

## CHAPTER 5

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## ARTICLE I

### Cable Television Franchise

#### Sec. 5-1-10. Definitions.

For the purpose of this Article, the following terms, phrases, words and their derivations shall have the meanings given herein. Words not defined shall be given their common and ordinary meaning.

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

a. *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.

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

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

d. *Leased access channel* means portions of the system's nonbroadcast bandwidth, including unused portions of the specially designated channels for leased access services.

*Additional subscriber service* or *additional service* means any communications service, other than basic service, provided by the grantee to its subscribers, directly or as a carrier for its subsidiaries, affiliates or any other person engaged in communication services, including, but not limited to, pay television signals, data or other electronic intelligence transmission, meter reading and home shopping.

*Annual gross receipts* means any and all compensation, revenue and other consideration, derived directly or indirectly, in any form whatsoever, by a franchisee, its affiliates, subsidiaries or parent corporation, from, or in connection with, the operation of the cable television system, with no deductions whatsoever.

*Applicant* means the natural person, partnership, domestic or foreign corporation, association, joint venture or organization of any kind which applied for a franchise for cable television to be regulated hereunder.

*Application* includes all written proposals, in whatever form, made by the 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 Company, 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 as required by the F.C.C. to be carried by a community antenna television system as defined by the F.C.C.;
- b. Channels designated for special purposes by the Board of Trustees or its designate;
- c. Public, educational, local government, local organization and leased access channel signals; and
- d. Additional service as proposed by the Company in its application, or as it may hereafter provide.

*Board of Trustees* means the present governing body of the Town or any successor to the legislative powers of the present Board of Trustees.

*Cable television service* means the delivery by the Company to television receivers, or any other suitable type of audio/video communication receiver, to all subscribers within the confines of the Town of all signals of over-the-air television broadcasters allowed by the F.C.C. to be carried by the television system as defined by the F.C.C.; all F/M radio stations carried on the system; local origination channels; educational channels; public access channels; leased access channels; pay television channels; and other services provided for in this Article and the Company's application.

*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 electrical signals, located in the Town.

*Channel* means a band of frequencies six (6) megahertz (MHz) wide in the electromagnetic spectrum which is capable of carrying either one (1) audio/video television signal or a number of nonvideo signals.

*Company* means that successful applicant awarded a franchise pursuant to this Article for purposes of operating a cable television system with the Town, or the successor, transferee or assignee of the original applicant for such franchise.

*Converter* means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by use of an appropriate channel selector also permits a subscriber to view all signals included in a basic service delivered at designated converter dial locations.

*Easement* shall be limited to those rights-of-way owned by the Town, the terms, conditions or limitations upon which are not inconsistent with the erection, construction or maintenance of a CATV system, its structures or equipment.

*Equipment and apparatus* means manholes, underground conduits, poles, cables, boxes, wires, fixtures, conductors or other facilities necessary, essential, used or useful to and operated by the cable television system.

*F.C.C.* means the Federal Communications Commission of the United States government or its lawful successor.

*Fair market value* means the price that a willing buyer under no compulsion to buy would pay to a willing seller under no compulsion to sell.

*Franchise* means the nonexclusive rights granted pursuant to this Article to construct and operate a cable television system along the streets, alleys and public ways of the Town.

*Gross revenue* means any and all revenue derived directly or indirectly by the Company, its affiliates, subsidiaries, parent corporation and any person in which the Company has a financial interest, from or in connection with the operation of the cable television system pursuant to this Article; provided, however, that all revenues shall include, but not be limited to, basic subscriber service monthly fees, pay cable fees, leased channel fees, converter rentals, studio rental, production equipment, personnel fees and advertising revenues; and shall not include any taxes on services furnished by the Company herein, imposed directly upon any subscriber or user by the State, Town or other governmental unit and collected by the Company on the behalf of said governmental unit, and shall not include refunds or credits to subscribers in the Town.

*Initial service area* means all that area within the boundaries of the Town as it may be changed from time to time, having at least forty (40) dwelling units per street mile, and as set forth in the Company's application.

*Installation* means the connection of the system from feeder cable to subscribers' terminals.

*Party* means any person, firm, partnership, association, corporation, company or organization of any kind.

*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.

*Property of the Company* means all property, real or personal, owned, installed or used within the Town by the Company in the conduct of the cable television system business under the authority of a franchise granted pursuant to this Article.

*Public notice* means, unless otherwise defined herein, minimum public notice of any Town public meeting relating to this Article or to any CATV franchise granted pursuant to this Article and shall be by publication at least once in a local newspaper of general circulation at least ten (10) days prior to the meeting; posting at Town Hall; and, commencing on the fifteenth day prior to the meeting, the Company shall notify its subscribers of the meeting by announcement on at least one (1) channel of its CATV system between the hours of 7:00 p.m. and 9:00 p.m. for ten (10) consecutive days.

*Public property* means any real property owned by the Town other than a highway, sidewalk, easement or dedication.

*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. This may include "Class IV Channels" as defined by the F.C.C.

*Service* means all communications maintenance, repair and installation services provided by the Company, including the delivery of broadcast signals and programming covered by the regular

monthly charge paid by all subscribers, including such standard type of service that is normally furnished by CATV companies for a regular monthly charge and such additional communications services as are furnished as a part of the cable communications system in the way of two-way, return path services.

*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 Company to the use thereof for the purpose of installing or transmitting signals over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and 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 Company including, but not limited to, the conventional cable television system service of retransmission of television broadcast, radio signals, the Company's original broadcasting and the local government, educational, public access and leased channels and other services, including but not limited to, 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.

*System* means the broadband communications facility which is to be constructed, operated and maintained by the Company within the Town.

*Two-way capability* means the technical capacity for nonvoice return communications. (Ord. 151 §1, 1981; Ord. 481 §1, 2003)

#### **Sec. 5-1-20. Grant of franchise.**

(a) The Town hereby grants to Satellite Communications Cable Television, Inc., a Colorado corporation, hereinafter the "Company," a nonexclusive franchise for the installation, maintenance and operation of a cable television system within the Town under the terms and conditions set forth in this Article.

(b) The franchise for CATV service, granted by the Town pursuant to this Article, shall grant to the Company the right and privilege to erect, construct, operate and maintain, in, upon, along, across, above, over and under the highways, sidewalks, easements, dedications and other public property now in existence and as may be created or established during its term, any poles, wires, cable, underground conduits, manholes and other television conductors and fixtures 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. Existing utility poles of other utilities may be used only if written approval from such utility is obtained and approved by the Board of Trustees. (Ord. 151 §2, 1981; Ord. 152 §1, 1981; Ord. 359, 1997; Ord. 481 §1, 2003)

**Sec. 5-1-30. Term of franchise.**

(a) The term of the franchise granted by the Town pursuant to this Article shall be for a period of fifteen (15) years, commencing with the date of final acceptance by the Company of the franchise and approval thereof by the Board of Trustees. Approval of the final acceptance shall not be granted by the Board of Trustees until such time as the Company has fully and completely complied with all requirements of this Code relative to cable television system franchise applications.

(b) Pursuant to the approved agreement for extension of service dated July 9, 1997, between the Town and Fanch Cablevision of Colorado, Limited Partnership, successor in interest to Satellite Communications Cable Television, Inc., an extension of this franchise is hereby granted for ten (10) years.

(c) This franchise is hereby amended to extend the term of the franchise for a period of six (6) months from its expiration date of September 18, 2011. The new expiration date is March 18, 2012. (Ord. 151 §1, 1981; Ord. 152 §2, 1981; Ord. 344 §2, 1996; Ord. 356 §2, 1997; Ord. 359 §1, 1997; Ord. 481 §1, 2003; Ord. 566 §1, 2007; Ord. 590 §1, 2008; Ord. 599 §1, 2009; Ord. 649 §1, 2011)

**Sec. 5-1-40. Conditions of franchise.**

(a) 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 granting of the franchise and after the Company has:

(1) Filed with the Town Clerk an unconditional acceptance of the franchise grant and entered into and executed such documents as required by the Town consistent with the terms and provisions of this Article. Said acceptance shall be in a form as prescribed by the Town and shall contain provisions that the Company, by its acceptance, agrees to provide all services specifically set forth in its application to provide CATV service within the confines of the Town, and further, that its application is incorporated by reference and made a part of the franchise and this Article. In the event of conflict between such proposals 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 Company pursuant to this Section shall be in writing, duly executed and sworn to, by or on behalf of the Company, before a notary public or other officer authorized by law to administer oaths.

(2) File certificates of insurance as set forth herein.

(3) File such bonds, letters of credit and other sureties as required in Section 5-1-180.

(4) Reimburse the Town for the remaining balance of any costs incurred in conducting a public hearing in determining the grant of any franchise for CATV service.

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

(b) In the event the Company fails to comply in full with Subsection (a) above, then it shall be conclusively considered that the Company has abandoned its application and rights to such grant and award of the franchise, and any such rights that the Company may have acquired under this Article or the grant of the franchise shall immediately terminate and the Company shall have no right, privilege or

authority whatsoever under this Article. In the event the Company has paid the initial franchise fee of one thousand dollars (\$1,000.00) as required in Subsection (a) above, such fees shall be refunded to the Company if the Company has otherwise complied with said provisions. If it has not, the aforesaid costs of awarding the franchise shall be deducted therefrom and the balance refunded.

(c) The Company shall have no recourse whatsoever against the Town for or on account of any loss, cause, expense or damage arising out of any provisions or requirements of this Article and/or the grant of any franchise by the Town.

(d) The Company, 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.

(e) It shall be the overriding duty of the Company to take advantage of any new developments in the field of transmission of television and radio signals which would afford the Company an opportunity to be more efficient, or to more efficiently and economically serve its customers so that, at all times, said cable television system shall be no less advanced than any other system of comparable size, excepting only systems which are experimental, pilot or demonstration. It shall be the policy of the Town that the CATV system shall, as practicable maintain the current state of the art as regards CATV, and this Article may be amended when, in the opinion of the Board of Trustees, such amendment is necessary to facilitate the adoption and promotion of the use of new developments in the industry.

(f) The Company shall be controlled at all times during its application for and operation, installation and maintenance of a cable television system franchise by the provisions of this Code relative to cable television franchises. (Ord. 151 §2, 1981; Ord. 481 §1, 2003)

**Sec. 5-1-50. CATV franchise required.**

No CATV system shall be allowed to occupy or use the right-of-way of the Town or be allowed to operate without a CATV franchise. (Ord. 151 §3, 1981)

**Sec. 5-1-60. Authority not exclusive.**

The right to use and occupy said streets for the purposes herein set forth shall not be exclusive, and the Town reserves the right to grant a similar use of said streets to any person at any time during the period of this franchise. (Ord. 151 §4, 1981)

**Sec. 5-1-70. Application for franchise.**

(a) Applications for a franchise for cable television service pursuant to this Article shall be filed with the Town Clerk and shall contain at least the following:

(1) The name and business address of the applicant, date of application and signature of the applicant or appropriate corporate officers.

(2) A general description of the applicant's proposed operation including, but not limited to: business hours, operating staff, maintenance procedures, management and marketing staff complement and procedure, rules of operation for public access, a statement of services to be provided, a description of the system design, placement and location of equipment and proposed programming.

(3) A statement setting forth a description of any automated services proposed, as well as a description of the production facilities to be made available by the applicant for public, municipal and educational access channels.

(4) A statement explaining any assistance, in terms of personnel, equipment or capacity, to be designated for the programming or programming assistance for the public, educational and governmental access channels.

(5) A statement of the applicant's proposed rates in conformity with this Article.

(6) A description of the applicant's organization and structure including:

a. If the applicant is an individual, partnership or unincorporated association, it shall state the names and addresses of all persons (including corporations) having a proprietary or equitable interest in and to the applicant's business operation, and in and to the prospective franchise, if awarded. The term *equitable interest* shall include all assignments for value, as well as all contingent assignments of any right or privilege under the prospective franchise, and shall also include any benefit, payment or emolument whatsoever resulting from the grant of a franchise under the Board of Trustees.

b. If the applicant is a nonpublic corporation, the application shall state additionally the names and addresses of the officers, directors and shareholders of said corporation, together with the number of shares held by each shareholder, the date of incorporation, the date of the last annual report and a statement as to whether or not the corporation is licensed to do business in the State.

c. If the applicant is a publicly held corporation as defined by the rules and regulations of the Securities and Exchange Commission, the statement shall contain the states in which incorporated and/or qualified to do business, the names and addresses of the officers and directors of the corporation, the names and addresses and number of shares owned of all stockholders, both nominal and beneficial, owning one percent (1%) or more of the outstanding stock of the applicant.

d. A full disclosure of the ownership of the facilities to be used in rendering the service.

(7) A statement describing all intracompany relationships of the applicant, including parent, subsidiary or affiliated companies.

(8) A statement setting forth all agreements and understandings, whether written or oral, existing between the applicant and any other person, firm, group or corporation with respect to any franchise awarded and the conduct of the operation thereof existing at the time the application is made.

(9) Audited financial statements for the applicant's two (2) latest fiscal years unless the applicant has not been in existence for at least two (2) years, in which case the applicant shall furnish audited financial statements for such lesser period of time covering the period that the applicant has been in existence. If the applicant is a partnership, audited financial statements shall include copies of the "Federal Partnership Income Tax Return" for its latest two (2) fiscal years or such lesser period of time that said partnership has been in existence.

(10) A technical description of the type of network proposed by the applicant, including but not limited to network configuration (i.e. hub) network capacity, two-way operation capability and service

to be provided, and a description of the studio or studios, studio equipment, planned hours of operation and hours of availability, if any, that will be made available to governmental, public and/or educational institution or agencies.

(11) A statement from the applicant's senior technical staff member or consultant, advising that he or she has reviewed this Article and that the applicant's planned network and operations thereof will meet all of the requirements set forth herein.

(12) A statement of existing franchises held by the applicant indicating, with particularity, when the franchises were issued or awarded and when the systems were constructed together with the name, address and phone number of a governmental official knowledgeable of the applicant and its performance in such franchise area.

(13) A statement as to whether the applicant or any of its officers or directors has in the past been convicted of any felony.

(14) A statement detailing the prior CATV experience of the applicant, including that of the applicant's officers, management and staff to be associated with the proposed operation.

(b) If an application is for renewal of the franchise, the proposal must include, in addition to the information required in Subsections (1) through (14) above:

(1) A summary of the technical, financial and programming history of the network since the granting of the original franchise.

(2) A statement and timetable that outlines all proposed changes, expansion or improvements in the network as to services, programming or technical specifications during the forthcoming ten-year period.

(c) Ten (10) copies of the application shall be filed. Supplementary, additional or other information that the applicant deems reasonable for consideration may be submitted at the same time as its application, but must be separately bound and submitted in the above number of copies. The Town may, at its discretion, consider such additional information as part of the application.

(d) The Board of Trustees reserves the right to require such supplementary, additional or other information that it deems reasonably necessary for its determination under this Article.

(e) Notwithstanding any other requirement, each applicant for a CATV franchise must accompany with its application a certified check for seven hundred fifty dollars (\$750.00) made payable to the Town. No application for a franchise will be considered without the accompaniment of said check.

(1) All checks received will be deposited to an account of the Town and will serve to recover all expenses incurred by the Town in the granting of the franchise. Said expenses shall include, but not be limited to, consultants' expenses, reasonable value of services performed by the Town's employees, agents or contractors, and the cost of elections or otherwise, for the granting of said franchise. In addition, the applicant shall pay all advertising and publication charges incurred by the Town.

(2) Any funds remaining after all expenses have been paid will be refunded to the applicant. The Town shall not guarantee any amounts to be refunded.

(3) In the event that the expenses exceed the total amount of the fees collected for the applicant, the Company shall pay to the Town the excess amount within thirty (30) days of the award of the franchise, as certified to the Company by the Town. (Ord. 151 §5, 1981; Ord. 481 §1, 2003)

**Sec. 5-1-80. Time of the essence.**

Whenever this Article sets forth any time for any act to be performed by or on behalf of the Company, such time shall be deemed to be of the essence, and any failure by the Company to perform within the time set forth shall constitute a material breach of the terms of this Article and shall entitle the Town to invoke all penalties and remedies prescribed in this Article, as well as all other legal or equitable remedies available to the Town. (Ord. 151 §6, 1981)

**Sec. 5-1-90. Franchise territory.**

(a) When the Company is awarded a franchise pursuant to this Article to operate a cable television system, it shall apply its operations throughout the Town according to its present boundaries, and to future boundaries as those boundaries may change from time to time by various annexations.

(b) The Company shall not be required hereunder to extend its service to any area unless there exists in that area a potential of at least forty (40) dwelling units per street mile. When the potential of forty (40) dwelling units per street mile does not exist, the Company shall make a charge for installation at actual cost, including labor and material, for cable extension, for servicing this portion of the system. (Ord. 151 §7, 1981; Ord. 481 §1, 2003)

**Sec. 5-1-100. Local business office.**

The Company shall maintain a local business office within five (5) miles of the Town for the purpose of receiving inquiries, complaints and requests for repairs or adjustments from its customers and the general public. Said office shall also be operated so that complaints and requests for repairs or adjustments may be received and processed with a minimum delay. Provisions shall also be made for telephonically receiving service interruption calls on a twenty-four-hour basis on a non-toll line. (Ord. 151 §8, 1981)

**Sec. 5-1-110. Service maintenance standards.**

The Company shall maintain a repair and maintenance crew capable of responding to subscriber complaints and requests for service at normal service intervals. When the basis of the complaint is a defect or problem existing in Company-owned, -installed or -maintained equipment, there shall be no charge to the subscriber for this service. A normal service interval for purposes of this Article shall mean the period between the time that the Company is notified by the subscriber of a service deficiency and the third close of business following the receipt of such notice, provided that the subscriber or his or her representative is available, during the period, at the premises. This provision shall not apply to new requests for service until initial construction of the system is substantially completed. (Ord. 151 §8, 1981)

**Sec. 5-1-120. Complaint procedures.**

(a) Any verbal, telephonic or written complaint relating to the quality or continuity of service shall be attended to within a normal service interval. In the event that such complaints are not responded to or that

service is not restored to the levels required by the FCC or by the terms of this Article during said normal service interval, the subscriber shall be entitled to a rebate of one-fifteenth ( $\frac{1}{15}$ ) of his or her normal monthly service charge for each day or part thereof between the end of the normal service interval and the time service is restored to set standards. This provision shall not apply if such delay is occasioned because of an act of God, strike, national emergency or any other circumstance beyond the control of the Company. Similarly, this provision shall not apply to service requests or complaints pertaining to television set malfunction or other breakdowns not related to the operation of the cable television system.

(b) The Company shall establish procedures for receiving, acting upon and resolving subscriber complaints. The Company shall furnish notice of such procedures to each subscriber at the time of initial subscription to the system. In addition, the Company shall maintain a written record or log listing the date and time of customer complaints, identifying the subscriber and describing the nature of the complaints and what action was taken by the Company in response thereto, and such information as the Town may require regarding said complaints shall be transmitted to the Town Clerk no less than monthly or as otherwise specified herein. Said records shall be kept at the Company's local office reflecting the operations to date and shall be available for inspection during regular business hours.

(c) In the event complaints of a similar nature are made, or where there exists other evidence which, in the judgment of the Board of Trustees, casts a doubt on the reliability or quality of the cable service provided, the Board of Trustees shall have the right to test, analyze and report on the performance of this system. Such reports shall be delivered to the Board of Trustees no later than fourteen (14) days after the Board of Trustees formally notifies the Company and shall include the following information: the nature of the complaints which precipitated the special tests; what system components tested, the equipment used and the procedures employed in testing; the results of such tests; the methods in which said complaints were resolved, if applicable; and any and all additional information deemed relevant by the Board of Trustees.

(d) Any tests or analyses required hereunder shall be supervised by a registered professional engineer not on the permanent staff of the Company and selected by the Town. Said engineer shall sign all records of special tests and forward to the Board of Trustees such records with a report interpreting the results of the test and recommending action to be taken by the Board of Trustees. Costs of said engineer shall be borne by the Company. (Ord. 151 §8, 1981; Ord. 481 §1, 2003)

#### **Sec. 5-1-130. Compliance with state and federal laws.**

Notwithstanding any other provision in this Article to the contrary, the Company shall at all times comply with all laws and regulations of the state and federal governments or any administrative agencies thereof; provided, however, that if any such state or federal law or regulation shall prohibit the Company from performing any service in conflict with the terms of this Article or of any law or regulation of the Town, then as soon as possible following knowledge thereof, the Company shall notify the Town of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Town or this Article. (Ord. 151 §9, 1981)

#### **Sec. 5-1-140. Police powers.**

Nothing in this Article or in any agreement or ordinance in accordance herewith shall be construed as an abrogation by the Town of any of its police powers. (Ord. 151 §10, 1981)

**Sec. 5-1-150. Rights reserved to Town.**

(a) The Town reserves such rights and powers which, under applicable federal or state law or regulations, the Town must reserve and maintain. The Company shall comply with any action or requirements of the Town in the exercise of such rights and powers which either have been or shall subsequent to the grant of the franchise be enacted or established.

(b) The Town may inspect all construction or installation work performed pursuant to any CATV franchise.

(c) The Town may grant additional franchises within the Town to other persons for the conduct of cable television systems. (Ord. 151 §11, 1981)

**Sec. 5-1-160. Notice.**

All notices from the Company to the Town pursuant to this Article shall be to the Town Clerk or to such other officers designated by the Board of Trustees. The Company shall maintain with the Town throughout the term of this franchise an address for service of all notices by mail. (Ord. 151 §12, 1981)

**Sec. 5-1-170. Conditions of street occupancy.**

(a) The Company shall have the right and privilege of constructing, erecting, operating and maintaining a cable television system, equipment and apparatus upon, through, along, under and over the streets within the corporate boundaries of the Town as they now exist or may hereafter be extended; subject to the provisions hereof and to all powers (including police powers) inherent in and conferred upon or reserved to the Town.

(b) No pavements, sidewalks, curbs, gutters or other such street installation shall be disturbed and no excavation in any of the streets will be made or any poles installed, except with the express written permission of the Town. All equipment and apparatus shall be located in such portion of said streets as may be designated by the Town, and the Company shall repair any disturbance or excavation to the extent that the pavement, sidewalk, curb, gutter or other street installation is returned to the condition as it existed prior to said disturbance or excavation.

(c) The company shall, at its expense, protect, support temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place any property of the Company when required by the Town by reason of traffic conditions, public safety, street vacation, street construction, change in establishment of street grade, installation of sewer, drains, water pipes, tracks or any other type of structural improvement by any public agency.

(d) All wires, conduits, cables and other property and facilities of the Company shall be so located, constructed, installed and maintained so as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the Town. The Company shall keep accurate maps and records of all its facilities and furnish copies of said maps and records as requested by Town. The Company shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, or with any gas, electric or telephone fixtures, or with any water hydrants or sewer and water mains. All poles and other fixtures placed in the streets shall be placed in the right-of-way between the roadway and the property, as specified by the Town.

(e) All wires, cables, amplifiers and other property shall be constructed and installed in an orderly and workmanlike fashion. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering and safety considerations. All installation shall be underground in those areas of the Town where all public utilities (those providing telephone or electric service) are underground. In areas where both telephone and electric facilities are above ground at the time of installation, the grantee may install its service above ground, provided, however, that at such time as those facilities are required to be placed underground by the Town, the Company shall likewise place its service underground without additional cost to the residents of the Town other than as may be granted by the provisions of this Article.

(f) The Town shall give the Company reasonable notice of plans for street improvement where paving or resurfacing of a permanent nature is involved. The notice shall give the Company sufficient time to make any additions, alterations or repairs to its facilities as it deems necessary in advance of the actual commencement of the work, so as to permit the Company to maintain continuity of service.

(g) The Company shall, at the request of 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 of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance.

(h) The Company shall have the authority to trim trees overhanging upon streets, alleys, sidewalks and any other public places of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company. All trimming is to be done under the supervision and direction of the Town and at the expense of the Company. The Company shall make every effort to preserve the aesthetic beauty and viability of any trees or shrubbery trimmed. The Company may contract for such services; however, any firm or individual shall obtain Town approval prior to commencing such activity. Any property owner whose property may be affected shall be given written notice of the Company's intent to undertake such actions at least ten (10) days prior to such trimming in order that said property owner may undertake the required trimming himself or herself and to consult with the Company in that regard. All tree limbs and other refuse shall be removed by the Company and at its expense.

(i) Public buildings shall be connected to the cable system at no charge upon the direction of the Town. Such requests for service shall be initiated by any local government through the Town. There shall be no monthly charges for providing basic subscriber services to said facilities. (Ord. 151 §13, 1981)

**Sec. 5-1-180. Letter of credit; cash deposit.**

(a) Within ten (10) days after the award of any franchise for a cable television operation granted pursuant to this Article, the Company shall deposit with the Town cash or an irrevocable letter of credit in the amount of two thousand dollars (\$2,000.00), the form and content of which shall be approved by the Town Attorney. The letter of credit shall be used to insure: the faithful performance by the Company of all provisions of the franchise, this Article and the Company's proposal; compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the Town having jurisdiction over this Article; and the payment by the Company of any claims, liens and taxes due the Town which arise by reason of the construction, operation or maintenance of the system.

(b) The deposit shall be maintained at two thousand dollars (\$2,000.00) during the entire term of the franchise, even if amounts have to be withdrawn pursuant to Subsection (a) or (c) of this Section.

(c) If the Company fails to pay to the Town any compensation within the time fixed herein; fails after ten (10) days' notice to pay to the Town any taxes due and unpaid; fails to repay to the Town within ten (10) days any damages, costs or expenses which the Town is compelled to pay by reason of any act or default of the Company in connection with this franchise; or fails, after three (3) days' notice of such failure by the Town to comply with any provision of this franchise which the Town reasonably determines can be remedied by demand on the letter of credit or cash deposit, the Town may immediately request payment of the amount thereof, penalties and interest at the then-prevailing legal rate, from said letter of credit or deduct said amounts from the cash deposit. Upon such request for payment or deduction, the Town shall notify the Company of the amount and date thereof.

(d) The rights reserved to the Town with respect to the letter of credit or cash deposit are in addition to all of the 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 cash deposit or letter of credit shall affect any other right the Town may have. (Ord. 151 §14, 1981; Ord. 481 §1, 2003)

**Sec. 5-1-190. Construction bond.**

(a) Within thirty (30) days after the award of this franchise, the Company shall obtain and maintain at its cost and expense, and file with the Town Clerk, a corporate surety bond from a company authorized to do business within the State and found acceptable by the Town Attorney, in an amount to be determined by the Board of Trustees to guarantee the timely construction and full activation of this cable television system.

(b) The bond shall provide, but not be limited to, the following conditions: there shall be recoverable by the Town, jointly and severally, from the principal and surety, any and all damages, loss or costs suffered by the Town resulting from the failure of the Company to satisfactorily complete and fully activate the CATV system throughout the franchise area where the CATV system will be initially available to subscribers pursuant to the terms and conditions of Section 5-1-250 of this Article.

(c) Any extension to any prescribed time limit must be authorized by the Board of Trustees. Such extension shall be authorized only when the Board of Trustees finds that such extension is necessary and appropriate due to causes beyond the control of the Company.

(d) The construction bond shall be terminated only after the Board of Trustees finds that the Company has satisfactorily completed initial construction and activation of the CATV system pursuant to the terms and conditions of Section 5-1-250.

(e) The rights reserved to the Town with respect to the construction bond 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 construction bond shall affect any other right the Town may have.

(f) The construction bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Town, by certified mail, of a written notice of intent to cancel or not renew."

(Ord. 151 §15, 1981; Ord. 481 §1, 2003)

**Sec. 5-1-200. Indemnification.**

(a) The Company shall at its sole cost and expense fully indemnify, defend and hold harmless the Town, its officers, boards, commissions and employees against any and all claims, suits, actions, liability and judgments for damages (including, but not limited to, expenses for reasonable legal fees and disbursements and liabilities assumed by the Town in connection therewith):

(1) To persons or property, in any way arising out of or through the acts or omissions of the Company, its servants, agents or employees or to which the Company's negligence shall in any way contribute;

(2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, for violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to Town programming);

(3) Arising out of the Company's failure to comply with the provisions of any federal, state or local statute, regulation or ordinance applicable to the Company in its business hereunder; and

(4) Any liability which may arise with regard to a claim for violation of any federal, state or local statute, regulation or ordinance dealing with civil rights or antitrust.

(b) In accordance with the foregoing indemnity, the Town shall give the Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall be deemed to prevent the Town from cooperating with the Company and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the Town of any sum by reason of the letter of credit required in Section 5-1-180 hereof shall be any limitation upon the liability of the Company to the Town under the terms of this Section, except that any sum so received by the Town shall be deducted from any recovery which the Town might have against the Company under the terms of this Section. (Ord. 151 §16, 1981)

**Sec. 5-1-210. Liability and insurance.**

(a) The Company shall maintain, throughout the term of the franchise, liability insurance insuring the Town and the Company in the minimum amount of:

(1) One hundred thousand dollars (\$100,000.00) for property damage to any one (1) person;

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

(3) Three hundred thousand dollars (\$300,000.00) for personal injury to any one (1) person; and

(4) One million dollars (\$1,000,000.00) for personal injury in any one (1) accident.

(b) The insurance policy obtained by the Company in compliance with this Section must be approved by the Town Attorney, and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the Town Clerk during the term of the franchise and may be

changed from time to time to reflect changing liability limits. The Company shall immediately advise the Town Attorney of any litigation which may develop that would affect this insurance.

(c) Neither the provisions of this Section nor any damages recovered by the Town thereunder shall be construed to limit the liability of the Company under any franchise issued pursuant to this Article.

(d) All insurance policies maintained pursuant to the franchise for cable television shall contain the following endorsement:

"It is hereby understood and agreed that this insurance policy may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Town, by certified mail, of a written notice of such intention to cancel or not to renew."

(Ord. 151 §17, 1981; Ord. 481 §1, 2003)

**Sec. 5-1-220. Rates, special rates and deposits.**

(a) The Board of Trustees may, by separate ordinance, approve a schedule for maximum rates for services which the Company may charge. In the absence of any such rate setting by ordinance, the rates as proposed by the Company in its application shall control. The absence of such rate setting by the Board of Trustees at any time shall not preclude the Board of Trustees from taking such action at such time and to such extent as is deemed appropriate by the Board of Trustees.

(b) The Board of Trustees may set maximum rates, by separate ordinance, for any or all of the Company's services, including but not limited to:

- (1) Installation;
- (2) Converter rental;
- (3) Converter deposit;
- (4) Basic monthly service;
- (5) Additional outlets;
- (6) Project rewiring;
- (7) Institutional service;
- (8) Transfers;
- (9) Reconnection;
- (10) Relocation;
- (11) Service calls; and
- (12) Undergrounding.

(c) The Company may make application for revision of the rate schedule at any time in accordance with the following procedures:

(1) The Company may petition the Board of Trustees for a change in rates by filing a revised rate schedule including its justifications for said proposed new schedule.

(2) Within fourteen (14) days of notification by the Board of Trustees of the place and time established for a hearing regarding rate change, the Company shall notify its subscribers of the date and time of said hearing by announcement on at least one (1) channel of its system, between the hours of 7:00 p.m. and 9:00 p.m. for ten (10) consecutive days immediately prior to the hearing.

(3) Within thirty (30) days of the filing of said petition for rate change, the Board of Trustees shall hold a public hearing to consider the proposed rate change, at which hearing all persons desiring to be heard, including the Company, shall be heard on any matter, including but not limited to the performance of this franchise, the Company services and the proposed new rates.

(4) Within thirty (30) days after said hearing, the Board of Trustees shall render a written decision on the Company's petition either accepting, rejecting or modifying the same and reciting the basis of its decision.

(5) The criteria for the Board's decision on such matters shall be the establishment of rates which are "fair and reasonable" to both the Company and its subscribers and shall be generally defined as the minimum rates necessary to meet all applicable costs of service, including fair return on all invested capital, all assuming efficient and economical management.

(6) In order for the Board of Trustees to determine whether proposed rate changes comport with the criteria established in Subparagraph (5) above, the Company shall include the following financial reports:

- a. Balance sheet;
- b. Income statement;
- c. Cash flow statement;
- d. Statement of sources and applications of funds;
- e. Detailed supporting schedules of expenses, income, assets and other items as may be required; and
- f. Statement of current and projected subscribers and penetration.

The Company's accounting records applicable to this system shall be available for inspection by the Town at all reasonable times. The Town shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to the Town's operation.

(7) The Board of Trustees may extend its time for rendering a decision regarding the Company's petition for up to thirty (30) days, by resolution. If the Board of Trustees fails to act within the initial

thirty-day period following a public hearing on any rate increase, or within the additional thirty-day period of any extension, the Company's petition shall be deemed to have been granted.

(d) The Company may charge special lower monthly service rates to hotels, motels, nursing homes, hospitals and other similar buildings where there is one hundred percent (100%) subscription, as may be established by the Board of Trustees by separate ordinance.

(e) The Company may provide service to full-time dealers and television sales and service without a monthly charge.

(f) The Company may require an advance deposit of all or a part of all of the estimated costs for installation.

(g) The Company may require subscribers to pay for each month of basic service in advance at the beginning of each month. No other advance payment or deposit of any kind shall be required by the Company for basic subscriber service. (Ord. 151 §18, 1981)

**Sec. 5-1-230. Franchise fees.**

(a) The Company shall pay to the Town, for use of the streets and other facilities of the Town in the operation of the cable television system and for the municipal supervision thereof during the life of the franchise, a sum equal to not less than three percent (3%) of the annual gross revenues of the Company. The Company shall file with the Town, within thirty (30) days after the expiration of each of the Company's fiscal quarters, a financial statement clearly showing the gross revenues received by the Company during the preceding quarter. Payment of the quarterly portion of the franchise fee shall be rendered to the Town at the time such statement is filed. The Company shall also file, within ninety (90) days following the conclusion of each fiscal year of the Company, an annual report prepared and audited by an officer of the Company showing the year's total gross revenues, franchise payments made to the Town and any further relevant financial information with regard to the Company as may be required by the Town.

(b) In the event this franchise should be terminated or forfeited prior to the end of the basic fifteen-year term, the Company shall immediately submit to the Town an audited financial statement showing the gross revenue of the Company for the time elapsed since the last quarter for which the Company has paid to the Town the required percentage of gross annual revenues. The Company shall pay to the Town, not later than thirty (30) days following the termination of the franchise, a like percentage of such gross revenue.

(c) In the event that any payment is not made on or before the applicable date fixed in Subsections(a) and (b) hereof, the Company shall be subject to the penalty provided for in Section 5-1-320.

(d) The Town shall have the right to inspect the Company'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. No acceptance of any payment by the Town shall be construed as a release of or an accord and satisfaction of any claim the Town might have for further or additional sums payable under the terms of this Article or for any other performance or obligation of the Company hereunder.

(e) Payments of compensation made by the Company 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. 151 §19, 1981)

**Sec. 5-1-240. Technical standards and specifications and system channel capacity.**

(a) All construction, installation and maintenance of equipment related to the Company CATV system shall comply with the following:

(1) National Electric Safety Code as adopted by the Town.

(2) National Electric Code of the National Fire Protection Association.

(3) National Bureau of Standards Handbook 81 (Part 2).

(4) 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 I Street N.W., Washington, D.C. 20006.

(5) Bell Telephone System Code of Pole Line Construction.

(6) Applicable FCC or other federal, state and local regulations and technical standards.

(7) With regard to any tower constructed for use in the Town's cable television system, Federal Aviation Agency regulations, including, but not limited to, Objectives Affecting Navigable Airspace, 14 CFR 77.1, et seq., February 1965, and Construction, Marking and Lighting of Antenna Structures 47 CFR 17.1, et seq., September 1967.

(8) Federal Communications Commission Regulations, Technical Rules and Standards, 47 CFR 76.601-76-613 (1972).

(b) Construction, installation and maintenance of the CATV system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(c) All working facilities and conditions used during construction, installation and maintenance of the CATV system shall comply with the standards of the Occupational Safety and Health Administration.

(d) Stray radiation (Rf leakage) shall be checked at reception locations for emergency radio services to provide that no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns.

(e) The CATV system shall be capable of delivering all National Television Systems Committee color and monochrome standard signals (developed and presented to the FCC on July 21, 1953) to standard Electronic Industries Association approved television receivers without noticeable degradation.

(f) The CATV system shall meet all performance criteria over the ambient temperature range prevailing in the franchise area.

(g) The Company shall construct a cable television system that shall have not less than thirty-five (35) video channels or an equivalent amount of bandwidth capacity. (Ord. 151 §20, 1981)

**Sec. 5-1-250. Construction timetables.**

(a) Upon the granting of the CATV franchise, the Company shall, within thirty (30) days, file any and all documents required to obtain all necessary federal, state and local licenses, permits and authorizations required for the conduct of its business (except for building permits) and shall, upon request of the Town, submit reports to the Board of Trustees on progress in this respect until all documents are in hand.

(b) Construction of the system shall commence within thirty (30) days after the effective date of the franchise. Within six (6) months from the date of the award of the CATV franchise, the Company must make cable television service available to every dwelling unit within the initial service area. (Ord. 151 §21, 1981)

**Sec. 5-1-260. Power to contract; pole usage.**

The Company may enter into contracts with any public utility companies or any other owners or lessees of any poles located within or without the Town to whatever extent such contracts may be expedient and of advantage to the Company for use of poles and posts necessary for proper installation of the system, obtain right-of-way permits from appropriate state, county and federal officials necessary to cross highways or roads under their respective jurisdictions to supply main trunk lines from the Company's receiving antennas, obtain permission from the Federal Aviation Administration to erect and maintain antennas suitable to the needs of the system and its subscribers and obtain whatever other permits the Town, County, State or Federal officials may require. (Ord. 151 §22, 1981)

**Sec. 5-1-270. Disconnection.**

(a) There shall be no charge for disconnection from any cable television system. If a user or subscriber had failed to pay properly due monthly fees, or if a user or subscriber disconnects for seasonal periods, the Company may require, in addition to full payment of delinquent fees, a reasonable fee for reinstatement.

(b) If a user or subscriber fails to pay a properly due monthly subscriber fee, or any other properly due fee or charge, the Company may disconnect the subscriber's service outlet upon a ten-day written notice. If the subscriber pays within the (10) days after payment is due and after notice of disconnection has been given, the Company shall not disconnect the subscriber's service. (Ord. 151 §23, 1981)

**Sec. 5-1-280. Change application; procedure.**

Except as otherwise specifically provided herein, all applications by the Company for changes in service, construction schedules, transfer of ownership, proposed changes in regulations or ordinances, etc., shall be made and processed according to the following procedure:

- (1) Applications shall be in a form as prescribed by the Town;

(2) An application may be rejected for inadequacy by the Town if it contains an inadequate description of what is being applied for, is not in an acceptable form or contains insufficient facts or information for adequate consideration;

(3) A rejection of an application for an inadequacy shall be in writing and shall state the nature of said deficiencies;

(4) Upon acceptance, the Town shall review the application regarding the necessity of further staff study and reports. The Town Clerk shall submit the application to the Board of Trustees if he or she deems it adequate and complete and in need of no further staff study or report. Upon submittal to the Board of Trustees, notice shall be given to the Company of the date, time and place that the matter will be considered. All such matters shall be considered in a public hearing with notice being given to the public as described herein. In no event shall the application be submitted to the Board of Trustees later than thirty (30) days from acceptance by the Town Clerk.

(5) Following a public hearing, the Board of Trustees may submit the application for further study and information, and may request that additional documents and provisions be provided, in which case a new hearing date will be established.

(6) Following the public hearing and the receipt of any additional information requested, the Board of Trustees may approve, disapprove or modify the change requested by the Company. (Ord. 151 §24, 1981)

**Sec. 5-1-290. Company services.**

(a) The Company shall provide all subscribers with all television signals required to be carried pursuant to FCC Rules and Regulations, and all local access channels as defined herein.

(b) Signal quality. The Company shall produce a picture, whether in black and white or in color, accompanied with proper sound on typical standard production television sets in good repair, that is as good as the state of the art reasonably and practicably allows. The Company shall limit failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than three (3) days after written notice by the Town to the Company unless the failure is beyond the control of the Company.

(c) The Company shall maintain, as a minimum, the following (access channels):

(1) At least one (1) specially designated, noncommercial public access channel to be used by the Town in conjunction with Johnstown and the local school system.

(2) At such time as the Board of Trustees determines that additional channels are necessary the Company shall activate one (1) or more additional channels for noncommercial, public and educational use.

(d) The Company shall have available equipment for local production and presentation of cablecast programs other than automated services and shall permit its use for the production and presentation of public access programs.

(e) The Company shall make available equipment for color productions for the production of programming involved in access channeling. The equipment shall be kept and stored in the Tri-Town area and made available to the Town for use.

(f) The Company may charge for the use of such facilities as contemplated in Subsections (d) and (e) above according to such rates as approved by the Board of Trustees. (Ord. 151 §25, 1981; Ord. 481 §1, 2003)

**Sec. 5-1-300. Emergencies.**

(a) In the event of an emergency or disaster, the Company shall, upon request of the Town, make available its facilities to the Town, the county, state or federal governments at no cost for emergency use during the period of such emergency or disaster and shall provide such personnel as necessary to properly operate the system under said circumstances.

(b) The Company shall incorporate into its facilities the capability for an emergency override alert, whereby the Town, in times of crises, may be able to introduce a bulletin on all channels simultaneously.

(c) If, at any time in the case of fire or disaster in the Town, it shall be necessary in the reasonable judgment of the Town Engineer to cut or move any of the wires, cables, amplifiers or other appurtenances to the network of the Company, such cutting or removing may be done and any repairs necessary thereby shall be made by the Company at its sole expense, provided that such repairs are not necessitated by a negligent act of the Town, in which case costs of repairs shall be borne by the Town. (Ord. 151 §26, 1981)

**Sec. 5-1-310. Continuity of service.**

(a) The Company shall be required to provide continuous service to all subscribers in return for payment of the established fee.

(b) If the Company elects to overbuild, rebuild, modify or sell or determines to abandon the system, or the Town removes or fails to renew the franchise, elects to purchase the system, if the franchise becomes void, the Company is required as part of its franchise to continue to operate the system and provide continuous, uninterrupted service until an orderly and lawful change of operation is effectuated regardless of the circumstances. Under no circumstances shall this period of operation exceed three (3) months from the date of occurrence of any of the above events. (Ord. 151 §27, 1981)

**Sec. 5-1-320. Penalties.**

For violation of the following provisions of this Article, penalties shall be chargeable to a letter of credit or other security as follows:

(1) For failure to complete CATV system construction in accordance with the plans as submitted by the applicant and as required hereunder unless the Board of Trustees specifically approves the delay by motion or resolution, or when the delay is due to occurrence of conditions beyond the Company's control, the Company shall pay one hundred dollars (\$100.00) per day for each day, or part thereof, the deficiency continues.

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

(3) For failure to test, analyze and report on the performance of the system following a request pursuant to this Article, the Company shall pay to the Town fifty dollars (\$50.00) per day for each day, or part thereof, that such noncompliance continues.

(4) For failure to pay a franchise fee when due pursuant to Section 5-1-230, the Company shall pay one hundred dollars (\$100.00) per day, or part thereof, that the violation continues.

(5) For failure to refund the cash deposit as required in Section 5-1-330 within the specified thirty (30) days, the Company shall pay one hundred dollars (\$100.00) per day, or part thereof, that the violation continues. (Ord. 151 §28, 1981)

**Sec. 5-1-330. Refunds to subscribers and users.**

(a) If the Company fails to provide any reasonable service request by a subscriber or user, the Company shall, after being afforded reasonable opportunity to provide the service, not to exceed thirty (30) days, promptly refund all deposits or advance charges paid for the service in question by said subscriber or user. This provision shall not alter the Company's responsibility to subscribers and users under any separate contractual agreements the Company may have with said subscribers or users or to relieve the Company for liability for penalties under this Article that may be assessed by the Town for damage that may result to the Town or any subscriber or user because of the Company's failure to provide the service promised.

(b) If any subscriber terminates any monthly service during the first twelve (12) months of said service because of failure of the Company to render the service in accordance with the standards set forth in this Article, the Company shall refund to said subscriber an amount equal to the installation or reconnection charge paid by the subscriber multiplied by the fraction of the twelve-month period for which the subscriber will not be receiving the service. In the event that said subscriber has made an advance payment, the amount paid shall be refunded by the Company. This provision shall not relieve the Company of liability established in other provisions of this Article.

(c) If any subscriber terminates, for personal reasons, any monthly service prior to the end of a prepaid period, a pro rata portion of any prepaid subscriber's service fee, using the number of days as a basis, shall be refunded to the subscriber by the Company, within thirty (30) days. (Ord. 151 §29, 1981)

**Sec. 5-1-340. Company rules and regulations.**

The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business, as shall be reasonably necessary to enable the Company to exercise its rights and performance obligations under this Article and the franchise, and to insure an uninterrupted service to each and all of its customers; provided, however, that its rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations. (Ord. 151 §30, 1981)

**Sec. 5-1-350. Rights of individuals.**

(a) The company shall not initiate or use any form procedure or device for procuring information or data from a cable subscriber's premises by use of the cable system without prior valid written authorization from the subscriber so affected. Valid authorization shall mean written approval from the subscriber for a period of time not to exceed one (1) year, and said authorization shall not have been obtained from the subscriber as a condition for providing service not requiring return path monitoring. Further, it shall be unlawful for the Company, without such authorization, to activate and/or utilize return signals in any manner from the subscriber's premises. In any case, the subscriber shall have the right and opportunity to deactivate the return path from his or her premises.

(b) Neither the Town nor the Company shall, without prior valid written authorization from each subscriber so affected, provide any data identifying the subscribers' name or address to any other party, and said authorization shall not have been obtained from the subscriber as a condition for providing service not requiring return path monitoring.

(c) No person shall procure information or data from a cable subscriber's premises by use of the cable system without prior written authorization from each subscriber affected. *Valid authorization* shall mean written approval from the subscriber for a period of time not to exceed one (1) year and shall not have been obtained as a condition for providing service not requiring return path monitoring.

(d) No authorization for procurement or dissemination of subscriber-identifiable information or data shall be valid unless it specifies:

- (1) The type or types of information or data covered; and
- (2) The parties authorized to collect, receive, store, record, transmit or otherwise convey this information or data.

Further, all authorizations shall specify the maximum period of time that any subscriber-identifiable information or data shall be preserved in any manner or form.

(e) A written copy of all subscriber-identifiable information or data which is retained and/or disclosed and the disposition of this information or data, together with any explanation necessary to make it understandable to the subscriber, shall be provided to the affected subscriber within thirty (30) days of procurement. Further disclosures shall be fully detailed in writing to the affected subscriber within thirty (30) days of such disclosure.

(f) Nothing contained herein shall prohibit the Company from conducting system-wide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return path transmission or billing for pay services. (Ord. 151 §31, 1981)

**Sec. 5-1-360. Fiscal reports.**

The Company shall file annually with the Town Clerk, no later than one hundred twenty (120) days after the end of the Company's fiscal year, a copy of a financial report, including an income statement applicable to its operations during the preceding twelve-month period, a balance sheet, and a statement of its investment in such properties on the basis of original cost, less applicable depreciation. Such report shall be certified as correct by an authorized officer of the Company, and there shall be submitted along

with such report any other reasonable information as requested by the Town with regard to the Company's properties and expenses related to its CATV system operations within the Town. (Ord. 151 §32, 1981)

**Sec. 5-1-370. Access to books and records.**

(a) Copies of all petitions, filings, applications and correspondence submitted by the Company to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations, shall be submitted simultaneously to the Town.

(b) The Company shall fully cooperate in making available at reasonable times, and the Town shall have the right to inspect the books, records, maps, plans and other like materials of the Company applicable to the Milliken CATV system, at any time during normal business hours; provided that where volume and convenience necessitate, the Company may require the inspection to take place on Company premises. (Ord. 151 §33, 1981)

**Sec. 5-1-380. Transfer of ownership or control.**

(a) This franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without the prior written consent of the Town. The Company may, however transfer or assign the franchise to a wholly owned subsidiary of the Company, and such subsidiary may transfer or assign the franchise back to the Company without such consent.

(b) Any proposed assignee must show financial responsibility as determined by the Town and must agree to comply with all provisions of the franchise and this Article. The Town shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to the Company within sixty (60) days following the receipt of written notice of the proposed transfer or assignment.

(c) The Company shall promptly notify the Town of any actual or proposed change in, transfer of or acquisition by any party of control of the Company. The word *control* is used here and is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Company shall make the franchise subject to cancellation unless and until the Town shall have consented thereto, which consent will not be reasonably 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 Company shall assist in any such inquiry. In addition to those criteria mentioned above for determining whether or not to approve any such change, transfer or acquisition, the Board of Trustees may also look into the moral character of the proposed assignee, including but not limited to, his or her criminal history; convictions or judgments for fraud, deceit or misrepresentation against the proposed assignee; and whether or not there is any claim or lawsuit pending against the proposed assignee arising out of or involving a cable communication system. (Ord. 151 §34, 1981)

**Sec. 5-1-390. Forfeiture and termination.**

(a) In addition to all other rights and powers retained by the Town under this franchise or otherwise, the Town reserves the right to declare a forfeiture and terminate the franchise and all rights and privileges

of the Company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by the Company shall include, but not be limited to, the following:

(1) Violation of any material provision of this authority or any rule, order or determination of the Board of Trustees made pursuant to this authority, except where such violation, other than of provisions concerning transfer without prior Board of Trustees approval, is without fault of the Company;

(2) Becoming insolvent or unable or unwilling to pay its debts, or being adjudged bankrupt;

(3) Attempting to dispose of any of the facilities or property of its CATV system in violation of the terms of this authority;

(4) Attempting to evade any of the provisions of this authority or practicing any fraud or deceit upon the Town;

(5) Failure to begin or complete construction and/or failure to provide services as otherwise required hereby; or

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

(b) Any of the above mentioned shall not constitute a major breach if the violation occurs but is without fault of the Company, or occurs as a result of circumstances beyond its control. The Company shall not be excused by mere economic hardship by misfeasance or malfeasance of its directors, officers or employees.

(c) The Town may make a written demand that the Company comply with any such provision, rule, order or determination under or pursuant to its franchise and/or this Article. If the violation by the Company continues for a period of thirty (30) days following such written demand without written proof that corrective action has been taken or is being actively or expeditiously pursued, the issue of termination of franchise may be placed before the Board of Trustees. The Town shall cause to be served upon the Company, at least twenty (20) days prior to the date of such Board hearing, a written notice of the intent to request such termination and the date and place of the hearing. Public notice shall be given of the hearing and issue which the Board of Trustees is to consider.

(d) At the public hearing, the Board of Trustees shall hear and consider the issue and shall hear any person interested therein to determine whether or not a violation by the Company has occurred.

(e) If the Board of Trustees determines that the violation by the Company was the fault of the Company and within its control, the Board of Trustees may, by resolution, declare that the franchise of the Company is forfeited and terminated unless there is compliance within such period as the Board of Trustees may fix, such period not to be less than sixty (60) days, provided that no opportunity for compliance need be granted for fraud or misrepresentation.

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

(g) Upon termination or cancellation of this authority as provided for herein, the Town shall have the right to require the Company to remove at its own expense all portions of the CATV system from all public ways within the Town within six (6) months of said termination or cancellation. (Ord. 151 §35, 1981; Ord. 481 §1, 2003)

**Sec. 5-1-400. Foreclosure; receivership.**

(a) Upon the foreclosure or other judicial sale of all or a substantial part of the cable communication system, or upon the termination of any lease covering all or a substantial part of the system, the Company shall notify the Town of such fact, and such notification shall be treated as a notification that a change in control of the Company has taken place and the requirements of this Article governing the consent of the Board of Trustees to such change in control of the Company shall apply.

(b) The Board of Trustees shall have the right to cancel the franchise 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 receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(1) Within one hundred twenty (120) days after his or her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Article and remedied all defaults thereunder; and

(2) Such receiver or trustee within said one hundred twenty (120) days shall have executed an agreement duly approved by the Court having jurisdiction in the matter whereby such receiver or trustee assumes or agrees to be bound by each and every provision of this Article and the franchise granted to the Company. (Ord. 151 §36, 1981; Ord. 481 §1, 2003)

**Sec. 5-1-410. Nondiscrimination.**

(a) The Company shall not deny service, access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin or sex. The Company shall strictly adhere to the Equal Employment Opportunity requirements of the FCC.

(b) The Company shall comply at all time 'with all other applicable federal, state and Town ordinances and laws, and all executive and administrative orders relating to nondiscrimination. (Ord. 151 §37, 1981)

**Sec. 5-1-420. Abandonment or removal of facilities.**

(a) In the event that the use of any part of the system is discontinued for any reason by the Company for a continuous period of twelve (12) months, in the event such system or property has been installed in any street or public place without complying with the requirements of this Article, or in the event the rights granted hereunder have been terminated or cancelled or have expired, the Company shall promptly remove from the streets and public places all such property and poles of such system, other than any which the Town may permit to be abandoned in place. In the event of such removal, the Company shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the Town. Any property of the Company to be abandoned in place shall be abandoned in such manner as the Town may prescribe. Upon a permanent abandonment of property of the Company in

place, the Company shall submit to the Town an instrument, to be approved by the Town, transferring to the Town the ownership of such property.

(b) If the Company fails to remove any property as herein requested, the Town may perform the work at the Company's expense. (Ord. 151 §38, 1981; Ord. 481 §1, 2003)

**Sec. 5-1-430. Rules and regulations.**

In addition to the inherent powers of the Town to regulate and control this franchise for cable television service and those powers expressly reserved by the Town or agreed to and provided for herein, the right and power is hereby reserved by the Town to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and in the furtherance of the terms and conditions of this Article. Such additional regulations may be promulgated by resolution of the Board of Trustees. (Ord. 151 §39, 1981)

**Sec. 5-1-440. Renewal.**

(a) Any franchise for cable television service within the Town may be renewed by the Board of Trustees for a period of not to exceed ten (10) years if, upon a review of the Company's performance during the initial franchise term, it is determined that such a renewal would be in the Town's best interest.

(b) In considering any renewal pursuant to this provision, the Board of Trustees may examine and consider:

(1) Past performance by the Company.

(2) A review of reports prepared throughout the life of the franchise, including the system technical performance, the development of cable services, the costs of services to the subscriber and the performance of similar systems in other communities operating under similar requirements, and complaint resolution.

(c) Any renewal made pursuant to this Section shall be by ordinance, after notice to the public as defined herein and public hearing.

(d) No renewal under this Section shall in any way limit or restrict the ability to award other franchises for cable television services pursuant to this Article.

(e) Any renewal of the franchise pursuant to this Section shall be done in accordance with the then-existing rules and regulations of the Federal Communications Commission.

(f) Any application for renewal made by the Company shall be considered by the Board of Trustees no later than one hundred twenty (120) days prior to the expiration of the initial franchise term. (Ord. 151 §40, 1981)

**Sec. 5-1-450. Landlord/tenant relationships.**

(a) Neither the owner of any multiple-unit residential dwelling nor his or her agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable television service,

cable installation or maintenance from a cable communication company regulated by and lawfully operating under a valid and existing cable television franchise issued by the Town.

(b) Neither the owner of any multiple-unit residential dwelling nor his or her agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a cable television service to the dwelling unit occupied by a tenant or resident requesting service.

(c) Neither the owner of any multiple-unit residential dwelling nor his or her agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from a company operating under a valid and existing cable television franchise issued by the Town.

(d) No person shall resell, without the expressed written consent of both the Company and the Town, any cable service, program or signal transmitted by a cable television company operating under a franchise issued by the Town.

(e) Nothing in this Article shall prohibit a person from requiring that cable television system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons and property.

(f) Nothing in this Section shall prohibit a person from requiring a cable communication company to agree to indemnify the owner or his or her agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable television facilities. (Ord. 151 §41, 1981; Ord. 481 §1, 2003)

**Sec. 5-1-460. Option to purchase.**

Upon termination of the franchise under the terms and conditions herein contained, the Town shall have a first and exclusive option to purchase the business operation and all assets pertaining thereto of the CATV system operated in the Town under the following terms and conditions:

(1) The Town shall have written notice of its election to exercise said option to the Company by certified mail not later than ten (10) days following the date of termination or cancellation.

(2) The date of closing of the Town's option to buy shall be not later than sixty (60) days after the determination of the "fair market value" of the CATV system and the Company's compliance with the requirements herein contained.

(3) The purchase price shall be paid in cash or by certified funds on the date of closing.

(4) The selling price by the Company to the Town for the CATV system shall be the "fair market value" of the CATV system owned and operated by the Company within the Town and including all assets, property and property rights of the Company pertaining thereto. The "fair market value" shall be the fair and reasonable value of the CATV system in place and in operation at the time of such termination and cancellation and shall include any value for the privilege of operating under this or an extended franchise.

(5) On the date of closing, the CATV system and all assets pertaining thereto shall be conveyed to the Town by the Company free and clear of all liens and encumbrances. The Company shall convey all property, whether real or personal, by good and sufficient warranty deed and bill of sale conveying good and marketable title to such property.

(6) The Company shall, upon receipt of such notice, advise the Town of its determination of the "fair market value" of the CATV system and its property. In the event that the Town and the Company in good faith can not agree upon such "fair market value", then and in that event the "fair market value" will be determined by a board of appraisers as hereafter set forth.

(7) In the event that the Company and Town do not agree upon the "fair market value," then and in that event the "fair market value" shall be determined by a board of appraisers consisting of three (3) persons, each with experience in appraising the current market value of cable TV systems. One (1) person shall be selected by the Board of Trustees, one (1) person shall be selected by the Company, and the two (2) persons so selected shall mutually agree and select a third person. When so selected, the three-person board of appraisers shall immediately proceed to appraise and determine the "fair market value" of the CATV system and its property, and the decision of the board of appraisers shall be binding upon the Town and the Company. In the event that the two (2) persons selected by the Town and the Company do not agree on the selection of the third person, they may petition the District Court to select the third person.

(8) The cost to determine the "fair market value" and the cost of the board of appraisers shall be shared equally between the Town and the Company.

(9) The decision of the board of appraisers and the compliance with this Section shall be enforceable in the District Court, in accordance with the state statutes.

(10) In the event that the Town fails to exercise its option as herein provided, the Company shall have the absolute right to sell the CATV system and its property to any third party under such terms and conditions as it may desire. (Ord. 151 §42, 1981; Ord. 481 §1, 2003)

**Sec. 5-1-470. Censorship prohibited.**

(a) The Town shall not prohibit or limit any program or class or type of program or otherwise censor the communications or signals by the Company or other parties over the cable communications system, other than programs on the designated government access channel or channels, and shall not promulgate any regulation or condition which would interfere with the right of free speech by means of cable television.

(b) The Company shall not prohibit or limit any program or class or type of program presented over any channel made available for public access, educational access, government access or leased access purposes. (Ord. 151 §43, 1981)

**Sec. 5-1-480. Contest of validity.**

By acceptance of the grant of any franchise pursuant to this Article for cable television service, the Company 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 this Article or the grant of the franchise pursuant to this Article as being unreasonable, arbitrary, voidable or void, nor that the Town did not have the power or

authority to make such term or condition, and shall be required to accept the validity of this Article in its entirety. (Ord. 151 §44, 1981)

## ARTICLE II

### Electric and Gas Franchise

#### Sec. 5-2-10. Definitions.

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

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

*Company* refers to Public Service Company of Colorado d/b/a Xcel Energy and its successors and assigns, including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise.

*Company facilities* means all facilities paid by the Company reasonably necessary to provide gas and electric service into, within and through the Town, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles.

*Energy conservation* means the decrease in energy requirements of specific customers during any selected time period, with end-use services of such customers held constant.

*Energy efficiency* means increases in energy conservation, reduced demand or improved load factors resulting from hardware, equipment, devices or practices that are installed or instituted at a customer facility. *Energy efficiency* measures can include fuel switching.

*Gross revenues* refers to those amounts of money which the Company receives from the sale of gas and electricity within the Town under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the Town and from the use of Company facilities in streets and other Town property (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-off of uncollectible accounts, corrections or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds and pro-forma adjustments pursuant to federal or state regulation. *Gross revenues* shall exclude any revenues from the sale of gas or electricity to the Town or the transportation of gas to the Town.

*Other Town property* refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the Town, or hereafter held by the Town, that would not otherwise fall under the definition of streets, but which are suitable locations for the placement of Company facilities as agreed to in writing by the Town.

*Party* or *parties* means the Town and the Company, either singly or collectively as the context requires.

*Private project* refers to any project which is not covered by the definition of public project.

*Public project* refers to:

a. Any public work or improvement within the Town that is wholly owned or wholly funded by the Town;

b. Any public work or improvement within the Town where fifty percent (50%) or more of the funding is provided by any combination of the Town, the federal government, the State, any county, the Regional Transportation District and the Urban Drainage and Flood Control District, but excluding all other entities established under Title 32, C.R.S.

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

*Public utility easement* refers to any easement over, under or above public or private property, lawfully acquired by or dedicated to the use of the Company, its predecessors in interest or other public utility companies for the placement of public utility facilities, including but not limited to Company facilities. *Public utility easement* shall not include any easement for the use of the Company that is located within the streets.

*Renewable resource* refers to any facility, technology, measure, plan or action utilizing a renewable fuel source such as wind, solar, biomass, geothermal, municipal, animal, waste-tire or other waste or hydroelectric generation of twenty (20) megawatts or less, including any eligible renewable energy resource as defined in Section 40-2-124(i)(a), C.R.S., as the same shall be amended from time to time.

*Residents* refers to all persons, businesses, industries, governmental agencies, including the Town, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the Town.

*Streets* or *Town streets* refers to the surface, the air space above the surface and the area below the surface of any Town-dedicated streets, alleys, bridges, roads, lanes, public easements and other public rights-of-way within the Town. *Streets* shall not include public utility easements.

*Street lighting facilities* means all facilities necessary to provide street lighting service.

*Street lighting service* means the illumination of streets and other Town property by means of Company-owned nonornamental streetlights and ornamental streetlights located in the Town or along the streets adjacent to the Town limits thereof, supplied from the Company's overhead or underground electric distribution system.

*Supporting documentation* refers to all information reasonably required in order to allow the Company to design and construct any work performed under the provisions of this franchise.

*Tariffs* refers to those tariffs of the Company on file and in effect with the PUC.

*Town* refers to the Town of Milliken, a statutory town in Weld County, State of Colorado.

*Traffic facilities* refers to any Town-owned or authorized traffic signal, traffic signage or other traffic control or monitoring device, equipment or facility, including all associated controls, connections and other support facilities or improvements, located in streets or other Town property.

*Utility service* refers to the sale of gas or electricity to residents by the Company under rates approved by the PUC, as well as the delivery of gas to residents by the Company. (Ord. 595 §2, 2009)

**Sec. 5-2-20. Grant of franchise.**

(a) Grant of franchise.

(1) Grant. The Town hereby grants to the Company, subject to all conditions, limitations, terms and provisions contained in this franchise, the nonexclusive right to make reasonable use of Town streets:

a. To provide utility service to the Town and to its residents under tariffs on file with the PUC; and

b. To acquire, purchase, construct, install, locate, maintain, operate and extend into, within and through the Town all Company facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transmission, transportation and distribution of utility service within and through the Town.

(2) Street lighting and traffic signal lighting service. The rights granted by this franchise encompass the nonexclusive right to provide street lighting service and traffic signal lighting service as directed by the Town, and the provisions of this franchise shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company. Wherever reference is made in this franchise to the sale or provision of utility service, these references shall be deemed to include the provision of street lighting service and traffic signal lighting service. Street lighting service and traffic signal lighting service within the Town shall be governed by tariffs on file with the PUC.

(b) Conditions and limitations.

(1) Scope of franchise. The grant of this franchise shall extend to all areas of the Town within the Company's PUC certificated service territory, as the Town is now or hereafter constituted; however, nothing contained in the franchise shall be construed to authorize the Company to engage in activities other than the provision of utility service.

(2) Subject to Town usage. The right to make reasonable use of Town streets to provide utility service to the Town and its residents under this franchise is subject to and subordinate to any Town usage of said streets.

(3) Prior grants not revoked. This grant is not intended to revoke any prior license, grant or right to use the streets, and such licenses, grants or rights of use are hereby affirmed. Such rights shall, however, be governed by the terms of this franchise.

(4) Franchise not exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the Town reserves the right to make or grant a franchise to any other person, firm or corporation.

(c) Effective date and term.

(1) Term. This franchise shall supersede any prior franchise grants to the Company by the Town upon its adoption. This franchise shall take effect on January 1, 2009, and shall terminate on December 31, 2029, unless extended by mutual consent.

(2) Execution. The Company shall execute this franchise and deliver two (2) executed originals to the Town Administrator within thirty (30) days following the effective date of passage by the Town of an ordinance adopting this franchise. One (1) copy will remain with the Company and the other with the Town. Within two (2) weeks after the franchise has been executed by the Company and delivered to the Town, the Mayor and other necessary or proper officials of the Town are authorized and directed to sign this franchise in the name of the Town, and the Town Clerk is hereby authorized and directed to attest to the same under seal of the Town and to do all things necessary for the delivery of this franchise and for fully carrying out the franchise. (Ord. 595 §2, 2009)

**Sec. 5-2-30. Town police powers.**

(a) Police powers. The Company expressly acknowledges the Town's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the Town considers making any substantive changes in its local codes or regulations that in the Town's reasonable opinion will significantly impact the Company's operations in the Town's streets and other Town property, it will make a good-faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's noncompliance with any applicable local requirements. The Town shall place the Company on its list of persons who receive notice of the Board of Trustees' agendas from the Town Clerk, and when the notice is given to the Company by this method, such notice shall be deemed to satisfy the notice provisions of this Subsection.

(b) Regulation of streets or other Town property. The Company expressly acknowledges the Town's right to enforce regulations concerning the Company's access to or use of the streets, including requirements for permits.

(c) Compliance with laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders enacted by the Town. (Ord. 595 §2, 2009)

**Sec. 5-2-40. Franchise fee.**

(a) Franchise fee established.

(1) Fee. In partial consideration for the franchise, which provides for the Company's use of Town streets, which are valuable public properties acquired and maintained by the Town at great expense to its residents, and in recognition that the grant to the Company of the use of Town streets is a valuable right, the Company shall pay the Town a sum equal to three percent (3%) of all gross revenues. To the extent required by law, the Company shall collect this fee from a surcharge upon Town residents who are customers of the Company.

(2) Obligation in lieu of fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the Town, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as partial consideration for use of the Town streets. To the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon utility service provided to Town residents.

(3) Changes in utility service industries. The Town and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities and are also experiencing other changes as a result of mergers, acquisitions and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that, in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the Town, the Company will cooperate with and assist the Town in modifying this franchise to assure that the Town receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the Town as of the date that such initiatives and changes adversely impact franchise fee revenues.

(4) Utility service provided to the Town. No franchise fee shall be charged to the Town for utility service provided to the Town for its own consumption, including street lighting service and traffic signal lighting service.

(b) Consumption-based franchise fee conversion. If, at any time during the term of this franchise, the Company agrees to pay any Colorado municipality a franchise fee measured against the total consumption of gas or electricity in each month by each resident, then the Company shall, within sixty (60) days of executing said agreement, provide written notice to the Town, which notice shall include the consumption-based franchise calculation. If requested by the Town, the Company shall supply the Town with such relevant information that the parties agree is necessary to assist the Town in its evaluation of the consumption-based franchise fee calculation. If the Town elects to convert to a consumption-based franchise fee, the Town shall provide written notice to the Company. Within sixty (60) days after receiving said notice, the Company shall begin paying consumption-based franchise fees to the Town on the same basis on which it pays consumption-based gas and/or electric franchise fees to any other Colorado municipality, as selected by the Town.

(c) Remittance of franchise fee.

(1) Remittance schedule. Franchise fee revenues shall be remitted by the Company to the Town in monthly installments not more than thirty (30) days following the close of each month.

(2) Corrections of franchise fee payments. In the event that either the Town or the Company discovers that there had been an error in the calculation of the franchise fee payment to the Town, it shall provide written notice to the other party of the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Paragraph (4) below; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the Town and said overpayment is in excess of five thousand dollars (\$5,000.00), credit for overpayment shall be spread over the same period the error was undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either

party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the Company error.

(3) Audit of franchise fee payments.

a. Every three (3) years, commencing at the end of the third year of this franchise, the Company shall conduct an internal audit to investigate and determine the suitability of the franchise fee paid to the Town. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the Town Administrator containing the audit findings regarding the franchise fee paid to the Town for the previous three (3) calendar years.

b. If the Town disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the Town may conduct its own audit at its own expense, and the Company shall cooperate fully, including but not necessarily limited to providing the Town's auditor with all information reasonably necessary to complete the audit.

c. If the results of a Town audit conducted pursuant to Subparagraph b. above concludes that the Company has underpaid the Town by two percent (2%) or more over the period of the Town's audit, in addition to the obligation to pay such amounts to the Town, the Company shall also pay all costs of the audit.

(4) Fee disputes. Either party may challenge any written notification of error as provided for in Paragraph (2) above by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good-faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error. If efforts at resolution are unsuccessful, the parties agree to submit the dispute through informal means including negotiation and mediation, but not by arbitration, prior to initiating any legal action.

(5) Reports. Upon written request by the Town, but not more than once per year, the Company shall supply the Town with reports, in such formats and providing such details as reasonably requested by the Town, of all suppliers of utility service that utilize Company facilities to sell or distribute utility service to residents and the names and addresses of each such supplier. (Ord. 595 §2, 2009)

**Sec. 5-2-50. Administration of franchise.**

(a) Town designee. The Town shall designate in writing to the Company an official having full power and authority to administer the franchise. The Town may also designate one (1) or more Town representatives to act as the primary liaison with the Company as to particular matters addressed by this franchise and shall provide the Company with the names and telephone numbers of said Town representatives. The Town may change these designations by providing written notice to the Company. The Town's designee shall have the right, at all reasonable times, to inspect any Company facilities in Town streets.

(b) Company designee. The Company shall designate a representative to act as the primary liaison with the Town and shall provide the Town with the name, address and telephone number for the Company's representative under this franchise. The Company may change its designation by providing written notice to the Town. The Town shall use this liaison to communicate with the Company regarding utility service and related service needs for Town facilities.

(c) Coordination of work.

(1) The Company agrees to meet with the Town's designee upon written request for the purpose of reviewing, implementing or modifying mutually beneficial procedures for the efficient processing of Company bills, invoices and other requests for payment.

(2) The Company agrees to coordinate its activities in Town streets with the Town. The Town and Company will meet annually upon the written request of the Town designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Town streets. The Town and Company shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the Town will be assured that all provisions of this franchise, building and zoning codes and air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration. (Ord. 595 §2, 2009)

**Sec. 5-2-60. Supply, construction and design.**

(a) Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the Town to the residents which require the Company to provide prompt and reliable utility service and the performance of related services for Town facilities. The Town and the Company wish to provide for certain terms and conditions under which the Company will provide utility service and perform related services for the Town in order to facilitate and enhance the operation of Town facilities. They also wish to provide for other processes and procedures related to the provision of utility service to the Town.

(b) Supply. The Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to residents at the lowest reasonable cost consistent with reliable supplies.

(c) Service to Town facilities.

(1) Transport gas. To the extent the Town is or elects to become a gas transport customer of the Company, the Company shall transport natural gas purchased by the Town for use in Town facilities pursuant to separate contracts with the Town.

(2) Charges to the Town. No charges to the Town by the Company for utility service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the PUC over the Company's regulated intrastate electric and gas rates.

(d) Restoration of service.

(1) Notification. The Company shall provide to the Town daytime and nighttime telephone numbers of a designated Company representative from whom the Town designee may obtain status information from the Company on a twenty-four-hour basis concerning interruptions of utility service in any part of the Town.

(2) Restoration. In the event the Company's gas system or electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such systems to satisfactory service within the shortest practicable time or provide a reasonable alternative to such system if the Company elects not to restore such system.

(e) Obligations regarding Company facilities.

(1) Company facilities. All Company facilities within Town streets shall be maintained in good repair and condition.

(2) Company work within the Town. All work within Town streets performed or caused to be performed by the Company shall be done:

- a. In a high-quality manner;
- b. In a timely and expeditious manner;
- c. In a manner which minimizes inconvenience to the public;
- d. In a cost-effective manner, which may include the use of qualified contractors; and
- e. In accordance with all applicable laws, ordinances and regulations.

(3) No interference with Town facilities. Company facilities shall not interfere with any Town facilities, including water facilities, sanitary or storm sewer facilities, communications facilities or other Town uses of the streets or other Town property. Company facilities shall be installed and maintained in Town streets and other Town property so as to minimize interference with other property, trees and other improvements and natural features in and adjoining the streets.

(4) Permit and inspection. The installation, renovation and replacement of any Company facilities in the Town streets or other Town property by or on behalf of the Company shall be subject to permit, inspection and approval by the Town. Such inspection and approval may include, but shall not be limited to, the following matters: location of Company facilities, cutting and trimming of trees and shrubs and disturbance of pavement, sidewalks and surfaces of Town streets or other Town property. The Company agrees to cooperate with the Town in conducting inspections and shall promptly perform any remedial action lawfully required by the Town pursuant to any such inspection.

(5) Compliance. The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits and standards, including but not limited to requirements of all building and zoning codes and requirements regarding curb and pavement cuts, excavating, digging and other construction activities. The Company shall assure that its contractors working in Town streets or other Town property hold the necessary licenses and permits required by law.

(6) As-built drawings. Upon reasonable written request of the Town designee, the Company shall provide, within fourteen (14) days of the request, as-built drawings of any Company facility installed within the Town streets or contiguous to the Town streets. As used in this Section, *as-built drawings* refers to the facility drawings as maintained in the Company's geographical information system or any

equivalent system. The Company shall not be required to create drawings that do not exist at the time of the request.

(f) Excavation and construction. The Company shall be responsible for obtaining, paying for and complying with all applicable permits, including but not limited to excavation, street closure and street cut permits, in the manner required by the laws, ordinances and regulations of the Town. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing relocations requested by the Town under Subsection (h) below and undergrounding requested by the Town under Section 5-2-110 of this Article, the Town will not require the Company to pay the fees charged for such permits.

(g) Restoration. When the Company does any work in or affecting the Town streets, it shall, at its own expense, promptly remove any obstructions therefrom and restore such Town streets or other Town property to a condition that meets applicable Town standards. If weather or other conditions do not permit the complete restoration required by this Subsection, the Company may, with the approval of the Town, temporarily restore the affected Town streets or other Town property, provided that such temporary restoration is at the Company's sole expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the Town, the Company shall restore the streets or other Town property to a better condition than existed before the work was undertaken, provided that the Town shall be responsible for any additional costs of such restoration. If the Company fails to promptly restore the Town streets or other Town property as required by this Subsection and if, in the reasonable discretion of the Town, immediate action is required for the protection of public health and safety, the Town may restore such Town streets or other Town property or remove the obstruction therefrom; provided, however, that Town actions do not unreasonably interfere with Company facilities. The Company shall be responsible for the actual cost incurred by the Town to restore such Town streets or other Town property or to remove any obstructions therefrom. In the course of its restoration of Town streets or other Town property under this Subsection, the Town shall not perform work on Company facilities unless specifically authorized by the Company in writing on a project-by-project basis and subject to the terms and conditions agreed to in such authorization.

(h) Relocation of Company facilities.

(1) Relocation obligation. The Company shall at its sole cost and expense temporarily or permanently remove, relocate, change or alter the position of any Company facility in Town streets or in other Town property whenever the Town shall determine that such removal, relocation, change or alteration is necessary for the completion of any public project. For all relocations, the Company and the Town agree to cooperate on the location and relocation of the Company facilities in the Town streets or other Town property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company facility at the Town's direction, if the Town requests that the same Company facility be relocated within two (2) years, the subsequent relocation shall not be at the Company's expense.

(2) Private projects. The Company shall not be responsible for the expenses of any relocation required by the Town's direct or indirect assistance for private projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation.

(3) Relocation performance. The relocations set forth in Paragraph (1) above shall be completed within a reasonable time, not to exceed one hundred twenty (120) days from the later of the date on which the Town designee requests in writing that the relocation commence or the date when the Company is provided all supporting documentation. The Company shall be entitled to an extension of time to complete a relocation where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including, without limitation, fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of labor, materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown, and the Town shall not unreasonably withhold any such extension.

(4) Town revision of supporting documentation. Any revision by the Town of supporting documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.

(5) Completion. Each such relocation shall be deemed complete only when the Company actually relocates the Company facilities, restores the relocation site in accordance with Subsection (g) above or as otherwise agreed with the Town, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.

(6) Scope of obligation. The relocation obligation set forth in this Subsection shall only apply to Company facilities located in Town streets. The obligation shall not apply to Company facilities located on property owned by the Company in fee or to Company facilities located in privately owned easements or public utility easements, unless such public utility easements are on or in Town-owned property.

(7) Underground relocation. Underground facilities shall be relocated underground. Above-ground facilities shall be placed above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above-ground cost of relocation or the Town requests that such additional cost be paid out of available funds under Section 5-2-110 of this Article.

(8) Coordination. When requested in writing by the Town designee or the Company, representatives of the Town and the Company shall meet to share information regarding anticipated projects which will require relocation of Company facilities in Town streets or other Town property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any timetable established by the Town for any public project.

(9) Proposed alternatives or modifications. Upon receipt of written notice of a required relocation, the Company may propose an alternative to or modification of the public project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of Company facilities. The Town shall in good faith review the proposed alternative or modification. The Town's acceptance of the alternative or modification shall be at the sole discretion of the Town; provided, however, that such acceptance shall not be unreasonably withheld. In the event the Town designee accepts the proposed alternative or modification, the Company agrees to promptly compensate the Town for all additional costs, expenses or delay that the Town reasonably determines resulted from the implementation of the proposed alternative.

(i) New or modified service requested by Town. The conditions under which the Company shall install new or modified utility service to the Town as a customer shall be governed by this franchise and the Company's PUC tariffs.

(j) Service to new areas. If the territorial boundaries of the Town are expanded during the term of this franchise, the Company shall, to the extent permitted by law, extend service to residents in the expanded area that is within the Company's PUC certificated service territory at the earliest practicable time, unless the Town is adequately providing utility service to the area. Service to the expanded area shall be in accordance with the terms of the Company's PUC tariffs and this franchise, including the payment of franchise fees.

(k) Town not required to advance funds. Upon receipt of the authorization for billing and construction, the Company shall extend Company facilities to provide utility service to the Town as a customer, without requiring the Town to advance funds prior to construction. The Town shall pay for the extension of Company facilities once completed in accordance with the Company's extension policy on file with the PUC.

(l) Technological improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the Town when such advances are technically and economically feasible and are safe and beneficial to the Town and its residents. (Ord. 595 §2, 2009)

**Sec. 5-2-70. Reliability.**

(a) Reliability. The Company shall operate and maintain Company facilities efficiently and economically and in accordance with the high standards and best systems, methods and skills consistent with the provision of adequate, safe and reliable utility service.

(b) Franchise performance obligations. The Company recognizes that, as part of its obligations and commitments under this franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical and workmanlike manner.

(c) Reliability reports. Upon written request, the Company shall provide the Town with a report regarding the reliability of Company facilities and utility service. (Ord. 595 §2, 2009)

**Sec. 5-2-80. Company performance obligations.**

(a) New or modified service to Town facilities. In providing new or modified utility service to Town facilities, the Company agrees to perform as follows:

(1) Performance. The Company shall complete each project requested by the Town within a reasonable time. New or modified service should be applicable to all. The parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the Town designee makes a written request and provides the required supporting documentation for all Company facilities other than traffic facilities as described in this Section. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of

materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the Town designee may also grant the Company reasonable extensions of time for good cause shown, and the Town shall not unreasonably withhold any such extension.

(2) Town revision of supporting documentation. Any revision by the Town of supporting documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to Town facilities shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.

(3) Completion; restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of the franchise or as otherwise agreed with the Town and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

(b) Adjustments to Company facilities. The Company shall perform adjustments to Company facilities, including manholes and other appurtenances in streets and other Town property, to accommodate Town street maintenance, repair and paving operations at no cost to the Town. In providing such adjustments to Company facilities, the Company agrees to perform as follows:

(1) Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the Town makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown, and the Town shall not unreasonably withhold any such extension.

(2) Completion; restoration. Each such adjustment shall be complete only when the Company actually adjusts the Company facility to accommodate the Town operations in accordance with Town instructions and, if required, readjusts, following paving operations.

(3) Coordination. As requested by the Town or the Company, representatives of the Town and the Company shall meet regarding anticipated street maintenance operations which will require such adjustments to Company facilities in streets or other Town property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

(c) Third-party damage recovery.

(1) Damage to Company interests. If any individual or entity damages any Company facilities that the Company is responsible to repair or replace, to the extent permitted by law, the Town will notify the Company of any such incident upon request and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

(2) Damage to Town interests. If any individual or entity damages any Company facilities for which the Town is obligated to reimburse the Company for the cost of the repair or replacement of the

damaged facility, to the extent permitted by law, the Company will notify the Town of any such incident upon request and will provide to the Town within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

(3) Meeting. The Company and the Town agree to meet periodically, upon written request of either party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company facilities. (Ord. 595 §2, 2009)

**Sec. 5-2-90. Billing and payment.**

(a) Billing for other utility services.

(1) Unless otherwise provided in its tariffs, the rules and regulations of the PUC or the Public Utility Law, the Company shall render bills monthly to the offices of the Town for utility service and other related services for which the Company is entitled to payment and for which the Town has authorized payment.

(2) Billings for service rendered during the preceding month, except for billings pursuant to the agreement, shall be sent to the person(s) designated by the Town, and payment for same shall be made as prescribed in the agreement and the applicable tariff on file and in effect from time to time with the PUC.

(3) The Company shall provide all billings and any underlying support documentation reasonably requested by the Town and in an editable and manipulatable electronic format that is acceptable to the Company and the Town.

(4) The Company agrees to meet with the Town designee at least annually for the purpose of developing, implementing, reviewing and/or modifying mutually beneficial and acceptable billing procedures, methods and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the Town.

(b) Payment to Town. In the event the Town determines after written notice to the Company that the Company is liable to the Town for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the Town may deduct all monies due and owing the Town from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the Town Administrator to discuss such determination. As an alternative to such deduction, the Town may bill the Company for such assessments, in which case the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill. If the Company challenges the Town's determination of liability, the Town shall make such payments pursuant to the Company's tariffs until the challenge has been finally resolved. (Ord. 595 §2, 2009)

**Sec. 5-2-100. Use of Company facilities.**

(a) Town use of Company facilities. The Town shall be permitted to make use of Company facilities in the Town at no cost to the Town for the placement of Town equipment or facilities necessary to serve a legitimate health, safety, police, fire, emergency, public safety or traffic control purpose or for any other purpose consistent with the Town's police powers. The Town will notify the Company in writing in advance of its intent to use Company facilities and the nature of such use. The Town shall be responsible for costs associated with modifications to Company facilities to accommodate the Town's use of such Company facilities and for any electricity used. No such use of Company facilities shall be required if it would constitute a safety hazard or would interfere with the Company's use of Company facilities. Any such Town use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations.

(b) Third-party use of Company facilities. If requested in writing by the Town, the Company will allow other companies who hold franchises, or otherwise have obtained consent from the Town to use the streets, to utilize Company facilities for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions, including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company facilities. The Company shall not be required to permit the use of Company facilities for the provision of utility service except as otherwise required by law.

(c) Town use of Company transmission rights-of-way. The Company shall offer to grant to the Town use of electric transmission and distribution rights-of-way which it now, or in the future, owns in fee within the Town for parks and open space on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such offer would constitute a safety hazard or would interfere with the Company's use of the transmission rights-of-way.

(d) Emergencies. Upon written request, the Company shall assist the Town in developing an emergency management plan. In the case of any emergency or disaster, the Company shall, upon verbal request of the Town, make available Company facilities for emergency use during the emergency or the disaster period. Such use of Company facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of Company facilities. (Ord. 595 §2, 2009)

**Sec. 5-2-110. Undergrounding of overhead facilities.**

(a) Underground electrical lines in new areas. The Company shall, upon payment to the Company of the charges provided in its tariffs or their equivalent, place all newly constructed electrical distribution lines in newly developed areas underground in accordance with applicable laws, regulations and orders.

(b) Underground conversion at expense of Company.

(1) Underground Fund. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's electric gross revenues (the "Fund"), for the purpose of undergrounding existing overhead distribution facilities in the Town, as may be requested by the Town. Except as provided in Paragraph 5-2-60(h)(7) of this Article, no relocation expenses which the Company would be required to expend pursuant to Section 5-2-60 of this Article shall be charged to this allocation. An unexpended portion of the one percent (1%) of such electric revenues shall be carried over to succeeding years and, in addition, upon request by the Town, the Company agrees to

anticipate amounts to be available under this Paragraph for up to three (3) years in advance. Any amounts so advanced shall be charged against otherwise available amounts which would have been expended in succeeding years until such advance is eliminated.

(2) Unexpended portion and advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the Town designee, the Company agrees to expend amounts anticipated to be available under the Paragraph (1) above for up to three (3) years in advance. Any amounts so expended shall be credited against amounts to be expended in succeeding years. Any funds accumulated under any prior franchise shall be carried over to the Fund balance. The Town shall have no vested interest in the Fund, and any monies in the Fund not expended at the expiration or termination of this agreement shall remain the property of the Company.

(3) System-wide undergrounding. If, during the term of this franchise, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution facilities, the Company will budget and allocate to the program of undergrounding in the Town such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual electric gross revenues provided above.

(4) Town requirement to underground. In addition to the provisions of this Section, the Town may require any above-ground Company facilities to be moved underground at the Town's expense.

(c) Undergrounding performance. Upon receipt of a written request from the Town, the Company shall, to the extent of monies available in the Fund and as otherwise provided herein, underground Company facilities in accordance with the procedures set forth in this Section.

(1) Performance. The Company shall complete each undergrounding project requested by the Town within a reasonable time, not to exceed one hundred eighty (180) days from the later of the date upon which the Town designee makes a written request and the date the Town provides to the Company all supporting documentation. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown, and the Town shall not unreasonably withhold any such extension.

(2) Town revision of supporting documentation. Any revision by the Town of supporting documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under the franchise.

(3) Completion; restoration. Each such undergrounding project shall be deemed complete only when the Company actually undergrounds the designated Company facilities, restores the undergrounding site in accordance with Subsection 5-2-60(g) of this Article, or as otherwise agreed with the Town designee, and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

(4) Estimates. Promptly upon receipt of an undergrounding request from the Town and the supporting documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good-faith cost estimate of the anticipated actual cost of the requested project for the Town to review and, if acceptable, issue a project authorization. The Company will not proceed with any requested project until the Town has provided a written acceptance of the Company estimate.

(5) Report of actual costs. Upon completion of each undergrounding project, the Company shall submit to the Town a detailed report of the Company's actual cost to complete the project.

(d) Audit of Underground Fund. Upon written request of the Town, but no more frequently than once every three (3) years, the Company at its expense shall audit the Fund for the Town. Such audits shall be limited to the previous three (3) calendar years. The Company shall provide the audit report to the Town and shall reconcile the Fund consistent with the findings contained in the audit report. If the Town has concerns about any material information contained in the audit, the parties shall meet and make good-faith attempts to resolve any outstanding issues. If the matter cannot be resolved to the Town's reasonable satisfaction, the Company shall, at its expense, cause an independent auditor to investigate and determine the correctness of the charges to the Underground Fund. The independent auditor shall provide a written report containing its findings to the Town and the Company. The Company shall reconcile the Fund consistent with the findings contained in the independent auditor's written report.

(e) Cooperation with other utilities. When the Company is undertaking an undergrounding project, the Town and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior notification, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for the cost of undergrounding the facilities of other companies or the Town.

(f) Planning and coordination of undergrounding projects. The Town and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Section as a part of the review and planning for other Town and Company construction projects. In addition, the Town and the Company agree to meet, as required, to review the progress of then-current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the Town and the Company to achieve the orderly undergrounding of Company facilities. At such meetings, the parties shall review:

(1) Undergrounding, including conversions, public projects and replacements which have been accomplished or are underway, together with the Company's plans for additional undergrounding; and

(2) Public projects anticipated by the Town. (Ord. 595 §2, 2009)

**Sec. 5-2-120. Public Utilities Commission regulations.**

(a) Compliance with orders of the Public Utilities Commission. The provision of electric and gas service by the Company is regulated in whole or in part by regulatory agencies including the Public Utilities Commission. The Company is obligated by law to comply with all lawful PUC orders, rules and regulations.

(b) Certificates to exercise franchise rights. The Town agrees to assist the Company at its expense, if necessary, in obtaining PUC approval of a certificate to exercise the franchise rights conferred under this franchise, including negotiating a change to any provision of this franchise that the PUC may reasonably require in order to obtain the certificate. (Ord. 595 §2, 2009)

**Sec. 5-2-130. Purchase or condemnation by Town.**

(a) Right and privilege of Town. The right and privilege of the Town to construct, purchase or condemn any Company facilities located within the territorial boundaries of the Town, and the Company's rights in connection therewith, as set forth in applicable provisions of the Constitution and statutes of the State relating to the acquisition of public utilities, are expressly recognized. The Town shall have the right, within the time frames and using the procedures set forth in such provisions, to purchase Company facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the Town. In the event of any such purchase, no value shall be ascribed or given to the rights granted under this franchise in the valuation of the property thus taken.

(b) Notice of intent to purchase or condemn. The Town shall provide to the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the Town's purchase or condemnation of Company facilities. (Ord. 595 §2, 2009)

**Sec. 5-2-140. Municipally produced utility service.**

(a) Town reservation. The Town expressly reserves the right to engage in the production of utility service to the extent permitted by law. The Company agrees to negotiate in good faith long-term contracts to purchase Town-generated power made available for sale, consistent with PUC requirements.

(b) Franchise not to limit Town's rights. Nothing in this franchise prohibits the Town from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law. (Ord. 595 §2, 2009)

**Sec. 5-2-150. Environment and conservation.**

(a) Environmental leadership. The Company is committed to sustainable development and energy conservation for the term of the agreement by continuing to provide leadership, support and assistance, in collaboration with the Town, to identify, develop, implement and maintain new and creative programs. The Company shall strive to conduct its operations in a way that avoids adverse environmental impacts where feasible, subject to the ongoing regulatory oversight of the PUC. In doing so, the Company shall consider environmental issues in its planning and decision-making and shall invest in environmentally sound technologies when such technologies are deemed prudent and feasible. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a combination of energy conservation and energy efficiency measures, clean energy measures and promoting and implementing the use of renewable energy resources on both a distributed and centralized basis. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines.

(b) Energy conservation and efficiency.

(1) Energy efficiency programs. The Town and the Company recognize and agree that energy conservation and efficiency programs offer opportunities for the efficient use of energy and reduction of customers' energy consumption and costs. The Company recognizes and shares the Town's desire to advance the implementation of cost-effective energy conservation and efficiency programs, which present opportunities to the Company's customers to manage more efficiently their use of energy and, thereby, create the opportunity to reduce their energy consumption, costs and impact on the environment. The Company shall seek authority from the PUC to develop and offer energy efficiency programs to its customers. Subject to PUC approval, the Company commits to offer programs that attempt to capture market opportunities for cost-effective energy efficiency improvements such as municipal-specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects and recommissioning programs to analyze existing systems to optimize performance and conserve energy. Subject to PUC approval, the Company commits to offer Demand Side Management (DSM) programs and succeeding programs, which provide customers the opportunity to reduce their energy usage. In doing so, the Company recognizes the importance of: (i) implementing cost-effective programs, the benefits of which could otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective energy management programs for the various classes of the Company's customers. The Company shall advise the Town and the Company's customers of the availability of assistance that the Company makes available for investments in energy conservation through its account managers, area manager, newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information of these programs on the Company's website. Further, the Company's area manager will act as the primary liaison with the Town who will provide the Town with information on how the Town may participate in energy conservation and energy efficiency programs sponsored by the Company.

(2) Renewable resource programs. The Company agrees to consider renewable resource programs as an integral part of the Company's provision of utility service to its customers. The Company agrees to comply with the mandates of federal and state law concerning energy efficiency and clean energy technologies. Unless otherwise provided by law or PUC order, the Company will obtain electricity from renewable sources equivalent to at least twenty percent (20%) of retail sales by 2020. The Company will promote a significant role for renewable resources in its future resource acquisitions, consistent with acceptable rate impacts, legislative requirements and applicable provisions of law.

(3) Promotion of existing or new programs. The Company will continue to promote existing or new programs in its service territory to comply with applicable provisions of law relating to renewable resources. The Town actively supports the Company's compliance with the renewable resource standards required by law. The Company agrees that, in complying with this provision, it shall take the following steps to encourage participation by the Town and the Company's customers in available renewable resource programs:

- a. Notify the Town regarding all eligible renewable resource programs;
- b. Provide the Town with support regarding how the Town may participate in eligible renewable resource programs; and
- c. Advise customers regarding participation in eligible renewable resource programs.

(c) Continuing commitment. The Company agrees to maintain its commitment to sustainable development and energy conservation for the term of this franchise by continuing to provide leadership,

support and assistance to identify, develop, implement and maintain new and creative programs similar to the programs identified in this franchise.

(d) PUC approval. Nothing in this Section shall be deemed to require the Company to invest in technologies or to incur costs that it has a good-faith belief the PUC will not allow the Company to recover through the rate-making process.

(e) Customer-generated electricity. Nothing in this franchise shall prohibit customers from self-generating electricity to the extent allowed by law. (Ord. 595 §2, 2009)

**Sec. 5-2-160. Transfer of franchise.**

(a) Consent of Town required. The Company shall not transfer or assign any rights under this franchise to an unaffiliated third party, unless the Town approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld.

(b) Transfer fee. In order that the Town may share in the value this franchise adds to the Company's operations, any transfer or assignment of rights granted under this franchise requiring Town approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the Town a transfer fee in an amount equal to the proportion of the Town's then-population provided utility service by the Company to the most recent census of the City and County of Denver provided utility service by the Company, multiplied by one million dollars (\$1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of residents. (Ord. 595 §2, 2009)

**Sec. 5-2-170. Continuation of utility service.**

Continuation of utility service. In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the Town has not provided for alternative utility service, the Company shall have no right to remove any Company facilities pending resolution of the disposition of the system unless otherwise ordered by the PUC and shall continue to provide utility service within the Town until the Town arranges for utility service from another provider. The Company further agrees that it will not withhold any temporary utility services necessary to protect the public. The Town agrees that in the circumstances of this Section, the Company shall be entitled to monetary compensation as provided in the Company's tariffs on file with the Public Utilities Commission, and the Company shall be entitled to collect from residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Town's streets. Only upon receipt of written notice from the Town stating that the Town has adequate alternative utility service for residents and upon order of the PUC shall the Company be allowed to discontinue the provision of utility service to the Town and its residents. (Ord. 595 §2, 2009)

**Sec. 5-2-180. Indemnification and immunity.**

(a) Town held harmless. The Company shall indemnify, defend and hold the Town harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise, the exercise by the Company of the related rights or from the operations of the Company within the Town and shall pay the costs of defense plus reasonable attorneys' fees. The Town shall: (1) give prompt written notice to the Company of any claim, demand or lien with respect to

which the Town seeks indemnification hereunder; and (2) unless in the Town's judgment a conflict of interest may exist between the Town and the Company with respect to such claim, demand or lien, with counsel satisfactory to the Town. If such defense is assumed by the Company, the Company shall not be subject to any liability for any settlement made without its consent. If such defense is not assumed by the Company or if the Town determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien is finally determined to have arisen out of or in connection with any negligent or intentional act or failure to act of the Town or any of its officers or employees.

(b) Immunity. Nothing in this Section or any other provision of this agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Town may have under the Colorado Governmental Immunity Act, Section 4-10-101, et seq., C.R.S., or of any other defenses, immunities or limitations of liability available to the Town by law. (Ord. 595 §2, 2009)

#### **Sec. 5-2-190. Breach.**

(a) Noncontestability. The Town and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise are performed, and neither will take any legal action to secure modification of the franchise. However, the Company reserves the right to seek a change in its rates, charges, terms and conditions imposed upon customers of providing utility service to the Town and its residents.

(b) Breach.

(1) Notice, cure, remedies. Except as otherwise provided in this franchise, if a party (the "breaching party") to this franchise fails or refuses to perform any of the terms or conditions of this franchise (a "breach"), the other party (the "nonbreaching party") may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach. If the breaching party does not remedy the breach within the time allowed in the notice, the nonbreaching party may exercise the following remedies for such breach:

a. Specific performance of the applicable term or condition; and

b. Recovery of actual damages from the date of such breach incurred by the nonbreaching party in connection with the breach, but excluding any consequential damages.

(2) Termination of franchise by Town. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of the franchise (a "material breach"), the Town may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, within which to remedy the material breach. If the Company does not remedy the material breach within the time allowed in the notice, the Town may, at its sole option, terminate this franchise. This remedy shall be in addition to the Town's right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide utility service to the Town and its residents until the Town makes alternative arrangements for such service and until otherwise ordered by the PUC, and the Company shall be entitled to collect from residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the

amount which the Company would have paid as a franchise fee as consideration for use of the Town streets.

(3) Company shall not terminate franchise. In no event does the Company have the right to terminate this franchise.

(4) No limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise.

(5) Costs and attorneys' fees. If the Town initiates any legal action seeking damages for any alleged violation of this franchise or to seek enforcement of any of the provisions hereof, then the prevailing party in any such action shall recover from the other party all of its reasonable costs and attorneys' fees incurred in connection with the matter. (Ord. 595 §2, 2009)

**Sec. 5-2-200. Amendments.**

(a) Proposed amendments. At any time during the term of this franchise, the Town or the Company may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the proposed amendments desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendments. However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.

(b) Effective amendments. No alterations, amendments or modifications to this franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever. (Ord. 595 §2, 2009)

**Sec. 5-2-210. Equal opportunity.**

(a) Economic development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is also committed to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.

(b) Employment.

(1) The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.

(2) The Company recognizes that the Town and the business community in the Town, including women- and minority-owned businesses, provide a valuable resource in assisting the Company to

develop programs to promote persons of color, women and members of under-represented communities into management positions and agrees to keep the Town regularly advised of the Company's progress by providing the Town a copy of the Company's annual affirmative action report upon the Town's written request.

(3) In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies, such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity-specific media to advertise employment opportunities, internships and engaging recruiting firms with diversity-specific expertise.

(4) The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under-represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training and leadership programs.

(5) The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, sex, age, national origin or ancestry or handicap, refuse to hire, discharge, promote, demote or discriminate in matters of compensation against any person otherwise qualified, and further agrees to insert the foregoing provision or its equivalent in all agreements the Company enters into in connection with this franchise.

(6) The Company shall identify and consider women, persons of color and other under-represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the shareholders, customers and employees of the Company.

(c) Contracting.

(1) It is the Company's policy to make available to minority- and women-owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority- and women-owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

(2) The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority- and women-owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the Town regularly advised of the Company's programs.

(3) The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority-owned, women-owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority-owned, women-owned and disadvantaged businesses to contract with the Company.

(d) Coordination. Town agencies provide collaborative leadership and mutual opportunities or programs relating to Town-based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Section with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation. (Ord. 595 §2, 2009)

**Sec. 5-2-220. Miscellaneous.**

(a) No waiver. Neither the Town nor the Company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees or agents, upon any one (1) or more occasions, to insist upon or to seek compliance with any such terms and conditions.

(b) Successors and assigns. The rights, privileges and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Section 5-2-160 of this Article.

(c) Third parties. Nothing contained in this franchise shall be construed to provide rights to third parties.

(d) Notice to 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. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed 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:

To the Town:

Town Administrator  
Town of Milliken  
1101 Broad Street  
P.O. Box 290  
Milliken, CO 80543

Mayor of Milliken  
1101 Broad Street  
P.O. Box 290  
Milliken, CO 80543

With a copy to:

Town Attorney  
Town of Milliken  
P.O. Box S  
Berthoud, CO 80513

To the Company:

Regional Vice President  
Customer and Community Service Dept.  
Public Service Company of Colorado  
P.O. Box 840  
Denver, CO 80201

With a copy to:

Legal Department  
Public Service Company of Colorado  
P.O. Box 840  
Denver, CO 80201

(e) Examination of records. The parties agree that any duly authorized representative of the Town and the Company shall have access to and the right to examine any directly pertinent nonconfidential books, documents, papers and records of the other party involving any activities related to this franchise. All such records must be kept for a minimum of four (4) years. To the extent that either party believes in good faith that it is necessary in order to monitor compliance with the terms of this franchise to examine confidential books, documents, papers and records of the other party, the parties agree to meet and discuss providing confidential materials, including but not limited to providing such materials subject to a reasonable confidentiality agreement which effectively protects the confidentiality of such materials and complies with PUC rules, regulations and final decisions.

(f) List of Company property. The Company shall provide the Town, upon request not more than every two (2) years, a list of utility-related property owned or leased by the Company within the Town. All such records must be kept for a minimum of four (4) years.

(g) Copy of PUC filings. Upon written request, the Company shall provide the Town copies of all applications, advice letters and periodic reports, together with any accompanying nonconfidential testimony and exhibits, filed by the Company with the Public Utilities Commission.

(h) Other information. Upon written request, the Company shall provide the Town Administrator or the Town Administrator's designee with:

(1) A copy of the Company's or its parent company's consolidated annual financial report or, alternatively, a URL link to a location where the same information is available on the Company's website;

(2) Maps or schematics indicating the location of specific Company facilities, including gas or electric lines, located within the Town, to the extent those maps or schematics are in existence at the time of the request; and

(3) A copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

(i) Payment of taxes and fees.

(1) The Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special, ordinary or extraordinary, of every name, nature and kind whatsoever, including all governmental charges of whatsoever name, nature or kind, which may be levied, assessed, charged or imposed, or which may become a lien or charge against this agreement ("impositions"), provided that the Company shall have the right to contest any such impositions and shall not be in breach of this Subsection so long as it is actively contesting such impositions.

(2) The Town shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable tariffs on file and in effect from time to time with the PUC.

(j) Conflict of interest. The parties agree that no official, officer or employee of the Town shall have any personal or beneficial interest whatsoever in the service or property described herein, and the Company further agrees not to hire or contract for service any official, officer or employee of the Town to the extent prohibited by law, including ordinances and regulations of the Town.

(k) Authority. Each party represents and warrants that, except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws or applicable law to legally authorize the undersigned signatories to execute this agreement on behalf of the parties and to bind the parties to its terms. The persons executing this agreement on behalf of each of the parties warrant that they have full authorization to execute this agreement. The Town acknowledges that, notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise.

(l) Severability. Should any one (1) or more provisions of this franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, that the parties shall forthwith enter into good-faith negotiations and proceed with due diligence to draft one (1) or more substitute provisions that will achieve the original intent of the parties hereunder.

(m) Force majeure. Neither the Town nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to uncontrollable forces, which shall include, but not be limited to, accidents, breakdown of equipment, shortage of materials, shortage of labor, acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government and other causes or contingencies of whatever nature beyond the reasonable control of the party affected, which could not reasonably have been anticipated and avoided.

(n) Earlier franchises superseded. This franchise shall constitute the only franchise between the Town and the Company for the furnishing of utility service, street lighting service and traffic signal lighting service, and it supersedes and cancels all former franchises between the parties hereto, including all extensions.

(o) Titles not controlling. Titles of the paragraphs herein are for reference only and shall not be used to construe the language of this franchise.

(p) Responsibility for language. The Town and the Company hereby acknowledge that each bears co-extensive and identical responsibility for the language in this franchise. In case of ambiguity, there shall be no presumptions based upon responsibility for drafting this franchise.

(q) Applicable law. State law shall apply to the construction and enforcement of this franchise. The parties agree that the venue for any litigation arising out of this franchise shall be in the District Court for Weld County, State of Colorado.

(r) Attorneys' fees. In any judicial or administrative action to enforce any of the terms or conditions of this franchise, the prevailing party shall be entitled to recover its costs and expenses incurred in such action, including reasonable attorneys' fees.

(s) Customers charged additional expenses caused by franchise. The parties agree that, if compliance with certain provisions within the franchise agreement causes the Company's costs to increase, the additional costs of compliance shall be borne by customers within the Town, if required by PUC rules, regulations or final decisions.

(t) Payment of certain expenses incurred by Town. The Company shall pay for all expenses incurred for the publication of notices, publication of ordinances and photocopying of documents related to the adoption of this franchise.

(u) Municipal utility service. Nothing in this franchise shall prohibit the Town from providing utility service as a municipal utility to the extent allowed by law. (Ord. 595 §2, 2009)

### **ARTICLE III**

#### **Electric Franchise**

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

There is hereby granted by the Town to Poudre Valley Rural Electric Association, Inc. ("Poudre Valley") a franchise for the right, privilege and authority to locate, build, rebuild, construct, reconstruct, extend, maintain and operate into, within and through the public rights-of-way for the storage, exchange, purchase, transmission and distribution of electrical energy, including selling and distribution of electrical energy to the Town as a retail consumer and to the inhabitants of the Town, for any purposes, by means of conduits, cables, poles with wires strung thereon, structures or otherwise, on, over, under, along, across and through the public rights-of-way in the Town and on, over, under, along, across and through any extension, connection with or continuation of the same as they may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of the Town. (Ord. 213 §1, 1986)

##### **Sec. 5-3-20. Approval of franchise agreement and authorization of execution.**

The Mayor and Town Clerk hereby are authorized and directed to enter into a franchise agreement with Poudre Valley that more fully describes and sets forth the terms and conditions of the franchise hereby granted. Such franchise agreement shall be in the form and substance approved by the Board of Trustees at first reading of the ordinance codified herein. (Ord. 213 §2, 1986; Ord. 481 §1, 2003)

##### **Sec. 5-3-30. Provisions of franchise agreement.**

The franchise agreement hereby authorized shall contain and more fully describe, however shall not be limited to, the following provisions:

- (1) The manner of use and repair by the Association of the Town's rights-of-way.
- (2) The manner by which the Town shall be held harmless from liability, damage or expenses arising out of the negligent exercise by the Association of the rights and privileges thereby granted.
- (3) The manner by which the Town may attach to the poles of the Association for the purpose of stringing wires thereon for its fire alarm, water control wires and police signal system.
- (4) The manner of assessment and amount of an appropriate franchise fee to be paid to the Town in lieu of all occupancy, occupation and license taxes or other taxes or assessments. (Ord. 213 §3, 1986)

**Sec. 5-3-40. Term and effective date.**

(a) This Article shall become effective as provided by law, thirty (30) days after publication of the ordinance codified herein following final passage, and the franchise shall remain in full force and effect for a period of twenty-five (25) years from and after said effective date according to the terms of the franchise agreement.

(b) The franchise is hereby amended to extend the term of the franchise for a period of six (6) months from its current expiration date of September 10, 2011. The new expiration date is March 10, 2012. (Ord. 213 §4, 1986; Ord. 481 §1, 2003; Ord. 650 §1, 2011)

**Sec. 5-3-50. Irrepealable.**

The ordinance codified herein shall be irrepealable after its passage by the Town until the franchise agreement herein authorized, and any renewal or extension thereof shall cease to be of any force and effect and the same has been discharged and cancelled. (Ord. 213 §5, 1986; Ord. 481 §1, 2003)

**ARTICLE IV**

**Telephone Occupation Tax**

**Sec. 5-4-10. 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 and lines connected therewith in the Town and of supplying local exchange telephone service to the inhabitants of the Town. The amount of tax levied hereby shall be:

- (1) For the portion of 1980 remaining after the date on which the tax begins to accrue as provided in Section 5-4-20, seventy-five cents (\$0.75) per telephone account per quarter for which local exchange telephone service is provided within the corporate limits of the Town on said date; and
- (2) For each subsequent calendar year, three dollars (\$3.00) per telephone account per year for which local exchange telephone service is provided within the corporate limits of the Town on the anniversary of the date on which the tax begins to accrue as provided in Section 5-4-20. (Ord. 144 §1, 1980)

**Sec. 5-4-20. Time payment of tax.**

The tax levied by this Article shall begin to accrue on the first day of October, 1980, and shall be due and payable in one (1) installment for the remaining portion of 1980 and in quarterly installments for years subsequent to 1980, each installment to be paid on the last business day of each calendar quarter. (Ord. 144 §2, 1980)

**Sec. 5-4-30. Filing statement.**

Within thirty (30) days after the date on which the tax begins to accrue as provided in Section 5-4-20, each telephone 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 telephone service was provided within the corporate limits of the Town on said date. Such statement shall be filed within thirty (30) days after each anniversary of the date on which the tax begins to accrue, showing such accounts on the anniversary date. (Ord. 144 §3, 1980)

**Sec. 5-4-40. Failure to pay.**

If any telephone utility company subject to the provisions of this Article fails 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 shall be and hereby is declared to be a debt due and owing from such company to the Town. The Town Attorney, upon direction of the Board of Trustees, shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect the said debt. (Ord. 144 §4, 1980)

**Sec. 5-4-50. Penalty clause.**

If any officer, agent or manager 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 5-4-30, said officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00); provided that each day after said statement shall become delinquent during which said officer, agent, manager or person shall so fail, neglect or refuse to make and file such statement shall be considered a separate and distinct offense. (Ord. 144 §5, 1980)

**Sec. 5-4-60. Inspection of records.**

The Town and its officer, 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. 144 §6, 1980)

**Sec. 5-4-70. 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. 144 §7, 1980)

**Sec. 5-4-80. Tax in lieu of other taxes.**

The tax herein provided shall be in lieu of all other occupation taxes or taxes on the privilege of doing business in the Town on any telephone utility company subject to the provisions of this Article and, in addition, shall be in lieu of any free service furnished the Town by any said telephone utility. (Ord. 144 §8, 1980)

**ARTICLE V**

**Emergency Telephone Charge**

**Sec. 5-5-10. Establishment of emergency telephone service.**

The Mayor is authorized to sign the intergovernmental agreement creating the Weld 911 Emergency Telephone Service Authority Board, which agreement is attached to the ordinance codified herein, to establish and maintain an emergency telephone service system within the County, including the Town. (Ord. 239 §1, 1988; Ord. 481 §1, 2003)

**Sec. 5-5-20. Imposition of emergency telephone charge.**

There is hereby imposed, pursuant to Section 29-11-101 et seq., C.R.S., upon all telephone exchange access facilities within the Town, an emergency telephone charge in an amount not to exceed two percent (2%) of the tariff rates as approved by the Colorado Public Utilities Commission, or fifty cents (\$0.50), whichever is less. Upon recommendation of the Weld 911 Emergency Telephone Service Authority Board, the Board of Trustees may, by ordinance, raise or lower the emergency telephone charge, but in no event shall such charge exceed the amount of two percent (2%) of said tariff rates as approved by the Colorado Public Utilities Commission. (Ord. 239 §2, 1988)

**Sec. 5-5-30. Collection of charge.**

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 911 Emergency Telephone Service Authority Board as provided in the intergovernmental agreement. (Ord. 239 §3, 1988)

**ARTICLE VI**

**Gas Franchise**

**Sec. 5-6-10. Definitions.**

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

*Board or Town Board* refers to and is the legislative body of the Town of Milliken.

*Company* refers to and is Atmos Energy Corporation, a Texas and Virginia corporation, and its successors and assigns.

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

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

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

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

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

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

*Town* refers to and is the Town of Milliken, Weld County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the Town of Milliken. (Ord. 568 Art. I, 2007; Ord. 577 Art. I, 2008)

**Sec. 5-6-20. Grant of franchise.**

The Town hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this Article, the right to furnish, transport, sell and distribute gas to the areas which are certificated to it within the Town and to all persons, businesses and industries within that certificated area of the Town, the right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to provide gas to the Town and to all persons, businesses and industries within the Town and in the territory adjacent thereto, and the right to make reasonable use of all streets and other public places as may be necessary to carry out the terms of this Article. (Ord. 568 §2.1, 2007; Ord. 577 §2.1, 2008)

**Sec. 5-6-30. Term of franchise.**

The term of this franchise shall be for ten (10) years, beginning June 1, 2008, and expiring June 1, 2018. (Ord. 568 §2.2, 2007; Ord. 577 §2.2, 2008)

**Sec. 5-6-40. Franchise fee.**

In consideration for the grant of this franchise, the Company shall collect and remit to the Town a sum equal to five percent (5%) of the revenues derived annually from the sale of gas within the Town, excluding the amount received from the Town itself for gas service furnished it. Payment shall be made in quarterly installments not more than thirty (30) days following the close of the month for which payment is to be made. Quarters shall end on March 31, June 30, September 30 and December 31. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this franchise. (Ord. 568 §3.1, 2007; Ord. 577 §3.1, 2008)

**Sec. 5-6-50. Franchise fee payment in lieu of other fees.**

Payment of the franchise fee by the Company is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax, assessment or excise upon the pipes, mains, meters or other personal property of the Company or on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its real property or any other tax not related to the franchise or the physical operation thereof. The franchise fee is not in lieu of actual expenses for damage to, loss of or repairs to the assets and property of the Town done by the Company. (Ord. 568 §3.2, 2007; Ord. 577 §3.2, 2008)

**Sec. 5-6-60. Change of franchise fee and other terms.**

(a) Once during each calendar year of the franchise term, the Town Board, upon giving thirty (30) days' notice to the Company of its intention to do so, may review and change the franchise fee the Town may be entitled to receive as a part of the franchise in accordance with applicable law; provided, however, that the Town may only change the franchise fee to be received by the Town under the terms of this franchise to the equivalent of the highest franchise fee paid by the Company to any city or town in the State in which the Company supplies gas service under a franchise. The Town and the Company expressly agree that any franchise agreement currently in effect between the Company and any Colorado city or town which provides for payment of a franchise fee higher than the fee negotiated hereunder is excluded and exempt from consideration by the Town under this Section throughout the term of this franchise.

(b) The Company shall report to the Town annually, as soon after the first of the year as practical, of a subsequent franchise or of any change of franchise in other Colorado municipalities (other than those exempt hereunder) that exceed the franchise fee to be paid by the Company to the Town. If the Town Board decides that the franchise fee shall be so changed, it shall provide for such change by ordinance in accordance with applicable law; provided, however, that the franchise fee is not higher than the highest franchise fee paid by the Company to any municipality within the State (other than those exempt hereunder); and provided further that any change in the franchise fee is then allowed to be surcharged by the Company in the bills of the Company's customers located within the Town in an amount sufficient to recover such increase. For purposes of this Section, *franchise fee* means the franchise fee established in Section 5-6-40 above, and includes any similar provision which materially affects the amount of the franchise fee paid to the Town. (Ord. 568 §3.3, 2007; Ord. 577 §§3.3, 3.4, 2008)

**Sec. 5-6-70. Conduct of business.**

The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise

its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the State. (Ord. 568 §4.1, 2007; Ord. 577 §4.1, 2008)

**Sec. 5-6-80. Tariffs on file.**

The Company shall keep on file in its nearest office copies of all its tariffs currently in effect and on file with the PUC. Said tariffs shall be available for inspection by the public. (Ord. 568 §4.2, 2007; Ord. 577 §4.2, 2008)

**Sec. 5-6-90. Compliance with PUC regulations.**

The Company shall comply with all rules and regulations adopted by the PUC. (Ord. 568 §4.3, 2007; Ord. 577 §4.3, 2008)

**Sec. 5-6-100. Compliance with Company tariffs.**

The Company shall furnish gas within the Town to the Town and to all persons, businesses and industries within the Town at the rates and under the terms and conditions set forth in its tariffs on file with the PUC. (Ord. 568 §4.4, 2007; Ord. 577 §4.4, 2008)

**Sec. 5-6-110. Applicability of Company tariffs.**

The Town and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the PUC are controlling over any inconsistent provision in this franchise dealing with the same subject matter. (Ord. 568 §4.5, 2007; Ord. 577 §4.5, 2008)

**Sec. 5-6-120. Location of Company facilities.**

Company facilities shall not unreasonably interfere with the Town's water mains, sewer mains or other municipal use of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition. The Company shall comply with all rules, regulations and ordinances of the Town; specifically, it shall make use of the Town's roads, streets and alleys in conformance with all provisions of the Town. (Ord. 568 §5.1, 2007; Ord. 577 §5.1, 2008)

**Sec. 5-6-130. Excavation and construction.**

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

perform such work within a reasonable time after notice from the Town. (Ord. 568 §5.2, 2007; Ord. 577 §5.2, 2008)

**Sec. 5-6-140. Relocation of Company facilities.**

If at any time the Town requests the Company to relocate any distribution gas main or service connection installed or maintained in streets or other public places in order to permit the Town to change street grades, pavements, sewers, water mains or other Town works, such relocation shall be made by the Company at its expense. The Company is not obligated hereunder to relocate any facilities at its expense which were installed in private easements obtained by the Company, the underlying fee of which was, at some point subsequent to installation, transferred to the Town unless located in public streets, roads or alleys. Following relocation, the Company, at its expense, shall restore all property to its former condition. (Ord. 568 §5.3, 2007; Ord. 577 §5.3, 2008)

**Sec. 5-6-150. Service to new areas.**

(a) If, during the term of this franchise, the boundaries of the Town are expanded, the Company may extend service to the newly incorporated areas if located within the Company's certificated area in accordance with the Company's main extension policy then in effect under the Company's tariffs on file with the PUC. Service to annexed areas shall be in accordance with the terms of this franchise.

(b) If, during the term of this franchise, the boundaries of the Town are expanded, the Town will promptly notify the Company in writing of any geographic areas annexed by the Town during the term hereof ("annexation notice"). Any such annexation notice shall be sent to the Company by mail and shall contain the effective date of the annexation, maps showing the annexed area and such other information as the Company may reasonably require in order to ascertain whether there exist any customers of the Company receiving natural gas service in said annexed area. To the extent there are such Company customers therein, then the gross revenues of the Company derived from the sale and distribution of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of the Company's billing cycle immediately following the Company's receipt of the annexation notice. The failure by the Town to advise the Company in writing through a proper annexation notice of any geographic areas which are annexed by the Town shall relieve the Company from any obligation to remit any franchise fees to the Town based upon gross revenues derived by the Company from the sale and distribution of natural gas to customers within the annexed area until the Town delivers an annexation notice to the Company in accordance with the terms hereof. (Ord. 568 §5.4, 2007; Ord. 577 §5.4, 2008)

**Sec. 5-6-160. Restoration of service.**

In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time. (Ord. 568 §5.5, 2007; Ord. 577 §5.5, 2008)

**Sec. 5-6-170. Supply and quality of service.**

The Company shall make available an adequate supply of gas to provide service in the Town. The Company's facilities shall be of sufficient quality, durability and redundancy to provide adequate and efficient gas service to the Town. (Ord. 568 §5.6, 2007; Ord. 577 §5.6, 2008)

**Sec. 5-6-180. Safety regulations by the Town.**

The Town reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety and welfare of the public, provided that such regulations are not destructive of the rights granted herein. The Company agrees to comply with all such regulations in the construction, maintenance and operation of its facilities and in the provision of gas within the Town. (Ord. 568 §5.7, 2007; Ord. 577 §5.7, 2008)

**Sec. 5-6-190. Inspection, audit and quality control.**

The Town shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the Town and its residents. The Town also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Article at all reasonable times. The Company agrees to cooperate with the Town in conducting the inspection and/or audit and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner. (Ord. 568 §5.8, 2007; Ord. 577 §5.8, 2008)

**Sec. 5-6-200. Assignment.**

Nothing in this Article shall prevent the Company from assigning its rights under this franchise. (Ord. 568 §6.1, 2007; Ord. 577 §6.1, 2008)

**Sec. 5-6-210. Saving clause.**

If a court of competent jurisdiction declares any portion of this franchise to be illegal or void, the remainder of the Article shall survive and not be affected thereby. (Ord. 568 §6.2, 2007; Ord. 577 §6.2, 2008)

**Sec. 5-6-220. Force majeure.**

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event the Company is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which the Company is so prevented shall not be counted against the Company for any reason. The term *force majeure*, as used herein, shall mean any cause not reasonably within Company control and includes, but is not limited to, acts of God, strikes, lockouts, wars, terrorism, riots, orders or decrees of any lawfully constituted federal, state or local body; contagions or contaminations hazardous to human life or health; fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe; inability to obtain or the delay in obtaining rights-of-way, materials, supplies or labor permits; temporary failures of gas supply; or necessary repair, maintenance or replacement of facilities used in the performance of the obligations contained in this franchise. (Ord. 568 Art. VII, 2007; Ord. 577 Art. VII, 2008)