

CHAPTER 5

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Article 1

CABLE TELEVISION SYSTEMS

Sec. 5-1. Definitions

For the purposes of this Agreement, the following terms shall have the meanings given herein, and when not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.

Basic cable means the tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.

Cable Act means the Cable Communications Policy Act of 1984, as amended.

Cable service means the one-way transmission to subscribers of video and audio cable television programming.

Cable system means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment or other communications equipment that is designed to provide cable service and other services to subscribers.

FCC means Federal Communications Commission, or successor governmental entity thereto.

Franchise means the initial authorization, or renewal thereof, issued by the town, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and

operation of the cable system for the purpose of offering cable service and other services to subscribers.

Grantee means US Cable of Coastal-Texas, L.P., or the lawful successor, transferee or assignee thereof.

Gross revenues means the monthly cable service revenues received by Grantee from subscribers; provided, however, that such phrase shall not include (1) revenues received from any advertising carried on the cable system; (2) any franchise fees charged; and (3) any taxes on cable service which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the agency and which are collected by the Grantee on behalf of such governmental unit or agency.

Person means an individual, partnership, association, joint stock company, trust corporation or governmental entity.

Public way means the surface of, and space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or right-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the town in the service area which shall entitle Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. *Public way* also means any easement now or hereafter held by the town within the service 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 shall, within their proper use and meaning, entitle Grantee to the use thereof for the purposes of installing or transmitting Grantee's cable service or other services over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to the cable system.

Service area means the area within the present legal boundaries of the town.

Service tier means a category of cable service or other services, provided by Grantee and for which a separate charge is made by Grantee.

Subscriber means a person or user of the cable system who lawfully receives cable services or other services with Grantee's express permission. (Ord. 03-12 Sec. 1, 2003)

Sec. 5-2. Grant of authority.

The town hereby grants to Grantee a franchise which authorizes Grantee to construct and operate a cable system and offer cable service and other services in, along, among, upon, across, above, over, under or in any manner connected with public ways and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across or along any public way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other

related property or equipment as may be necessary or appurtenant to the cable system. The location of all poles to be placed or constructed by Grantee in the town shall be approved by the town and shall conform to the National Electrical Safety Code. (Ord. 03-12 Sec. 1, 2003)

Sec. 5-3. Grant nonexclusive.

Nothing herein shall be construed as giving to Grantee any exclusive privilege. (Ord. 03-12 Sec. 1, 2003)

Sec. 5-4. Most favored nation clause.

In the event the town enters into a franchise, permit, license, authorization or other agreement of any kind with any person or entity other than Grantee to enter into the public ways for the purpose of construction or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall not be more favorable nor less burdensome than 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. 03-12 Sec. 1, 2003)

Sec. 5-5. Use and conditions of right-of-way occupancy.

Use of rights-of-way. Subject to the town's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the public ways within the town such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers,

pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a cable system within the town. Grantee, through this franchise, is granted extensive and valuable rights to operate its cable system for profit using the public ways in compliance with all applicable town construction codes and procedures.

(b) Police powers. Grantee's rights hereunder are subject to the police powers of the town to adopt and enforce ordinances necessary to the safety, health and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the town or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof.

(c) Conditions of road occupancy. All transmission and distribution structures, poles, other lines and equipment installed or erected by Grantee pursuant to the terms thereof shall be so located as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said public ways.

(d) Restoration. If, while installing, repairing or maintaining its facilities, Grantee disturbs the surface of any right-of-way or public place, Grantee shall restore the surface to as good a condition as before the disturbance and maintain same to the satisfaction of the town official to whom such duties have been or may be delegated, for one (1) year from the date the surface of said street, alley, highway or public place is broken for such construction or maintenance work. No such street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work.

(e) Specifications and standards. All fixtures installed, repaired, maintained or operated shall be done so in compliance with all applicable town, county, state and federal specifications and standards. Grantee shall obtain a permit from the town prior to the installation of any new lines or equipment within any public way.

(f) Relocations of facilities at request of the town. Upon its receipt of reasonable advance notice, but in no event less than five (5) working days advance notice, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the public way or remove from the public way, any property of Grantee when lawfully required by the town by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes or any other type of structures or improvements by the town.

(g) Relocation at request of third party. Grantee shall, on the request of any person holding a building moving permit issued by the town, temporarily raise or lower its wires to permit the moving of such building, provided: (1) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by Grantee, making such payment in advance; and (2) Grantee is not given less than ten (10) working days' advance written notice to arrange for such temporary wire changes.

(h) Trimming of trees and shrubbery. Grantee shall have the authority to trim trees or other natural growth overhanging any of its service area so as to prevent branches from coming in contact with Grantee's wires, cables

or other equipment. All trimming shall be performed in a manner so as to not injure the tree or materially change its appearance. Grantee agrees either to use its own employees to trim trees or to use the tree trimmers licensed or approved by the town. (Ord. 03-12 Sec. 1, 2003)

Sec. 5-6. System description.

(a) System description. Grantee introduced one hundred four (104) digital channels to subscribers in 2003, in addition to the forty-one (41) analog channels. Grantee currently delivers one hundred forty-five (145) channels of quality programming.

(b) Technical standards. The technical standards used in the operation of the cable system shall comply, at minimum, with the technical standards promulgated by the FCC relating to cable communications systems pursuant to the FCC's rules and regulations and found in Title 47, Sections 76.601 to 76.617.

(c) Safety requirements. Construction, installation and maintenance of the cable system shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state and local regulations. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the service area.

(d) Aerial and underground construction. In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities are underground, Grantee likewise shall construct, operate and maintain all of its transmission and distribution facilities underground; provided that such right-of-way easements are actually capable of receiving Grantee's cable and other equipment

without technical degradation of the cable system's signal quality. In those areas of the service area where the transmission or distribution facilities of the respective public utilities are both aerial and underground, Grantee shall have the sole discretion to construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aurally or underground. Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the respective public utilities are placed underground after the effective date of this Agreement, Grantee shall only be required to construct, operate and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

(e) Extensions of service. The cable system as constructed as of the effective date of this franchise substantially complies with the material provisions hereof. Grantee hereby is authorized to extend the cable system within the service area as necessary pursuant to the terms hereof.

(f) Subscriber charges for extension of services. No subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a subscriber's request to locate his or her cable drop, of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to subscribers, or a density of less than eight (8) subscribers per one thousand three hundred twenty (1320) cable-bearing strand feet of trunk or distribution cable, including connectivity to the closest existing and active cable plant amplifier. Cable service or other services may be made available on the basis of a capital contribution in aid on construction, including cost of material, labor and easements.

(g) Periodic evaluation.

(1) Upon thirty (30) days' written notice to Grantee, the town may require an evaluation session. Evaluation sessions shall occur a minimum of once every five (5) years from the effective date of this franchise. All evaluation sessions shall be open to the public.

(2) Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, system performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this franchise, judicial rulings, FCC rulings, line extension policies and any other topics the town and Grantee deem relevant.

(3) As a result of a periodic review or evaluation session, the town and Grantee may develop such changes and modifications to the terms and conditions of the franchise as are mutually agreed upon. (Ord. 03-12 Sec. 1, 2003)

Sec. 5-7. Term.

This franchise shall continue in force and effect for a period of fifteen (15) years from the effective date hereof, unless otherwise lawfully terminated in accordance with the terms of this article. (Ord. 03-12 Sec. 1, 2003)

Sec. 5-8. Renewal of franchise.

The town and Grantee agree that any proceedings that relate to the renewal of the franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act (as such existed as of the effective date of the Cable Act), unless the procedures and

substantive protections set forth therein shall be deemed to be pre-empted and superseded by any subsequent provision of federal or state law. (Ord. 03-12 Sec. 1, 2003)

Sec. 5-9. Franchise transfer or sale.

(a) No sale or transfer of Grantee shall take place until the parties to the sale or transfer file a written request with the town for its approval and such approval is granted by the town, provided, however, that said approval shall not be required where Grantee grants a security interest in its franchise and assets to secure an indebtedness.

(b) Grantee shall promptly notify the town of any actual or proposed change or transfer of Grantee. Any sale or transfer of the cable system shall be subject to the requirements of this section.

(c) The parties to the sale or transfer shall make a written request to the town for its approval of a sale or transfer and furnish all information required by law and the town.

(d) In seeking the town's consent to any change in ownership and control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, state or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

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

(3) Has pending any material legal claim, lawsuit or administrative proceeding arising out of or involving a cable system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the town may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the cable system for the remaining term of the franchise.

(e) The town shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the town 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 town agree to an extension of time.

(f) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the town, Grantee shall file with the town a written instrument evidencing such sale or transfer of ownership.

(g) Notwithstanding anything to the contrary in this section, the prior approval of the town shall not be required for any sale, assignment or transfer of the franchise or cable system to an affiliate of Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be reasonably determined necessary by the town and must agree in writing to comply with all of the provisions of the franchise. Further, Grantee may pledge the assets of the cable system for the purpose of financing without the consent of the town; provided that such pledge of assets shall not impair or mitigate Grantee's

responsibilities and capabilities to meet all of its obligations under the provisions of this franchise. (Ord. 03-12 Sec. 1, 2003)

Sec. 5-10. Franchise fee.

(a) Grantee shall pay to the town a franchise fee in an amount equal to five percent (5%) of its quarterly gross revenues.

(b) Payments due to the town under this section shall be payable quarterly. The payment shall be made within ninety (90) days of the end of each fiscal quarter together with a brief report showing the basis for the computation.

(c) Any confidential financial information coming into the possession of the town as a result of this franchise shall be treated as confidential and shall not be subject to public disclosure, subject to the Colorado Open Records Act, Section 24-72-201 et seq., C.R.S. and other applicable law.

(d) The town shall have a right to review and audit the records on which the Franchise Fee payments are based. (Ord. 03-12 Sec. 1, 2003)

Sec. 5-11. Insurance requirement and indemnification.

Insurance requirements. Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the franchise, the following insurance:

(1) Worker's compensation.

(2) Commercial general liability; includes products and completed

operations, advertising injury, explosion hazard, collapse hazard, underground hazard and contractual liability with minimum limits of one million dollars (\$1,000,000.00).

(3) Commercial automobile liability; including nonowned and hired care coverage with minimum limits of one million dollars (\$1,000,000.00).

(4) Umbrella liability policy with minimum limits of one million dollars (\$1,000,000.00).

Grantee shall provide evidence of such insurance to the town. Such evidence shall be a copy of the certificate of insurance. (Ord. 03-12 Sec. 1, 2003)

Sec. 5-12. Franchise bond or letter of credit.

(a) Grantee shall, within thirty (30) days of the effective date of this franchise, deliver to the town a bond or letter of credit in the amount of ten thousand dollars (\$10,000.00). The bond shall ensure the faithful performance by Grantee of all provisions of this franchise, and payment by Grantee of any claims, liens and taxes due to the town which arise out of Grantee's failure to perform as required by the franchise.

(b) Prior to making a claim against the bond or letter of credit, the town shall provide Grantee with a reasonable opportunity to cure any alleged violation. The town shall provide written notice of any alleged violation, and Grantee shall have a reasonable period of time (but not less than thirty [30] days from the date of the notice) in which to cure any alleged violation. If Grantee fails to cure or otherwise resolve the alleged violation, then the town board of trustees shall conduct a public hearing, allowing Grantee and other interested

parties to comment on the alleged violation and the proposed claim against the bond or letter of credit. If the violation is not then cured, the town may withdraw from the letter of credit or draw on the bond. (Ord. 03-12 Sec. 1, 2003)

Sec. 5-13. Customer service standards.

(a) Grantee shall comply with customer service standards promulgated by the FCC. Grantee shall comply in all respects with the customer services requirements established by the FCC pursuant to Section 632(c) of the Cable Act, as may be amended from time to time.

(b) All employees of Grantee shall use their best efforts to be courteous, knowledgeable and helpful and to provide effective and satisfactory service in all contacts with customers.

(c) Accessibility, office hours and telephone availability.

(1) Grantee shall maintain a local, toll-free or collect-call telephone access line which will be available to subscribers twenty-four (24) hours a day, seven (7) days a week.

a. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

b. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(2) Under normal operating conditions, telephone answer time by a customer service representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

(3) Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards set forth above, unless a historical record of complaints indicates a clear failure to comply.

(4) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(5) Customer service center and bill payment locations will be open at least during normal business hours.

(d) Responsiveness, installations, outages and service calls.

(1) Under normal operating conditions, each of the following standards shall be met no less than ninety-five percent (95%) of the time.

a. Standard installation will be performed within seven (7) business days after an order has been placed. *Standard installations* are those that are located up to one hundred fifty (150) feet from the existing distribution system.

b. Excluding conditions beyond the control of Grantee, Grantee shall begin working on service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. If the service interruption occurs on a weekend, Grantee shall respond on the first business day thereafter, unless three (3) or more subscribers are affected, in which case Grantee shall respond within twelve (12) hours. Grantee shall begin actions to correct other service problems the next business day after notification of the service problem.

c. The *appointment window* alternatives for installations, service calls and other installation activities shall be either a specific time or, at maximum, a four-hour time block during normal business hours. Grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

d. Grantee shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

e. If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer shall be contacted. The appointment shall be rescheduled as necessary.

(2) Billings, refunds and credits.

a. Bills shall be clear, concise and understandable. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case of a billing dispute, Grantee shall respond to a written complaint from a customer within thirty (30) days.

b. Refund checks shall be issued promptly, but no later than either the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or the return of the equipment supplied by Grantee if service is terminated.

c. Credits for service shall be issued no later than the Customer's next billing cycle following the determination that a credit is warranted.

(3) Treatment of public or private property. Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law. For major construction or installation projects, property owners or occupants shall also be notified forty-eight (48) hours prior to the commencement of construction. In the case of an emergency, Grantee shall attempt to contact the property owner or legal tenant in person and shall leave a door hanger notice in the event personal contact is not made.

(e) Notification to subscribers.

(1) Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

a. Products and services offered;

b. Prices and options for programming services and conditions of subscription to programming and other services;

c. Installation and service maintenance policies;

d. Instructions on how to use the cable service;

e. Channel positions programming carried on the system; and

f. Billing and complaint procedures.

(2) Customers shall be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice shall be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify subscribers thirty (30) days in advance of any significant changes. Notwithstanding any other provision herein, Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee or any other fee, tax, assessment or change of any kind imposed by any federal agency, state or franchising authority on the transaction between Grantee and subscriber.

(f) Customer privacy.

(1) Grantee shall not monitor cable television signals to determine the individual viewing patterns or practices of any customer without prior written consent from that customer, except as otherwise permitted by the franchise.

(2) Grantee shall not sell or otherwise make available customer lists or other personally identifiable customer information without prior written customer consent, except as otherwise permitted by the franchise. Grantee is permitted to disclose such information if such disclosure is necessary to render or conduct a legitimate business activity related to a cable service or other service provided by Grantee to its customers.

(g) Customer complaints. Grantee shall provide cable communication services throughout the entire service area pursuant to the provisions of this franchise and shall keep a current file of all complaints received by Grantee for at least the three (3) most recent years. Grantee shall maintain a file of complaints as set forth above, which shall be available for inspection by the Town, subject to all applicable laws including and not limited to Section 631 of the Cable Act, at the local office of Grantee during regular business hours. (Ord. 03-12 Sec. 1, 2003)

Sec. 5-14. Revocation and termination of franchise.

(a) Right to revoke. In addition to all other rights which the town has pursuant to law or equity, the town reserves the right to revoke, terminate or cancel this franchise and all rights and privileges pertaining thereto if, after the hearing required by Subsection (b) below, it is determined that Grantee has violated any material provision of this franchise,

or has failed to remedy any nonmaterial violation of this franchise after notice from the town.

(b) Procedure for revocation.

(1) The town shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days from the date of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the franchise. Together with the notice required herein, the town shall provide Grantee with an explanation of the basis for the revocation in writing.

(2) Grantee shall be provided a public hearing before the town board of trustees prior to revocation, which public hearing shall follow the sixty-day period provided in subparagraph (1) above. The town shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

(3) Grantee may appeal any decision to revoke the franchise in an appropriate state or federal court or agency.

(4) During the appeal period, the franchise shall remain in full force and effect unless the term thereof sooner expires.

(c) Acts of God. Grantee shall not be held in default or noncompliance with the provisions of the franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, war, acts of God, power outages or other events reasonably beyond its ability to control. (Ord. 03-12 Sec. 1, 2003)

Sec. 5-15. Miscellaneous provisions.

(a) Notice. Unless expressly otherwise agreed between the parties, every notice or response to be served upon the town or Grantee shall be in writing, and shall be deemed to have been duly given to the required party fifteen (15) working days after having been posted in a properly sealed and correctly addressed envelope by certified mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service or other reliable courier service.

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

Town of Hudson
Attn: Judy Larson, Town Clerk
PO Box 351
557 Ash Street
Hudson, CO 80642

The notices or responses to Grantee shall be addressed as follows:

US Cable of Coastal-Texas, L.P.
Attn: J. Appio, V.P.
28 West Grand Avenue
Montvale, NJ 07645

With a copy to:

US Cable of Coastal-Texas, L.P.
Attn: Dave Kavanagh, GM
111 WS 1st Street
Johnstown, CO 80534

The town and Grantee may designate such other address or addresses from time to time by giving prior written notice to the other.

(b) Description headings. The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

(c) Severability. If any section, sentence, paragraph, term or provision hereof 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, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise or any renewal or renewals thereof.

(d) Binding effect. This franchise shall be binding upon the parties hereto, their permitted successors and assigns.

(e) No joint venture. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

(f) Successors and assigns. The rights, powers, limitations, duties and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns.

(g) Waiver. The failure of the town at any time to require performance by Grantee of any provision hereof shall in no way affect the right of the town hereafter to enforce the same. Nor shall the waiver by the town of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

(h) Execution. The agreement codified herein shall not be entered into, or binding, until fully executed by the town in accordance with all legal requirements appertaining thereto, including full signature, execution and

attestation. This agreement shall be binding upon the heirs, successors and assigns of the parties hereto.

(i) Authority to amend. This agreement may be amended at any time by written agreement between the parties. (Ord. 03-12 Sec. 1, 2003)

Secs. 5-16—5-49. Reserved.

Article 2

ELECTRIC FRANCHISE

Sec. 5-50. Definitions.

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

(1) *Company* refers to and is United Power, Inc., and its successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.

(2) *Distribution facilities* refers to and is only that portion of the company's electric system which delivers electric energy from the substation breakers to the point-of-delivery of the customer, including all devices connected to that system.

(3) *Facilities* refers to and is all facilities reasonably necessary to provide electricity into, within and through the town and includes plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, wires, cables and poles.

(4) *Franchise* means the rights granted by this article, as well as all rights associated therewith pursuant to the laws of the State.

(5) *Mayor* means the duly elected mayor of the town, or his or her designee.

(6) *Public streets and other public places* means streets, alleys, boulevards, viaducts, bridges, roads and lanes that are dedicated to, conveyed to or acquired by the Town and are used as routes for transportation by the public and all other Public Places within the Town.

(7) *Public easements* refers to and is public and dedicated easements created and available for use by investor-owned or other public utilities for their facilities.

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

(9) *Revenues* refers to and is those amounts of money which the company receives from its customers within the town from the sale of electricity and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments, as well as money received by the company from the use by others of its overhead utility facilities within the town. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-51.1. Grant of franchise.

The town hereby grants to United Power, Inc., for the period specified in and subject to the conditions, terms and provisions contained in this franchise, a nonexclusive right to furnish, sell and distribute electricity to the town and to all residents of the town. Subject to the conditions, terms and provisions contained in this franchise, the town also hereby grants to the company a nonexclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the town all facilities reasonably necessary to furnish, sell and distribute electricity within and through the town and a nonexclusive right to make reasonable

use of the public streets and other public places and public easements as may be necessary to carry out the terms of this franchise. These rights shall extend to all areas of the town as it is now constituted and to additional areas as the town may increase in size by annexation or otherwise. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-51.2. Street lighting service.

The rights granted in this franchise encompass the nonexclusive right to provide street lighting service to the town, and the provisions of this franchise apply with full and equal force to the street lighting service provided by the company. Wherever reference is made to the sale of electricity or to the provision of electric service in this franchise, these references shall be deemed to include the provision of street lighting service. Wherever reference is made to company facilities, equipment, system or plant in this franchise, this reference shall be deemed to include company-owned street lighting facilities, equipment, system and plant. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-51.3. Term of franchise.

This franchise shall be extended to November 1, 2015. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-52.1. Franchise fee.

In consideration for the grant of this franchise, the company shall pay the town a sum equal to three percent (3%) of all revenues received from the sale of electricity within the town and three percent (3%) of the revenues

received by the company for the use by others of its overhead utility facilities within the town. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-52.2. Payment schedule.

(a) For the franchise fee owed on revenues received after the effective date of this franchise from the sale of electricity, payment shall be made in monthly installments not more than thirty (30) days following the close of the month for which payment is to be made. For the franchise fee owed on revenues received from the use by others of the company's overhead utility facilities, payment shall be made within ninety (90) days following the close of the calendar year for which they are due. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this article. All payments shall be made to the town clerk's office. The town clerk, or other authorized representatives, shall have access to the books of the company for the purpose of auditing or checking to ascertain that the franchise fee has been correctly computed and paid.

(b) In the event an error by the company results in an overpayment of the franchise fee to the town and said overpayment is in excess of Five Hundred Dollars (\$500.00), credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is five hundred dollars (\$500.00) or less, credit shall be taken against the next payment. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-52.3. Change of franchise fee and other franchise terms.

Once during each calendar year of the franchise term the board of trustees, upon giving thirty (30) days' notice to the company, may review and change the franchise fee and other significant financial benefit the town may be entitled to receive as a part of the franchise; provided, however, that the board of trustees may only change the franchise fee payments, or other provision of this franchise to cause the town to receive a franchise fee, or other significant financial benefit, under this franchise equivalent to the franchise fee or other significant financial benefit that the company may pay to (or obligate itself for) any other city or town in any other franchise under which the company renders any electric service in the state. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-52.4. Company to report.

The company shall report to the town within sixty (60) days of execution, the terms of any franchise or of any change of franchise in any other municipality that may be greater than or different from the franchise fee or other significant benefit is then allowed to be surcharged by the company and such charged franchise fee to the town contained in this franchise. If the board of trustees decides the franchise fee or other significant financial benefit should be changed or incorporated into the franchise, it shall provide for such change by ordinance; provided, however, that any changed franchise fee or other significant financial benefit shall not be higher than the

highest franchise fee or other significant benefit paid by the company to any municipality within the state. Any such change of franchise fee or other significant financial benefit shall not be considered an amendment, renewal or enlargement of this franchise. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-52.5. Franchise fee payment in lieu of other fees.

Payment of the franchise fee by the company is accepted by the town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax on the privilege of doing business or in connection with physical operation thereof, but does not exempt the company from any lawful taxation upon its property or any other tax not related to the franchise or the physical operation thereof and does not exempt the company from payment of head taxes or other fees or taxes assessed generally upon businesses. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-52.6. Contract obligation.

The franchise constitutes a valid and binding contract between the company and the town. In the event that the franchise fee specified in this article is declared illegal, unconstitutional or void for any reason by any court or other proper authority, the company shall be contractually bound to pay the town, on the same schedule as provided herein for the franchise fee, an aggregate amount equal to the amount which would have been paid as a franchise fee. In the alternative, if the franchise fee is so declared invalid, the town shall

have the right to impose occupation and licensing fees and permit charges reasonably equivalent on an annual rate to said franchise. If the company fails to fulfill any substantial obligation under this article, the town will have a breach of contract claim against the company, in addition to any other remedy provided by law. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-53.1. Supply of electricity.

The company shall take all reasonable and necessary steps to provide an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of electricity to its customers should be interrupted, the company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-53.2. Restoration of service.

In the event the company's electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the company shall use due diligence to restore its system to satisfactory service within the shortest practicable time. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-53.3. Obligations regarding company facilities.

The company shall install, maintain, repair, renovate and replace its facilities with due diligence in a good and workmanlike manner, and the company's facilities will be of sufficient quality and durability to provide adequate and efficient electric service to the town and its residents. Company facilities shall not interfere with any existing town telecommunications facilities, traffic signal lights or with

water mains, sewer mains or other municipal use of public streets and other public places. The company shall erect and maintain its facilities in such a way so as to minimize interference with trees and other natural features. Company facilities shall be installed in public easements so as to cause a minimal amount of interference with such property. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-53.4. Excavation and construction.

(a) Excavation. All excavation and construction work done by the company shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. All public and private property whose use conforms to restrictions in public easements disturbed by company excavation or construction activities shall be restored by the company at its expense to substantially its former condition.

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

(c) Inspection. All work is subject to inspection by the town pursuant to the town ordinances. The company shall promptly perform reasonable remedial action required by the town pursuant to said inspection.

(d) Contractors. The company and any and all contractors thereof shall comply with all town ordinances and regulations. All contractors of the company working in public streets and public places shall hold the necessary contracting licenses required by a town ordinance. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-53.5. Relocation of company facilities.

(a) Any relocation of the company's facilities in any public street or other public place required, caused or occasioned by any town project shall be at the cost of the company. The company shall use its best efforts to complete any such relocation within ninety (90) calendar days from the date when the town makes its request, such time to be established by the company as soon as possible after the town's request. The company shall be granted an extension of time of completion equivalent to any delay caused by conditions not under its control, provided that the company proceeds with due diligence at all times.

(b) Relocated underground facilities shall be underground. Relocated above-ground facilities shall be above ground unless the town either agrees to pay the additional cost of moving them underground or requests that such additional cost be paid out of available funds under Section 5-58.2.

(c) Following relocation, all property affected by such relocation shall be restored to substantially its former condition by the company at its sole expense. Nothing herein contained shall be construed to impose any obligation upon the town to make any payment for any relocation of the company's facilities. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-53.6. Service to new areas.

If the boundaries of the town 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 the terms of this franchise agreement, including payment of franchise fees. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-53.7. Technological improvements.

The company shall generally introduce and install, as soon as practicable, electrical energy technological advances in its equipment and service within the town when such advances are technically and economically feasible and are safe and beneficial to the town and its residents. Upon request by the town, the company shall review and promptly report advances which have occurred in the electric utility industry that have been incorporated into the company's operations in the town in the previous year or will be so incorporated in the six (6) months following the town request. In no event shall this section be construed to authorize the installation of fiber optic facilities not related to electric utility service provided by the company. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-54.1. Town regulation.

The town expressly reserves, and the company expressly recognizes, the town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such charter provisions (in the event the registered electors of the town approve the adoption of a home rule charter), ordinances and rules and regulations as may by the town be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens, and the company shall comply with all lawfully adopted local laws, rules and regulations. Nothing herein contained shall waive the company's right to challenge the validity of such law, rule or regulation. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-54.2. Compliance with town requirements.

The company will comply with all town requirements regarding curb and pavement cuts, excavating, digging and related construction activities. If requested by the town, the company shall submit copies of reports of annual and long-term planning for capital improvement projects with descriptions or required street cuts, excavation, digging and related construction activities within thirty (30) days after issuance. Except for emergencies, the town may require that all installations be coordinated with the town's street improvement programs. The mayor or his or her designee shall be the town's agent for inspection and for compliance with town ordinances and regulations on any such projects. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-54.3. Town review of construction and design.

When known, no less than sixty (60) days prior to construction of any transmission lines or generating plant, building, substation or similar structure within the town, the company shall advise the mayor of such planned construction, and, if requested by the town, the company shall furnish to the town the plans for such facilities. In addition, the company shall assess and report on the impact of such proposed construction on the town environment. Such plans and reports may be reviewed by the town to ascertain, *inter alia*:

- (1) That all applicable laws including building and zoning codes and air and water pollution regulations are complied with;
- (2) That aesthetic and good planning principles have been given due consideration; and
- (3) That adverse impact on the environment has been minimized. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-54.4. Compliance with regulations.

The electrical energy which the company distributes shall conform with the standards promulgated by the company and with the tariff provisions of the company setting standards, as the same may be amended from time to time. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-54.5. Compliance with air and water pollution laws.

The company shall use its best efforts to take measures which will result in its facilities meeting the standards required by applicable federal and state air and water pollution laws. Upon the town's request, the company will provide the town with a status report of such measures. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-54.6. Inspection.

All work and any portion of the company's system used to serve the town and its residents is subject to inspection by the Mayor or his designee. The company shall promptly perform reasonable remedial action required by the town pursuant to said inspection. The town shall also have access to company records for the purpose of determining company compliance with this franchise. The company agrees to cooperate with the town in conducting the inspection and to correct any discrepancies affecting the town's interest in a prompt and efficient manner. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-54.7. Repair of damage.

The company shall promptly repair all damage caused by company activities or facilities. If such damage poses a threat to health, safety or welfare of the public or individuals, the town may cause repairs to be made at the company's expense unless the company makes such repairs promptly upon the town's request. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-55.1. Reports on company operations.

The company shall submit reasonable financial and other necessary reports contained or based on information available from the company's books and records as the town may from time to time request with respect to the operations of the company under this franchise, provided that such information can be provided at a reasonable cost. Such reports may be changed from time to time as may be mutually agreeable between the town and the company. Initially the town requests the following reports on or before May 1 of each year:

(1) On an annual basis a copy of the company's statement of operations showing the return earned by the company on operations.

(2) A list of all real property and leasehold interests in real property owned by the company within the municipal boundaries of the town as the same may be changed from time to time, excepting public and other assessments. Upon request by the town, such list shall include the legal description and land area of each listed property and shall be accompanied by a map showing the location of each listed property.

(3) Short term (less than three [3] years) and long range (over three [3] years) plans for all capital improvements, construction and excavation within the town or affecting service to the town and its residents. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-55.2. Copies of tariffs.

The company shall keep on file in its nearest company office all tariffs, rules, regulations and policies relating to service by the company to the town and its residents. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-56.1. Town use.

The town shall have the right, for town purposes, to reasonably use all poles and suitable overhead structures constructed by the company within the town, to string wire which use shall not include the distribution or transmission of electricity. Such use by the town will be without cost. The company will allow others holding a franchise, except for electric service, from the town to so utilize such poles and suitable overhead structures upon reasonable terms and conditions to be agreed upon by the company and such holder of a franchise from the town. The company shall assume no liability nor shall it be put to any additional expense in connection with the town's or other franchisee's use, and the use of said poles and structures by the town or others holding a franchise from the town shall be in such a manner as not to constitute a safety hazard or to interfere unnecessarily with the company's use of same. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-56.2. Underground conduit.

If the company installs new electric underground conduit or opens a trench or replaces such conduit, the company shall provide adequate advance notice to permit additional installation of similar conduit and pull wire for the town. If the town wants additional similar conduit and pull wire installed, it will so notify the company and provide similar conduit and pull wire at its expense to the company, which will install it without further expense to the town provided that such action by the town will not unnecessarily interfere with the company's facilities or delay the accomplishment of the project. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-57.1. Town held harmless.

The company shall construct, maintain and operate its facilities in a manner which provides reasonable protection against injury or damage to persons or property; provided, however, that said obligation of the company hereunder shall not increase or decrease its liability on third party claims; and provided further that the company's obligation to the town hereunder shall not be diminished by said exception. The company shall save the town harmless and indemnify the town from and against all lawsuits, liability, damage, claims, demands, judgments and losses whatsoever in nature filed by third parties, and reimburse the town for all its reasonable expenses, arising out of the operations of the company within the town and the securing of and the exercise by the company of the

franchise rights granted in this article, including any third party claims, administrative hearings and litigation. For reasonable expenses related to the negotiation of this franchise, the company shall not be responsible for costs, including attorneys' fees, in excess of one thousand dollars (\$1,000.00). None of the town's expenses reimbursed by the company under this section shall be surcharged. Nothing herein contained shall obligate the company to save the town harmless and indemnify the town to the extent any lawsuits, liability, damage, claims, demands, judgments and losses shall have been found, by final decision of a court of competent jurisdiction in an action where the town is a party, to have arisen out of or in connection with any negligent act or failure to act of the town or of its officers, agents or employees. The parties specifically acknowledge and agree that the company, in exercising its rights and obligations under this franchise, is an independent entity and is not an entity controlled by or subject to the control of the town for the purposes of C.R.S. 24-91-103.5. The right of the company to seek contribution from the town for its negligence is hereby expressly reserved. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-57.2. Payment of expenses incurred by town in relation to ordinance.

At the town's option, the company shall pay in advance or reimburse the town for expenses incurred in publication of notices and ordinances and for photocopying of documents arising out of the negotiations or process for obtaining the franchise. None of the town's expenses reimbursed by the company under this section shall be surcharged against the town rate payers. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-58.1. Underground electrical distribution lines in new areas.

The company will place newly constructed electrical distribution lines underground to serve new residential subdivision areas in accordance with the company's tariffs and town subdivision regulations. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-58.2. Overhead conversion at expense of company.

(a) As and when requested by the town, the company will spend one percent (1%) of the preceding calendar year's electric revenues derived from customers within the town to move electric distribution facilities located in public streets and other public places in the town underground, provided that the undergrounding shall extend for a minimum distance of one (1) block or seven hundred fifty (750) feet.

(b) Any unexpended portion of the one percent (1%) of electric revenue may be carried over to succeeding years and, in addition, upon request by the town, the company shall anticipate amounts to be available for up to three (3) years in advance. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated. No relocation expenses which the company is required to expend pursuant to Section 5-53.5 shall be charged to this allocation.

(c) Funds to be expended pursuant to this section shall not be used in any project or situation for which and to the extent that the town has received federal or state funds for the purpose of underground utilities. Funds to be expended pursuant to this section may be used for "matching" purposes with state or federal monies.

(d) If the Public Utilities Commission authorizes a system-wide program or programs of undergrounding electric distribution facilities, the company will allocate to the program of undergrounding in the town such amount as is authorized by the Public Utilities Commission, but in no case less than one percent (1%) of annual electric revenues.

(e) In addition to the provisions of this section, the town may require additional facilities to be moved underground at the town's expense.

(f) The town acknowledges that the establishment of this undergrounding fund creates no vested right in the town to the undergrounding monies. Further, if such monies are not expended pursuant to the conditions hereof, the fund is not convertible to cash or available for any other purposes.

(g) The town and the company shall mutually plan in advance the undergrounding projects which shall be undertaken according to the provisions of this section. The company shall not withhold approval of the plans of the town except where reasonably necessary for safety or to protect the operational integrity of the company's electric system. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-58.3. Review of undergrounding program.

(a) Representatives of both the town and the company shall meet periodically to review the company's undergrounding program. This review shall include:

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

(2) Undergrounding projects anticipated by the town.

(3) The status of technology in the field of electric undergrounding.

(4) Construction, operation and maintenance costs of underground lines versus overhead lines.

(b) Such meetings shall be held to achieve a continuing program for the orderly undergrounding of electrical lines in the town. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-58.4. Cooperation with other utilities.

When undertaking a project of undergrounding, the town and the company shall work with other utilities or companies which have their lines overhead to attempt to have all lines undergrounded as part of the same project. When other utilities or companies are placing their lines underground, the company shall cooperate with these utilities and companies and undertake to underground company facilities as part of the same project where feasible. The company shall not be required to pay the costs of any other utility or company in connection with work under this section. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-59.1. Consent of town required.

The company shall not transfer or assign any rights under this franchise to a third party, excepting only corporate reorganizations of the company not including a third party, unless the town shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-59.2. Transfer fee.

In order that the town may share in the value this franchise adds to the company's operation, any such transfer or assignment of rights under this franchise requiring the approval of the town shall be subject to the conditions that the transferee shall promptly pay to the town a pro rata share of seven hundred thousand dollars (\$700,000.00), which pro rata amount of seven hundred thousand dollars (\$700,000.00) shall be calculated by

multiplying seven hundred thousand dollars (\$700,000.00) times a fraction of which the then population of the town is the numerator and the then population of the city and county of Denver is the denominator. Such transfer fee shall not be recovered from the town or from the town's residents or property owners through electric rates of customers in the town or by surcharge by the transferee or the company. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-60.1. Town's right to purchase or condemn.

The right of the town to construct, purchase or condemn any public utility works or ways, and the rights of the company in connection herewith, as provided by the state Constitution and statutes, is hereby expressly reserved. The town shall have the option to purchase or condemn these facilities at any time during the term of this franchise, upon ninety (90) days' written notice to the company or within ninety (90) days of the termination date of this franchise. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-60.2. Continued cooperation by company.

In the event the town exercises its option to purchase or condemn, the company agrees that, at the town's request, it will continue to supply any service it supplies under this franchise, for the duration of the term of this franchise pursuant to terms and conditions negotiated for such continued operation. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-60.3. Negotiated purchase price or condemnation award.

Upon the exercise of the town's option to purchase, the parties shall negotiate in good faith to determine a mutually acceptable purchase price. No value shall be given to the franchise or to public rights-of-way. If the town and company cannot reach agreement as to the purchase price or acceptable payment terms within ninety (90) days after commencement of negotiations, the town may commence condemnation proceedings, and each party shall have the rights provided by law relating to condemnation; provided, however, that no award shall be made for the value of the franchise or public rights-of-way. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-61. Limitations on company removal.

(a) In the event this franchise is not renewed at the expiration of its terms, the company shall not be required to remove its facilities immediately from the public streets and public easements.

(b) At the town's request and within a reasonable time not to exceed nine (9) months, the company, at its sole expense, shall remove from the public streets and public easements all overhead distribution facilities belonging to the company which are not purchased by the town at the termination of the franchise. Further, the company, at the request of the town, shall remove at the company's expense all underground facilities which are not purchased by the town within nine (9) months after the receipt by the company of a written notice from the town that said underground distribution facilities constitute a hazardous condition

or interfere with a public use of the subsurface of said public streets and public places. All property affected by such removal shall be restored by the company to substantially its former condition after said removal. The company need not remove any property from said public streets and public easements which property the company shall continue to use and maintain pursuant to contractual arrangements with the town. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-62. Company to purchase.

The town expressly reserves the right to engage in the production of electricity. The company agrees to negotiate for the purchase of town-generated power in accordance with its tariffs, federal and state laws and regulations and applicable Public Utilities Commission Rules and Regulations. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-63.1. Forfeiture.

Both the company and the town recognize there may be circumstances whereby compliance with the provisions of this franchise is impossible or is delayed because of circumstances beyond the company's control. In those instances, the company shall use its best efforts to comply in a timely manner and to the extent possible. If the company fails to perform any of the terms and conditions of this franchise and such

failure is within the company's control, the town, acting by and through its board of trustees, may determine, after hearing, that such failure is of a substantial nature. Upon receiving notice of such determination, the company shall have a reasonable time not to exceed one hundred eighty (180) days in which to remedy the violations, unless the parties otherwise agree in writing. If during said reasonable time corrective actions have not been successfully taken, the town, acting by and through its board of trustees, shall determine whether any or all rights and privileges granted the company under this franchise shall be forfeited. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-63.2. Judicial review.

Any such declaration of forfeiture shall be subject to judicial review as provided by law. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-63.3. Other legal remedies.

Nothing herein contained shall limit or restrict any legal rights that the town or the company may possess arising from any alleged violation of this franchise. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-63.4. Continued obligations.

Upon forfeiture, the company shall continue to provide service to the town and its residents in accordance with the terms hereof until the town makes alternative arrangements for such service. If the company fails to provide continued service, it shall be liable for damages to the town. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-64. Conduct of business.

The company, from time to time, may establish such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be established contrary to or in conflict with the laws of the state. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-65. Annexation to the town.

When any property owned by the company becomes eligible for voluntary annexation to the town and is not eligible for voluntary annexation to another municipality, the company shall, upon the request of the town, petition to annex the same so long as the annexation does not impair the company's ownership or the then existing use of its property and water or water rights for public utility purposes. Further, the company shall be exempted from any public donation of land or money arising from such mandatory annexation so long as the land to be annexed is used solely for the purposes of generating, transmitting or distributing electric energy. This exemption shall not apply to the required donation of water rights. Otherwise, the company agrees to meet all terms and conditions imposed upon the annexation by the company that are no more stringent than those imposed generally upon property owners seeking annexation of similarly situated land to the town. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-66. Notice.

The town will provide notice to the company of the pendency of any claim or action arising under this franchise against the town, to the extent the town has actual knowledge, arising out of the exercise by the company of its franchise rights. The company will not be relieved of any of its obligations under this franchise in the event the town fails to provide such notice. The company will be permitted at its own expense to appear and defend or to assist in the defense of such claim. The company shall provide notice to the town of the pendency of any claim or action arising under this franchise against the company, to which the company has actual knowledge, arising out of the exercise by the company of its franchise rights. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-67.1. Amendments to franchise.

At any time during the term of this franchise, the town, through its board of trustees, or the company may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the proposed amendments desired and both parties thereafter, through their designated representatives, will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendments. The word *amendment* as used in this section does not include a change authorized in Section 5-52.3. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-67.2. Changing conditions.

The company and the town recognize that many aspects of the electric utility business are currently the subject of discussion, examination and inquiry by different segments of industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the company conducts its business and meets its service obligations. In recognition of the present state of uncertainty respecting these matters, the company and the town each agree, on request of the other during the term of this franchise, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this franchise, to amend this franchise or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-68.1. Successors and assigns.

The rights, privileges, franchises and obligations granted and contained in this franchise shall inure to the benefit of and be binding upon United Power, Inc., its successors and assigns. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-68.2. Third parties.

Nothing contained in this franchise shall be construed to provide rights to third parties. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-68.3. Representatives.

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

For the town of Hudson:
Mayor
Town of Hudson
P.O. Box 351
Hudson, CO 80642

For the company:
David I. Dunnell
General Manager
United Power
P.O. Box 929
Brighton, CO 80601

(Ord. 90-17 Sec. 1, 1990)

Sec. 5-68.4. 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 term that will achieve the original intent of the parties hereunder. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-68.5. Entire agreement.

This franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this franchise. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-69.1. Board of trustees approval.

The grant of franchise shall not become effective unless approved by a majority vote of the board of trustees. (Ord. 90-17 Sec. 1, 1990)

Sec. 5-69.2. Company approval.

The company shall file with the town clerk its written acceptance of this franchise and of all of its terms and provisions at least ten (10) days prior to adoption of the ordinance containing this article by the board of trustees. The company shall file with the town clerk its written ratification thereof no later than ten (10) days after the approval of this franchise by the board of trustees. The acceptance and ratification shall be in form and content approved by the town attorney. If the company shall fail to timely file its written acceptance as herein provided, this franchise shall be and become null and void. (Ord. 90-17 Sec. 1, 1990)

Secs. 5-70—5-79. Reserved.

Article 3

GAS FRANCHISE

Sec. 5-80. Definitions.

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

Board or *Board of Trustees* refers to and is the legislative body of the town.

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

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

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

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

PUC refers to and is the Public Utilities Commission of the State of Colorado or

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

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

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

Town refers to and is the town of Hudson, Weld County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the town. (Ord. 81 Article 1, 1980; Ord. 05-10 Article I, 2005)

Sec. 5-81. Grant of franchise.

The town hereby grants to the company, for the period specified and subject to the conditions, terms and provisions contained in this article, the right to furnish, transport, sell and distribute gas to the town and to all persons, businesses and industries within the town, the right to acquire, construct, install, locate, maintain, operate and extend into, within and through the town all facilities reasonably necessary to provide gas to the town and to all persons, businesses and industries within the town and in the territory adjacent thereto; and the right to make reasonable use of all streets and other public places as may be necessary to carry out the terms of this article. (Ord. 81 Sec. 2-1, 1980; Ord. 05-10 Article II, 2005)

Sec. 5-82. Term of franchise.

The term of this franchise shall be for twenty-five (25) years, beginning October 8, 2005 and expiring October 8, 2030. (Ord. 81 Sec. 6-1, 1980; Ord. 05-10 Article II, 2005)

Sec. 5-83. Franchise fee.

(a) In consideration for the grant of this franchise, the company shall collect and remit to the town a sum equal to three percent (3%) of the revenues derived annually from the sale of gas within the town, excluding the amount received from the town itself for gas service furnished it. Annual franchise fee payments shall be made on or before March 1 for the preceding calendar year ending December 31. Payments at the beginning and end of the franchise shall be prorated.

(b) Franchise fee payment in lieu of other fees. Payment of the franchise fee by the company is accepted by the town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax, assessment or excise upon the pipes, mains, meters or other personal property of the company or on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the company from any lawful taxation upon its real property or any other tax not related to the franchise or the physical operation thereof. (Ord. 81 Sec. 5-1, 1980; Ord. 05-10 Article III, 2005)

Sec. 5-84. Rules and regulations.

(a) Conduct of business. The company may establish from time to time such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to

exercise its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the state.

(b) Tariffs on file. The company shall keep on file in its nearest office copies of all its tariffs currently in effect and on file with the PUC. Said tariffs shall be available for inspection by the public.

(c) Compliance with PUC regulations. The company shall comply with all rules and regulations adopted by the PUC.

(d) Compliance with company tariffs. The company shall furnish gas within the town to the town and to all persons, businesses and industries within the town at the rates and under the terms and conditions set forth in its tariffs on file with the PUC.

(e) Applicability of company tariffs. The town and the company recognize that the lawful provisions of the company's tariffs on file and in effect with the PUC are controlling over any inconsistent provision in this franchise dealing with the same subject matter. (Ord. 81 Sec. 4-4, 1980; Ord. 05-10 Article IV, 2005)

Sec. 5-85. Construction, installation and operation of company facilities.

(a) Location of facilities. Company facilities shall not unreasonably interfere with the town's water mains, sewer mains or other municipal use of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition.

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

(c) Relocation of company facilities. If at any time the town requests the company to relocate any distribution gas main or service connection installed or maintained in streets or other public places in order to permit the town to change street grades, pavements, sewers, water mains or other town works, such relocation shall be made by the company at its expense. The company is not obligated hereunder to relocate any facilities at its expense, which were installed in private easements obtained by the company, the underlying fee of which was, at some point subsequent to installation, transferred to the town. Following relocation, the company, at its expense, shall restore all property to substantially its former condition.

(d) Service to new areas. If, during the term of this franchise, the boundaries of the town are expanded, the company may extend service to the newly incorporated areas in accordance with the company's main extension policy then in effect under the company tariffs on file with the PUC. Service to annexed areas shall be in accordance with the terms of this article.

(e) Restoration of service. In the event the company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

(f) Supply and quality of service. The company shall make available an adequate supply of gas to provide service in the town. The company's facilities shall be of sufficient quality, durability and redundancy to provide adequate and efficient gas service to the town.

(g) Safety regulations by the town. The town reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety and welfare of the public, provided that such regulations are not destructive of the rights granted herein. The company agrees to comply with all such regulations in the construction, maintenance and operation of its facilities and in the provision of gas within the town.

(h) Inspection, audit and quality control. The town shall have the right to inspect, at all reasonable times, any portion of the company's system used to serve the town and its residents. The town also shall have the right to inspect and conduct an audit of company records relevant to compliance with any terms

of this article at all reasonable times. The company agrees to cooperate with the town in conducting the inspection and/or audit and to correct any discrepancies affecting the town's interest in a prompt and efficient manner (Ord. 81 Sec. 2-4, 1980; Ord. 05-10 Article V, 2005)

Sec. 5-86. Assignment; saving clause.

(a) Assignment. Nothing in this article shall prevent the company from assigning its rights under this franchise.

(b) Saving clause. If a court of competent jurisdiction declares any portion of this franchise to be illegal or void, the remainder of this article shall survive and not be affected thereby (Ord. 81 Sec. 6-3, 1980; Ord. 05-10 Article VI, 2005)

Sec. 5-87. Force majeure.

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event the company is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which the company is so prevented shall not be counted against the company for any reason. The term *force majeure*, as used herein, shall mean any cause not reasonably within company control and includes,

but is not limited to, acts of God, strikes, lock-outs, wars, riots, orders or decrees of any lawfully constituted federal, state or local body; contagions or contaminations hazardous to human life or health; fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe; inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits; temporary failures of gas supply; or necessary repair, maintenance or replacement of facilities used in the performance of the obligations contained in this article. (Ord. 05-10 Article VII, 2005)

Secs. 5-88—5-109. Reserved.

Article 4

**TELEPHONE SERVICE
OCCUPATIONAL TAX**

Sec. 5-110. Levy of tax.

There is hereby levied on and against each telephone utility company operating within the town a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the town and of supplying local exchange telephone service to the inhabitants of the town. The amount of tax levied hereby shall be:

(1) For the portion of 1986 remaining after the date on which the tax begins to accrue as provided in Section 5-111, two dollars and fifty cents (\$2.50) per telephone account for which local exchange telephone is provided within the corporate limits of the town on said date; and

(2) For each subsequent calendar year, five dollars (\$5.00) per telephone account for which local exchange service is provided within the corporate limits of the town on the anniversary of the date on which the tax begins to accrue as provided in Section 5-111. (Ord. OT 1-86 Sec. 1, 1986)

Sec. 5-111. Time payment of tax.

The tax levied by this article shall begin to accrue on the first day of July, 1986, and be payable in equal installments for the remaining portion of 1986, payable on December 31, 1986, and in four (4) equal quarterly installments for years subsequent thereto, to be paid on the last business days of the months of March, June, September and December. (Ord. OT 1-86 Sec. 2, 1986)

Sec. 5-112. Filing statement.

Within thirty (30) days after the date on which the tax begins to accrue as provided in Section 5-111, each telephone utility company subject to this article shall file with the town clerk, in such form as the clerk may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the town on said date. Such statement shall be filed within thirty (30) days after each anniversary of the date on which the tax begins to accrue, showing such accounts on the anniversary date. (Ord. OT 1-86 Sec. 3, 1986)

Sec. 5-113. Failure to pay.

If any telephone utility company subject to the provisions of this article shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same, together with an additional ten percent (10%) of the amount of taxes due, shall be and is hereby declared to be a debt due and owing from such company to the town. The town attorney, upon direction of the board of trustees, shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect said debt. (Ord. OT 1-86 Sec. 4, 1986)

Sec. 5-114. Penalty clause.

If any officer, agent or manager of a telephone utility company which is subject to the provisions of this article shall fail, neglect or refuse to make or file the annual statement of accounts provided in Section 5-112, said officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00); provided that each day after said statement shall become delinquent during which said officer, agent, manager or person shall fail, neglect or refuse to make and file such statement shall be considered a separate and distinct offense. (Ord. OT 1-86 Sec. 5, 1986)

Sec. 5-115. Inspection of records.

The town, its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility companies which are subject to the provisions of this article and to make copies of the entries or contents thereof. (Ord. OT 1-86 Sec. 6, 1986)

Sec. 5-116. Local purpose.

The tax herein provided is upon occupations and businesses in the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this article shall be construed to mean that any telephone utility company is issued a franchise by the town. (Ord. OT 1-86 Sec. 7, 1986)

Sec. 5-117. Tax in lieu of other taxes.

The tax herein provided shall be in lieu of all other occupation taxes or taxes on the privilege of doing business in the town on any telephone utility company subject to the provisions of this article, and in addition shall be in lieu of any free service furnished the town by any said telephone utility. (Ord. OT 1-86 Sec. 8, 1986)

Sec. 5-118. Offenses and liabilities continue.

All offenses committed and all liabilities incurred prior to the effective date of this article shall be treated as though all prior applicable articles and amendments thereto were in full force and effect for the purpose of sustaining any proper suit, action or prosecution with respect to such offenses and liabilities. (Ord. OT 1-86 Sec. 9, 1986)

Secs. 5-119--5-129. Reserved.**Article 5****EMERGENCY TELEPHONE SERVICE CHARGE****Sec. 5-130. Emergency telephone service charge established.**

There is hereby imposed, pursuant to Section 29-11-101, et. seq., C.R.S., upon all telephone exchange access facilities within that portion of the town, an emergency telephone charge in an amount not to exceed two percent (2%) of the tariff rates as approved by the Public Utilities Commission or fifty cents (\$.50), whichever is less. Upon recommendation of the Weld Emergency Telephone Service Authority, the town board may, by resolution, raise or lower the emergency telephone charge, but in no event, shall such charge exceed the amount of two percent (2%) of the tariff as approved by the Public Utilities Commission. (Ord. FTS-1-87 Sec. 2, 1987)

Sec. 5-131. Collection of funds.

Telephone service suppliers providing telephone service in the town are hereby authorized to collect the emergency telephone charge imposed by this article in accordance with Section 29-11-101 et. seq., C.R.S., and to provide those funds to the Weld Emergency Telephone Service Authority as provided in the intergovernmental agreement. (Ord. No. FTS-1-87). (Ord. FTS-1-87 Sec. 3, 1987)

Secs. 5-132—5-139. Reserved.

