant.

f. The Company will at all reasonable times during the term of the franchise provide technical assistance to train local personnel in the care and operation of the equipment necessary to produce and transmit programming for the local access channels.

g. The Town reserves the sole and exclusive right to control access to and use of the local access channels, subject to all applicable state and federal laws and regulations. The Company shall not lose its rights as to protecting its equipment, property and investments by setting up a schedule of personnel and times agreeable to both the Town and the Company.

h. All cable casting and content of materials on prescribed access channels shall be the sole responsibility of the organization or persons cable casting said materials. The Grantee does not and will not recognize responsibility for any and all materials presented by those associations and persons using the public access channel.

i. A local access channel shall be at all times ready and available for use by the Town or its designate to broadcast information or instructions in times of emergency.

(b) The Grantee shall provide the broadcast and cablecast services specified in Subsection (a) of this Section in the entire initial service area defined in its application within the time stated in the application for franchise, or within eighteen (18) months of the effective date of the franchise, whichever is less.

(c) The Grantee shall extend the broadcast and cablecast services specified in Subsection (a) of this Section to areas in the Town having a ratio equivalent of at least thirty-five (35) occupied dwelling units per street mile within the time specified for such extensions in its application for franchise or within twelve (12) months from the date the area qualifies for such extension (i.e., attains the required population density, or is annexed to the Town having such density), whichever is less.

(d) In addition to any other rights reserved, the Board of Trustees reserves the right, after notice and a hearing, to require that the Grantee provide such additional broadcast or cablecast services as the state of the art at the time may reasonably permit without undue hardship to the Grantee.

(e) Reception facilities for schools and governmental buildings. The Company will, at its sole expense, install, operate and maintain, free of charges and liens, facilities for reception of its cable television distribution services through an outlet at each of the following locations. The installation shall take place during the initial construction of the system or upon construction or acquisition of a new school or governmental facility.

- (1) Each public elementary and secondary school within the Town.
- (2) The Town Hall and any fire station located within the corporate boundaries of the Town.
- (3) Each public library within the Town.
- (4) Each of the foregoing may request the installation of one (1) to six (6) outlets during the

initial construction of the system, or upon construction or acquisition of a new school or governmental facility, and the same shall be installed by the franchisee at no charge to the entity. Additional outlets installed after the initial construction of the system or after construction or acquisition of a new school or governmental facility may be charged to the requesting entity at the Company's normal installation fee. In no event shall the Grantee charge a monthly service fee to said establishments, regardless of the number of outlets installed.

(f) The Grantee shall interconnect its system with other CATV companies within the Town, St. Vrain School District and others providing educational programming services for St. Vrain School District. In lieu of direct interconnection with systems within the St. Vrain School District, the Grantees may install a tapped display system to the public access channels for educational use of the school district. This equipment may also be used for governmental uses subject to the provisions of Section 5-2-150.

(g) The Grantee shall make available to subscribers, for rental or purchase, remote control devices for use with the Grantee-supplied converter for noncable-ready television sets.

(h) The franchise shall make available to subscribers, upon request, a keyed locking device or other means of preventing or restricting access to individual channels or programming by minor children.

(i) The franchise shall make available to subscribers, upon request, an RF Switch (and A-B Switch) permitting conversion from cable to antenna reception.

(j) When five thousand (5,000) dwelling units exist within the corporate limits of the Town, or two thousand five hundred (2,500) subscribers to the basic monthly service are recorded, whichever occurs first, the Grantee shall provide, at no cost to the Town, a television studio equipped with state-of-the-art cable television equipment, connected to the CATV system. One percent (1%) of the franchise fees shall be used by the Town to employ a trained, experienced person who shall act as a local access coordinator. (Ord. 180 §1, 1989; Ord. 241 §§6, 7, 1993; Ord. 242 §§7, 8, 1993; Ord. 316 §1, 1997)

Sec. 5-2-130. Repairs and service.

(a) The Grantee shall maintain a published local telephone number throughout the term of the franchise by which subscribers may make inquiry regarding a complaint twenty-four (24) hours per day, seven (7) days per week, and shall maintain sufficient employees and other resources in or near the Town to enable it to maintain a repair service capability which complies with all applicable requirements of this Article.

(b) The Grantee shall at all times render sufficient service, make repairs promptly and interrupt service only for good cause for the shortest time possible. Any scheduled interruptions shall be preceded by reasonable notice to affected subscribers and shall occur during periods of minimum use of the CATV system when practicable. The Grantee shall respond to all service calls as soon as possible and correct malfunctions as promptly as possible, but in any event within forty-eight (48) hours after notice thereof is received by the Grantee. Provisions shall be made for "after hours" and weekend repair services.

(c) Each cable television system shall include equipment capable of providing standby electric powering of headend for a minimum of two (2) hours. The system shall incorporate safeguards necessary to prevent injury to a lineman resulting from a standby generator powering a "dead" utility line.

(d) The Grantee shall additionally at all times conduct its repair and service operations in such a way as to comply with all applicable provisions of its application for franchise.

(e) Should a subscriber have an unresolved complaint regarding the quality of cable television service, equipment malfunction or similar matters, the subscriber shall be entitled to meet jointly with the Mead Cable Commission and a representative of the Grantee to fully discuss and resolve such matters. This meeting shall take place within fifteen (15) days of the subscriber's giving written notice of said complaint to the Commission. If such matters are not resolved, the Commission shall arbitrate and render a decision regarding such service through arbitration procedures established by the Commission for the orderly resolution of such complaints. (Ord. 180 §1, 1989; Ord. 241 §8, 1993; Ord. 316 §1, 1997)

Sec. 5-2-140. Emergencies.

(a) Each cable television system shall include an "Emergency Alert Capability" which will permit the Town, in times of emergency, to override by remote control alternatively the audio and/or the audio and video of all channels simultaneously. Each cable television system shall include the capability to broadcast from the Town's headquarters for civil defense, disaster and emergency services.

(b) If during an emergency it becomes reasonably necessary in the judgment of the Town Engineer to cut or move any of the Grantee's property, such cutting or removal may be done and any repairs made necessary thereby shall be made by the Grantee at its sole expense, provided that such repairs are not necessitated by a negligent act or omission of the Town, in which case such costs shall be paid by the Town. (Ord. 180 §1, 1989)

Sec. 5-2-150. Availability of access facilities.

(a) Use of facilities for public, educational and governmental access upon the cable television system pursuant to Section 5-2-120 above shall be made available without rental, deposits or any other charge whatsoever, for use twenty-four (24) hours per day, seven (7) days a week in connection with the production of public, educational and/or governmental access programming cablecast upon the cable television system. The Grantee shall:

(1) Allow all persons and entities desiring to cablecast public, educational and/or governmental access programming to produce programming upon and electronically interface directly with the cable television system of the Grantee so as to effectively cablecast the public, educational and/or governmental access programming or, in the alternative;

(2) Establish such reasonable rules and procedures designed to promote the utilization of such public, educational and/or governmental access programming subject to the approval of the Board of Trustees, which approval shall not be unreasonably withheld, whereby the Grantee shall accept and cablecast such public, educational and/or governmental access programming upon the cable

television system as shall be provided to the Grantee by such persons and entities.

(b) The Grantee shall make all reasonable efforts to coordinate the cable casting of public, educational and/or governmental access programming upon the cable television system at the same time and upon the same channel designations as such programming is cablecast upon other cable television systems within the community. (Ord. 180 §1, 1989)

Sec. 5-2-160. Support for use of access.

Nothing contained in this Article shall be construed to limit the authority of the Grantee to make payments in support of the use of public, educational and/or governmental access channels. However, such payments are expressly not a requirement of any franchise granted hereunder and shall in no event be considered in the calculation of the franchise fee pursuant to this Article. (Ord. 180 §1, 1989)

Sec. 5-2-170. Subscriber privacy.

(a) It shall be unlawful for the Grantee or any other person acting with the Grantee's consent or cooperation to initiate or use any form, procedure or device for procuring information or data from any subscriber's premises by use of the CATV system or to activate or utilize return signals in any manner from the subscriber's premises without prior valid written authorization from the subscriber affected.

(b) Valid authorization shall mean written approval from the subscriber not obtained as a condition for providing service not requiring return path monitoring and specifying the following:

- (1) The period of time, not to exceed one (1) year, during which the authorization is effective.
- (2) The type or types of information or data covered.
- (3) The parties authorized to collect, receive, store, record, transmit or otherwise convey the information or data.

(c) Nothing contained in this Section shall prohibit the Grantee from conducting system-wide or individually addressed "sweeps" and/or audits for the purpose of verifying system integrity, controlling return path transmission or billing for pay services. (Ord. 180 §1, 1989; Ord. 241 §9, 1993)

Sec. 5-2-180. Abandonment and removal of facilities.

(a) If the use of any part of the system is discontinued for any reason for a period of twelve (12) consecutive months, or if the system or any part thereof has been unlawfully installed in any utility easement or public right-of-way or if the rights granted hereunder have been terminated, cancelled or have expired, the Grantee shall promptly remove, in the manner prescribed by the Town, from such utility easements or public rights-of-way all such property other than any which the Town may permit to be abandoned in place. Any property to be abandoned in place shall be abandoned in such manner as the Town may prescribe. Upon a permanent abandonment of property in place, the Grantee shall

submit to the Town an instrument approved as to form by the Town Attorney transferring ownership of such property to the Town.

(b) If the Grantee fails to remove any such property on proper demand, the Town may perform the work at the Grantee's expense. (Ord. 180 §1, 1989)

Sec. 5-2-190. Continuity of service.

(a) The Grantee shall provide continuous service to all subscribers in return for payment of the fees and charges assessed by the Grantee.

(b) If the Grantee elects to over-build, rebuild, modify or sell or determines to abandon the system, if the Town terminates, forfeits or fails to renew the franchise or elects to purchase it, or if the franchise otherwise becomes void, the Grantee is required as part of its franchise to continue to operate the system and to provide continuous, uninterrupted service until an orderly and lawful change of operation is effected, regardless of the circumstances. Under no circumstances shall this period of operation exceed three (3) months from the date of the occurrence of any of the above specified events. (Ord. 180 §1, 1989; Ord. 316 §1, 1997)

Sec. 5-2-200. Transfer restrictions.

(a) Except in cases found by the Board of Trustees to involve extreme hardship, no franchise granted pursuant to this Article may be transferred until construction of the system for which the franchise was issued shall be eighty-five percent (85%) completed in the initial service area. Thereafter, a franchise may be transferred only upon the prior written consent of the Town, which consent shall not be unreasonably withheld.

(b) A transfer of more than twenty percent (20%) of the capital stock of a corporate Grantee not registered as a publicly held corporation with the United States Securities Exchange Commission, or a transfer of a controlling interest in the Grantee organized as a partnership shall be deemed to be a transfer of a franchise for the purposes of this Section. No sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the Town Clerk an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise and agreeing to perform all the conditions thereon.

(c) The proposed assignee must show technical ability, financial capability, legal qualifications and general character qualifications as determined by the Town and must agree to comply with all provisions of the franchise and such conditions as may be prescribed by the Board of Trustees expressed by resolution. The Town shall be deemed to have denied a proposed transfer or assignment in the event that its consent is not communicated in writing to the Grantee within one hundred twenty (120) days following receipt of written notice of the proposed transfer or assignment.

(d) The Grantee shall promptly notify the Town of any actual or proposed change in, transfer of or acquisition by any other party of, control of the Grantee as defined in Subsection (b) above. Every change, transfer or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the Town shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change,

transfer or acquisition of control, the Town may inquire into the qualifications of the prospective controlling party and the Grantee shall assist the Town in any such inquiry.

(e) The consent or approval of the Board of Trustees to any transfer of the franchise shall not constitute a waiver or release of the rights of the Town in and to the streets, and any transfer shall by its terms be expressly subordinate to the terms and conditions of a franchise.

(f) The Board of Trustees reserves the right of "first refusal" to purchase a cable system at the market value price, if and when it is placed on the market for sale. The offer shall be by delivery of a contract within thirty (30) days of receipt of the notice required by Subsection (d) above. The contract shall be contingent upon obtaining financing (which may require a bond election).

(g) In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to the franchise agreement. (Ord. 180 §1, 1989; Ord. 241 §10, 1993)

Sec. 5-2-210. Subscriber fees and charges.

(a) The Town expressly reserves the right to regulate the rates which the Grantee charges its subscribers for basic service and the rates for such other services to the extent permitted by law. It is recognized by the Town that Subsections (a) through (k) of this Section may be subject to preemption by federal or state law or regulation. However, those sections or parts thereof which are not preempted shall be in full force and effect. The Grantee shall not deny, delay interrupt or terminate cable communications services or the use of community communications facilities to subscribers or users because the Board of Trustees denies a request for a rate increase; provided, however, that nothing herein shall be construed to limit the Grantee's right to seek judicial review of such action.

(b) Subscriber fees and charges. The initial subscriber fees shall be as specified in the application filed by the Company. These provisions do not affect the franchisee's legal authority to change rates in accordance with this Article, or federal and state regulations. The thirty-month restriction on rate changes contained in Subsection (d) below shall remain in effect, except, if the Company incurs cost increases creating financial hardships to its operations, these factors will be reviewed by the Town before any rate changes are made.

(c) No rate, fee or charge of any kind shall be charged or collected from subscribers by the Grantee for basic service or other regulated services without the written authorization of the Board of Trustees. Violation of this Section shall subject the Grantee to the provisions of Section 5-2-270 and shall be deemed to be a material breach of any agreement awarding a franchise in accordance herewith and shall subject the Grantee to all remedies and penalties prescribed therein and to all other remedies, legal and equitable, which are available to the Town.

(d) The Grantee may request rate increases or decreases at any time in accordance herewith; provided, however, that the initial rates to be charged and collected from subscribers for basic service shall be established in the agreement awarding a franchise in accordance herewith and shall remain in force for a minimum of thirty (30) months from and after the date of execution of the agreement.

(e) The Grantee shall file with the Town on or before December 31 of each year a full schedule of all subscriber and user rates and all other charges including, but not limited to, pay TV, lease channel and discrete services, made in connection with the cable communication system.

- (1) All rates shall be published and on file with the Town.
 - (2) The Grantee shall not discriminate in the assessment, levy, charge, imposition or collection of rates on the basis of age, race, creed, color, religion, national origin, sex or martial status.
- (f) Nothing in this Article shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers or users.
- (g) The Grantee may require all subscribers to pay for basic service not more than two (2) months in advance. The Grantee shall require no other advancement of payment for basic service; provided, however, that nothing herein shall be construed to prohibit an advancement of payment for installation of cable communication services.
- (h) The Grantee shall neither impose nor collect any additional charge for the disconnection of any installation or outlet.
- (i) In the event that a subscriber fails to pay as properly due and owing a fee or charge, the Grantee may disconnect the subscriber's service outlet, upon giving ten (10) days' written notice thereof.
- (j) The Grantee shall establish and conform to the following policy regarding refunds to subscribers and users:
- (1) If the Grantee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the Grantee shall provide such service or equipment within thirty (30) days of the collection of the deposit or charge or it shall refund such deposit or charge within five (5) days thereafter.
 - a. Nothing in this Subsection shall be construed to relieve the Grantee of any responsibility to subscribers or users under any contractual agreements into which it enters with them.
 - b. Nothing in this Subsection shall be construed as limiting the Grantee's liability for fines or penalties which may be imposed under this Article or any agreement awarded in accordance herewith for violation or breach of any of their provisions.
 - c. Nothing in this Subsection shall be construed to limit the Grantee's liability for damages because of its failure to provide the service for which the deposit or charge was made.
 - (2) In the event that a subscriber terminates basic service during the first twelve (12) months of service because of the failure of the Grantee to render the service in accordance with the requirements set forth in this Article or in any agreement awarded in accordance herewith, the Grantee shall refund to such subscriber an amount equal to the initial applicable installation or reconnection charge paid by the subscriber. In the event that such subscriber has made an advance payment, the amount so advanced shall be refunded to such subscriber by the Grantee. Nothing in this provision shall be construed to relieve the Grantee of any liability established under any other provision of this Article or any agreement awarding a franchise in accordance herewith.

(3) In the event that a subscriber terminates basic service prior to the end of a prepaid period, the pro-rata portion of any prepaid subscriber fee which represents payment for services which are no longer to be rendered shall be refunded promptly, but in no case more than thirty (30) days after receipt of the request for termination.

(k) The Grantee shall not charge a converter security deposit greater than such converter's actual cost to the Grantee. Any converter security deposit collected by the Grantee shall be returned to the subscriber twenty-four (24) months after the installation of such converter or upon termination of service by the subscriber and return of such converter undamaged, with allowance for reasonable wear and tear and payment of any outstanding balance due and payable, whichever occurs first. (Ord. 180 §1, 1989; Ord. 242 §9, 1993; Ord. 316 §1, 1997)

Sec. 5-2-220. Flow-through of refunds.

If during the term of a franchise, the Grantee receives refunds of any payments made for television or radio signals, it shall without delay notify the Town, suggest a plan for flow-through of the refunds to its subscribers and retain such refunds pending order of the Town. After considering the plan submitted by the Grantee, the Board of Trustees shall order the flow-through of the refunds to the Grantee's subscribers in a fair and equitable manner. The Grantee shall then immediately flow-through the refunds to its subscribers in accordance with the order of the Board of Trustees. (Ord. 180 §1, 1989)

Sec. 5-2-230. Communication with regulatory agencies.

Copies of all petitions, applications, communications and reports submitted by the Grantee to the F.C.C., or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of a cable television system or services provided through such a system, shall be filed simultaneously with the Town. Copies of responses or any other communications from the regulatory agencies to the Grantee likewise shall be filed immediately on receipt with the Town. (Ord. 180 §1, 1989)

Sec. 5-2-240. Security for performance of franchise obligations.

(a) The Company shall file and maintain with the Town Clerk an irrevocable letter of credit (the form of the letter to be approved by the Town Attorney) in the amount of ten thousand dollars (\$10,000.00) during any construction phase (initial or extension), and two thousand five hundred dollars (\$2,500.00) at other times, to guarantee the full and faithful performance of all material terms and conditions of the franchise. The Town shall not make demand on the letter of credit without prior or contemporaneous notification to Company of the amount of and reasons for the same. Failure of the Company within fifteen (15) days thereafter to restore or replenish a letter of credit to the required amount shall be deemed a material breach of the franchise.

(b) The Board of Trustees may by ordinance increase these amounts not more frequently than once every twenty-four (24) consecutive months to reflect increases in construction and labor costs. The Company shall increase the amount of the letter of credit to comply with this Section within thirty (30) days of the effective date of any ordinance promulgating such an increase, and failure to do so shall be deemed a material breach of the franchise.

(c) The rights reserved to the Town with respect to the letter of credit are in addition to all other rights of the Town, whether reserved by this Article or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Town may have. (Ord. 242 §11, 1993; Ord. 316 §1, 1997)

Sec. 5-2-250. Construction approved; inspection; correction of defects; breach or default.

(a) Except for individual service drops, the Grantee shall not, within the Town, run any line or make any attachment, nor shall any construction of any kind be commenced, without the prior approval of the Town. Such approval shall not be unreasonably withheld and action shall be taken on any request for approval within three (3) business days of receipt of the request or it shall be deemed granted. The Grantee shall be able to make emergency repairs as needed. The Town shall have and maintain the right to inspect the construction, operation and maintenance of the system by the Grantee to insure the proper performance of the terms of this Article.

(b) In the event the Grantee should violate any of the terms of this Article or any federal, state or local law or regulation, any of the rules and regulations as may hereafter be from time to time lawfully adopted, or any provision of the franchise agreement, the Town shall promptly give the Grantee fifteen (15) days' written notice of the violation, breach, default or noncompliance. The Grantee shall within fifteen (15) days of receipt of written notice from the Town substantially undertake and promptly correct such default, breach, violation or noncompliance and certify the same to the Town. In the event that the Grantee fails to substantially undertake such corrective action within fifteen (15) days of receipt of such written notice and promptly complete the corrective action, the Town may:

(1) Make such correction itself and charge the cost of the same to the Grantee;

(2) Secure the proceeds from any financial performance instrument posted by the Grantee or impose the sum of fifty dollars (\$50.00) per day for each day of breach or violation following the cure date that the Grantee fails to meet an agreed-upon limit for such activity or its contractual or legal obligations; and/or

(3) In the case of a material breach of this Article or the franchise agreement, declare the Grantee in default and terminate the franchise and rights granted under the franchise.

(c) Upon any termination of the franchise by the Town or the Town's refusal to renew the same pursuant to applicable federal law, the Grantee shall, within thirty (30) days of receipt of notice of termination or refusal to renew the franchise, remove its facilities and equipment and in the event that the Grantee does not remove its facilities and equipment within the time provided in this Section, the Town may do so, the removal cost to be borne in any event by the Grantee. Any enforcement action or remedy provided by this Section or this Article or by the franchise agreement shall not be deemed exclusive but shall be alternative or cumulative in nature. Notwithstanding anything to the contrary in this Article, the Town shall not impose any penalty upon the Grantee where either the violation or failure to cure the same results from *force majeure*, labor dispute, declaration of war or other hostilities, act of God or any other reason beyond the control of the Grantee. (Ord. 180 §1, 1989; Ord. 316 §1, 1997)

Sec. 5-2-260. Liquidated damages.

(a) By acceptance of a franchise granted by the Town, the Grantee understands and shall agree that failure to comply with any time and performance requirements as stipulated in this Article and the franchise agreement will result in damage to the Town, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; the franchise agreement shall include provisions for liquidated damages to be paid by the Grantee, in amounts set forth in the franchise agreement and chargeable to the security fund for the following concerns:

(1) Failure to complete system construction or reconstruction in accordance with Section 5-2-250, unless the Board of Trustees specifically approves the delay by motion or resolution, due to the occurrence of conditions beyond the Grantee's control, the Grantee shall pay to the Town one hundred dollars (\$100.00) per day for each day or part thereof the deficiency continues.

(2) Failure to provide, upon written request, data, documents, reports information, or to cooperate with the Town during an application process or CATV system review, the Grantee shall pay to the Town fifty dollars (\$50.00) per day for each day or part thereof the violation occurs or continues.

(3) Failure to test, analyze and report on the performance of the system following a written request pursuant to this Article, the Grantee shall pay to the Town one hundred dollars (\$100.00) per day for each day or part thereof that such noncompliance continues.

(4) Failure to provide in a continuing manner the types of services proposed in the accepted franchise application, unless the Board of Trustees specifically approves the Grantee a delay or change, or the Grantee has obtained modifications of its obligation under Section 625 of the Cable Communications Policy Act of 1984; the Grantee shall pay to the Town one hundred dollars (\$100.00) per day for each day or part thereof that each noncompliance continues.

(5) Any other action or nonaction by the Grantee, as agreed upon between the Town and the Grantee, and set forth in the franchise agreement. Nothing in this Section shall preclude further liquidated damages as agreed upon by parties in the franchise agreement.

(b) If the Town concludes that the Grantee is liable for liquidated damages pursuant to this Section, it shall issue to the Grantee by certified mail a notice of intention to assess liquidated damages. The notice shall set forth the basis for the assessment and shall inform the Grantee that liquidated damages will be assessed from the date of the notice unless the assessment notice is appealed for hearing before the Board of Trustees and the Board of Trustees rules: (1) that the violation has been corrected; or (2) that an extension of time or other relief should be granted. The Grantee desiring a hearing before the Board of Trustees shall send a written notice of appeal by certified mail to the Town within ten (10) days of the date on which the Town sent the notice of intention to assess liquidated damages. The hearing on the Grantee's appeal shall be within thirty (30) days of the date on which the Town sent the notice of intention to assess liquidated damages. Unless the Board of Trustees indicates to the contrary, said liquidated damages shall be assessed beginning with the date on which the Town sent the notice of the intention to assess liquidated damages and continuing thereafter until such time as the violation ceases, as determined by the Town. (Ord. 180 §1, 1989; Ord. 316 §1, 1997)

Sec. 5-2-270. Procedure for remedying franchise violations.

In the event that the Town determines that the Grantee has violated any material provision of the franchise, the Town may make a written demand upon the Grantee that it remedy such violation. If the violation is not remedied or in the process of being remedied, to the satisfaction of the Town within thirty (30) days following such demands, the Town shall determine whether or not such violation by the Grantee was excusable or inexcusable, in accordance with the following procedure:

(1) An administrative hearing shall be held to review the alleged violation. If this hearing does not result in a satisfactory resolution, and/or the Grantee requests a public hearing, then a public hearing shall be held, and the Grantee shall be provided with an opportunity to be heard upon thirty (30) days' written notice to the Grantee of the time and place of the hearing provided and the allegations of franchise violations.

(2) If, after notice is given and, at the Grantee's option, a full public proceeding is held, the Town determines that such violation by the Grantee was excusable, the Town shall direct the Grantee to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as the Town may reasonably direct.

(3) If, after notice is given and, at the Grantee's option, a full public proceeding is held, the Town determines that such violation by the Grantee was inexcusable, then the Town may impose a remedy in accordance with Section 5-2-260.

(4) Any hearing held may be conducted either by the Board of Trustees or, at the sole discretion of the Board of Trustees, by a hearing officer appointed by the Board of Trustees to conduct the hearing. Any such hearing officer shall be an attorney licensed to practice under the laws of the State.

(5) The cost of providing quarters for the hearing, compensation for the hearing officer, if any, and the per diem cost of any reporter retained to record the proceedings shall be borne by the Town. The costs incurred by the parties for attorney's fees, expert witness fees and other expenses shall be borne solely by the party incurring the costs.

(6) All witnesses testifying at any hearing held pursuant to this Section shall be sworn witnesses and shall be subject to direct and cross-examination. However, formal rules of evidence applicable to the trial of civil and criminal proceedings in the trial courts of the State shall not be applicable to the hearing. The provisions of the State Administrative Procedures Act, Sections 24-4-101 to 24-4-108, C.R.S., or any successor legislative enactment, shall not be applicable to any such hearing. The hearing may be continued from time to time.

(7) If the hearing is conducted by a hearing officer, the officer shall, upon conclusion of the hearing, prepare a recommended decision which includes findings of fact and conclusions. The recommended decision shall be filed with the Town Clerk and mailed to the parties not later than thirty (30) calendar days after the conclusion of the hearing. Upon receipt of such a recommended decision, the Board of Trustees may, without a hearing except as otherwise required below, either:

a. Adopt the recommended decision, including findings of fact and conclusions submitted by the hearing officer;

b. Adopt the findings of fact and conclusions contained in the recommended decision, modify the decision and adopt the recommended decision as so revised;

c. Based upon the record of the hearing, modify the findings of fact, conclusions or decisions, and adopt the recommended decision as so revised; or

d. Reject the recommended decision and conduct a new hearing.

(8) If the hearing is conducted by the Board of Trustees, upon conclusion of the hearing, the Board of Trustees shall adopt a decision which includes findings of fact and conclusions.

(9) If the decision by the Board of Trustees is that there are grounds for termination of the franchise and that the franchise shall be terminated, the Board of Trustees may adopt a resolution which terminates the franchise and includes its decision. The effective date of termination shall be such date as is prescribed by the Board of Trustees, within its sole discretion, in the resolution. (Ord. 180 §1, 1989; Ord. 316 §1, 1997)

Sec. 5-2-280. Alternative remedies.

No provision of this Article shall be deemed to bar the right of the Town to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Article nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Town to recover monetary damages (except where liquidated damages are otherwise prescribed) for such violation by the Grantee or judicial enforcement of the Grantee's obligation by means of specific performance, injunction, relief, mandate or any other judicial remedy at law or in equity. (Ord. 180 §1, 1989; Ord. 316 §1, 1997)

Sec. 5-2-290. Nonenforcement.

The Grantee shall not be relieved of any obligation to comply with any of the provisions of the franchise or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the Town or its officers, agents or employees to enforce prompt compliance. (Ord. 180 §1, 1989)

Sec. 5-2-300. Indemnification by grantee.

(a) Each Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the Town, and in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damages or otherwise:

(1) For actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of the Grantee or its officers, agents, employees or contractors;

(2) Arising out of or alleged to arise out of any claim for damages for invasion of the right of privacy, for defamation of any person for civil rights or antitrust violations for the violation, or

infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person; and

(3) Arising out of or alleged to arise out of the Grantee's failure to comply with the provisions of any statute, regulation or ordinance of the United States, the State or any local agency applicable to the Grantee in its business.

(b) Each Grantee shall maintain throughout the term of the franchise and furnish the Town with proper evidence of liability insurance coverage with an approved company insuring both the Grantee and the Town against all claims, demands for losses for injury to persons or damage to property resulting from or connected with the construction, operation or maintenance of the CATV system and business within the Town. Such liability insurance shall have minimum amounts of four hundred thousand dollars (\$400,000.00) for property damage to any one (1) person; one million dollars (\$1,000,000.00) for property damage in any one (1) accident; one hundred fifty thousand dollars (\$150,000.00) for personal injury to any one (1) person; and six hundred thousand dollars (\$600,000.00) for personal injury in any one (1) accident. Where there is a question of coverage, this insurance shall be the primary insurance.

(c) Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at the Grantee's sole expense. Such participation shall not under any circumstances relieve the Grantee from its duty of defense against liability or of paying any judgment entered against such party. (Ord. 180 §1, 1989; Ord. 241 §13, 1993; Ord. 316 §1, 1997)

Sec. 5-2-310. Reservation of rights.

(a) The Grantee shall have a continuing duty to take advantage of any new developments in the field of transmission of television and radio signals which would enable it more efficiently and economically to serve its subscribers and at all time to provide a CATV system which shall be no less advanced than any other system of comparable size, excepting only systems which are experimental, pilot or demonstration systems. The Town's policy is and shall be that all CATV systems within its jurisdiction shall, to the extent practicable, maintain the current state of the art. To this end, the Town may review the technology available at the end of each five (5) years of the franchise and may amend the franchise when, in the opinion of the Board of Trustees, such amendment is necessary to facilitate or promote the adoption of new developments in the industry.

(b) The Town further reserves the right and power to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this Article. Such additional regulations may be promulgated by resolution of the Board of Trustees.

(c) The Grantee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, handicap, sex or income. (Ord. 180 §1, 1989; Ord. 316 §1, 1997)

Sec. 5-2-320. Property Damage and System Maintenance Fund.

(a) The Grantee shall, before the Grantee starts home installation phase, deliver to the Town one thousand five hundred dollars (\$1,500.00) to be deposited in the Mead Cable Property Damage and System Maintenance Fund. Said fund is to be used in the sole discretion of the Town for settlement of minor unresolved claims against the Grantee for damage to private property, including but not limited to shrubs, trees, fences, etc., and in the correction of system maintenance problems unresolved by the Grantee. The Grantee shall restore this cash fund to the one-thousand-five-hundred-dollar amount within forty-eight (48) hours after notification that the Town has drawn from the fund for a claim settlement. Interest earnings on this cash fund shall be returned to the Grantee annually.

(b) During the initial construction of the system, the Company shall monthly publish notice of the availability of the "Town of Mead Cable Property Damage and System Maintenance Fund" in three (3) designated locations in the Town. The notice shall give the procedure to be followed by a resident in making a claim against the fund. Following the initial construction of the system, the Company shall publish a similar notice not less than annually.

(c) Notwithstanding the above provisions of this Section, the Board of Trustees may, in its sole discretion, waive the Property Damage and System Maintenance Fund requirement or reduce the required amount thereof if performance by the Grantee, its successors or assigns, in the sole opinion of the Board of Trustees, has been satisfactory.

(d) The procedure for utilization of the fund for restoration of private property damage shall be as follows:

(1) If a property owner has been unable to resolve settlement of a property damage claim against the Grantee within fourteen (14) calendar days, he or she may request resolution by the Town Engineer.

(2) The Town Engineer shall investigate the claim and notify the Grantee of his or her findings in writing.

(3) If, after fourteen (14) calendar days from notification by the Town Engineer, the Grantee has still not resolved the claim, the Town Engineer may draw from the fund and make payment to the claimant in an amount as deemed equitable by him or her up to the amount of five hundred dollars (\$500.00).

(e) The procedure for utilization of the fund for restoration of unresolved system maintenance problems shall be as follows:

(1) When unresolved system maintenance problems come to the attention of the Mead Cable Commission, the Commission shall meet with the Grantee to discuss the problem and determine a course of action to be taken by the Grantee to correct the problem. The Commission may set a time schedule for the activities involved in the problem correction.

(2) If the Grantee is unresponsive to the system repair schedule established by the Commission, or the system malfunction continues beyond the date established for system restoration, the Commission shall have the authority to employ the services of technical

consultants or others qualified by training or experience to assist in the analysis and repair of any unresolved system malfunctions and to disburse the funds from the Property Damage and System Maintenance Fund necessary for this purpose. (Ord. 180 §1, 1989; Ord. 241 §14, 1993; Ord. 242 §15, 1993)

Sec. 5-2-330. Mead Cable Commission created.

The Mead Cable Commission of the Town is hereby created. (Ord. 180 §1, 1989; Ord. 316 §1, 1997)

Sec. 5-2-340. Membership.

The Mead Cable Commission shall consist of one (1) member of the Board of Trustees, four (4) members-at-large and two (2) alternates-at-large appointed by the Board of Trustees. The term of the Trustee member shall be two (2) years. The terms of appointment for the at-large-members shall be three (3) years on a staggered basis. Members must be residents of the Town at least one (1) year. Alternates serve only in the absence of one (1) or two (2) regular members. (Ord. 180 §1, 1989; Ord. 316 §1, 1997)

Sec. 5-2-350. Organization.

The Mead Cable Commission shall elect a chairman during its first meeting of each calendar year and may create and fill such other offices as it may determine. The Commission shall adopt rules for transaction of business and shall keep a record of its resolutions, transactions, findings and determinations, which shall be a public record. (Ord. 180 §1, 1989; Ord. 316 §1, 1997)

Sec. 5-2-360. Authority.

The Mead Cable Commission shall have the powers and authority concerning the application and enforcement of this Code as follows:

- (1) To advise the Board of Trustees on applications for franchises.
- (2) To advise the Board of Trustees on matters which might constitute grounds for revocation of the franchise.
- (3) To resolve disagreements among grantees and public and private users of the system, subject to appeal to the Board of Trustees.
- (4) To provide the technical oversight of the operation of the cable system to assure compliance with the requirements of this Article and any franchise granted hereunder. This shall include the authority to employ the services of technical consultants to assist in the analysis and repair of any unresolved system malfunctions and to disburse the funds from the Property Damage and System Maintenance Fund necessary for this purpose.
- (5) To coordinate the use of the public access channels by the Town, library, schools and community groups.
- (6) To determine general policy relating to the service provided subscribers and the operation

and use of public access channels, with a view to maximizing the diversity of programs and services to subscribers.

(7) To encourage the use of public access channels among the widest range of institutions, groups and individuals within the Town.

(8) To submit an annual report to the Board of Trustees, including, but not limited to, a review of any plans submitted during the year by the Grantee for development of new services and the total hours of utilization of access channels.

(9) To cooperate with other systems and supervise interconnection of systems.

(10) To maintain a knowledge of current developments in cable communications.

(11) To submit a budget request to the Town to cover expenses incurred, which may include funds to be used for the development of the use of access channels, including production grants to users and the purchase and maintenance of equipment not required to be provided by the Grantee and funds to be used as per diem expenses and such salaries for the Commission members as may be prescribed from time to time by ordinance.

(12) To audit all Grantee records required by the cable ordinance and in the Commission's discretion, require the preparation and filing of information in addition to that required herein.

(13) To conduct evaluations of the system at least every three (3) years, with the Grantee and, pursuant thereto, make recommendations to the Board of Trustees for amendments to the CATV ordinance or the franchise agreements.

(14) To employ the services of a technical consultant to assist in the analysis of any franchise under the CATV ordinance.

(15) To act on behalf or as the designee of the Board of Trustees for the purpose of proposing regulations and arbitration procedures as deemed necessary by the Board of Trustees. (Ord. 180 §1, 1989; Ord. 316 §1, 1997)

Sec. 5-2-370. Appeals.

Any appeal of the decision of the Mead Cable Commission may be made to the Board of Trustees; provided however, that such appeal is made prior to thirty (30) days following the date of the final action taken by the Commission. (Ord. 180 §1, 1989; Ord. 316 §1, 1997)

Sec. 5-2-380. Revocation and termination.

(a) On its own motion or upon complaint from any party that a material or substantial breach or violation of the franchise has occurred, the Town may initiate an investigation of the performance of the Grantee. If any such investigation is initiated, the Town shall promptly notify the Grantee of such fact and identify generally the matters under investigation. The Grantee shall on demand furnish the Town with information and documents reasonably related to the matters under investigation.

(b) If, at the conclusion of its investigation, the Board of Trustees finds probable cause to believe that the Grantee has committed a material or substantial breach or violation of the franchise, it shall specify each such breach or violation and set a hearing to consider the allegations, with notice to the Grantee not less than thirty (30) days prior to the date of hearing. Such specifications and notice shall be in writing. The Grantee and any interested parties may appear and be heard at the hearing.

(c) If after the hearing the Board of Trustees determines that the Grantee has caused or permitted any material or substantial breach or violation of the franchise through its own fault and has not cured such breach or violation within thirty (30) days (or within such longer period of time as the Board of Trustees may have fixed for cure) from the date of written notice thereof to the Grantee, the Board of Trustees may by ordinance revoke and terminate the franchise. If the breach or violation was a material misrepresentation or act of fraud or deceit committed by the Grantee, there need be no finding that the Grantee has failed to cure, it being the express intent of this Section that such misrepresentation, fraud or deceit is sufficient cause, in and of itself, for revocation and termination of the franchise.

(d) For purposes of this Section, the term *material or substantial breach or violation of the franchise* shall mean any material representation or act of fraud or deceit committed by the Grantee; a material or substantial deviation or departure from or breach of any provision of this Article or of the ordinance granting the franchise; or any material deviation or departure from any statement or representation contained in the application filed by the Grantee. (Ord. 180 §1, 1989)

Sec. 5-2-390. Noncontestability.

By accepting a franchise, the Grantee covenants and agrees that it will not at any time or in any manner or proceeding set up against the Town any claim or proceeding challenging the effectiveness or legality of this Article or of the ordinance granting the franchise as being unreasonable, arbitrary, voidable or void or that the Town did not have the power or authority to make such term or condition, and the Grantee shall be required to accept the validity of this Article and the ordinance granting the franchise. (Ord. 180 §1, 1989)

Sec. 5-2-400. Notices.

All notices from the Grantee to the Town required by this Article or any other provision of law shall be addressed to the Town Clerk at the Town Hall. At all times during the term of this franchise, the Grantee shall maintain with the Town Clerk an address for service of all notices required by the Town to be given to the Grantee. Unless otherwise notified by the Grantee, the Town shall use the Grantee's address as set forth in its application. (Ord. 180 §1, 1989)

Sec. 5-2-410. Administrative costs of a franchise.

(a) The Grantee shall bear and be responsible for all costs incurred by the Town in the ongoing administration of franchises granted under this Article. These costs shall include, but not be limited to, professional fees billed to the Town by expert consultants; legal fees; advertising and publication charges; and the costs of elections, if any. These administrative costs are in addition to the franchise fee required by Section 5-2-70.

(b) Throughout the term of a franchise, the Town shall maintain an account of all expenses incurred, including but not limited to professional fees billed to the Town by expert consultants; legal fees; advertising and publication charges; and the costs of elections.

(c) The Town shall bill the franchisee monthly for all expenses incurred related to the administration of the franchise. The amount billed to the franchisee shall include but not be limited to professional fees billed to the Town by expert consultants; legal fees; advertising and publication charges; and the costs of elections.

(d) The franchisee shall pay to the Town all such expenses incurred within thirty (30) days of the mailing of the bill, unless the franchisee protests the reasonableness of the costs in the manner set forth in Subsection (e) below. Failure to pay shall constitute a material breach of the terms of the franchise and the Town may proceed to remedy the violation as provided by Section 5-2-270.

(e) If the franchisee disputes the reasonableness of the charges, it may seek review of the assessment by filing a protest with the Board of Trustees within thirty (30) days of the mailing of the bill. The protest shall state the grounds on which the protest is based. Appeals shall be conducted as provided in Section 5-2-370.

(f) Notwithstanding any of the remedies contained herein, the Town Attorney, acting on behalf of the Board of Trustees, may institute appropriate action in a court of competent jurisdiction to recover reasonable expenses incurred by the Town in administering the franchise, including but not limited to professional fees billed to the Town by expert consultants; legal fees; advertising and publication charges; the costs of elections; and court costs. (Ord. 180 §1, 1989; Ord. 241 §§15, 16, 17, 18, 1993; Ord. 316 §1, 1997)

Sec. 5-2-420. Renewal.

The franchise granted pursuant to this Article may be renewed by the Town for a period not to exceed ten (10) years if, upon a review of the Company's performance during the initial term, it is determined that such a renewal would be in the Town's best interests. Renewal of the franchise shall be in accordance with Title VI, Section 626, of the (Federal) Communications Act of 1934, as amended and Section 5-2-120. (Ord. 242 §17, 1993; Ord. 316 §1, 1997)

Division 2 Grant of Franchise

Sec. 5-2-510. Franchise.

There is hereby granted a nonexclusive franchise to K2 Communications, 1447 Lombardi Street, Erie, Colorado 80516, to construct and operate a CATV system within the corporate boundaries of the Town in accordance with that Multi-channel Video Programming Distribution System Franchise Agreement duly negotiated and agreed and hereby approved by this reference thereto. (Ord. 529 §1, 2005)

Sec. 5-2-520. Use of public streets and rights-of-way.

K2 Communications shall have the right under the terms of the franchise to the reasonable use of public streets and rights-of-way to construct, operate, maintain, reconstruct, rebuild and upgrade a CATV system subject to the terms and conditions set forth in the Agreement. (Ord. 529 §2, 2005)

Sec. 5-2-530. Franchise fee.

In exchange for the privileges granted K2 Communications by this franchise, K2 Communications shall pay to the Town the sum of five percent (5%) of its gross revenues derived from its operations within the Town, said sum to be subject to future modification in accordance with the terms and conditions of the Agreement. Payments shall be made semi-annually as provided in the Agreement. (Ord. 529 §3, 2005)

Sec. 5-2-540. Term of franchise.

The term of this franchise shall be for ten (10) years from the effective date of the ordinance codified herein and/or acceptance of the Franchise by K2 Communications, whichever occurs later, and is subject to renewal in accordance with the provisions of the Agreement. Upon the sale, transfer or merger of K2 Communications with any other entity, a new franchise agreement shall be negotiated. (Ord. 529 §4, 2005)

Sec. 5-2-550. Effective date.

The effective date of this franchise is May 23, 2005. (Ord. 529 §5, 2005)

ARTICLE III**Electric Franchise****Sec. 5-3-10. Definitions.**

In this Article, unless the context otherwise requires, the following words and phrases have the meanings indicated:

Certificated area means that area authorized by the PUC to be served by the Company.

Company means United Power, Inc.

Consideration means the franchise fee established in Section 5-3-40, and any other provision of significant financial benefit to the Town or the Company.

Electric distribution facilities means that portion of the Company's electric system that delivers electric energy from the substation breaker to the point of delivery of the consumer, including all devices connected to that system.

Facilities means facilities necessary or actually used to provide electric energy to, within and through the Town and includes plants, works, systems, substations, transmission and distribution

structures, equipment, conduit, transformers, pipes, meters, underground lines, wires, cables and poles.

Public place means any street, alley, viaduct, bridge, road, lane, highway or public right-of-way that is deeded or dedicated to or otherwise available for use by the Town.

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

Residents means and includes all persons, businesses, industries, governments or governmental agencies, and other entities located, in whole or in part, within the Town that are or may be served by the Company under this Article.

Revenue means all money that the Company, its affiliates, subsidiaries or parent derives directly or indirectly from the operation of the electrical franchise in the Town. Sources of revenue shall include but not be limited to the following:

- a. Sale of electricity and the use of its facilities to transport electricity through the Town, less adjustments for refunds, uncollectible accounts, corrections and other regulatory adjustments.
- b. The use of Company facilities by others.

Street means any street, alley, viaduct, bridge, road, lane, highway or public right-of-way that is deeded or dedicated to or otherwise available for use by the Town.

Work means and includes all work done by the Company in the Town, including excavations, installation, construction, repair, maintenance, renovation, removal and replacement of facilities. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

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

The Town hereby grants the Company a nonexclusive right and duty to furnish, sell and distribute electricity to its certificated area within the Town. The Town grants the Company the right to install, maintain and operate distribution facilities (34.5 kV or less) necessary to serve its certificated area within and without the Town. The Town grants the Company a nonexclusive right to make reasonable use of streets and other public places as may be necessary to carry out the terms of this franchise. (Ord. 197 §1, 1991)

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

The franchise granted hereby shall be effective from July 1, 1990, through June 30, 2010. (Ord. 197 §1, 1991)

Sec. 5-3-40. Franchise fee.

In consideration for the grant of this franchise, the Company shall pay the Town a sum equal to three percent (3%) of all revenue as defined in this Article. The franchise fee provided herein is the exclusive monetary payment by the Company to the Town for the Company's special use and

occupancy of public streets and other public places within the Town except as specifically provided in this Article. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-50. Payment schedule.

Payment of franchise fees shall be made in monthly installments not more than thirty (30) days following the close of the month in which payment is made to Company for the sale of electricity. Franchise fees due on account of payments received by the Company for use of its facilities by others shall be made within sixty (60) days of receipt of payment. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this franchise. If an error by the Company results in an underpayment of the franchise fee to the Town, the Company shall repay the balance due with interest from the date due at the rate assessed for delinquent taxes. If an error by the Company results in an overpayment of the franchise fee to the Town, credit shall be taken against the next payment or payments until the error is corrected. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-60. Access to Company records.

Upon request, the Town's authorized representative shall have reasonable access to the books of the Company for auditing or checking to insure that the franchise fee has been correctly computed and paid. (Ord. 197 §1, 1991)

Sec. 5-3-70. Change of franchise fee or other consideration.

Once each year, and upon at least thirty (30) days' written notice, the Board of Trustees may review and consider change of the franchise fee or other consideration paid the Town under this Article. The Town may change the franchise fee or consideration to the equivalent paid by the Company to any city and town in the State in which the Company supplies electricity under franchise. The Company shall report to the Town within sixty (60) days the execution or change of any franchise under which a municipality receives greater consideration than provided herein. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-80. Franchise fee is not payment in lieu of taxes.

So long as the Company performs its obligations under this Article, the Company will be exempt from payment of any license fees or charges to the Town, but payment of the franchise fee by the Company does not exempt the Company from any lawful taxation upon its property, from sales and use taxes, excavation permit fees, building permit charges and from fees and charges for excavating for construction of underground facilities that are uniform and generally applicable to contractors performing similar work. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-90. Contract obligation.

This franchise constitutes a binding contract between the Company and Town. If the franchise fee specified in this Article is declared illegal, unconstitutional or void for any reason, by any court or proper authority, the Company is contractually bound to pay the Town the amount that would have been paid as a franchise fee at the same times and in the same manner as provided for the franchise fee. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-100. Supply of electricity.

The Company shall make available an adequate supply of electricity to provide service throughout the Town when needed by customers and potential customers. The Company shall supply electricity at the lowest reasonable cost consistent with its long-term reliable supplies. If the supply of electricity is limited or interrupted, the Company shall immediately take all necessary actions to restore the supply as soon as possible. (Ord. 197 §1, 1991)

Sec. 5-3-110. Obligations regarding Company facilities.

(a) Work. All work by the Company shall be done:

- (1) In a good workmanlike manner;
- (2) In a timely and expeditious manner;
- (3) In a way that minimizes inconvenience to the public and individuals; and
- (4) In a cost-effective manner, which may include the use of qualified private contractors.

(b) Restoration. All public and private property and lawfully installed improvements that are disturbed by Company activities shall be restored as soon as possible by the Company at its expense, to substantially their former condition. Private improvements which overlay, enclose or limit access to Company facilities that are located in dedicated easements shall not be deemed lawfully installed.

(c) Location of facilities. The Company facilities shall not interfere with water facilities, sewer facilities or other public use of public places. Company facilities shall be installed to minimize interference with other property and improvements.

(d) Repair of damage. The Company shall promptly repair all damage caused by Company activities or facilities. If such damage poses a threat to health, safety or welfare of the public or individuals, the Town may cause repairs to be made at the Company's expense unless the Company makes such repairs promptly upon the Town's request.

(e) Inspection. All work is subject to inspection by the Town for its performance in accordance with applicable codes, rules and regulations. The Company shall promptly complete reasonable remedial action required by the Town pursuant to said inspection.

(f) Quality. The Company's facilities will be of sufficient capacity, quality, durability and redundancy to provide adequate and efficient electric service to the Town and its residents. In particular, the Company shall maintain a loop or two (2) source feeds into the Town. The Company shall keep its facilities in good working order. The Company will require warranties customary for the industry from its third-party suppliers of transformers and other major equipment incorporated into the Company's facilities and shall fully enforce any such warranty. Nothing herein shall be construed to provide rights to third parties. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-120. Relocation of Company facilities.

Any relocation of the Company's facilities in any public place required, caused or occasioned by any Town project shall be at the cost of the Company. Relocation shall be completed within one hundred twenty (120) days or a reasonable time from the date when the Town makes its request, such time to be established by the Company as soon as possible after the Town's request. The Company shall be granted an extension of time of completion equivalent to any delay caused by conditions not under its control, provided that the Company proceeds with due diligence at all times. Underground facilities shall be relocated underground. Above-ground facilities shall be relocated above ground unless the Town agrees to either pay the additional cost of undergrounding or requests that such additional cost be paid out of available funds under Section 5-3-270. Following relocation, all property shall be restored to its former condition by the Company at its expense. Nothing herein shall be construed to impose any obligation upon the Town to make any payment for relocation of the Company's facilities. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-130. Service to new areas.

If during the term of this franchise the boundaries of the Town are expanded within the Company's certificated service area, the Company shall extend service to residents of the newly annexed area as soon as possible, subject to the payment provisions of the Company's extension policy. Such services shall be according to all terms of this franchise, including the payment of franchise fees. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-140. Town not required to advance funds.

Upon receipt of the Town's authorization for construction, the Company shall extend its facilities to provide electric service for municipal uses within or outside the Town. The Town shall not be required to advance funds before construction. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-150. Technological improvements.

The Company shall use its best efforts to introduce and install, when practicable, technological advances in its equipment and services within the Town. Upon request by the Town, the Company shall promptly review and report advances that have occurred in the electric utility industry and report whether it believes it appropriate to incorporate such advances into its Company operations. (Ord. 197 §1, 1991)

Sec. 5-3-160. Joint use of Company facilities.

So long as the use does not unreasonably interfere with the Company's electric distribution system or create an unreasonable safety hazard, the Company shall permit use of Company facilities by holders of Town franchises for franchise purposes. The Company may charge a reasonable fee for this use. The Company shall assume no liability, nor shall it be put to any additional expense in connection with the use of its facilities by others. (Ord. 197 §1, 1991)

Sec. 5-3-170. Town use of facilities.

So long as the use does not unreasonably interfere with the Company's electric distribution system or create an unreasonable hazard, the Town shall be permitted to make reasonable, governmental use of any electric distribution facility of the Company without compensation to the Company except for payment of any costs or expenses made necessary by such use. Use by the Town may include, by way of explanation but not by way of limitation, the attachment of traffic control signs, fire alarm or police signal systems. The Town shall not transport electric energy or use Company facilities for any nongovernmental purpose without the written consent of Company and prior agreement with the Company for the consideration to be paid it. (Ord. 197 §1, 1991)

Sec. 5-3-180. Underground conduit.

If the Company installs a new underground conduit or opens a trench or replaces conduit or cable, the Company shall provide adequate advance notice to permit installation of similar conduit for the Town. If the Town wants additional similar conduit installed, it will notify the Company and provide the conduit that will be installed by the Company without further expense to the Town. (Ord. 197 §1, 1991)

Sec. 5-3-190. Use of Company right-of-way facilities.

So long as the use does not interfere with the Company's use of the transmission right-of-way, the Company will permit the Town use of the Company's transmission right-of-way within the Town for the purposes set forth in the Park and Open Space Act of 1984. Any such use or any improvements by the Town shall be made at its expense. (Ord. 197 §1, 1991)

Sec. 5-3-200. Town regulation.

The Town expressly reserves, and the Company expressly recognizes, the Town's right to adopt such lawful ordinances, rules and regulations as it may deem necessary for the protection of the health, safety and welfare of its residents and their property in the exercise of its police and other powers. In the event of any inconsistency between this Article and any other ordinance, rule or regulation, this Article shall control. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-210. Compliance with Town requirements.

The Company will comply with all lawful Town ordinances, rules and regulations and shall obtain all required permits. The Company shall comply with all Town requirements regarding placement of lighting, street lighting, curb cuts, excavating, digging, backfilling, patching, restoration and related construction activities. (Ord. 197 §1, 1991)

Sec. 5-3-220. Town review of construction design.

Except in the case of emergencies, before construction or installation of any significant above-ground electric transmission facilities, any building, any substation or any similar structures within the Town, the Company shall furnish the Town with plans for the facilities. In addition, the Company shall assess and report on the impact of the proposed construction on the Town environment. Such plans and reports shall be reviewed by the Town to ensure, *inter alia*: (1) that all applicable laws are

observed; (2) that aesthetic and good planning principles have been given due consideration; and (3) that adverse impact is minimized. The Company shall incorporate into its construction plans all reasonable changes requested by the Town. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-230. Compliance with PUC regulations.

The electricity that the Company distributes shall conform with the standards promulgated by the PUC in the Rules Regulating the Services of Gas and Electric Utilities and with the Company tariff provision as they may be amended from time to time. The Town shall have access to all records of the Company monitoring compliance with such PUC standards. Before final adoption by the Town of the ordinance codified herein, the Company shall file with the PUC such amendments to its tariffs as may be necessary to make its tariff provisions compatible with the provisions of this Article, and shall report to the Town any changes that are made for this purpose. The Company shall use its best efforts to assure the Town during the term of this franchise that the tariffs of the Company shall not conflict with any of the provisions of this Article. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-240. Compliance with air and water pollution laws.

The Company shall use its best efforts to meet the standards required by applicable air and water pollution laws. Upon the Town's request, the Company shall provide the Town with a status report of such measures. (Ord. 197 §1, 1991)

Sec. 5-3-250. Inspection.

The Town shall have the right to inspect at all reasonable times, and upon obtaining proper clearance for any secured areas, any portion of the Company's facilities used to serve the Town and its residents. The Town shall have access to Company records for the purpose of determining Company compliance with this Article. The Company agrees to cooperate fully with the Town in the inspection of the Company's facilities or records and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-260. Underground electrical distribution facilities.

The Company shall place newly constructed electrical distribution facilities underground in accordance with this Code and the Company's tariffs. The Company is not required to install facilities unless the charges provided in its tariffs have been paid. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-270. Overhead conversion at expense of Company.

(a) As and when requested by the Town, the Company will spend one percent (1%) of the preceding calendar year's electric gross revenues from the Town to move electric distribution facilities located in public places underground, provided that the undergrounding extends for a minimum distance of one (1) block or seven hundred fifty (750) feet, whichever is less.

(b) Any unexpended portion of the one percent (1%) shall be carried over to succeeding years for conversion to underground. In addition, upon request by the Town, the Company shall advance amounts anticipated to be available for the next three (3) succeeding years to be expended for such

conversion. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated. No relocation expenses that the Company is required to expend pursuant to Section 5-3-120 shall be charged to this allocation.

(c) The Town and the Company shall consult and plan together regarding projects to be financed under this Section. The final decision on which projects are selected rests with the Town. The specific scheduling of projects rests with the Company, which shall make every reasonable effort to complete such projects within the time requested by the Town. In no event shall any overhead conversion expense be charged against the one-percent fund herein provided for unless the project has been approved by the Town.

(d) If the PUC authorizes a system-wide program or programs of undergrounding electricity distribution facilities, the Company will allocate to the program of undergrounding in the Town such amount as authorized by the PUC, but never less than one percent (1%) of annual electricity revenues.

(e) When undertaking a project of undergrounding, the Town and the Company shall work with other utilities or companies that have their lines overhead to have all lines placed underground as part of the same project. When other utilities or companies are placing their lines underground, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where feasible. The Company shall coordinate its installation of new underground facilities with existing underground facilities of other companies. In each instance, each utility and company shall pay its appropriate share of the costs.

(f) In addition to the provisions of this Section, the Town may require additional facilities to be moved underground at the Town's expense. (Ord. 197 §1, 1991)

Sec. 5-3-280. Planning, coordination and reports.

(a) General. The Company shall keep the Town informed about existing and planned system capacity, construction and other activities. The Company shall submit, in advance, reports of long-term planning for capital improvement projects and descriptions of planned curb and street cut and other work. The Town shall keep the Company informed about existing and planned development, construction and other activities. All work shall be coordinated with the Town's public improvement projects.

(b) Emergencies. If there is an emergency affecting Company operations or service within the Town, the Company shall maintain ongoing communication with the Town about the nature of the problem and its anticipated duration and resolution. The Company shall develop and keep up to date and on file with the Town a mutually agreeable plan to simplify such communication. The Company shall have recorded with the Town a twenty-four-hour telephone number, not available to the public, which the Town government can use to obtain information in an emergency, and the Company shall use other available methods as needed to communicate with the Town. In addition, the Company shall make information available to residents about any problem and its anticipated duration and resolution.

(c) Local office. When the population of the Town reaches five thousand (5,000), the Company shall consider maintaining an office within the Town for the conduct of its business, including but not

limited to the handling of payments, service and outage complaints, dispatching of crews and emergency coordination.

(d) Reports of Company operations. The Company shall submit reasonable and necessary reports requested by the Town with respect to Company operations within the Town so long as such information can be provided at reasonable cost. Initially, the Town requests and the Company shall provide the following reports:

(1) An annual list of real property and leasehold interest in real property owned by the Company in the Town;

(2) An annual report listing the Town's accounts by type of account (e.g., electric service by location) and evaluating bill and rate classification alternatives;

(3) An annual report of the electric revenues received from residents of the Town, showing each adjustment to gross revenue;

(4) An annual report, upon the request of the Town, on electric facilities serving the Town and a current map of facilities;

(5) An annual report showing the performance standards or goals that the Company uses to monitor the quality of service provided as compared to actual performance; and

(6) Any cost of service study prepared by the Company for presentation to the PUC.

(e) Copies of tariffs, all PUC filings. The Company shall keep on file in the local office all tariffs, rules, regulations and policies approved by the PUC relating to service by the Company to the Town and its residents. Upon request by the Town, the Company shall provide the Town with copies of such documents and of filings that it makes with the PUC. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-290. Indemnification.

The Company agrees to indemnify and hold the Town, its officers and employees harmless from and against all liability, claims and demands, on account of injury, loss or damage of any kind whatsoever which arise out of or are in any manner connected with this franchise, if such injury, loss or damage is caused or is claimed to be caused, in whole or in part, by the act, omission, negligence or other fault of the Company, its subcontractors, officers, employees, agents or representatives; provided, however, that this indemnification shall not apply to claims based in whole or in part upon the alleged negligence or intentional misconduct of the Town, its officers and employees. As part of such indemnification, the Company will defend against such claims at its expense, including court costs and reasonable attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent unless the Town, its officers or employees participated in such groundless, false or fraudulent claims. (Ord. 197 §1, 1991)

Sec. 5-3-300. Transfer of franchise; consent of Town required.

The Company shall not sell, transfer or assign any right under this franchise to another entity without the Board of Trustees' written approval, which shall not be unreasonably withheld. In the

event of a sale, transfer or assignment of rights under this franchise, the transferee shall promptly pay to the Town a transfer fee equal to the greater of five thousand dollars (\$5,000.00) or an amount determined by multiplying seven hundred thousand dollars (\$700,000.00) times a fraction of which the then Town population is the numerator and the then Denver population is the denominator. Such fee is deemed reasonable. (Ord. 197 §1, 1991)

Sec. 5-3-310. Town's right to purchase or condemn.

The right of the Town to construct, purchase or condemn utility facilities and the rights of the Company in connection therewith, as provided by the State Constitution, state statutes and Town ordinances, is expressly recognized. (Ord. 197 §1, 1991)

Sec. 5-3-320. Negotiations and condemnation.

No value shall be given to the rights granted under this Article. If the Town desires to purchase the electric system, the parties shall negotiate in good faith to decide a mutually acceptable purchase price. If the Town and the Company cannot agree within ninety (90) days, the Town may commence condemnation proceedings. (Ord. 197 §1, 1991)

Sec. 5-3-330. Continued cooperation by Company.

If the Town purchases or condemns, the Company shall continue service, in whole or in part, at the Town's request, for the duration of this franchise pursuant to terms and conditions negotiated for such continued operation. The Company shall take no action that could inhibit the Town's ability to use the acquired system effectively or efficiently. At the Town's request, the Company shall supply electricity for use by the Town in the Town system. (Ord. 197 §1, 1991)

Sec. 5-3-340. Right of first purchase.

Whenever the Company proposes to sell or dispose of any of its real property (but not including electric facilities) located within the Town, it shall grant to the Town the right of first purchase of same. The Company shall obtain a qualified appraisal on any such property, and the Town shall have sixty (60) days in which to exercise the right of first purchase by giving written notice to the Company. If the Town does not give the required written notice, the Company may negotiate with others for the sale of the property; provided that the Company may not sell such property for an amount less than ninety-five percent (95%) of the appraised value without first providing the Town an opportunity to purchase such property at such lesser price, in which event the Town must notify the Company in writing within thirty (30) days if it wishes to purchase such property. It is understood that nothing in this Section shall preclude the Company from transferring real property to a subsidiary or affiliate without first according the Town the rights described above; provided that if the transferee proposes to sell or dispose of the property within one (1) year, it shall not do so without first affording the Town the rights described above. (Ord. 197 §1, 1991)

Sec. 5-3-350. Limitations of Company removal.

If this franchise is not renewed or is forfeited, or the Company terminates any service provided for herein for any reason, and the Town has not provided for service, the Company shall not remove the electric system pending resolution of their disposition. The Company will not withhold any

temporary services necessary to protect the public and in such event shall be entitled only to monetary compensation in no greater amount than it would have been entitled were such services provided during the term of this franchise. (Ord. 197 §1, 1991)

Sec. 5-3-360. Forfeiture.

Both the Company and the Town recognize there may be circumstances by which compliance with this Article is impossible or delayed. In those instances, the Company shall use its best efforts to comply in a timely manner and to the extent possible. If the Company fails to do any of its obligations under this Article, the Board of Trustees may decide after public hearing with notice to the Company whether such failure is of a substantial nature. Upon receiving notice of the determination, the Company shall have a reasonable time, not to exceed six (6) months, in which to remedy the violations, unless the parties otherwise agree in writing. If after such time corrective actions have not been taken, the Board of Trustees may declare the franchise forfeited. This shall not limit or restrict any other rights or remedies available to the Town at law or in equity. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-370. Company to purchase electricity.

The Town reserves the right to produce electricity. If requested by the Town, the Company agrees to purchase Town-generated electricity pursuant to the Company's tariffs and to transport electricity made available for sale on terms and conditions comparable to other contracts being negotiated contemporaneously by the Company. Payment for generated power and energy shall be guaranteed over the term of the purchase contract. (Ord. 197 §1, 1991)

Sec. 5-3-380. Interconnection.

To facilitate the purchase of Town-generated power and energy, at the Town's request and expense, the Company shall interconnect with all Town-owned generation sources and facilities. The Company shall construct, own and maintain the interconnection or any upgrade of the Company's existing interconnection facilities. (Ord. 197 §1, 1991)

Sec. 5-3-390. Curtailment.

The Company shall not curtail contractual purchase of Town-generated power and energy except in emergency situations. (Ord. 197 §1, 1991)

Sec. 5-3-400. Annexations to the Town.

When any property owned by the Company becomes eligible for voluntary annexation to the Town, the Company will take whatever action is necessary to annex that property, upon request by the Town. No condition of annexation shall impair the Company's ownership of its property or its use of its land for utility purposes. Except as herein provided, the Company shall comply with all terms and conditions imposed upon the annexation by the Town that are no more stringent than those generally imposed upon property owners seeking annexation of their land to the Town. (Ord. 197 §1, 1991)

Sec. 5-3-410. Amendments.

If the Board of Trustees or the Company proposes amendments hereto, both parties will negotiate within a reasonable time in good faith to agree on mutually satisfactory amendments. As used in this Section amendment does not include a change authorized in Section 5-3-70. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-420. Successors and assigns.

The provisions of this Article shall inure to the benefit of and be binding upon successors and assigns of the Town and of the Company. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-430. Representatives.

Each party shall have a representative to whom notices shall be sent regarding this franchise. Initially, the Town's representative shall be the Town Clerk and the Company's representative shall be the general manager. Notices, including notice of any change of representative, shall be in writing and forwarded by certified mail or hand delivery to the designated representative. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-440. No waiver.

Neither the Town nor the Company shall be excused from complying with any provision of this Article by any failure of the other to insist upon or to seek compliance with such provisions. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

Sec. 5-3-450. Breach of contract; legal remedies.

If either party fails to fulfill any substantial obligations under this Article, the other will have a breach of contract claim against the defaulting party, in addition to any other remedy provided by law. (Ord. 197 §1, 1991; Ord. 316 §1, 1997)

ARTICLE IV**Gas Franchise****Sec. 5-4-10. Short title.**

This Article shall be known and may be cited as the "Kinder Morgan, Inc. Franchise Ordinance." (Ord. 484 §1, 2004)

Sec. 5-4-20. Definitions.

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

Company is Kinder Morgan, Inc., the grantee of rights under this franchise.

Person is any person, firm, partnership, association, corporation, company or organization of

any kind.

Town is the Town of Mead, Weld, County, Colorado, the grantor of rights under this franchise.

Trustees is the Board of Trustees of the Town of Mead, Colorado. (Ord. 484 §2, 2004)

Sec. 5-4-30. Grant of franchise.

There is hereby granted to the Company the right, privilege and authority to locate, build, construct, acquire, purchase, extend, maintain and operate, into, within and through said Town, a plant or plants and works for the purchase, manufacture, transmission and distribution of gas, either natural, artificial or mixed, with the right and privilege for the period and upon the terms and conditions hereinafter specified to furnish, sell and distribute gas to the Town and the inhabitants thereof, for heating, cooking or other purposes, by means of pipes, mains or otherwise, over, under, along, across and through any and all streets, alleys, viaducts, bridges, roads, lanes and gas easements in said Town and over, under, along, across and through any extension, connection with or continuation of the same and/or over, under, along, across and through any and all such new streets, alleys, viaducts, bridges, roads, lanes and other public ways and places as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of said Town. The rights and authority granted by this franchise are not exclusive and shall not be deemed to be granted exclusively to the Company, and the Town reserves the right to make or grant a similar franchise to any other person, firm or corporation as permitted by law. (Ord. 484 §3, 2004)

Sec. 5-4-40. Grant of authority.

The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all streets, alleys, viaducts, bridges, roads, lanes and other public ways and places under the supervision of the properly constituted authority for the purpose of bringing gas into, within and through the Town, and supplying gas to said Town and the inhabitants thereof and in the territory adjacent thereto; provided, however, that the Company shall so locate its plants, works, transmission and distribution structures, equipment, mains and pipes within the Town in a manner to meet with the approval of the Town and, further, in locating said facilities shall do so in such manner as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of said streets, alleys or other public ways and places. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved streets, roads or alleys, or any other public or private improvement, the Company shall repair, at its own expense in a workmanlike manner subject to the approval by the Town, such sidewalk, graveled or paved street, road, alley or other improvement after the installation of its pipes or other structures. The Company shall use due care not to interfere with or damage any water mains, sewers or other structures now in place or which may hereafter be placed in said streets, alleys or other public places, and the Company shall, at its own expense, repair in a workmanlike manner subject to the approval of the Town, any such water mains, sewers or other structures which are damaged through the action of the Company; provided, however, that the Town may make such repairs and charge the reasonably incurred actual cost thereof to the Company. (Ord. 484 §4, 2004)

Sec. 5-4-50. Indemnity.

The Company shall save the Town harmless from all liability or damage and all reasonable expenses necessarily accruing against the Town arising out of the negligent exercise by the Company of the rights and privileges hereby granted; and for this purpose the Company shall maintain public liability insurance in an amount not less than one million dollars (\$1,000,000.00), and upon request shall furnish a certificate to the Town so showing; provided, however, that the Company shall have had notice of the pendency of any action against the Town arising out of such exercise by the Company of said rights and privileges and be permitted at its own expense to appear and defend, or assist in the defense of, the same. The obligation of this Section shall not extend to any liability or damage and all reasonable expenses accruing against the Company arising out of the negligence, recklessness or specific intent of the Town, its officers, employees, agents, representatives or contractors. (Ord. 484 §5, 2004)

Sec. 5-4-60. Relocation of facilities.

If at any time it shall be necessary to change the position of any gas main or service connection of the Company to permit the Town to lay, make or change sanitary or storm sewers, water mains or other Town works, such changes shall be made by the Company at the Company's expense. The Company shall bear all costs associated with relocation of any gas main or service connection to permit Town works that are caused by the alteration of street alignment, grades or pavement; provided, however, that the Town shall confer with the Company and seek the Company's input during the initial planning and engineering phase of any Town project which may require the Company to relocate its facilities in order to explore means of reducing the costs to the Company and/or the Town without materially increasing the cost of the Town project. The Town shall attempt to make reasonable efforts to mitigate the financial impact of any such project on the Company. If the Town does not confer with the Company prior to finalizing the planning and engineering of any Town project which may require the Company to relocate its facilities, such Company relocation expenses shall be paid by the Town. The Town will not oppose just and reasonable recovery of substantial costs the Company incurs in complying herewith that the Company requests from the Public Utilities Commission of the State (PUC). (Ord. 484 §6, 2004)

Sec. 5-4-70. Nonexclusivity of franchise.

This franchise and the right to use and occupy said streets, alleys and public ways and places shall not be exclusive, and the Town reserves the right to grant the use of said streets, alleys and public ways and places to any person during the period of this franchise. (Ord. 484 §7, 2004)

Sec. 5-4-80. Service standards.

(a) The Company shall maintain and operate its structures, apparatus, mains, pipes and other equipment and render efficient service in accordance with the rules and regulations of the PUC and the terms and conditions of Town codes.

(b) Maps. The Company 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 updated annually, if necessary, by filing with the Town by May 1 of

each year. If the Company fails to keep such map current and provide the required information, the Town can cause such mapping work to be done and charge all costs thereof to the Company.

(c) Before commencement of installation of pipes in Town streets and alleys, the Company 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 Company shall submit a construction plan indicating 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 by the Town. (Ord. 484 §8, 2004)

Sec. 5-4-90. 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 Company because of depletion of such supply, the Company shall take all reasonable steps to obtain an additional natural gas supply from other sources to be delivered to the Company and, if unable to procure same, it is hereby authorized to supply artificial or mixed gas for the unexpired term of this franchise. If the Company, within a reasonable period after failure of the supply of natural gas, shall fail to supply to its customers artificial and/or mixed gas, the franchise rights granted herein shall terminate. (Ord. 484 §9, 2004)

Sec. 5-4-100. Franchise fee.

(a) In consideration for the franchise rights granted herein, and in lieu of all occupation and license taxes, other special taxes, assessments or excises, and excavation/street cut permit or rental fees upon the facilities and operations of the Company, the Company shall pay to the Town the franchise fee to be computed as follows for all gas sold or delivered within the Town: \$0.02/ccf x volume of gas delivered to residential and commercial customers within the Town on the Company's distribution system. This fee shall be effective the first billing cycle after this franchise becomes effective.

(b) In addition to the foregoing, the Company shall pay the Town an initial lump sum franchise fee of no more than ten thousand dollars (\$10,000.00). The Company shall pay such initial franchise fee within thirty (30) days of the effective date of this franchise. The Company reserves the right to recover this initial fee from residential and commercial customers over the effective period of this franchise. The Company shall retain any collections of this initial franchise fee. The Company shall also be responsible for all publication costs related to the Town's approval of this franchise agreement in accordance with applicable regulations and shall pay all invoices relating to such publication within thirty (30) days of receipt of such invoices.

(c) Adjustment for the net write-off of uncollectible amounts and corrections of bills theretofore rendered shall be allowed. Payments of the franchise fee to the Town shall be made on or before the first day of March of each year for the previous calendar year. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this Subsection, the Town or its authorized representative shall have access to the books of said Company for the purpose of checking

the gross revenue received and volume of gas sold and delivered from operations within said Town. (Ord. 484 §10, 2004)

Sec. 5-4-110. Franchise fee payment not in lieu of other fees.

Payment of the franchise fee by the Company as accepted by the Town does not exempt the Company 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 uniform and generally applicable to all businesses alike. (Ord. 484 §11, 2004)

Sec. 5-4-120. Right to purchase.

The Town's rights and privilege of purchasing the Company's system subject to this franchise shall be governed by the laws of the State. (Ord. 484 §12, 2004)

Sec. 5-4-130. Term of franchise.

This franchise shall be in full force and effect from and after its passage, approval and publication, as by law required, upon acceptance thereof in writing by the Company, within thirty (30) days of final passage, and the terms, conditions and covenants hereof shall remain in full force and effect for a period of thirteen (13) years from and after the effective date following final passage. (Ord. 484 §13, 2004)

Sec. 5-4-140. Right to removal of facilities.

Upon the expiration of this franchise, if the Company shall not have acquired an extension or renewal thereof and accepted the same, it may have, and it is hereby granted, the right to enter upon the streets, alleys, bridges, viaducts, roads, lanes and other public places of the Town, for the purpose of removing therefrom any or all of its plants, structures, pipes, mains or equipment pertaining thereto, at any time after the Town has had ample time and opportunity to purchase, condemn or replace them. In so removing said pipes, mains or other property, the Company shall, at its own expense and in a workmanlike manner, refill any excavations that shall be made by it in the graveled or paved streets, alleys, bridges, viaducts, roads, lanes and other public places after the removal of its mains, pipes or other structures. Restoration of the Town's graveled or paved streets, alleys, bridges, viaducts, roads, lanes and other public places shall be completed in a reasonable manner to the satisfaction of the Town. (Ord. 484 §14, 2004)

Sec. 5-4-150. Assignment.

The Company may assign this franchise or the rights granted hereunder without first obtaining the written consent of the Town, except in the circumstance when the Company offers to sell or enters into a contract to sell only the system subject to this franchise; provided however, that the consent to assignment shall not be unreasonably withheld and, further, that this condition shall not be construed to restrict or prevent the issuance of bonds, debentures or other evidence of indebtedness, or the issue of additional stock, needed or useful, for the purpose of financing the system or any portion thereof. (Ord. 484 §15, 2004)

Sec. 5-4-160. Forfeiture.

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 Company shall have had an opportunity to be heard and to correct or justify the alleged breach with the Town. Upon failure of reasonable justification by the Company for such breach, or upon failure of the Company to exercise reasonable diligence to correct such condition, the Town may declare this franchise forfeited. In the event that this franchise is forfeited, then the Company agrees to continue to render service as theretofore for a period of six (6) months to give the Town time to decide upon its course of action. (Ord. 484 §16, 2004)

Sec. 5-4-170. Severability.

If any section, subsection, sentence, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion thereof. (Ord. 484 §17, 2004)

Sec. 5-4-180. Reserved rights.

The right is hereby reserved to 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, provided that such regulations shall be reasonable and not destructive of the rights and benefits herein granted, and not in conflict with the laws of the State, or with orders of other authorities having jurisdiction in the premises, except, if applicable, as permitted in the exercise of the Town's "home rule" powers granted by Article XX of the Colorado Constitution. This franchise shall be subject to all valid and effective provisions of the Municipal Code, whether enumerated herein or not. (Ord. 484 §18, 2004)

Sec. 5-4-190. Effective date.

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

(b) This franchise does not create any third-party beneficiary rights. (Ord. 484 §19, 2004)

Sec. 5-4-200. Representatives.

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

For the Town:

Town of Mead

Attn: Town Manager
P.O. Box 626
Mead, CO 80542

And to:

Richard E. Samson, Town Attorney
Samson, Pipis & Marsh, LLC
P.O. Box 1076
Longmont, CO 80502

For Kinder Morgan, Inc.:

Kinder Morgan, Inc.
Attn: Retail Services
370 Van Gordon Street
P.O. Box 281304
Lakewood, CO 80228-8304

(Ord. 484 §20, 2004)

Sec. 5-4-210. Attorney fees.

In the event that either party finds it necessary to retain an attorney in connection with a default by the other as to any of the provisions contained in this franchise, the defaulting party shall pay the other's reasonable attorney's fees and costs incurred in enforcing the provisions of this franchise. (Ord. 484 §21, 2004)

ARTICLE V

Telephone Utility Tax

Sec. 5-5-10. Levy of tax.

There is hereby levied on and against each telephone utility company operating within the Town, a tax on the occupation and business of maintaining a telephone exchange service to the inhabitants of the Town. The amount of the tax levied hereby shall be as set forth in Section 5-5-20 herein. The Board of Trustees shall vote annually on whether the tax shall be increased. Should the Board of Trustees fail to vote on the question of whether or not the tax shall be increased, the tax shall remain at the level stated herein until subsequently amended by the Board of Trustees. (Ord. 174 §2, 1989; Ord. 316 §1, 1997)

Sec. 5-5-20. Amount of business and occupation tax.

The occupation and business tax for maintaining a telephone exchange service to the inhabitants of the Town shall be one hundred fifty dollars (\$150.00) per month. Said business and occupation tax shall be in addition to any and all other fees or taxes provided for under this Code. (Ord. 174 §2, 1989)

Sec. 5-5-30. Time of payment of tax.

The tax levied by this Article shall begin to accrue on the first day of June, 1989, and shall be paid in equal monthly installments on the last business day of each calendar month thereafter. (Ord. 174 §2, 1989)

Sec. 5-5-40. Filing statement.

On or before July 10 of each year, each telephone utility company subject to this Article shall file with the Town Clerk, in such form as the Town Clerk may require, a statement showing the total telephone accounts for which local exchange service was provided within the corporate limits of the Town on July 1. In addition to the information contained in the annual statements, the Town may request any other relevant information necessary to a determination of the appropriateness of the amount of the levy. (Ord. 174 §2, 1989)

Sec. 5-5-50. Failure to pay.

If any telephone utility company shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same, together with an addition of ten percent (10%) of the amount of taxes due as a nonpayment penalty shall be and hereby is declared to be a debt due and owing from such company to the Town. The Town Attorney, upon the direction of the Board of Trustees, shall commence any legal action necessary to recover any amount so due and owing. (Ord. 174 §2, 1989; Ord. 316 §1, 1997)

Sec. 5-5-60. Penalty clause.

If any officer, agent, manager or director of a telephone utility company which is subject to the provisions of this Article shall fail, neglect or refuse to make or file the annual statement of accounts provided in Section 5-5-40 above, said officer, agent, manager or director, shall, upon conviction thereof, be punished in accordance with Section 1-4-20 of this Code. (Ord. 174 §2, 1989; Ord. 316 §1, 1997)

Sec. 5-5-70. Inspection of records.

The Town, its officers, agents or representatives, shall have the right at all reasonable hours and times to examine the books and records of the telephone utility companies which are subject to the provisions of this Article and to make copies of the entries or contents thereof. (Ord. 174 §2, 1989)

Sec. 5-5-80. Local purpose.

The tax herein provided is upon occupations and businesses in the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this Article be construed to mean that any telephone utility company is issued a franchise by the Town. (Ord. 174 §2, 1989)

Sec. 5-5-90. Indemnification.

It is the express intent of this Article that all telephone utility companies subject to this business and occupation tax shall hold harmless and indemnify the Town from any and all actions at law arising from their operations within the Town. (Ord. 174 §2, 1989)

ARTICLE VI**Emergency Telephone Service****Sec. 5-6-10. Authorization.**

The Mayor is authorized to sign the intergovernmental agreement attached to the ordinance codified herein creating an emergency telephone service authority in order to establish and maintain an emergency telephone service system in the County to include the portions of the Town lying within the County. (Ord. 164 §1, 1987; Ord. 316 §1, 1997)

Sec. 5-6-20. Charge imposed.

There is hereby imposed, pursuant to Section 29-11-101 et seq., C.R.S., upon all telephone exchange access facilities within that portion of the Town, an emergency telephone charge in an amount not to exceed two percent (2%) of the tariff rates as approved by the Public Utilities Commission or fifty cents (\$.50), whichever is less. Upon recommendation of the Weld County Emergency Telephone Service Authority, the Board of Trustees may, by resolution, raise or lower the emergency telephone charge, but in no event shall such charge exceed the amount of two percent (2%) of the tariff as approved by the Public Utilities Commission. (Ord. 164 §2, 1987)

Sec. 5-6-30. Collection.

Telephone service suppliers providing telephone service in the Town are hereby authorized to collect the emergency telephone charge imposed by this Article in accordance with Section 29-11-101 et seq., C.R.S., and to provide those funds to the Weld Emergency Telephone Service Authority as provided in the intergovernmental agreement. (Ord. 164 §3, 1987; Ord. 316 §1, 1997)

ARTICLE VII**Secondary Water System Franchise****Sec. 5-7-10. Definitions.**

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

(b) The headings, titles and catch lines of the several sections of this agreement are intended for reference or to indicate the contents of the sections, and shall not be taken as part of the substantive agreement of the sections to which they refer.

Board of Trustees refers to the legislative body of the Town.

Company refers to the Highland Secondary Water Supply Company LLC, a Colorado limited liability company.

Distribution system, system, facility or facilities refers to those facilities reasonably necessary to provide secondary water into, within and through the Town, and to territory adjacent to the Town, including but not limited to systems, pipelines, equipment, valves, meter pits, meters and other appurtenant structures. The distribution system shall not be used, at any time for any reason, to deliver potable water.

Franchise or agreement means the nonexclusive and revocable initial authorization or renewal thereof for the construction or operation of a secondary water distribution system such as is granted by this agreement and the franchise ordinance, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, ordinance or otherwise, and subject to all limitations and restrictions contained herein.

Franchise area means the area within the jurisdictional boundaries of the Town, including any areas annexed by the Town during the term of this agreement that may contain the distribution system.

Franchise fee means any fee or assessment of any kind imposed by the franchising authority or other governmental entity on the Company or a customer of the Company, or both, solely because of their status as such. The term *franchise fee* does not include:

a. Any tax, fee, permit fee or assessment of general applicability, including any such tax, fee or assessment imposed on utilities or their services.

b. Requirements or charges incidental to the awarding or enforcing of the franchise, including but not limited to payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages.

Gross revenues means all revenue collected by the Company from the operation of the secondary water system within the franchise area. *Gross revenues* shall not include bad debt, or sales or other similar taxes, which are collected for direct pass-through to local or state government.

Initial service area. The Company shall provide a secondary water distribution system, as authorized under this franchise, within the initial service area depicted on Exhibit A to the ordinance codified herein, a copy of which is on file in the Town Clerk's office.

Secondary water refers to untreated water delivered by the Company and its successors and assigns through the distribution system, to be used for outside watering within the limits of the Town and territory adjacent thereto.

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

Town refers to the Town of Mead, Weld County, Colorado, and includes the territory currently within the Town and surrounding territory as may, in the future, be included within the boundaries of the Town. (Ord. 568 §1, 2006)

Sec. 5-7-20. Grant of franchise.

The Town hereby grants to the Company, for the term specified in Section 5-7-30 below and subject to the conditions and terms contained herein, a nonexclusive and revocable authorization to:

- (1) Make reasonable and lawful use of the public streets, alleys, easements and other public places within the franchise area to construct, install, locate, operate, maintain, reconstruct, rebuild and upgrade an underground pipeline system for the purpose of delivery of secondary water.
- (2) Sell and distribute secondary water to the Town and all persons within the franchise area.

This franchise is subject to the general police power of the Town. Nothing in this franchise shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by the Town. (Ord. 568 §2, 2006)

Sec. 5-7-30. Term.

The term of this franchise shall be twenty-five (25) years from the effective date of the agreement, unless terminated sooner as hereinafter provided. The franchise shall terminate and become null and void if the Company has not begun distribution system construction within two (2) years from the effective date of the agreement.

- (1) Effective date. The effective date of the agreement shall be thirty (30) days after the approval of the agreement by the Board of Trustees.
- (2) Franchise nonexclusive. This franchise shall be nonexclusive and subject to all prior rights, interests, easements or licenses granted by the Town, or its predecessors, to any person to use any property, right-of-way, easement, right, interest or license, for any purpose whatsoever, including the right of the Town to use the same for any purpose it deems fit, including the same or similar purposes allowed the Company hereunder.
- (3) Police powers.
 - a. The Company's rights hereunder are subject to the lawful police powers of the Town to adopt and enforce ordinances necessary to the safety, health and welfare of the public, and the Company agrees to comply with all generally applicable laws, charter provisions and ordinances enacted or hereafter enacted by the Town.
 - b. The Town reserves the right to exercise its lawful police powers, notwithstanding anything in this agreement to the contrary; and any conflict between the provisions of this franchise and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter.

(4) Initial service area. The Company shall provide a secondary water distribution system, as authorized under this agreement, within the initial service area depicted on said Exhibit A.

(5) Expansion of service area. The service area may be expanded from the initial service area as depicted in said Exhibit A, to include any areas within the Town or annexed into the Town during the term of this franchise in accordance with the distribution system extension requirements as set forth in Section 5-7-100 of this Article. (Ord. 568 §3, 2006)

Sec. 5-7-40. Franchise fee and financial controls.

(a) Franchise fee.

(1) As compensation for the benefits and privileges granted under this franchise and in consideration of permission to use the Town's streets, the Company shall pay as a franchise fee to the Town, throughout the duration of this franchise, the amount specified in Exhibit B to the ordinance codified herein and incorporated herein by this reference. Accrual of such franchise fee shall commence as of the effective date of this franchise.

(2) Any service of secondary water to subdivisions outside of the initial service area shall require an amendment to said Exhibit B to provide for the franchise fee to be paid by the Company for service to the subdivision. The Town reserves the right to review the amount of the franchise fee and adjust said fee as it determines appropriate for each new subdivision serviced by the Company under the franchise.

(b) Payments. The Company's franchise fee payments to the Town shall be computed semiannually for the periods ending December 31 and June 30. Each semiannual payment shall be due and payable no later than forty-five (45) days after said dates.

(c) Acceptance of payment and recalculation. No acceptance of any payment shall be construed as an accord by the Town that the amount paid is, in fact, the correct amount, nor shall any acceptance of payment be construed as a release of any claim the Town may have for further or additional sums payable or for the performance of any other obligation of the Company.

(d) Franchise fee reports. A written report shall accompany each payment to the Town, verified by a certified public accountant or an officer of the Company, containing an accurate statement, in summarized form and in detail, of the Company's gross revenues and the computation of the payment amount. Such reports shall detail all gross revenues of the secondary water distribution system and shall be prepared in accordance with generally accepted accounting principles.

(e) Annual franchise fee reports. The Company shall, within sixty (60) days after the end of each calendar year, furnish to the Town a statement stating the total amount of gross revenues and all payments, deductions and computations for the preceding year. A certified public accountant shall certify such statements, who may also be the chief financial officer or controller of the Company, before submission to the Town.

(f) Audits. Annually, upon thirty (30) days' prior written notice, the Town shall have the right to conduct an independent audit of the Company's records related to the administration or enforcement of this franchise, in accordance with generally accepted accounting principles. If the audit shows that

franchise fees have been underpaid by five percent (5%) or more, the Company shall pay the total cost of the audit. The Town's right to audit, and the Company's obligation to retain records related to the franchise fee audit, shall be subject to the general limitation period for contract actions as set forth in Section 13-80-101(l)(a), C.R.S.

(g) Interest on late payments. In the event any payment is not received within forty-five (45) days of the date due, such payment shall be deemed delinquent and shall accrue interest at the rate of one percent (1%) per month. If any payment is not received within seventy-five (75) days of the date due, the Company shall be considered to have violated its obligations pursuant to this agreement and shall be subject to the procedure for remedying such violation as set forth in Section 5-7-110 of this Article.

(h) Additional commitments not franchise fees. No term or condition in this agreement shall in any way modify or affect the Company's obligation to pay franchise fees. Although the total sum of franchise fee payments and additional commitments set forth elsewhere in this Article may total more than the amount specified in said Exhibit B in any twelve-month period, the Company agrees that, to the extent provided by applicable law, the additional commitments herein will not be franchise fees as defined under any current law, nor are they to be offset or credited against any franchise fee payments due to the Town, nor do they represent an increase in franchise fees to be passed through to customers as a "Franchise Fee" line item pursuant to any law.

(i) Tax liability. Payment of the franchise fee under this agreement shall not exempt the Company from the payment of property taxes, personal property taxes, sales tax license fees, sales and use taxes, head taxes, building permit fees, land use fees, development impact fees, excavation permit fees or other fees and charges that are uniform and generally applicable to all businesses alike. (Ord. 568 §4, 2006)

Sec. 5-7-50. Company conduct of distribution system business.

The Company may establish rules, regulations, terms and conditions governing the distribution system, not in conflict with the laws of the State, to enable the Company to exercise its rights and perform its obligations under this franchise. (Ord. 568 §5, 2006)

Sec. 5-7-60. Construction system facilities.

(a) Location of distribution facilities. The Company shall coordinate with the Town on the location of all pipelines and appurtenant structures of the distribution system so that distribution system facilities shall not interfere with the established potable water system water mains, sewer mains or other Town use of streets, alleys, easements and other public places. The distribution system shall be located so as to cause minimum interference with the public use of streets, alleys, easements and other public places, and shall be maintained in good repair and condition.

(b) Construction of distribution system. All construction, excavation, maintenance and repair work performed by the Company to the distribution system shall be performed in a timely and expeditious manner which minimizes inconvenience to the public and is in compliance with all applicable codes of the State and the United States of America. All public and private property within the Town, directly affected by Company distribution system construction or excavation activities, shall be restored, as soon as practicable, by the Company, at its expense, to substantially its

former condition prior to distribution system construction. The Company shall comply with any reasonable Town or landowner request for prompt remediation of damage to private property adjacent to streets, alleys, easements and other public places caused by the Company's performance of construction, excavation, maintenance or repair work on the distribution system. The Town reserves the right to restore property and remedy damages caused by Company distribution system activities within the Town, at the expense of the Company, in the event the Company fails to begin such work within twenty (20) days after written notice from the Town.

(c) Relocation of Company distribution system. The Company intends to construct the distribution system, wherever possible, at a depth of at least three (3) feet. Therefore, the distribution system should not interfere with Town changes to street grading or street paving, with the installation and repair of the Town sewer or water main or with other Town works. If any such Town construction or repair work will be affected by the location of the distribution system, despite Company cooperation with the Town as required by Subsection (a) above, and the Company provision of maps, required by Subsection (g) below, the Town and the Company will negotiate in good faith to resolve the dispute. The Company has no obligation to relocate any distribution system facilities if funds are not available from distribution system customers. Following relocation, the Company, at its expense, shall restore all property disturbed directly by the Company's work on the distribution system to substantially its former condition. The Company is not obligated to relocate, under any circumstances, any facility of the distribution system installed in easements obtained by the Company prior to any transfer of the overlying land to the Town.

(d) Restoration of service. In the event the Company's distribution system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use diligence to restore the distribution system to satisfactory service, provided that the funds are available to do so from distribution system customers.

(e) Safety regulations of the Town. In the exercise of its police power, the Town reserves the right, after consultation with the Company, to adopt reasonable regulations regarding the distribution system, which are necessary to ensure the health, safety and welfare of the public; provided that such regulations do not adversely affect the rights granted herein. The Company agrees to comply with all such regulations, now existing or duly adopted, in the construction, maintenance and operation of its distribution system and in the provision of secondary water through the distribution system within the Town.

(f) Inspection, emergency action and quality control. The Town has the right to inspect, during regular Company business hours, upon prior arrangement with the Company, so that a Company representative is present, any portion of the distribution system within the Town, except that, if the Town requires the excavation of any portion of the distribution system to perform an inspection, generally, for leaks, the Town will pay for such excavation and the repair of any damage caused thereby if the excavation reveals there is no problem with the distribution system. The Company agrees to cooperate with the Town in conducting the inspection and to correct any discrepancies in distribution system construction affecting the Town's interest in a prompt and efficient manner. In case of emergency, the Town has the right to take necessary action to protect the health and safety of the Town's citizens, but shall immediately notify the Company.

(g) Maps. The Company shall prepare and submit to the Board of Trustees a map showing the location of the distribution system within the Town, including the shutoff valves, gates and

appurtenances incident to the distribution system, insofar as such facilities can reasonably be determined. The map shall be revised annually, if necessary, to show any major changes or extensions of the distribution system. The map may be used by the Town. Dissemination of the map to the public for use in locating underground facilities shall be at the discretion of the Company. (Ord. 568 §6, 2006)

Sec. 5-7-70. Financial and insurance requirements.

(a) Indemnification.

(1) General indemnification. The Company shall indemnify, defend and hold the Town, its officers and employees harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any casualty or accident to person or property, including, without limitation, antitrust, civil rights and defamation, and all other damages in any way arising out of, or because of, any construction, excavation, operation, maintenance, reconstruction or any other act done under this franchise, by or for the Company, its agents or its employees, or because of any neglect or omission of the Company. The Company shall reasonably consult and cooperate with the Town while conducting its defense of the Town.

(2) Indemnification for relocation. The Company shall indemnify the Town for any damages, claims, additional costs or expenses assessed against, or payable by, the Town arising out of or resulting, directly or indirectly, from the Company's failure to remove, adjust or relocate any of its facilities in the streets, alleys, easements or other public places, in a timely manner in accordance with any relocation required by the Town.

(3) Additional circumstances. The Company shall also indemnify, defend and hold the Town harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, in any way arising out of the lawful actions of the Town in granting this franchise agreement, to the extent such actions are consistent with this agreement and applicable law.

(4) Procedures and defense. If a claim or action arises, the Town or any other indemnified party shall tender the defense of the claim to the Company. The Company shall not agree to any settlement of claims affecting the Town without the Town's approval, which approval the Town shall not unreasonably withhold.

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

(6) Governmental immunity. The Town's execution of this agreement is done in furtherance of the general public's health, safety and welfare, and no immunity is waived thereby. The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations, presently one hundred fifty thousand dollars (\$150,000.00) per person and six hundred thousand dollars (\$600,000.00) per occurrence, or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to

the Town, its officers or its employees.

(b) Insurance.

(1) The Company shall maintain in full force and effect and at its own cost and expense the following insurance coverages that protect the Company and the Town, and the parties' officers and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this agreement or in connection therewith:

a. Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and two million dollars (\$2,000,000.00) aggregate. The policy will include coverage for personal injury and property damage, plus costs of defense.

b. Commercial automobile liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and two million dollars (\$2,000,000.00) aggregate, plus costs of defense, with respect to each of the Company's owned, hired and nonowned vehicles assigned to or used in the operation of the secondary water distribution system in the franchise area.

(2) The insurance limits hereunder shall be revised upward in the event the statutory maximums applicable to local governments in the State are raised during the term of this agreement to exceed the coverage limits required pursuant to this agreement. The Town shall provide written notification to the Company of any increase in such statutory maximums, and shall allow the Company a reasonable period of time within which to obtain the increased insurance coverage required by this Section. The insurance company providing insurance pursuant to this Section shall be licensed in the State.

(3) The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the Town and its elected officials, officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one (1) person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

(4) The insurance shall provide that the insurance shall not be canceled or materially altered to be out of compliance with the requirements of this Section without thirty (30) days' written notice first being given to the Town. If the insurance is canceled or materially altered to be out of compliance with the requirements of this Section within the term of this agreement, the Company shall provide a replacement policy. The Company agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this agreement.

(5) The Company shall maintain on file with the Town a certificate of insurance certifying the coverage required above, which certificate shall be subject to the reasonable approval of the Town as to the adequacy of the certificate. Willful failure to maintain adequate insurance as required under this Section shall be considered a material violation of this agreement.

(6) As an alternative to providing a certificate of insurance to the Town certifying insurance coverage as required above, the Company's self-insurance shall provide the same amount and level of protection for the Company and the Town, its elected officials, officers, agents and employees as otherwise required under this Section. The adequacy of the self-insurance shall be subject to the periodic review and approval of the Town. If the Company elects to provide self-insurance under this Section, any failure to maintain adequate self-insurance shall be cause for immediate termination of this agreement by the Town.

(7) Nothing herein shall be in any way construed as a waiver on behalf of the Town of any of the protections or provisions of the Colorado Governmental Immunity Act, and the Company shall ensure that, in naming the Town as an insured under this Section, all insurance policies or agreements shall specifically contain a nonwaiver provision, and shall not impair said protections and provisions.

(8) The Company shall provide workers' compensation insurance as required by state law.

(9) The Company shall, through contract requirements and other normal means, require any contractor performing work for the Company pursuant to this agreement to maintain insurance. The failure of any contractor performing work for the Company to maintain insurance coverages in the amounts required by Subparagraph (b)(1)a. above shall not relieve the Company of its obligations to the Town pursuant to this agreement. The Company shall be held specifically liable for any deficits in its contractors' insurance coverages. (Ord. 568 §7, 2006)

Sec. 5-7-80. Reports and records.

(a) Colorado Open Records Act. The Company acknowledges that the Town is subject to the Colorado Open Records Act. All information furnished to the Town is public information and shall be treated as such, except for information involving the privacy rights of individual customers. Nothing in this Section shall require the Company to provide the Town with copies of documents that the Company reasonably classifies as proprietary, or otherwise confidential, information.

(b) Record retention and Town access to records. The Company shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the Town. The Town shall have access to, and the right to inspect, any books and records of the Company, its parent corporations and affiliated entities, which are reasonably related and necessary to the administration or enforcement of the terms of this agreement. The Company shall not deny the Town access to any such records on the basis that the Company's records are under the control of any parent corporation, affiliated entity or third party. The Town may, in writing, request copies of any such records or books and the Company shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other Section shall be furnished to the Town. If the requested books and records are too voluminous or for security reasons cannot be copied or removed, then the Company may request, in writing within ten (10) days of receipt of request, that the Town inspect them at the Company's local offices. If any books or records of the Company are not kept in a local office and not made available in copies to the Town upon written request as set forth above, and if the Town determines that an examination of such records is necessary or appropriate to the performance of any of the Town's duties, administration or enforcement of this agreement, then all reasonable travel and maintenance expenses incurred by the Town in making such examination shall be paid by the Company.

(c) Annual reports. Within sixty (60) days after the close of the Company's fiscal year, and upon the written request of the Town, the Company shall submit to the Town a written report in a form acceptable to the Town, which may include, but not necessarily be limited to, the following information for the franchise area:

(1) A statement of gross revenue, as required by Subsection 5-7-40(e) above.

(2) A summary of the previous year's activities in development of the secondary water distribution system, including but not limited to the number of customers for each class and type of secondary water services, a breakdown of how services are provided, number of customers added or terminated and all construction activity.

(3) A list of the Company's officers, members of its boards of directors and other principals of the Company.

(4) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in the Company, and subsidiaries and affiliated entities, if any.

(d) Inspection of facilities. The Town may inspect any of the Company's facilities and equipment at any time during usual business hours, upon at least twenty-four (24) hours' notice or, in case of emergency, upon demand without prior notice.

(e) Failure to report. The failure or neglect of the Company to file any of the reports or filings required under this agreement, or such other reports as the Town may reasonably request pursuant to this agreement, may, at the Town's option, be deemed a material breach of this agreement.

(f) False statements. Any intentional false or misleading statement or misrepresentation in any report required by this agreement may be deemed a material breach of this agreement and may subject the Company to all remedies, legal or equitable, which are available to the Town under this agreement or otherwise. (Ord. 568 §8, 2006)

Sec. 5-7-90. General street use and construction.

(a) Construction.

(1) The secondary water distribution system constructed or installed by the Company shall be of good quality and workmanship, shall be maintained in good repair and efficiency and shall meet or exceed all Town standards. The Company shall, at its own expense, repair, renew, change and improve its secondary water distribution system from time to time as may be necessary to accomplish the purposes of this agreement.

(2) Subject to applicable laws, regulations and ordinances of the Town and the provisions of this agreement, the Company may perform all construction necessary for the operation of its secondary water distribution system. All construction and maintenance of any and all facilities within streets, alleys, easements and other public places incident to the Company's secondary water distribution system shall, regardless of who performs the construction, be and remain the Company's responsibility. The Company shall strictly adhere to all building and zoning codes currently or hereinafter in effect, including without limitation, the International Building Code,

cross-connection control regulations and all permit procedures. The Company shall apply for and obtain all permits necessary for construction or installation of any facilities and for excavating and laying any facilities within the streets, alleys, easements and other public places, and give appropriate notices to the notification association established in Section 9-1.5-105, C.R.S. All permit applications which involve work on, in, under, across or along any public ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

(3) At the option of the Town, construction drawings may be reviewed and approved by the Town Engineer. The Company shall arrange its pipes, mains, service lines and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any person. In the event of such interference, the Town may require the removal or relocation of the Company's pipes, mains, service lines and other appurtenances from the property in question in accordance with the provisions of Subsection 5-7-60(c) above.

(4) When the Company's construction of facilities in the streets is completed, the Company shall provide the Town with an as-built map showing the location of the installed facility in the streets. The Company represents and warrants that all information provided to the Town, including as-built maps, are and will be true and accurate. As-built maps required by this Section shall be provided both as hard copies and in digital format compatible with the Town's geographical information system (AutoCAD™ drawing files, release 2002 or higher), referencing state plane coordinates. The Town agrees to make available to the Company digital format files with current GIS information containing street names and locations.

(5) Pursuant to Section 9-1.5-103(4), C.R.S., the Company shall locate, mark and map any portion of its installed secondary water distribution system for the Town at no expense to the Town.

(6) Before beginning any excavation or other construction activity on a public right-of-way or easement which crosses or abuts any private property, the Company shall clearly mark and delineate with flags, stakes or nonpolluting water-soluble spray paint the boundaries of that public right-of-way or easement where it abuts or crosses the private property.

(7) In the event that emergency repairs are necessary, the Company shall immediately notify the Town of the need for such repairs. The Company may initiate such emergency repairs and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency. The Company shall comply with all generally applicable Town regulations relating to such excavations or construction, including the payment of permit or license fees.

(8) All construction practices shall be in accordance with all applicable sections of federal and state Occupational Safety and Health Acts and any amendments thereto, as well as all state and local codes and standards where applicable.

(9) The Company shall install "underground warning" tape at least twelve (12) inches above all underground pipes. A copper tracer wire is to be taped to all pipes and to the outside of all

valve boxes, entering the valve box through a hole in the valve box six (6) inches below the top of the valve box. A two-foot length of tracer wire shall be looped inside the top of the valve box.

(10) Neither the Company's plant and equipment, nor any work the Company performs, shall endanger or interfere in any manner with the rights of any property owner or hinder or obstruct pedestrian or vehicular traffic.

(11) All work is subject to inspection by the Town. The Company shall promptly perform any reasonable remedial action required by the Town pursuant to said inspection.

(b) Geographical coverage. Subject to the line extension policy set forth in Section 5-7-100 below, the Company's secondary water distribution system shall be continuously operated in such a manner that all customers within the franchise area have access to equivalent secondary water distribution services.

(c) Location of facilities. Within forty-eight (48) hours after the Town or any franchisee, licensee or permittee of the Town notifies the Company of a proposed street excavation, the Company shall, at the Company's expense:

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

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

(3) Notify the excavator that the Company does not have any underground facilities in the vicinity of the proposed excavation.

(d) Relocation, removal and discontinuing use of facilities.

(1) The Town shall have the right to require the Company to protect, support, temporarily disconnect, remove or change the location of any portion of the Company's secondary water distribution system within the streets, when any of the following requires such change, and the expense thereof shall be paid by the Company: traffic conditions; public safety; street vacation, construction or change or establishment of street grade, separation or realignment; installation, construction or repair of sewers, drains, gas or water pipes or any other type of structures or improvements by the Town; or the nonrenewal of this agreement. Such removal, replacement or relocation shall be in a manner as the Town may reasonably direct, and the Town shall in no event be liable for any damage to any portion of the Company's secondary water distribution system.

(2) Should the Company discontinue using any facility within the streets, the Company may remove the facility or request that the Town permit it to remain in place. Notwithstanding the Company's request that any such facility remain in place, the Town may require the Company to remove the facility from the street or modify the facility to protect the public health, welfare, safety and convenience, or otherwise serve the public interest.

(3) The Town may require the Company to perform a reasonable combination of modification, removal and/or abandonment of the facility, as determined by the Town, which the

Company shall complete in accordance with a reasonable schedule set by the Town. Until such time as the Company abandons the facility pursuant to the Town's direction or removes or modifies the facility as reasonably directed by the Town, or until the rights to and responsibility for the facility are accepted by another person having authority to construct and maintain such facility, the Company shall retain all liability for such facility and be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the street, in the same manner and degree as if the facility were in active use. If the Company abandons its facilities, the Town may choose to use such facilities for governmental purposes.

(4) Should the Company fail to remove or relocate any such facilities by the date established by the Town, the Town may effect such removal or relocation, and the expense thereof shall be paid by the Company, including all costs and expenses incurred by the Town due to the Company's delay. If the Town requires the Company to relocate its facilities located within the streets, the Town shall make a reasonable effort to provide the Company with an alternate location within the streets. If funds are generally made available to users of the public rights-of-way for such relocation, the Company shall be entitled to its pro rata share of such funds.

(5) Nothing described in this Section shall be considered a taking of the property of the Company, and the Company is not entitled to additional compensation because of these actions.

(e) Restoration of streets.

(1) Whenever the Company disturbs the surface of any street for any purpose, the Company shall promptly restore the street to at least its prior condition. When any opening is made by the Company in a hard surface pavement in any street, the Company shall promptly refill the opening and restore the surface to a condition reasonably satisfactory to the Town.

(2) If the Company excavates the surface of any street for any purpose, the Company shall be responsible for restoration of the street and its surface within the area affected by the excavation in accordance with the applicable regulations of the Town. If the Company fails to refill or repave any opening it makes in the street within the time required by the Town, then the Town may, after providing notice to the Company, refill and/or repave any opening made by the Company in the street, and the expense thereof shall be paid by the Company. The Town may, after providing notice to the Company, remove and/or repair any work done by the Company which, in the reasonable determination of the Town, is inadequate. The actual cost thereof shall be paid by the Company.

(3) All excavations made by the Company in the streets shall be properly safeguarded for the prevention of accidents. All the Company's work shall be done in strict compliance with all generally applicable rules, regulations and ordinances of the Town. Prior to any street cuts or openings in utility easements, the Company shall provide notice to the Town and the notification association established in Section 9-1.5-105, C.R.S.

(f) Maintenance and workmanship.

(1) The Company shall employ professional care and install and maintain methods and devices for preventing failures and accidents that are likely to cause damage, injuries or nuisances to the public.

(2) The Company shall keep and maintain all pipelines, equipment and structures in a safe, adequate and substantial condition, and in good order and repair. The Company's secondary water distribution system shall be constructed and maintained in such manner as not to interfere with sewers, water pipes or any other property of the Town, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the streets by, or under, the Town's authority.

(3) The Company shall provide and use any equipment and appliances reasonably necessary to control and carry the Company's secondary water so as to prevent injury to the Town's property or property belonging to any person. The Company, at its own expense, shall repair, renew, change and improve its secondary water distribution system and keep related facilities in good repair and safe and presentable condition.

(g) Acquisition of facilities. Upon acquisition of facilities in any Town street in the initial service area, the Company shall submit to the Town a statement describing the secondary water distribution system and related facilities involved, whether they are authorized by franchise, permit, license or other prior right, and specifying the location of all such secondary water distribution system related thereto. The operation of such secondary water distribution system shall immediately be subject to the terms of this agreement.

(h) Reservation of the Town streets rights. Nothing in this agreement shall prevent the Town or public utilities owned, maintained and/or operated by public entities other than the Town from constructing sewers; grading, paving, repairing and/or altering any street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of the Company's secondary water distribution system.

(i) Street vacation. If any street or portion thereof used by the Company is vacated by the Town during the term of this agreement, unless the Town specifically reserves to the Company the right to continue its installation in the vacated street, the Company shall, without delay or expense to the Town, remove its facilities from such street, restore, repair or reconstruct the street where such removal has occurred, and place the street in such condition as it existed prior to the Company's disruption of the street, as may be reasonably required by the Town. In the event of failure, neglect or refusal of the Company, after thirty (30) days' notice by the Town, to restore, repair or reconstruct such street, the Town may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by the Town, shall be paid by the Company within thirty (30) days of receipt of the invoice and documentation, and failure to make such payment shall be considered a material breach of this agreement.

(j) Hazardous substances.

(1) The Company shall comply with all applicable state and federal laws, statutes, regulations and orders concerning hazardous substances relating to the Company's secondary water distribution system in the streets.

(2) The Company shall maintain and inspect its secondary water distribution system located in the streets. Upon reasonable notice to the Company, the Town may inspect the Company's facilities in the streets to determine if any release of hazardous substances has occurred, or may

occur, from or related to the Company's secondary water distribution system. In removing or modifying the Company's facilities as provided in this agreement, the Company shall also remove all residue of hazardous substances related thereto.

(3) The Company agrees to indemnify the Town against any claims, costs and expenses of any kind, whether direct or indirect, incurred by the Town arising out of a release of hazardous substances caused by the Company's secondary water distribution system in the streets. Said indemnification shall not extend to claims, actions or other liability arising as a result of any hazardous substance, pollutants or contaminants generated or deposited by the Town, its employees or representatives.

(k) Completion of work by the Town. Upon failure of the Company to commence, pursue or complete any work required by law or by the provisions of this agreement or any applicable permit to be done in any public right-of-way or public utility easement, within the time prescribed and to the satisfaction of the Town, the Town may, after thirty (30) days' notice to the Company, cause the work to be done. The Company shall pay to the Town the reasonable costs of the work, in the itemized amount reported by the Town to the Company, within thirty (30) days after receipt of the itemized report.

(l) Stop work.

(1) On written notice from the Town that any work is being done contrary to the provisions of this agreement, in an unsafe or dangerous manner as determined by the Town, or in violation of the terms of any permit or generally applicable laws, regulations, charter provisions, ordinances or standards, the work may be immediately stopped by the Town.

(2) The stop work order shall indicate the nature of the alleged violation or unsafe condition and may establish reasonable conditions under which work may be resumed. The stop work order shall be:

- a. In writing;
- b. Given to the individual doing the work or posted on the work site; and
- c. Sent to the Company by overnight delivery at the address given herein.

(m) Company's contractors. The Company's contractors shall be licensed and bonded in accordance with the Town's ordinances, regulations or requirements of any contractor working in the public rights-of-way. Any act or omission of any contractor of the Company which violates any provision of this agreement shall be considered an act or omission of the Company that violates this agreement.

(n) Private property. Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the Company shall give reasonable notice to the property owners or legal tenants prior to entering upon any private premises, and said notice shall specify the work to be performed; provided that, in the case of construction operations, such notice shall be delivered or provided at least twenty-four (24) hours prior to entry. If any damage is caused by any of the Company activity or omission, the Company shall reimburse the property owner one

hundred percent (100%) of the cost of the damage or shall replace the damaged property. In the case of an emergency, the Company shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Nothing herein shall be construed as authorizing access or entry to private property or any other property where such right to access or entry is not otherwise provided by law. (Ord. 568 §9, 2006)

Sec. 5-7-100. Service extension and construction.

(a) General requirements. The Company shall meet or exceed all construction, extension and service availability requirements set forth in this agreement.

(b) Equivalent service. The Company shall not arbitrarily refuse to provide secondary water services to any person within its franchise area. It is the Town's general policy that all commercial establishments, dwelling units and multiple dwelling unit addresses in the Company's franchise area have available secondary water services from the Company's secondary water distribution system, at nondiscriminatory rates and under reasonable terms and conditions.

(c) Service availability. In general, except as otherwise provided herein, the Company shall provide secondary water services within ten (10) days of a request by any person within its franchise area whose property is adjacent to the Company's service lines. For purposes of this Section, a request shall be deemed made upon the date of signing a service agreement, receipt of funds by the Company, receipt of a written request by the Company or receipt by the Company of a verified verbal request. Except as otherwise provided herein, the Company shall provide such service:

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

(2) At a nondiscriminatory installation charge for a standard installation, consisting of not more than a one-hundred-twenty-five-foot extension to the customer's property.

(3) At nondiscriminatory monthly rates for residential users.

(d) Line extension policy.

(1) Whenever the Company receives requests for service from more than fifty percent (50%) of the landowners residing in a contiguous unserved area with a residential density of at least thirty-five (35) homes per lineal mile of pipeline, the Company agrees to extend its secondary water distribution system to such area within twenty-four (24) months, at its cost.

(2) No customer shall be refused service arbitrarily. However, for unusual circumstances, such as that the distance is more than one hundred twenty-five (125) feet from the distribution system to the customer's property line, or a density of less than thirty-five (35) homes per mile, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Company and customers in the area to which service may be expanded, the Company will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per mile, and whose denominator equals thirty-five (35). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata

basis. The Company may require that the payment of the capital contribution in aid of construction to be borne by such potential customers be paid in advance. Nothing in this Subsection shall prohibit the Company from extending service to customers at the Company's sole cost and expense. (Ord. 568 §10, 2006)

Sec. 5-7-110. Franchise breaches, defaults; termination of franchise.

(a) Procedure for remedying franchise breaches, defaults.

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

a. Respond to the Town, contesting the Town's assertion that a default has occurred;

b. Cure the default; or

c. Notify the Town that the Company cannot cure the default within the thirty (30) days because of the nature of the default. In the event the default cannot be cured within thirty (30) days in accordance with the terms of this agreement, the Company shall promptly take all reasonable steps to cure the default and notify the Town in writing and in detail as to the exact steps that will be taken and the projected completion date.

(2) Upon five (5) business days prior written notice, either the Town or the Company may call an informal meeting to discuss the alleged default.

(3) If the Company fails to respond to the notice described above or fails to cure the alleged default within the cure period stated above, the Town shall set a public hearing to investigate said issues or the existence of the alleged default. The Town shall notify the Company of the hearing, in writing, and such hearing shall take place no less than thirty (30) days after the Company's receipt of notice of the hearing. At the hearing, the Company shall be provided an opportunity to be heard and to present evidence in its defense. The determination as to whether a default or a material breach of this agreement has occurred shall be within the Town's sole discretion.

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

a. In the case of a substantial default of a material provision of this agreement, revoke this agreement in accordance with this Section; or

b. Pursue any other legal or equitable remedy available under this agreement or any applicable law.

(b) Assessment of monetary damages.

(1) Upon completion of the procedures set forth in Subsection (a) above, and from the date of

said completion, the Town may assess against the Company monetary damages up to one hundred dollars (\$100.00) per day for any material breach of this agreement. Subject to the completion of the procedures set forth in Subsection (a) above, the Company shall pay any such damage assessment within forty-five (45) days of written demand by the Town. The Town may take such action as necessary to enforce this provision.

(2) The assessment does not constitute a waiver by the Town of any other right or remedy it may have under this agreement or applicable law, including its right to recover from the Company any additional damages, losses, costs and expenses that are incurred by the Town by reason of the breach of this agreement.

(c) Revocation.

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

a. If the Company substantially fails to perform any material obligations under this agreement, the procedures for establishing a default under this Section have been followed and completed, and the Town has determined that a default has occurred.

b. If the Company willfully fails for more than ninety-six (96) consecutive hours to provide continuous and uninterrupted secondary water distribution service, subject to the provisions of Section 5-7-90 of this Article regarding forces majeure, unless the Town specifically, and in writing, authorizes a longer interruption service.

c. If the Company practices any fraud or deceit upon the Town.

d. If the Company becomes insolvent, or if there is an order for relief in favor of the Company in a bankruptcy proceeding.

(2) The Town shall provide to the Company written notice of its intent to consider revocation under this Subsection at least ninety (90) days prior to the date of the hearing in accordance with Subsection (a) above. The Company may object in writing to the Town, stating its reasons for its objections.

(3) The Town shall hear any persons interested in the revocation, and shall allow the Company, in particular, an opportunity to state its position on the matter, subpoena witnesses on its behalf and cross-examine the Town witnesses and other persons presenting testimony. The Town Clerk shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records necessary to the determination of the hearing.

(4) Within ninety (90) days after the hearing, the Town shall determine whether to revoke the agreement and declare that the franchise is revoked; or, if the breach at issue is capable of being cured by the Company, direct the Company to take appropriate remedial action within the time, in the manner and on the terms and conditions that the Town determines are reasonable under the circumstances. The Company may appeal such determination to an appropriate court, in

accordance with and within the time provided by applicable law. The Town may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Town's rights under the agreement in lieu of revocation of the franchise.

(d) Procedures in event of termination or revocation.

(1) If this agreement expires without renewal and is not extended, or is otherwise lawfully terminated or revoked, the Town may, subject to applicable law:

a. Allow the Company to maintain and operate its secondary water distribution system on a month-to-month or short-term extension of this agreement for not less than six (6) months, unless a sale of the secondary water distribution system can be closed sooner or the Company demonstrates to the Town's satisfaction that it needs additional time to complete the sale; provided, however, that the Company's continued operation of the secondary water distribution system during the six-month period, or such other period as the parties may agree, shall not be deemed a waiver or extinguishment of any rights of either the Town or the Company; or

b. Purchase the Company's secondary water distribution system in accordance with the procedures set forth in Subsection (e) below.

(2) In the event that a sale has not been completed in accordance with this Section, the Town may order the removal of the aboveground secondary water distribution system facilities and such underground facilities as required by the Town in order to achieve reasonable engineering or street use or other public purposes within the franchise area, at the Company's sole expense, within a reasonable period of time as determined by the Town. In removing its plant, structures and equipment, the Company shall refill, at its own expense, any excavation that is made by it and shall leave all streets and public or private property in as good condition as that prevailing prior to the Company's removal of its equipment. The indemnification and insurance provisions and the security provided in this agreement shall remain in full force and effect during the period of removal.

(3) If the Company fails to complete any removal required by this Section after the date of the written notice and to the satisfaction of the Town, after thirty (30) days' notice to the Company, the Town may cause the work to be done and the Company shall reimburse the Town for the reasonable costs incurred, within thirty (30) days after receipt of an itemized list of the costs incurred by the Town. If the Company does not reimburse the Town within forty-five (45) days after presentation of the itemized list of costs, the Town may recover the costs through any security provided pursuant to Section 5-7-90 of this Article.

(4) The Town may seek legal and equitable relief to enforce the provisions of this agreement.

(e) Purchase of secondary water distribution system.

(1) If, at any time, this agreement is revoked, terminated or not renewed upon expiration in accordance with the provisions of federal law, and the Town either lawfully acquires ownership of the secondary water distribution system or, by its actions, lawfully effects the transfer of ownership of the secondary water distribution system to another party, any such acquisition shall be at the fair market value price determined below.

(2) The Town may, at any time, offer in writing to purchase the Company's secondary water distribution system. The Company shall have thirty (30) days from receipt of a written offer from the Town within which to accept or reject the offer.

(3) In any case where the Town elects to purchase the secondary water distribution system, the purchase shall be closed within sixty (60) days of the date of the Town's audit of a current profit and loss statement of the Company.

(4) For the purposes of this Section, *fair market value* shall be determined as follows:

a. In the case of expiration of the franchise without renewal: on the basis of the Company's secondary water distribution system, or the portion being acquired, as a going concern, but with no value allocated to the franchise itself.

b. In the case of forfeiture, revocation or termination of the franchise: the equitable price of the Company's secondary water distribution system, or the portion being acquired, reduced by the amount of any liens, encumbrances or other obligations of the Company which the Town may assume, but without including any figure for the unexpired portion of this franchise. In determining the equitable price, matters such as the potential harm to the community resulting from the Company's violation(s) of the franchise shall be considered.

(f) Receivership and foreclosure.

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

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

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

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

a. The Town has approved the transfer of the agreement, in accordance with the procedures set forth in this agreement and as provided by law; and

b. The purchaser has covenanted and agreed with the Town to assume and be bound by all of the terms and conditions of this agreement.

(g) No monetary recourse against Town. The Company shall not have any monetary recourse against the Town or its officials, boards, commissions or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this agreement or the enforcement thereof, in accordance with the provisions of federal law.

(h) Nonenforcement by Town. The Company is not relieved of its obligation to comply with any of the provisions of this agreement by reason of any failure of the Town to enforce prompt compliance. The Town's forbearance or failure to enforce any provision of this agreement shall not serve as a basis to stop any subsequent enforcement. (Ord. 568 §11, 2006)

Sec. 5-7-120. Franchise renewal and transfer.

(a) Negotiated renewal. The Town and the Company at any time may elect to negotiate a proposed franchise renewal agreement.

(b) Transfer of ownership or control.

(1) In this Section, the following words have the meanings indicated:

Control means actual working control in whatever manner exercised. *Control* includes, but may not necessarily require, majority stock ownership.

Proposed transferee means a proposed purchaser, transferee, lessee, assignee or person acquiring ownership or control of the franchise or the Company.

(2) The Company shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale or by ordinary sale, contract, consolidation or otherwise, the agreement or any of the rights or privileges therein granted, without the prior written consent of the Town, except that such consent shall not be required for an intra-corporate transfer from one (1) wholly owned subsidiary to another wholly owned subsidiary of the parent corporation. The consent required by the Town shall be given or denied no later than one hundred twenty (120) days following any request and may not be unreasonably withheld, but may be conditioned upon the performance of those requirements necessary to ensure compliance with the agreement.

(3) The requirements of Paragraph (2) above shall also apply to any change in control of the Company. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person, or group of persons, of thirty percent (30%) or more of the voting shares of the Company. The consent required shall be deemed granted by the Town if the Town has not consented or denied consent within one hundred twenty (120) days following a request, and the Town's consent may not be unreasonably withheld. For the purpose of determining whether it should consent to transfer of control, the Town may inquire into the qualifications of the proposed transferee and the Company shall assist the Town in the inquiry.

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

a. Has ever been convicted or held liable for acts involving deceit, including any violation of federal, state or local law or regulations, or is currently under an indictment, investigation or

complaint charging such acts;

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

c. Has pending any material legal claim, lawsuit or administrative proceeding arising out of or involving a secondary water distribution system, except that any such claims, suits or proceedings relating to insurance claims, theft of service or employment matters need not be disclosed;

d. Is financially solvent, by submitting the financial data, including financial statements, that are audited by a certified public accountant, who may also be an officer of the parent corporations, along with any other data that the Town may reasonably require;

e. Has the legal, financial and technical capability to enable it to maintain and operate the secondary water distribution system for the remaining term of the agreement.

(5) The Company (transferor) shall provide information regarding any failure of the Company to comply with any provision of this agreement or of any applicable customer or consumer service standards promulgated or in effect in the Town's jurisdiction at any point during the term of this agreement.

(6) The consent or approval of the Town to any transfer by the Company does not constitute a waiver or release of the rights of the Town in or to its public rights-of-way or easements, and any transfer shall by its own terms be expressly subject to the terms and conditions of this agreement.

(7) A sale, transfer or assignment of this agreement may not be approved without the successor in interest becoming a signatory to this agreement.

(8) Notwithstanding anything contained in this agreement, the Company may pledge the assets of the secondary water distribution system for the purpose of financing; provided that such pledges of assets shall not impair or mitigate the Company's responsibility and capability to meet all its obligations under the provisions of this agreement. (Ord. 568 §12, 2006)

Sec. 5-7-130. Severability.

(a) Severability. If any section, subsection, paragraph, term or provision of this agreement is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such determination shall have no effect on the validity of any other section, subsection, paragraph, term or provision of this agreement, all of which will remain in full force and effect for the term of the agreement, or any extension or extensions thereof.

(b) Waiver of challenge. The Company agrees that it will not challenge the Town's authority as of the effective date of this agreement to enter into this agreement. (Ord. 568 §13, 2006)

Sec. 5-7-140. Assignment; amendment.

(a) Assignment. The Company shall not transfer or assign any rights under this franchise agreement to a third party, except a reorganization of the Company, unless the Town approves such

transfer or assignment in writing. Town approval of the transfer or assignment shall not be unreasonably withheld.

(b) Amendment. This franchise may be amended by a mutually agreed upon written amendment to this agreement. (Ord. 568 §14, 2006)

Sec. 5-7-150. Expiration of franchise, purchase or condemnation.

The right of the Town to construct, purchase or condemn utility facilities and the rights of the Company in connection therewith, as provided pursuant to Section 31-15-707, C.R.S., and the Constitution of the State of Colorado, Article XIV, Paragraph 13, are expressly recognized. If, at the time of expiration of this franchise, no franchise extension or renewal has been negotiated between the Town and the Company, or if the Town allows another provider to establish a secondary water distribution system within the Town, the Town may purchase or condemn the secondary water distribution system as provided by Section 31-15-707, C.R.S. (Ord. 568 15, 2006)

Sec. 5-7-160. Miscellaneous provisions.

(a) Preferential or discriminatory practices prohibited. The Company shall not discriminate in hiring, employment or promotion on the basis of race, color, ethnic or national origin, religion, age, sex, sexual orientation or physical or mental disability. Throughout the term of this agreement, the Company shall fully comply with all equal employment or nondiscriminating provisions and requirements of federal, state and local law relating thereto.

(b) Notices. Unless expressly agreed otherwise between the Town and the Company, every notice or response required by this agreement to be served upon the Town or the Company shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope:

- (1) Upon receipt when hand-delivered with receipt or acknowledgment;
- (2) Upon receipt when sent by certified mail; or
- (3) Within five (5) business days after having been posted in the regular mail, postage prepaid.

The notices or responses to the Company shall be addressed as follows:

Highland Secondary Water Supply Co. LLC
Jill A. Baty, Office Manager
4309 State Hwy 66
Longmont, CO 80504

With a copy to:

Jeffrey J. Kahn, Esq.
Bernard Lyons Gaddis & Kahn, PC
515 Kimbark Street
P.O. Box 978
Longmont, CO 80502-0978

All notices, information and responses to be sent to the Town under this agreement shall be sent to:

Town of Mead
ATTN: Town Manager
P.O. Box 626
Mead, CO 80542

With a copy to:

Samson, Pipis & Marsh, LLC
ATTN: Richard E. Samson, Esq.
255 Weaver Park Rd, STE 200
P.O. Box 1079
Longmont, CO 80502

Or, notices shall be sent to such other addresses or to the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure.

(c) Execution. This agreement shall not be entered into, or binding, until fully executed by the Town in accordance with all legal requirements appertaining thereto, including full signature, execution and attestation in the spaces therein. This agreement shall be binding upon the heirs, successors and assigns of the parties hereto.

(d) Authority to amend. This agreement may be amended at any time by written agreement between the parties.

(e) Payment of franchise negotiation expenses of Town. The Company is cognizant of the provisions of Chapter 5, Article I, of this Chapter regarding the reimbursement of the Town's expenses for the negotiation of this agreement. The Company agrees to fully comply with the provisions of Article I in the reimbursement of the Town for its expenses incurred in the negotiation of this agreement.

(f) Payment of expenses. The Company shall pay for all expenses relating to the publication of notices and ordinances arising out of the process for obtaining this franchise.

(g) Venue. In the event of any dispute regarding this agreement, venue shall be in the District Court for Weld County, Colorado. (Ord. 568 §16, 2006)