

CHAPTER 5

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ARTICLE I

Cable Television System Franchise

Division 1 General Provisions

Sec. 5-1-10. Recitals.

(a) The City has the authority to grant permits to companies to build and operate cable television systems in the City.

(b) The Grantor has considered the financial condition, technical ability and legal qualifications of the Grantee.

(c) The Grantor, after such consideration, analysis and deliberation as are required by applicable law, has approved and found sufficient the financial, technical and legal qualifications of the Grantee to provide cable television service within the City.

(d) The Grantee is willing to accept this agreement subject to the terms and conditions stated herein, and to abide by those terms and conditions.

(e) The public has had adequate notice and opportunity to comment on the Grantee's proposal to provide cable television service within the City. (Ord. 18 §§1.1-1.5, 2002)

Sec. 5-1-15. Definitions.

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

Activate means the status of any capacity or part of the cable system which any cable service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

Affiliate when used in connection with the Grantee, means any corporation, person or entity that owns or controls, is owned or controlled by or is under common ownership or control with, the Grantee.

Basic service means any cable service tier that includes the retransmission of local television broadcast signals and public, educational and governmental access channels, or as such service tier may be further defined by federal law.

Cable Act means Title VI of the Communications Act of 1934 (47 U.S.C. § 521 et seq.), as the same may be amended.

Cable operator means any person or group of persons, including the Grantee, who provide cable service over a cable system and directly or through one (1) or more affiliates own a significant interest in such cable system or who otherwise control or are responsible for, through any arrangement, the management and operation of such a cable system.

Cable service means:

- a. The one-way transmission of video programming or other programming service to subscribers; and
- b. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable system means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

- a. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- b. A facility that serves subscribers without using any public right-of-way;
- c. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand service;
- d. An open video system that complies with federal laws; or
- e. Any facilities of any electric utility used solely for operating its electric utility systems.

Channel means a portion of the electromagnetic frequency spectrum that is used in a cable system and is capable of delivering a television channel, as television channel is defined by the FCC by regulation.

Designated access provider means the entity or entities designated by the Grantor to manage or co-manage public, educational or governmental access channels and facilities. The Grantor may be a designated access provider.

Downstream means the transmission from the headend to remote points on the cable system.

FCC means the Federal Communications Commission.

Franchise means the nonexclusive and revocable authorization or renewal thereof for the construction or operation of a cable system such as is granted by this franchise agreement, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise.

Franchise area means the area within the jurisdictional boundaries of the City, including any areas annexed by the Grantor during the term of this agreement.

Gross revenues means all amounts received by the Grantee from the operation of the Grantee's cable system to provide cable service within the franchise area. *Gross revenues* shall include, without limitation, all amounts for all cable services, including but not limited to Basic, expanded Basic, premium and pay-per-view services, installation fees, late charges and franchise fees. *Gross revenues* shall also include any revenue received by any affiliate of the Grantee where such revenue in the ordinary course of business should have been paid to the Grantee from the operation of its cable system to provide cable service within the franchise area. By way of illustration and not limitation, this definition would include revenue received from the sale of cable system advertising time by an affiliate of the Grantee. *Gross revenues* shall not include bad debt, sales taxes or other taxes that are collected by the Grantee on behalf of, and for payment to, the local, state or federal government.

Headend means a facility, for signal reception and dissemination, on a cable system, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors and all other related equipment and facilities.

Leased access channel means any channel of the cable system available to the public in a manner consistent with Section 612 of the Cable Act for commercial use by persons unaffiliated with the Grantee for video programming purposes.

PEG Access channel means any channel, or portion thereof, designated for noncommercial PEG Access purposes or otherwise made available to facilitate or transmit PEG Access programming or service.

Person means any individual, sole proprietorship, partnership, association or corporation, or any other form of entity or organization.

Public, Educational and Governmental Access or *PEG Access* means the availability for noncommercial use of capacity on a channel or channels on the cable system by various governmental and educational agencies and institutions, and public organizations, groups and individuals, including the Grantor and its designees.

Return capacity means that a cable or fiber, when connected to an rf modulator at a given location, is capable of taking video/audio feeds from the remote location and distributing them throughout the cable system to the subscribers.

School means any state-accredited public or private primary and secondary schools.

Street means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the franchise area: streets, roads, highways, avenues, bridges, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas dedicated for compatible uses, now or hereafter held by the Grantor in the franchise area which shall entitle the Grantee to the use thereof for purposes of installing, operating, repairing and maintaining the cable system. *Street* shall also mean any easement now or hereafter held by the Grantor within the franchise area for the purpose of public travel or for utility or public service use dedicated for compatible uses and shall include other easements or rights-

of-way as within their proper use and meaning shall entitle the Grantee to the use thereof for the purpose of installing, operating and maintaining the Grantee's cable system.

Subscriber means any person who elects to subscribe to, for any purpose, cable service provided by the Grantee by means of, or in connection with, the Cable System, and whose premises are physically wired and lawfully activated to receive cable service from the Grantee's cable system.

a. *Commercial subscriber* means any subscriber other than a residential subscriber.

b. *Residential subscriber* means any person who receives cable service delivered to single or multiple dwelling units, excluding such dwelling units billed on a bulk-billing basis. (Ord. 18 §2, 2002)

Sec. 5-1-20. Grant.

(a) The Grantor hereby grants to the Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the streets within the franchise area to construct, operate, maintain, reconstruct and repair a cable system for the purpose of providing cable services through the cable system, subject to the terms and conditions set forth in this franchise.

(b) This franchise is intended to convey limited rights and interests only as to those streets in which the Grantor has an actual interest. It is not a warranty of title or interest in any right-of-way; it does not provide the Grantee with any interest in any particular location within the right-of-way; and it does not confer rights other than as expressly provided in the grant hereof. This franchise does not deprive the Grantor of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or regulate the use of and to control the Grantor's streets covered by this franchise, including without limitation the right to perform work on its roadways, right-of-way or appurtenant drainage facilities, including constructing, altering, paving, widening, grading or excavating thereof.

(c) This franchise shall not be interpreted to prevent the Grantor from imposing additional conditions, including additional compensation conditions for use of the streets should the Grantee provide service other than cable service, as described herein.

(d) This franchise constitutes the entire agreement between the Grantee and the City. Any amendments to this franchise shall be mutually agreed to in writing by the parties. (Ord. 18 §3.1, 2002)

Sec. 5-1-25. Use of public streets and ways.

Subject to the Grantor's supervision and control, the Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the streets within the franchise area such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a cable system for the provision of cable service within the franchise area. The Grantee shall comply with all generally applicable construction codes, laws, ordinances, regulations and procedures now in effect or enacted hereafter, and must obtain any and all necessary permits from the City prior to commencing any construction activities. (Ord. 18 §3.2, 2002)

Sec. 5-1-30. Duration.

This franchise and the rights, privileges and authority granted hereunder shall take effect on the 19th day of June, 2002, (the "Effective Date"), and shall terminate on the 18th day of June, 2007, unless lawfully terminated sooner or extended. The term shall be automatically extended for an additional five (5) years if the Grantee has substantially completed an upgrade to the cable system as described in Section 5-1-535 herein. (Ord. 18 §3.3, 2002)

Sec. 5-1-35. Prior rights.

This franchise is subject to all prior rights granted by the Grantor to any person other than the Grantee to use any street, for any purpose whatsoever, including the right of the Grantor to use the same for any purpose it deems fit, including the same or similar purposes allowed the Grantee hereunder. (Ord. 18 §3.4, 2002)

Sec. 5-1-40. Grant of other agreements.

In the event the Grantor enters into a franchise, permit, license, authorization or other agreement of any kind with any person or entity other than the Grantee to enter into the Grantor's public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the franchise area, in which the Grantee is actually providing cable service under the terms and conditions of this franchise or is required to extend cable service to customers under the provisions of Sections 5-1-545 and 5-1-550 of this franchise, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one (1) operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. (Ord. 18 §3.5, 2002; Ord. 4 §1, 2005)

Sec. 5-1-45. Police powers.

The Grantee's rights hereunder are subject to the lawful police powers of the Grantor to adopt and enforce ordinances necessary to the safety, health and welfare of the public, and the Grantee agrees to comply with all generally applicable laws and ordinances enacted, or hereafter enacted, by the Grantor pursuant to such police powers, provided that such ordinances shall be reasonable and not destructive of the rights granted in this franchise. (Ord. 18 §3.6, 2002)

Sec. 5-1-50. Effect of acceptance.

By accepting the agreement, the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the agreement; (2) accepts and agrees to comply with each and every provision of this franchise subject to applicable law; and (3) agrees that the franchise was granted pursuant to processes and procedures consistent with applicable law in effect as of the effective date of the franchise. (Ord. 18 §3.7, 2002)

*Division 2
Franchises*

Sec. 5-1-110. Franchise fee.

As compensation for the benefits and privileges granted under this franchise, and in consideration of permission to use the Grantor's streets, the Grantee shall pay as a franchise fee to the Grantor an amount equal to five percent (5%) of the Grantee's gross revenues received from the operation of the cable system to provide cable service in the franchise area. The Grantee shall provide notice to its Subscribers within thirty (30) days of the effective date of this franchise of the increase in the franchise fee, and shall commence payment of franchise fees to the City in the amount of five percent (5%) upon collection of such fees from the subscribers, which shall be within ninety (90) days of the effective date of this franchise. The franchise fees are in addition to all other fees, assessments, taxes, charges or payments of general applicability that the Grantee may be required to pay under any federal, state or local law. (Ord. 18 §4.1, 2002)

Sec. 5-1-115. Payments.

The Grantee's franchise fee payments to the Grantor shall be computed quarterly. Each quarterly payment shall be due and payable no later than forty-five (45) days after the last day of the preceding quarter. (Ord. 18 §4.2, 2002)

Sec. 5-1-120. Acceptance of payment and recomputation.

No acceptance of any payment shall be construed as an accord by the Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Grantor may have for further or additional sums payable or for the performance of any other obligation of the Grantee. (Ord. 18 §4.3, 2002)

Sec. 5-1-125. Quarterly franchise fee reports.

Each payment shall be accompanied by a report to the Grantor, containing accurate statements of the Grantee's gross revenues and the computation of the payment amount. (Ord. 18 §4.4, 2002)

Sec. 5-1-130. Annual franchise fee reports.

The Grantee shall, no later than sixty (60) days after the end of each calendar year, furnish to the Grantor a statement of gross revenues and all payments, deductions and computations for the year just ended. Such statement shall be reviewed and approved by an authorized representative of the Grantee prior to submission to the Grantor. (Ord. 18 §4.5, 2002)

Sec. 5-1-135. Audits.

On an annual basis, upon thirty (30) days' prior written notice, the Grantor shall have the right to conduct an independent audit of those records of the Grantee reasonably necessary to the administration or enforcement of this franchise, in accordance with generally accepted accounting principles. The City may hire an independent certified public accountant or other qualified person to audit the Grantee's revenue records, in which case the Grantee shall make available all necessary records to the certified

public accountant. If the audit shows that franchise fees have been underpaid by five percent (5%) or more, the Grantee shall pay the reasonable cost of the audit, up to a maximum of three thousand dollars (\$3,000.00). The period of limitation for recovery of any franchise fee due hereunder shall be three (3) years from the date on which the payment by the Grantee was due. (Ord. 18 §4.6, 2002)

Sec. 5-1-140. Interest on late payments.

In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the prime rate of interest as such interest rate is listed in *The Wall Street Journal*, on the date the payment was due, until the date that the Grantor receives the payment. (Ord. 18 §4.7, 2002)

Sec. 5-1-145. Filing on termination.

If this franchise terminates for any reason, the Grantee shall file with the Grantor, within ninety (90) calendar days of the date of the termination, a statement of revenues, certified by a certified public accountant, showing the gross revenues received by the Grantee since the end of the previous fiscal year. The Grantee shall provide payment of the remaining amount of franchise fees due at the time the statement of revenue is provided to the City. (Ord. 18 §4.8, 2002)

Sec. 5-1-150. Authority.

The Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this franchise in the public interest. (Ord. 18 §5.1, 2002)

Sec. 5-1-155. Rates and charges.

All of the Grantee's rates and charges related to or regarding cable service shall be subject to regulation by the Grantor to the full extent authorized by applicable federal, state and local laws. (Ord. 18 §5.2, 2002)

Sec. 5-1-160. No rate discrimination.

All of the Grantee's rates and charges shall be published (in the form of a publicly available rate card), and shall be nondiscriminatory as to all persons and organizations of similar classes, under similar circumstances and conditions. The Grantee shall apply its rates in accordance with governing law, with similar rates and charges for all subscribers receiving similar cable service, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability, or geographic location in the franchise area. The Grantee shall make available equivalent cable service to all residential subscribers at similar rates and as authorized by applicable laws. Nothing herein shall be construed to prohibit:

- (1) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;
- (2) The offering of reasonable discounts to senior citizens, the disabled or economically disadvantaged citizens; or

(3) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for commercial subscribers as allowable by federal law and regulations. (Ord. 18 §5.3, 2002)

Sec. 5-1-165. Filing of rates and charges.

(a) Throughout the term of this franchise, the Grantee shall maintain on file with the Grantor a complete schedule of applicable rates and charges for cable service provided under this franchise. Nothing in this Subsection shall be construed to require the Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns, provided that such information shall be made available by the Grantee upon request by the Grantor.

(b) The Grantee shall provide upon request from the Grantor a complete schedule of current rates and charges for any and all leased access channels, or portions of such channels, provided by the Grantee. The schedule shall include a description of the price, terms and conditions established by the Grantee for leased access channels. (Ord. 18 §5.4, 2002)

Sec. 5-1-170. Late fees.

If the Grantee assesses any kind of fee for late payment, such fee shall be consistent with federal and state laws and applicable judicial decisions. (Ord. 18 §5.5, 2002)

Sec. 5-1-175. Time limits strictly construed.

Whenever this franchise sets forth a time for any act to be performed by the Grantee, such time shall be deemed to be of the essence, and any failure of the Grantee to perform within the allotted time may be considered a material violation of this franchise and sufficient grounds for the Grantor to invoke any relevant provision of this franchise. However, in the event that the Grantee is prevented or delayed in the performance of any of its obligations under this franchise by reasons of a *force majeure* occurrence such as acts of God (for example, floods, tornadoes or unusually severe weather conditions), or other reasons beyond the reasonable control of the Grantee, the Grantee's performance shall be excused during the *force majeure* occurrence; and the Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this franchise or procure a substitute for such obligation which is satisfactory to the Grantor. The Grantee shall not be held in default or noncompliance or suffer any enforcement or penalty relating thereto where such noncompliance or alleged defaults occurred or were caused by reasons of *force majeure*. The Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers or employees. (Ord. 18 §5.6, 2002)

Sec. 5-1-180. Performance evaluation sessions.

(a) The Grantor may hold a regular performance evaluation session within sixty (60) days following the third anniversary date of the effective date of this franchise. Such evaluation session shall be conducted by the Grantor.

(b) Special evaluation sessions may be held at any time by the Grantor during the term of this franchise.

(c) The evaluation sessions shall be open to the public and publicized in the same manner as required for all other public hearings by the City.

(d) During such evaluation sessions, the Grantor will review the Grantee's performance of the terms and conditions of the franchise.

(e) As part of the regular performance evaluation session, the Grantee shall submit to the Grantor a plant survey report, or map, acceptable to the Grantor, which includes a description of the portions of the permit area that are cabled and have all cable services available. Such report shall also include the number of miles and location of overhead and underground cable plant. If the Grantor has reason to believe that a portion or all of the cable system does not meet the applicable FCC technical standards, the Grantor retains the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the cable system.

(f) During evaluations under this Section, the Grantee shall fully cooperate with the Grantor and shall provide such information and documents as necessary and reasonable for the Grantor to perform the evaluation. (Ord. 18 §5.7, 2002)

Sec. 5-1-185. State of the art.

At all times, the Grantee's cable system installed in the City shall be no less advanced than any other cable system operated by the Grantee in other Colorado cities of comparable size, density and demographics to the City, and with reasonably similar franchise incentives as the Grantee has with the Grantor, excepting systems which are experimental, pilot or demonstrations; provided, however, that should an upgrade of the cable system in the City be required pursuant to the terms of this Section, the Grantee shall have the right to meet, confer and negotiate with the City concerning the economic practicality of such an upgrade, giving due consideration to the remaining term of the franchise and other reasonable incentives. (Ord. 18 §5.8, 2002)

Sec. 5-1-190. Insurance requirements.

(a) General requirement. The Grantee must have adequate insurance during the entire term of this franchise to protect the City against claims for injuries to persons or damages to property which arise from or are connected with this franchise or involve the Grantee's operation of the cable system.

(b) Insurance limits. The Grantee shall maintain in full force and effect during the term of this franchise, at its own cost and expense, the following coverage:

(1) Commercial general liability: Two million dollars (\$2,000,000.00) aggregate combined single limit for bodily and personal injury and property damage per occurrence.

(2) Automobile liability: Two million dollars (\$2,000,000.00) combined single limit per accident for bodily injury and property damage; and

(3) Employer's liability: Two million dollars (\$2,000,000.00).

(c) The Grantee's insurance coverage shall be primary insurance with respect to the Grantor, its officers, officials and employees. Any insurance or self-insurance maintained by the Grantor, its officers,

officials and employees shall be in excess of the Grantee's insurance and shall not contribute to it. The Grantor, its officers, officials and employees are to be covered as, and have the rights of additional insureds with respect to liability arising out of activities performed by, or on behalf of the Grantee under this franchise or applicable law, or in the Grantee's construction operation, repair or ownership of the cable system.

(d) The Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(e) The policy shall not be suspended, voided, canceled or reduced in coverage or in limits so as to be out of compliance with the requirements of this Section, nor shall the insurance company decline to renew the coverage except after thirty (30) days' prior written notice, return receipt requested, has been given to the City Manager.

(f) Acceptability of insurers. The insurance obtained by the Grantee shall be placed with insurers with an A.B. Best's rating of no less than "A-."

(g) Verification of coverage. The Grantee shall furnish the Grantor with certificates of insurance stating the coverage and stating the additional insured status of the Grantor, its officers, officials and employees. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance is to be on standard forms or such forms as are consistent with standard industry practices. The Grantee hereby warrants that its insurance policies satisfy the requirements of this franchise. (Ord. 18 §6.1, 2002)

Sec. 5-1-195. Indemnification.

(a) Scope of indemnity. The Grantee shall, at its sole cost and expense, indemnify, hold harmless and defend the Grantor and its officers, boards, commissions and employees against any and all claims, including but not limited to third party claims, suits, causes of action, proceedings and judgments and settlements for damages or equitable relief arising out of the Grantee's construction, operation or repair of its cable system, or in any way arising out of the Grantee's enjoyment or exercise of this franchise, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this franchise. Without limiting in any way the Grantee's obligation to indemnify the Grantor and its officers, boards, commissions and employees, as set forth above, this indemnity provision also includes, but is not limited to, reasonable attorneys' fees, expenses and costs.

(b) Duty to give notice and tender defense. The Grantor shall give the Grantee written notice within ten (10) days of the presentation of any claim and/or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. In the event any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee, the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. (Ord. 18 §6.2, 2002)

Sec. 5-1-200. Bond.

The Grantee shall not be required to initially obtain or maintain bonds or other surety as a condition of being awarded this renewal franchise or continuing its existence. The City acknowledges that the legal, financial and technical qualifications of the Grantee are sufficient for compliance with the terms of the

franchise and the enforcement thereof. The City may require bonds or other surety during the term of the franchise, in the event there should be a reasonably demonstrated need therefor. In the event that a bond or other surety is required in the future, the City agrees to give the Grantee at least sixty (60) days' prior written notice thereof, stating the specific reason for the requirement. The amount of the bond or other surety shall not exceed an aggregate amount of ten thousand dollars (\$10,000.00). In the event that a bond is required pursuant to this Section, the City agrees to either return the bond or sign the necessary documentation to release the bond promptly upon the expiration or termination of the franchise. (Ord. 18 §6.3, 2002)

*Division 3
Standards*

Sec. 5-1-310. Customer service standards.

The Grantee shall comply with all customer service standards as set forth by the FCC, a copy of which is attached to this Chapter as Appendix B to this Code. Customer service standards may be adopted separately by ordinance of the City. The Grantee reserves the right to challenge any customer service standards adopted by the City that are inconsistent with the Grantee's contractual rights under this franchise. (Ord. 18 §7.1, 2002)

Sec. 5-1-315. Subscriber privacy.

The Grantee will comply with privacy rights of subscribers in accordance with federal, state and local laws. (Ord. 18 §7.2, 2002)

Sec. 5-1-320. Customer service center.

Throughout the franchise term, the Grantee must maintain, at a minimum, one (1) customer service center conveniently located within Garfield County which will be open during normal business hours, as defined by the FCC, to provide subscribers the opportunity to receive and pick up subscriber equipment and to make bill payments and complaints. The Grantee shall maintain its service center so that customer complaints, service requests, information requests and other concerns can be received by the Grantee or an agent of the Grantee on a twenty-four-hour, seven-day-a-week basis at a local or toll-free telephone number. During normal business hours, customers shall be capable of speaking with an actual customer service agent. (Ord. 18 §7.3, 2002)

Sec. 5-1-325. Emergency warning system.

The Grantee shall provide an emergency alert system in accordance with and as required by applicable laws and FCC regulations. The Grantor shall permit only appropriately trained and authorized persons to operate the emergency alert system equipment and shall take reasonable precautions to prevent any use of the Grantee's cable system in any manner that results in inappropriate use thereof, or any loss or damage to the cable system. Except to the extent expressly prohibited by law, the Grantor shall hold the Grantee, its employees and officers harmless from any claims arising out of unauthorized or inappropriate use of the emergency alert system by the Grantor, including but not limited to reasonable attorneys' fees and costs. (Ord. 18 §7.4, 2002)

Sec. 5-1-330. Open records.

The Grantor shall have access to, and the right to inspect, any books and records of the Grantee that are reasonably related and necessary to the administration or enforcement of the terms of this franchise. The Grantee shall not deny the Grantor access to any of the Grantee's records on the basis that the Grantee's records are under the control of any parent corporation, affiliate or a third party. The Grantor may, in writing, request copies of any such records or books. The Grantee shall make such books and records available at its local office within thirty (30) days of written notice from the Grantor requesting access to the records. If any of the Grantee's books or records necessary to the enforcement of this franchise are not kept in a local office and not made available to the Grantor upon written request as set forth above, and if examination of such records is necessary for the administration or enforcement of this franchise, then all reasonable travel expenses incurred in making such examination shall be paid by the Grantee. (Ord. 18 §8.1, 2002)

Sec. 5-1-335. Confidentiality.

The Grantor agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent the Grantee makes the Grantor aware of such confidentiality. The Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If the Grantor believes it must release any such confidential books and records in the course of enforcing this franchise, or for any other reason, it shall advise the Grantee in advance so that the Grantee may take appropriate steps to protect its interests. If the Grantor receives a demand from any person for disclosure of any information designated by the Grantee as confidential, the Grantor shall, so far as consistent with applicable law, advise the Grantee and provide the Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of the Grantee's books and records marked confidential as set forth above to any person. (Ord. 18 §8.2, 2002)

Sec. 5-1-340. Complaint file and reports.

(a) The Grantee shall keep an accurate and comprehensive file of any and all written complaints regarding the cable system, and the Grantee's actions in response to those complaints in a manner consistent with the privacy rights of subscribers. The Grantee shall, within thirty (30) days of written request from the City, provide an executive summary report, which shall also include the following information if requested by the City:

- (1) The nature and type of customer complaints.
- (2) An outage log.
- (3) Any significant construction activities that affect the quality or otherwise enhance the service of the cable system, including a construction schedule.
- (4) Average response time for service calls.

(5) New areas constructed and available for cable service.

(b) Upon written request, the Grantee shall also provide, quarterly, subscriber reports to the Grantor indicating the total number of subscribers in such format as the Grantee customarily prepares such reports. The Grantor shall also have the right to request such information as appropriate and reasonably necessary to determine whether or not the Grantee is in compliance with applicable customer service standards. The Grantee shall fully cooperate with the Grantor and shall provide such information and documents as reasonably necessary for the Grantor to evaluate franchise compliance by the Grantee. (Ord. 18 §8.3, 2002)

Sec. 5-1-345. False statements.

Any knowing and willful false or misleading statement or representation in any report required by this franchise may be deemed a material violation of this franchise and may subject the Grantee to all remedies, legal or equitable, which are available to the Grantor under this franchise or otherwise. (Ord. 18 §8.4, 2002)

Sec. 5-1-350. Broad programming categories.

The Grantee shall provide at least the following broad categories of programming to the extent such categories are reasonably available:

- (1) Educational programming;
- (2) News, weather and information;
- (3) Sports programming;
- (4) General entertainment programming;
- (5) Children/family-oriented programming;
- (6) Arts, culture and performing arts programming;
- (7) Science/documentary programming;
- (8) National weather information; and
- (9) Government information programming.

The Grantee shall not delete any broad category of programming within its control. (Ord. 18 §9.1, 2002)

Sec. 5-1-355. Parental control device.

Upon request by any subscriber, the Grantee shall make available a parental control or lockout device, traps or filters to enable a subscriber to control access to both the audio and video portions of any or all channels. The Grantee shall inform its subscribers of the availability and cost of the lockout device at the time of their initial subscription and any time thereafter upon request. (Ord. 18 §9.2, 2002)

Sec. 5-1-360. Leased access channels.

The Grantee shall offer leased access channel capacity on such terms, conditions and rates as may be negotiated with each lessee, subject to the requirements of Section 612 of the Cable Act and the rules and regulations of the FCC. (Ord. 18 §9.3, 2002)

Sec. 5-1-365. Continuity of service.

(a) It shall be the right of all subscribers to continue to receive cable service from the Grantee insofar as their financial and other obligations to the Grantee are satisfied. Subject to the *force majeure* provisions of this franchise, the Grantee shall use its best efforts to ensure that all subscribers receive continuous, uninterrupted cable service.

(b) In the event of a change in ownership or in the event a new cable operator acquires the cable system in accordance with this franchise, the Grantee shall cooperate with the Grantor and such new cable operator in maintaining continuity of service to all subscribers. (Ord. 18 §9.4, 2002)

Sec. 5-1-370. Services for the disabled.

The Grantee shall comply with the Americans With Disabilities Act and any amendments thereto. (Ord. 18 §9.5, 2002)

Sec. 5-1-375. Access channels.

(a) As of the effective date of this franchise, the Grantee shall continue to provide one (1) downstream channel for PEG Access for Rifle Community Television, located at 202 Railroad Avenue. The Grantee shall reserve and make available, upon one hundred eighty (180) days' written request of the Grantor, at least two (2) additional channels for noncommercial Public, Educational or Governmental Access use on its subscriber network. The Grantee shall be permitted to use the PEG Access channels if such channels are not being used for the purposes designated. All PEG Access channels shall be on the basic service tier of the cable system.

(b) Within ninety (90) days of the effective date of this franchise, the Grantee shall provide return capacity for live and taped feeds from the current locations of the following:

- (1) Rifle City Hall.
- (2) Rifle High School Gymnasium and Auditorium.
- (3) RE-2 Administration Building.
- (4) Rifle Fire Station.
- (5) Rifle Senior Center.
- (6) Colorado Mountain College.
- (7) Esma Lewis Elementary School.

(8) Wamsle Elementary.

(9) Rifle Middle School.

Within ninety (90) days of the effective date of this franchise, the Grantee shall provide return capacity for live and taped feeds from the Garfield County Fairgrounds and within five (5) years from Deerfield Park, provided that the service location for each is within five hundred (500) feet of the Grantee's cable system.

(c) If Rifle Community Television moves to another location, the City shall provide the Grantee with at least one hundred twenty (120) days' advance written notice in order for the Grantee to provide return capacity from the new location, provided that the Grantee shall only be required to provide return capacity if the new location is within five hundred (500) feet of the cable system.

(d) The Grantee shall provide two (2) portable tunable modulators to the City for its use to provide live and taped feeds from the locations listed in paragraph (b) of this Section. (Ord. 18 §10.1, 2002)

Sec. 5-1-380. Management and control of access channels.

(a) The Grantor may authorize designated access providers to control and manage the use of any and all PEG Access facilities, including, without limitation, the operation of the PEG Access channel. To the extent of such designation by the Grantor, the designated access provider shall have sole and exclusive responsibility for operating and managing such PEG Access facilities. The Grantor or its designee may formulate rules for the operation of the PEG Access channel, consistent with this franchise. Nothing herein shall prohibit the Grantor from authorizing itself to be a designated access provider.

(b) The Grantee shall cooperate with the Grantor and Designated Access Providers in the use of the cable system for the provision of PEG Access. (Ord. 18 §10.2, 2002)

Sec. 5-1-385. Capital funding.

(a) The Grantor, by written request, may direct the Grantee to collect and provide to the Grantor up to fifty cents (\$.50) per residential subscriber (excluding bulk accounts and free service accounts) per month as PEG Access capital funding.

(b) If the Grantor determines that an access capital fee shall be collected, the PEG Access capital contribution will be payable by the Grantee to the City after: (1) the approval of the City, if required, to include the capital contribution on the bills of residential subscribers; (2) notice by the Grantee to its residential subscribers of such inclusion; and (3) collection of the capital contributions from such residential subscribers. The collected amount shall be due and payable to the City annually within sixty (60) days of the end of the calendar year.

(c) Any pass-through amounts relating to monthly PEG Access capital contributions shall not be considered revenue for the purpose of calculating franchise fees, and the Grantee shall not be entitled to a deduction from franchise fees for any such amounts, so long as the pass-through amounts collected by the Grantee and paid to the City are used as capital support for PEG Access. The City shall provide a written report annually to the Grantee on the use of the pass-through funds provided to the City. The Grantee

shall have the opportunity to review records of the City and any designated access providers regarding the use of such funds.

(d) After imposition of an access capital monthly charge is instituted, the City shall biannually at a public meeting consider whether such charge shall be continued or modified. If the City determines to modify the implementation of the charge, including to discontinue or to increase or decrease the amount of the charge, the City shall provide the Grantee sixty (60) days' written notice of any such modification. (Ord. 18 §10.3, 2002)

*Division 4
Construction and Equipment*

Sec. 5-1-410. Right to construct.

Subject to applicable laws, regulations, rules, resolutions and ordinances of the Grantor and the provisions of this franchise, the Grantee may perform all construction in the streets for any facility needed for the maintenance, upgrade or extension of the Grantee's cable system. (Ord. 18 §11.1, 2002)

Sec. 5-1-415. General standard.

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices. (Ord. 18 §11.2, 2002)

Sec. 5-1-420. Emergency permits.

In the event that emergency repairs are necessary, the Grantee shall immediately notify the Grantor of the need for such repairs. The Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency. (Ord. 18 §11.3, 2002)

Sec. 5-1-425. Compliance with applicable codes.

(a) Tower specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, state and local codes or regulations.

(b) Safety codes. The Grantee shall comply with all federal, state and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction, operation and repair of its cable system. By way of illustration and not limitation, the Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards. (Ord. 18 §11.4, 2002)

Sec. 5-1-430. GIS mapping.

The Grantee shall comply with any generally applicable ordinances, rules and regulations of the City regarding geographic information mapping systems for users of the streets. The Grantee shall provide the

City with copies of strand and trench maps as soon as such maps are available after the completion of the upgrade as provided in Section 5-1-535 herein. (Ord. 18 §11.5, 2002)

Sec. 5-1-435. Minimal interference.

Work in the streets, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. The Grantee's cable system shall be constructed and maintained in such manner as not to interfere with sewers, water pipes or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the streets by, or under, the City's authority. The Grantee's cable system shall be located, erected and maintained so as not to endanger or unreasonably interfere with the lives of persons, or with new improvements the City may deem proper to make, or to unnecessarily hinder or obstruct the free use of the streets or other public property, and shall not unreasonably interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of the Grantee's lines, cables, equipment and other appurtenances from the property in question at the Grantee's expense. (Ord. 18 §11.6, 2002)

Sec. 5-1-440. Hazardous substances.

The Grantee shall comply with any and all applicable laws, statutes, regulations and orders concerning hazardous substances relating to the Grantee's cable system. (Ord. 18 §11.7, 2002)

Sec. 5-1-445. Locates.

Prior to doing any work in the streets, the Grantee shall give appropriate notices to the notification association established in Section 9-1.5-105, C.R.S., as such may be amended from time to time. (Ord. 18 §11.8, 2002)

Sec. 5-1-450. Notice to property owners.

Except for emergency situations, the Grantee shall provide at least three (3) days' prior written notice before commencing work on public or private property. The Grantee may provide such notice by door hangers or other reasonable means. (Ord. 18 §11.9, 2002)

Sec. 5-1-455. Underground construction and use of poles.

(a) When required by general ordinances, resolutions, regulations or rules of the City or applicable state or federal law, the Grantee's cable system shall be placed underground at the Grantee's expense, unless otherwise provided by state or federal law; however, a requirement to place facilities underground does not necessarily preclude the use of ground-mounted appurtenances.

(b) Where electric, telephone and other aboveground utilities are installed underground at the time of cable system construction, or when all such wiring is subsequently placed underground, all cable system lines shall also be placed underground with other wire-line service at no expense to the City unless funding is generally available for such relocation to all users of the streets. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or

resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(c) The Grantee shall utilize existing poles and conduit wherever possible.

(d) In the event the Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for the Grantee to make all needed excavations in the streets for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of the Grantee's cable system. All poles of the Grantee shall be located as designated by the proper City authorities.

(e) This franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other person. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon request by the City.

(f) The Grantee and the City recognize that situations may occur in the future where the City may desire to place its own cable, telecommunication wiring or conduit for fiber optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the City in any construction by the Grantee that involves trenching or boring, provided that the City has first notified the Grantee that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the City to lay its cable, conduit and fiber optic cable in the Grantee's trenches and bores, provided that the City pays the Grantee's incremental cost of the trenching and boring. The City shall be responsible for maintaining its respective cable, telecommunication wiring, conduit and fiber optic cable buried in the Grantee's trenches and bores under this Subsection. The City shall have the ability to sell or lease its cable, conduit and fiber optic cable installed pursuant to this Subsection to any third party; provided, however, that in the event the third party competes with the Grantee, the City or the third party shall reimburse the Grantee for its proportional share of the original entire cost of the trenching and boring.

(g) As a condition of issuing a permit for open trenching to any utility, the City agrees to require the utility to give the Grantee at least ten (10) days' advance written notice of the availability of the open trench or bore, and provide the Grantee with reasonable access to the open trench or bore. Likewise, the Grantee shall allow utility companies in the City reasonable access to its open trench and bore, provided that the utility shares in the cost of the trenching and boring. The utility shall be responsible for maintaining its respective cable conduit and facilities buried in the Grantee's trenches and bores. (Ord. 18 §11.10, 2002)

Sec. 5-1-460. Undergrounding of multiple dwelling unit drops.

In cases of single-site multiple dwelling units, the Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and multiple dwelling unit where determined to be technologically and economically feasible in agreement with the owners or owners' association of the multiple dwelling units. (Ord. 18 §11.11, 2002)

Sec. 5-1-465. Drop burial.

Cable drops installed by the Grantee to residences shall be buried within one (1) calendar week of initial installation, subject to weather conditions and acquisition of any necessary permits, or at a time mutually agreed upon between the Grantee and the subscriber. When freezing surface conditions or other weather conditions prevent the Grantee from achieving such timetable, the Grantee shall apprise the subscriber of the circumstances and the revised schedule for burial, and shall provide the subscriber with the Grantee's telephone number and instructions as to how and when to call the Grantee to request burial of the line if the revised schedule is not met. (Ord. 18 §11.12, 2002)

Sec. 5-1-470. Burial standards.

(a) Depths. Unless otherwise required by law, the Grantee shall comply with the following burial depth standards. In no event shall the Grantee be required to bury its cable deeper than electric or gas facilities in the same portion of the streets:

(1) Underground cable drops from the curb shall be buried at a minimum depth of twelve (12) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.

(2) Feeder lines shall be buried at a minimum depth of eighteen (18) inches.

(3) Trunk lines shall be buried at a minimum depth of thirty-six (36) inches.

(4) Fiber optic cable shall be buried at a minimum depth of thirty-six (36) inches and a maximum of forty-eight (48) inches.

(b) Timeliness. Cable drops installed by the Grantee to residences shall be buried according to these standards within one (1) calendar week of initial installation, subject to weather conditions and acquisition of any necessary permits, or at a time mutually agreed upon between the Grantee and the subscriber. When freezing surface conditions prevent the Grantee from achieving such timetable, the Grantee shall apprise the subscriber of the circumstances and the revised schedule for burial, and shall provide the subscriber with the Grantee's telephone number and instructions as to how and when to call the Grantee to request burial of the line if the revised schedule is not met. (Ord. 18 §11.13, 2002)

Sec. 5-1-475. Electrical bonding.

The Grantee shall ensure that all new cable drops are properly bonded to the electrical power ground at the home, consistent with applicable code requirements. Nonconforming or nonperforming cable drops shall be replaced by the Grantee as necessary. (Ord. 18 §11.14, 2002)

Sec. 5-1-480. Prewiring.

Any ordinance or resolution of the City that requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for cable systems. (Ord. 18 §11.15, 2002)

Sec. 5-1-485. Repair and restoration of property.

(a) The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(b) Whenever the Grantee disturbs or damages any streets, other public property or any private property, the Grantee shall promptly restore the streets or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(c) Streets and other public property. The Grantee shall warrant any restoration work performed by or for the Grantee in the streets or on other public property for one (1) year. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City.

(d) Public and private property. Upon completion of the work which caused any disturbance or damage, the Grantee shall promptly commence restoration of private or public property, as the case may be, and will use best efforts to complete the restoration within seventy-two (72) hours, weather conditions permitting, subject to the acquisition of any necessary permits and considering the nature of the work that must be performed. (Ord. 18 §11.16, 2002)

Sec. 5-1-490. Movement of cable system facilities for City purposes.

(a) The City shall have the right to require the Grantee to relocate, remove, replace, modify or disconnect the Grantee's facilities and equipment located in the streets or on any other property of the City in the event of an emergency or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed by the Grantee at the Grantee's expense, subject to applicable state and federal law. Except during an emergency, the City shall provide reasonable notice to the Grantee, not to be less than five (5) business days, and allow the Grantee the opportunity to perform such action. In the event of any capital improvement project exceeding fifty thousand dollars (\$50,000.00) in expenditures by the City that requires the removal, replacement, modification or disconnection of the Grantee's facilities or equipment, the City shall provide at least sixty (60) days' written notice to the Grantee. Following notice by the City, the Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any street, or on any other property of the City. If the City requires the Grantee to relocate its facilities located within the streets, the City shall make a reasonable effort to provide the Grantee with an alternate location within the streets. If funds are generally made available to users of the streets for such relocation, the Grantee shall be entitled to its pro rata share of such funds.

(b) If the Grantee falls to complete this work within the time prescribed and to the City's reasonable satisfaction, upon reasonable advance notice and an opportunity to cure, the City may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the City due to the Grantee's delay. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the City. (Ord. 18 §11.17, 2002)

Sec. 5-1-495. Movement of cable system facilities for other franchise holders.

If any removal, replacement, modification or disconnection of the cable system is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder, the Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The Grantee may require that the costs associated with the removal or relocation be paid in advance by the benefited party. (Ord. 18 §11.18, 2002)

Sec. 5-1-500. Temporary changes for third parties.

At the request of any person holding a valid permit and upon reasonable advance notice, the Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and the Grantee may require a reasonable deposit of the estimated payment in advance. (Ord. 18 §11.19, 2002)

Sec. 5-1-505. Reservation of City use of streets.

Nothing in this franchise shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers; grading, paving, repairing or altering any street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of the Grantee's cable system. (Ord. 18 §11.20, 2002)

Sec. 5-1-510. Tree trimming.

The Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the City's streets which interferes with the Grantee's cable system. The Grantee shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, the Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until at least a one-week written notice has been given to the owner or occupant of the premises abutting the street in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one-week period. For purposes of this Subsection, emergencies exist when it is necessary to prune to protect the public or the Grantee's facilities from imminent danger only. (Ord. 18 §11.21, 2002)

Sec. 5-1-515. Inspection of construction and facilities.

The City may inspect any of the Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours' notice, on a nondisruptive basis and during normal business hours, or, in case of emergency, upon demand without prior notice. The City does not waive any rights it may have to charge generally applicable inspection fees therefor. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order the Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to correct, inspect, administer and repair the unsafe condition if the Grantee fails to do so, and to charge the Grantee therefor. (Ord. 18 §11.22, 2002)

Sec. 5-1-520. Stop work order.

(a) On notice from the City that any work is being performed contrary to the provisions of this franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the work may immediately be stopped by the City.

(b) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the person doing the work, or posted on the work site;
- (3) Be sent to the Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed. (Ord. 18 §11.23, 2002)

Sec. 5-1-525. Work of contractors and subcontractors.

The Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements. Work performed by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by the Grantee. The Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this franchise and other applicable law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is the Grantee's responsibility to ensure that contractors, subcontractors or other persons performing work on the Grantee's behalf are familiar with the requirements of this franchise and other applicable laws governing the work performed by them. (Ord. 18 §11.24, 2002)

Sec. 5-1-530. Acquisition of facilities.

Upon the Grantee's acquisition of cable system facilities in any street, or upon the addition to the City of any area in which the Grantee owns or operates any cable system facility, the Grantee shall, at the City's request, submit to the City a statement describing all facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent that the Grantee has possession of such information. Such facilities shall immediately be subject to the terms of this franchise. (Ord. 18 §11.25, 2002)

Sec. 5-1-535. Subscriber network.

(a) The Grantee shall have the option of extending the term of this franchise pursuant to Section 5-1-30 by completing the upgrade of its cable system in the City to five hundred fifty (550). Upon completion of such upgrade, the cable system shall be capable of delivering at least seventy-seven (77) channels of programming services to all subscribers.

(b) The Grantee shall retransmit all closed-captioned programming received by the cable system so long as the closed caption signal is provided consistent with FCC standards. The Grantee shall also retransmit stereo signals as received without any degradation in signal quality.

(c) The Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the permit area.

(d) The facilities and equipment of the cable system must be capable of delivering high quality signals that meet, or exceed, FCC technical standards. The Grantee's cable system shall, at all times, meet or exceed the minimum performance standards required by the FCC.

(e) Within thirty (30) days of the commencement of an upgrade, and periodically thereafter, at the request of the Grantor, the Grantee and the Grantor will meet to discuss the progress of the construction and installation and will work cooperatively to speed the construction process and to minimize the impact upon subscribers. At such meetings, the Grantee will provide a progress report on the construction and installation, detailing the Grantee's progress in satisfying the requirements of this Section. (Ord. 18 §12.1, 2002)

Sec. 5-1-540. Tests.

(a) The Grantee shall advise the Grantor of schedules and methods for testing the cable system in order that the tests may be witnessed by representatives of the Grantor, and copies of test reports shall be made available to the Grantor upon written request.

(b) The Grantee shall also provide the Grantor with written reports of the proof of performance tests and cumulative leakage index tests results upon written request. (Ord. 18 §13, 2002)

Sec. 5-1-545. Service availability.

(a) New construction. Subject to the provisions of Subsection (b) below, the Grantee shall provide cable service within one hundred twenty (120) days of request for cable service in newly constructed areas, subject to weather conditions and permitting restrictions of the City. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee or receipt of a written request by the Grantee. The Grantee shall provide such service:

(1) With no line extension charge except as may apply under Subsection (b); and

(2) For a standard installation (which shall consist of a one-hundred-twenty-five-foot aerial cable drop) at a nondiscriminatory standard installation charge, with additional charges for a nonstandard installation, computed according to a nondiscriminatory methodology for such installation.

(b) Required extensions of service. The cable system, as constructed as of the effective date of this franchise, complies with the material provisions hereof. Whenever the Grantee shall receive a request for cable service from potential customers in a contiguous unserved area where there are at least fifty (50) residences within one (1) cable mile from the portion of the Grantee's trunk or distribution cable which is to be extended, the Grantee shall extend its cable system to such customers at no cost to said customers for the cable system extension, other than the installation or connection fees charged to all customers, provided that such extension is technically feasible.

(c) Customer charges for extensions of service. No customer shall be refused cable service arbitrarily. However, for unusual circumstances, such as a customer's request to locate the cable drop underground, the existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of cable service to customers, or a density of less than fifty (50) residences within one (1) cable mile of the Grantee's trunk or distribution cable which is to be extended, cable service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and customers in the area in which cable service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per one (1) cable mile of its trunk or distribution cable and whose denominator equals fifty (50). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance. (Ord. 18 §14.1, 2002)

Sec. 5-1-550. Connection of facilities.

The Grantee shall, at no cost to the Grantor or the building owner, provide at least one (1) outlet of basic cable service to those following locations which, as of the effective date of this franchise, are passed by the cable system: administrative buildings owned and occupied by the Grantor, fire stations, police stations, schools and public libraries. In addition, the Grantee shall provide, at no cost to the building owner, one (1) outlet of basic cable service to all future administrative buildings owned and occupied by the City, fire stations, police stations, schools and public libraries if such future buildings are passed by the cable system. The Grantee shall not be required to provide an outlet to such future buildings where a nonstandard installation is required unless the Grantor or the building owner or occupant agrees to pay the incremental cost of the nonstandard installation. The cable service provided shall not be used for commercial purposes, nor shall such outlets be located in areas open to the public. Outlets of basic cable service provided in accordance with this Section may be used to distribute cable service throughout such buildings at the building owner's cost. The Grantee shall provide such free service outlet, provided that: (a) such distribution can be accomplished without causing cable system disruption; and (b) general technical standards can be maintained. The Grantor shall take reasonable precautions to prevent any use of the Grantee's cable system that in any manner results in inappropriate use thereof, or any loss or damage to the cable system. (Ord. 18 §14.2, 2002)

*Division 5
Administration*

Sec. 5-1-610. Procedure for remedying franchise violations.

(a) If the Grantor believes that the Grantee has failed to perform any obligation under this franchise or has failed to perform in a timely manner, the Grantor shall informally discuss the matter with the Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall then notify the Grantee in writing, stating with reasonable specificity the nature of the alleged violation. The Grantee shall have thirty (30) days from the date of receipt of such notice to:

- (1) Respond to the Grantor, contesting the Grantor's assertion that a violation has occurred;

(2) Cure the violation; or

(3) Notify the Grantor that the Grantee cannot cure the violation within the thirty (30) days because of the nature of the violation, and notify the Grantor in writing of what steps the Grantee shall take to cure the violation, including the Grantee's projected completion date for such cure.

(b) In the event that the Grantee fails to cure the violation within the thirty-day cure period, or within the extended cure period projected pursuant to Subsection (a)(3) above, if the Grantor intends to continue to pursue this matter, then the Grantor shall schedule a public hearing. The Grantor shall provide the Grantee at least ten (10) days' prior written notice of such hearing.

(c) In the case of any hearing pursuant to this Section, the Grantor shall notify the Grantee of the hearing in writing specifying the time, place and purpose of such hearing, and shall provide the Grantee the opportunity to be heard and to present evidence in its defense.

(d) Subject to applicable federal and state law, if, after the public hearing set forth in Subsection (c) above, the Grantor determines that a violation still exists, the Grantor may utilize one (1) or more of the following remedies:

(1) Order the Grantee to correct or remedy the violation within a reasonable timeframe, as the Grantor shall determine;

(2) Commence an action at law for monetary damages;

(3) In the case of a substantial breach of a material provision of this franchise, seek to revoke this franchise, in accordance with and subject to this Section; or

(4) Pursue any other legal or equitable remedy available under this franchise or any applicable law.

(e) This franchise shall not be revoked nor shall damages be imposed except by the City Council after notice and hearing pursuant to the provisions of this Section.

(f) The determination as to whether a violation of this franchise has occurred shall be within the sole reasonable discretion of the Grantor, provided that any such final determination shall be subject to review by a court of competent jurisdiction under applicable law. (Ord. 18 §15.1, 2002)

Sec. 5-1-615. Revocation.

(a) In addition to all other rights and powers retained by the Grantor under this franchise or otherwise, the Grantor reserves the right to forfeit and terminate this franchise and all rights and privileges of the Grantee hereunder, in whole or in part, in the event of a substantial breach of a material term, provision or condition of this franchise.

(b) Should the Grantor seek to revoke this franchise after following the procedures set forth above in this Section, the Grantor shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the breach. The Grantee shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection. In the event the Grantor has not received a satisfactory response from the Grantee, it may then commence an administrative proceeding in accordance with this

Section to consider termination of this franchise. The Grantor shall cause to be served upon the Grantee, at least sixty (60) days prior to such hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke this franchise.

(c) At the designated hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the franchise shall be revoked. The Grantee may appeal such determination to an appropriate court of competent jurisdiction, which shall have the power to review the decision of the Grantor *de novo*. Such appeal must be taken within sixty (60) days of the issuance of the final determination by the Grantor.

(d) The Grantor may, at its sole discretion, take any lawful action that it deems appropriate to enforce the Grantor's rights under this franchise in lieu of revocation of this franchise. (Ord. 18 §15.2, 2002)

Sec. 5-1-620. Removal.

(a) In the event of lawful termination, expiration or revocation of this franchise, the Grantor may order the removal of the aboveground cable system facilities (and such underground facilities as required by the Grantor, in order to achieve reasonable engineering or street use purposes), from the franchise area at the Grantee's sole expense within a reasonable period of time as determined by the Grantor. The Grantee shall not be required to remove its system without having first had a reasonable opportunity to transfer its system to a third party. The Grantor shall have the opportunity to approve such transfer of this franchise and cable system in accordance with the procedures set forth in Sections 5-1-650 and 5-1-655 of this Article. In removing its plant, structures and equipment, the Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all streets, public places and private property in as good a condition as that prevailing prior to the Grantee's removal of its equipment.

(b) If the Grantee fails to complete any required removal to the satisfaction of the Grantor, the Grantor may cause the work to be done and the Grantee shall reimburse the Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs. (Ord. 18 §15.3, 2002)

Sec. 5-1-625. Receivership and foreclosure.

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

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

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

(b) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of the Grantee, the Grantor may serve notice of revocation on the Grantee and to the

purchaser at the sale, and the rights and privileges of the Grantee under this franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The Grantor has approved the transfer of this franchise, in accordance with the procedures set forth in this franchise and as provided by law; and

(2) The purchaser has agreed with the Grantor to assume and be bound by all of the terms and conditions of this franchise. (Ord. 18 §15.4, 2002)

Sec. 5-1-630. No monetary recourse against Grantor.

The Grantee shall not have any monetary recourse against the Grantor for any loss, costs, expenses or damages arising out of any provision or requirement of this franchise or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Grantor under this franchise are in addition to, and shall not be read to limit, any immunities the Grantor may enjoy under federal, state or local law. (Ord. 18 §15.5, 2002)

Sec. 5-1-635. Nonenforcement by Grantor.

The Grantee is not relieved of its obligations to comply with any of the provisions of this franchise by reason of any failure of the Grantor to enforce prompt compliance. The Grantor's forbearance or failure to enforce any provision of this franchise shall not serve as a basis to stop any subsequent enforcement. The failure of the Grantor on one (1) or more occasions to exercise a right or to require compliance or performance under this franchise or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived. (Ord. 18 §15.6, 2002)

Sec. 5-1-640. Effect of abandonment.

If the Grantee abandons its cable system during the franchise term, or fails to operate its cable system in accordance with its duty to provide continuous service, the Grantor, at its option, may obtain an injunction requiring the Grantee to continue operations. (Ord. 18 §16.1, 2002)

Sec. 5-1-645. Abandonment defined.

For the purposes of this franchise, *abandonment* is defined as:

(1) Subject to applicable law, and except for situations beyond the reasonable ability of the Grantee to control, if the Grantee fails to provide cable service in accordance with this franchise over a substantial portion of the franchise area for forty-eight (48) consecutive hours, unless the Grantor authorizes a longer interruption of service; or

(2) If the Grantee, for any period, willfully and without cause refuses to provide cable service in accordance with this franchise. (Ord. 18 §16.2, 2002)

Sec. 5-1-650. Renewal.

(a) The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

(b) In addition to the procedures set forth in said Section 626(a), the Grantor agrees to notify the Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of the Grantee under the then-current franchise term. Notwithstanding anything to the contrary set forth herein, the Grantee and the Grantor agree that, at any time during the term of then current franchise, while affording the public adequate notice and opportunity for comment, the Grantor and the Grantee may agree to undertake and finalize negotiations regarding renewal of the then-current franchise and the Grantor may grant a renewal thereof. The Grantee and the Grantor consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Act. (Ord. 18 §17.1, 2002)

Sec. 5-1-655. Transfer of ownership or control.

(a) The Grantee's right, title or interest in the franchise shall not be sold, transferred, assigned or otherwise encumbered without the prior consent of the Grantor, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation or by assignment of any rights, title or interest of the Grantee in the franchise or cable system in order to secure indebtedness.

(b) Within thirty (30) days of receiving the request for transfer, the Grantor shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the information it requires to determine the legal, financial and technical qualifications of the transfer.

(c) The Grantor shall render a final written decision on the request for consent to transfer within one hundred twenty (120) days of the request. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.

(d) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and the Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, that any such terms and conditions shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this franchise by the Grantee.

(e) The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this franchise.

(f) Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of this franchise or cable system to an affiliate of the

Grantee, provided that the assignee or transferee agrees in writing to comply with all of the lawful provisions of this franchise. (Ord. 18 §17.2, 2002)

Sec. 5-1-660. Severability.

If any section, subsection, paragraph, term or provision of this Article is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, paragraph, term or provision of this Article, all of which will remain in full force and effect for the term of this franchise. (Ord. 18 §18, 2002)

*Division 6
Miscellaneous Provisions*

Sec. 5-1-710. Preferential or discriminatory practices prohibited.

The Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status or physical or mental disability. Throughout the term of this franchise, the Grantee shall fully comply with all equal employment and nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations relating thereto. (Ord. 18 §19.1, 2002)

Sec. 5-1-715. Notices.

(a) Every notice or response required by this franchise to be served upon the Grantor or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope:

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

(b) The notices or responses to the Grantee shall be addressed as follows:

General Manager
TCI of Northern New Jersey, Inc.
1605 Grand Avenue
Glenwood Springs, CO 81601

with a copy to:

TCI of Northern New Jersey, Inc.
Attention: Legal Department
188 Inverness Drive West, 6th Floor
Englewood, CO 80112

(c) All notices or responses to be sent to the Grantor shall be addressed as follows:

City of Rifle
Attention: City Manager
202 Railroad Avenue
Rifle, CO 81650

with a copy to:

Leavenworth & Karp
1011 Grand Avenue
P.O. Drawer 2030
Glenwood Springs, CO 81602

(d) The Grantor and the Grantee may designate such other address or addresses from time to time by giving notice to the other. (Ord. 18 §19.2, 2002)

Sec. 5-1-720. Binding effect.

This franchise shall be binding upon the parties hereto, their permitted successors and assigns. (Ord. 18 §19.3, 2002)

Sec. 5-1-725. Authority to amend.

This franchise may be amended at any time by written agreement between the parties. (Ord. 18 §19.4, 2002)

Sec. 5-1-730. Governing law.

This franchise shall be governed in all respects by the laws of the State of Colorado. (Ord. 18 §19.5, 2002)

Sec. 5-1-735. Captions.

The captions and headings of this Article are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this franchise. (Ord. 18 §19.6, 2002)

ARTICLE II

Gas and Electric Franchise

Division 1

General

Sec. 5-2-10. Preface; definitions.

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

City refers to and is the municipal corporation designated as the City of Rifle, Garfield County, Colorado.

Company refers to and is Public Service Company of Colorado, its successors, assigns, affiliates and subsidiaries.

Council or *City Council* refers to and is the legislative body of the City of Rifle, Garfield County, Colorado.

Electric revenues refers to and is that portion of revenues that the Company receives from the sale of electricity.

Facilities refers to and is all apparatuses reasonably necessary for the Company to provide gas and electric service into, within and through the City, 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, wires, cables and poles.

Party or *parties* refers to and includes the Company and the City, either singly or collectively as the context requires.

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

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

Revenues refer to and are those amounts of money which the Company receives from its customers within the City from the sale of gas and electricity under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the City, and represents amounts billed under such rates as adjusted for refunds, net write-off of uncollectible accounts, corrections or regulatory adjustments. *Regulatory adjustments* refer to, by way of explanation but not

limitation, credits, surcharges, refunds and pro-forma adjustments pursuant to federal or state regulation.

Streets refer to and are streets, alleys, viaducts, bridges, roads, lanes and other public rights-of-way in the City. *Streets* shall also include public easements and other public places within the City that are suitable locations for the placement of facilities. (Ord. 20 §§1.1-1.11, 2003)

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

(a) The City hereby grants to the Company the right to use the streets within the City to furnish, sell, transmit, transport and distribute gas and electricity to the City and to all residents of the City. The City also hereby grants to the Company the right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City all facilities reasonably necessary to furnish, sell, transmit, transport and distribute gas and electricity within and through the City. The rights granted in this franchise encompass the right to provide street lighting service to the City. These rights shall extend to all areas of the City as it is now constituted and to additional areas as the City may increase in size by annexation or otherwise.

(b) If the boundaries of the City are expanded during the term of this franchise, the Company shall extend service to residents in the expanded area at the earliest practicable time and in accordance with the Company's extension policy. Service to the expanded area shall be in accordance with requirements of the PUC and the terms of this franchise, including payment of franchise fees.

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

(d) Except as otherwise specifically provided herein, the City retains the right through the exercise of its police power to use, control and regulate the use of the streets, and the space above and beneath said streets. The City retains the right to impose such other regulations as may be determined by the City to be necessary in the reasonable exercise of its police power to protect the health, safety and welfare of the public. (Ord. 20 §2.1, 2003)

Sec. 5-2-30. Term of franchise.

This franchise shall take effect upon its adoption and shall supersede any prior franchise granted to the Company by the City. The term of this franchise shall be twenty (20) years. (Ord. 20 §2.2, 2003)

Sec. 5-2-40. Franchise fee.

As consideration for the franchise rights granted herein, and in recognition of the fact that the grant to the Company of the right to use City streets is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of all revenues received from the sale of electricity, and three percent (3%) of all revenues received from the sale and transportation of gas within the City, excluding revenues received from the City for the sale of gas and electricity to the City. (Ord. 20 §3.1, 2003)

Sec. 5-2-50. Surcharge of franchise fees.

The Company shall charge a franchise fee to all City residents that use facilities of the Company in City streets to obtain electricity and or/gas. No franchise fee shall be charged to the City for street lighting service or for electric or gas service provided to the City for its own consumption. (Ord. 20 §3.2, 2003)

Sec. 5-2-60. Remittance schedule.

Franchise fees that are collected from residents shall be remitted by the Company to the City in monthly installments not more than thirty (30) days following the close of each month. All payments shall be made to the City Clerk. In the event that either the City or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City, the error shall be corrected in the next monthly payment, subject to the following provisions: In the event an error by the Company results in an overpayment of the franchise fee to the City in excess of five thousand dollars (\$5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered; if the overpayment is five thousand dollars (\$5,000.00) or less, credit shall be taken against the next payment. In no event shall either party be required to refund any overpayment or underpayment more than three (3) years from the date of the over- or underpayment. (Ord. 20 §3.3, 2003)

Sec. 5-2-70. Audit rights; protection of confidential information.

The City Clerk shall have access to the metering records of the Company during normal business hours upon reasonable notice for the purpose of auditing to ascertain that the franchise fee has been correctly computed and paid. Except as provided in Section 5-2-90 all information obtained by the City Clerk during a franchise fee audit shall be kept confidential and shall be utilized for the sole purpose of verifying that the franchise fee has been correctly computed and paid. (Ord. 20 §3.4, 2003; Ord. 4 §1, 2005)

Sec. 5-2-80. Enforcement of City sales and use tax laws.

The City may use the metered information obtained from franchise fee audits for the purpose of enforcing its sales and use tax laws. Upon request by the City, the Company shall supply the City with a list of all suppliers of electricity and/or gas that utilize Company facilities within the City streets to sell electricity and/or gas to City residents. (Ord. 20 §3.5, 2003)

Sec. 5-2-90. Franchise fee payment in lieu of certain taxes and other fees.

The City accepts payment of the franchise fee by the Company in lieu of any occupation tax, occupancy tax, license tax or similar tax or fee the City might charge the Company or its subcontractors for the privilege of doing business in the City, for the use or occupation of City streets, or for the installation, operation and maintenance of Company facilities. Payment of the franchise fee does not exempt the Company from any lawful taxation upon its property or from any other tax not related to the franchise or the occupation or use of City streets, including the payment of head taxes, sales taxes or other fees or taxes assessed generally upon businesses. (Ord. 20 §3.6, 2003)

Sec. 5-2-100. Share of joint use payments.

Within ninety (90) days following the close of each year, the Company shall pay the City a sum equal to three percent (3%) of all revenues received from others for the placement of wires or other equipment on Company distribution poles and distribution conduit located in City streets. (Ord. 20 §3.7, 2003)

*Division 2
Regulation*

Sec. 5-2-210. Obligations regarding Company facilities.

The Company shall install, maintain, repair, renovate and replace its facilities with due diligence in a good and workerlike manner. Company facilities shall not interfere with the City's water mains, sewer mains or other municipal uses of the streets. The Company shall construct and maintain its facilities in such a way as to minimize interference with trees and other natural features. The Company shall install underground all gas pipelines and all newly constructed electric distribution lines serving new residential subdivisions. All other Company facilities may be installed above ground unless the City or affected City residents pay to the Company the additional costs incurred by the Company to construct, operate and maintain the facilities underground or as provided in Sections 5-2-350 through 5-2-390 of this Article. (Ord. 20 §4.1, 2003)

Sec. 5-2-220. Excavation and construction.

All excavation and construction work performed by the Company shall be done in a manner that minimizes inconvenience to the public. All property disturbed by Company excavation or construction activities shall be restored by the Company at its expense to substantially its former condition. (Ord. 20 §4.2, 2003)

Sec. 5-2-230. Relocation of Company facilities.

The Company shall relocate, at its expense, facilities in the streets that interfere with a public project undertaken and paid for by the City with public funds. The City shall provide at its expense sufficient right-of-way for the Company to relocate its facilities. The Company shall relocate its facilities at the request of the City or other person to avoid interference with other nonpublicly financed projects, but the expense of the relocation and the new right-of-way shall be paid in advance by the City or by the person conducting the project and requesting the relocation. Relocation shall be completed within a reasonable time after a request and payment therefor is made (if applicable). In the event that the City requests the Company to relocate the same facilities within five (5) years of completion of a prior relocation, the subsequent relocation shall be at the City's expense. Underground facilities shall be relocated underground. Aboveground facilities shall be relocated above ground, unless the City pays the additional cost of relocating aboveground facilities underground or as provided in Sections 5-2-350 through 5-2-390 of this Article. (Ord. 20 §4.3, 2003)

Sec. 5-2-240. City not required to advance funds.

Upon receipt of the City's authorization for billing and construction, the Company shall extend its facilities to provide gas and/or electricity to the City for municipal uses within the Company's certificated service area, without requiring the City to advance funds prior to construction. Nothing in this Section shall

release the City from the obligation to pay for the extension of facilities once complete, in accord with the Company's gas and electric tariffs on file with the Public Utilities Commission. (Ord. 20 §4.4, 2003)

Sec. 5-2-250. Compliance with applicable laws.

The Company and all of its contractors shall comply with all applicable City laws, ordinances and regulations. The Company shall require its contractors working in the streets to hold the necessary licenses and permits required by the City. (Ord. 20 §5.1, 2003)

Sec. 5-2-260. Compliance with City requirements.

The Company will comply with all City building and zoning codes and requirements regarding curb and pavement cuts, excavating, digging and related construction activities. (Ord. 20 §5.2, 2003)

Sec. 5-2-270. Inspection.

The City shall have the right to inspect any portion of the Company's facilities in the City streets. The Company agrees to cooperate with the City in conducting the inspection. (Ord. 20 §5.3, 2003)

Sec. 5-2-280. Compliance with orders by 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. The City shall impose no obligation on the Company that interferes with the Company's ability to comply with lawful regulatory orders, rules and regulations. (Ord. 20 §6.1, 2003)

Sec. 5-2-290. Certificates to exercise franchise rights.

The City agrees to assist the Company, 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 require in order to obtain the certificate. (Ord. 20 §6.2, 2003)

*Division 3
Equipment Installation*

Sec. 5-2-310. City use of distribution poles.

The City shall have the right to attach, without paying a pole attachment fee, City-owned police, fire and traffic control equipment, as long as such equipment is not used to produce revenue for any third party, to Company distribution poles within the City in a manner that complies with the National Electric Safety Code and all other applicable laws, rules and regulations. All other attachments must be prescreened and approved by the Company, and the Company reserves the right to charge a reasonable fee for such attachments. The City shall hold harmless and indemnify the Company for all liability associated with the City's facilities on the Company's poles, including the payment of the Company's reasonable attorney and expert witness fees, if applicable. The City's use of the Company's poles shall be in such a manner as not to constitute a safety hazard or to interfere with the Company's use of the poles. Any construction or reconfiguration that may, in

the sole judgment of the Company, be required because of the City's attachment of equipment to Company distribution poles shall be paid for by the City. (Ord. 20 §7.1, 2003)

Sec. 5-2-320. Trenches available for City use.

If the Company opens a trench to install its facilities, the Company shall provide advance notice to the City to permit the City to install City facilities in the same trench at the City's expense. The City's installation of its facilities shall not interfere with the Company's facilities or delay the commencement or completion of the Company's construction project. (Ord. 20 §7.2, 2003)

Sec. 5-2-330. City held harmless and indemnified.

The Company shall indemnify, defend and hold the City harmless from and against all liability or damage and all claims or demands arising out of the Company's operations within the City pursuant to this franchise. The City shall provide prompt written notice to the Company of the pendency of any claim or action against the City arising out of the exercise by the Company of its franchise rights. The Company shall be permitted, at its own expense, to appear and defend or to assist in defense of such claim. The Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any intentional or negligent act or failure to act of the City or any of its officials, agents or employees, or to the extent that any claim, demand or lien arises out of or in connection with the use of City facilities. (Ord. 20 §8.1, 2003)

Sec. 5-2-340. Payment of ordinance expenses.

The Company shall reimburse the City for actual out-of-pocket expenses incurred in publishing notices and ordinances and conducting elections related to this franchise. (Ord. 20 §8.2, 2003)

Sec. 5-2-350. Underground conversion at expense of Company.

(a) The Company shall allocate an annual amount, equivalent to one percent (1%) of the preceding year's electric revenues derived by the Company from the distribution of electricity to customers within the City, for the purpose of undergrounding its overhead electric distribution facilities in the City; provided that the undergrounding shall extend for a minimum distance of one (1) block or seven hundred fifty (750) feet, whichever is less, or as may be mutually agreed by the parties. No relocation expenses which the Company is required to expend pursuant to Section 5-2-230 shall be charged to this allocation.

(b) Any 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 City, the Company agrees to anticipate amounts to be available under Subsection (a) above 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.

(c) The final decision as to which projects are selected for undergrounding rests with the City, subject to the provisions of this Article. The specific scheduling of such projects rests with the Company, which shall make every reasonable effort to complete such projects within the time requested by the City. (Ord. 20 §9.1, 2003)

Sec. 5-2-360. Relocation expenses not charged against remaining balances.

No relocation expenses which the Company is required to expend pursuant to Section 5-2-230 shall be charged against the balance remaining in the existing underground fund, nor shall the City be responsible for such costs. (Ord. 20 §9.2, 2003)

Sec. 5-2-370. System-wide undergrounding costs.

If the Public Utilities Commission requires a system-wide program or programs of undergrounding electric distribution facilities at the Company's expense, the City shall not be responsible for paying the costs of any undergrounding pursuant to such program. (Ord. 20 §9.3, 2003)

Sec. 5-2-380. Review of undergrounding projects.

The City and the Company shall mutually plan in advance the scheduling of approved undergrounding projects to be undertaken according to this Article as part of the review and planning for other Company construction projects. The City and the Company agree to meet, as required, to review the progress of the current undergrounding projects designated by the City and to review planned future undergrounding projects. The Company need not approve an undergrounding project if it would create a significant risk to safety or operational integrity, but it shall provide to the City written notification of any such nonapproval and the basis for nonapproval. (Ord. 20 §9.4, 2003)

Sec. 5-2-390. Cooperation with other utilities.

When undertaking a project of undergrounding, the City and the Company shall work with other utilities or companies which have overhead lines to attempt to underground all such lines as part of the same project. When other utilities or companies are placing their lines underground, the Company shall cooperate with those utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. Notwithstanding the foregoing, nothing in this Section shall require the Company to pay for undergrounding of its distribution lines except as required by Section 5-2-230 of this Article. (Ord. 20 §9.5, 2003)

*Division 4
General Provisions*

Sec. 5-2-410. Consent of City required.

The Company shall not transfer or assign any rights under this franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory orders, unless the City shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld. (Ord. 20 §10.1, 2003)

Sec. 5-2-420. Transfer fee.

In order that the City may share in the value this franchise adds to the Company's operations, any transfer or assignment of rights under this franchise requiring the approval of the City under Section 5-2-410 shall be subject to the condition that the transferee shall promptly pay to the City a transfer fee, which shall be calculated by multiplying one million dollars (\$1,000,000.00) by a fraction of which the numerator equals the

then population of the City which is served by the Company, and the denominator equals the then population of the City and County of Denver. Such transfer fee shall not be recovered from a surcharge placed only on the rates of City residents. (Ord. 20 §10.2, 2003)

Sec. 5-2-430. City's right to condemn.

During the term of this franchise, the City agrees not to condemn the facilities of the Company or to otherwise restrict the Company's opportunity to conduct business in the City, except as specifically provided in Section 31-15-707, C.R.S. (Ord. 20 §11.1, 2003)

Sec. 5-2-440. Operation of a municipal utility or competing distributors.

If, during the term of this franchise, the City operates a municipal utility or issues to another entity a franchise to use the streets for the placement of electric and or/gas facilities, the Company shall no longer be required to collect and pay franchise fees under Sections 5-2-40 through 5-2-100 unless substantially the same terms and conditions apply to the service provided by the City or by the other entity. In addition, the following sections of this Article shall no longer apply to the Company unless substantially the same provisions are applicable to all other electric and gas distributors, including the City: Sections 5-2-60, 5-2-70, 5-2-80, 5-2-100, 5-2-210, 5-2-220, 5-2-230, 5-2-250, 5-2-260, 5-2-270, 5-2-310, 5-2-320, 5-2-350, 5-2-380, 5-2-390, 5-2-410, 5-2-420. (Ord. 20 §11.2, 2003)

Sec. 5-2-450. Uncontrollable forces.

Neither the City 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, 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. (Ord. 20 §12.1, 2003)

Sec. 5-2-460. Breach.

If the Company fails to perform any of the terms and conditions of this franchise and such failure is within the Company's control, the City may notify the Company of the specific failure and shall allow the Company a reasonable time within which to remedy the failure. If the Company does not remedy the failure and the failure is of a substantial nature, the City Council may terminate this franchise after a full evidentiary hearing. Termination of the franchise shall be by no less than seventy-five percent (75%) vote of all members of the City Council. (Ord. 20 §13.1, 2003)

Sec. 5-2-470. Judicial review.

Any such termination of the franchise shall be subject to judicial review as provided by law. (Ord. 20 §13.2, 2003)

Sec. 5-2-480. Amendments to franchise.

This franchise may be amended only by a writing signed by both the Company and the City, which is approved in the same manner as is required for the passage of the ordinance codified herein. (Ord. 20 §14.1, 2003; Ord. 4 §1, 2005)

*Division 5
Miscellaneous Provisions*

Sec. 5-2-510. Successors and assigns.

The rights, privileges, franchises and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon Public Service Company, its successors, assigns, affiliates and subsidiaries. (Ord. 20 §15.1, 2003)

Sec. 5-2-520. Third parties.

Nothing contained in this franchise shall be construed to provide rights to third parties. (Ord. 20 §15.2, 2003)

Sec. 5-2-530. Representatives.

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

To the City:

City Manager, City of Rifle
202 Railroad Avenue
P.O. Box 1908
Rifle, CO 81650

To the Company:

Cynthia Evans, Vice President
Public Service Company of Colorado
1225 17th Street, Suite 900
Denver, CO 80202

(Ord. 20 §15.3, 2003)

Sec. 5-2-540. Surcharge to City residents.

The Company shall be permitted to surcharge to residents of the City the franchise fee payments it makes to the City. The Company shall be permitted to surcharge to residents of the City any other payments it

makes to the City only to the extent and in the manner permitted by law or as otherwise ordered by the PUC. (Ord. 20 §15.4, 2003)

Sec. 5-2-550. Severability.

Should any one (1) or more provisions of this franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, that the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a substitute term that will achieve the original intent of the parties hereunder. (Ord. 20 §15.5, 2003)

Sec. 5-2-560. Entire agreement.

This franchise constitutes the entire agreement of the parties with respect to the matters contained herein and supersedes any and all prior written or oral agreements, negotiations, correspondence, understandings and communications with respect to this franchise. (Ord. 20 §15.6, 2003)

Sec. 5-2-570. Headings for reference only.

The headings in this franchise are for reference only and convey no substantive rights or impose no substantive obligations on the parties. (Ord. 20 §15.7, 2003)

Sec. 5-2-580. Responsibility for language.

The City 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. (Ord. 20 §15.8, 2003)

Sec. 5-2-590. No waiver of rights.

Neither the City nor the Company waives any rights under the statutes and Constitution of the State or of the United States except as otherwise specifically set forth herein. (Ord. 20 §15.9, 2003)

Sec. 5-2-600. Prevailing party.

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 attorney fees. (Ord. 20 §15.10, 2003)

Sec. 5-2-610. Approval of franchise.

The Company shall promptly file, in writing, its acceptance of this franchise and of any amendment of this franchise following the City's final approval of the same. The failure to file such an acceptance within forty-five (45) days of said final adoption shall be deemed an acceptance of such franchise or amendment thereof. (Ord. 20 §15.11, 2003)