

## CHAPTER 5

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## ARTICLE 1

### Gas Franchise

#### *Division 1*

#### *General Provisions*

#### **Sec. 5-1-10. 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 Town Board of Trustees* refers to and is the legislative body of the Town of Mancos.

*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.

*Gross Revenues* refers to those amounts of money which the Company receives from the sale of gas within the Town under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the Town and from the use of Company facilities in Streets and Other Public Places, as adjusted for refunds, net write-offs of uncollectible accounts, corrections or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds and pro-forma adjustments pursuant to federal or state regulation.

*Streets and Other Public Places* refer to and are streets, alleys, viaducts, bridges, roads, lanes, easements, public ways and other public places in the Town that are owned by the Town, or which the Town has both a right to use and authority to allow the Company to utilize for purposes herein.

*Town* refers to and is the Town of Mancos, Montezuma County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the Town of Mancos. (Ord. 604 Art. I, 2008)

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

The Town hereby grants to the Company, subject to all conditions, limitations, terms and provisions contained in this franchise, the nonexclusive right to make reasonable use of Town Streets and Other Public Places:

(1) To provide Utility Service to the Town and to its residents under tariffs on file with the PUC; and

(2) To acquire, purchase, construct, install, locate, maintain, operate and extend into, within and through the Town all Company facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transmission, transportation and distribution of gas utility service within and through the Town. (Ord. 604 Art. II, 2008)

**Sec. 5-1-30. Conditions and limitations.**

(a) Scope of franchise. The grant of this franchise shall extend to all areas of the Town as it is now or hereafter constituted; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

(b) Subject to Town usage. The right to make reasonable use of Town Streets and Other Public Places to provide Utility Service to the Town and its Residents under this franchise is subject to and subordinate to any Town usage of said Streets and Other Public Places.

(c) Prior grants not revoked. This grant is not intended to revoke any prior license, grant or right to use the Streets and Other Public Places, and such licenses, grants or rights of use are hereby affirmed. Such rights shall, however, be governed by the terms of this franchise. (Ord. 604 Art. II, 2008)

**Sec. 5-1-40. Effective date and term.**

This franchise shall take effect on November 1, 2008, and shall supersede any prior franchise grants to the Company by the Town. This franchise shall terminate ten (10) years after the effective date, on November 1, 2018, unless extended by mutual consent. (Ord. 604 Art. II, 2008)

**Sec. 5-1-50. Regulation of streets and other public places.**

The Company expressly acknowledges the Town's right to enforce regulations concerning the Company's access to or use of the Streets and Other Public Places, including requirements for permits, which shall include, without limitation, public improvement permits required under Town ordinance. (Ord. 604 Art. III, 2008)

**Sec. 5-1-60. Franchise fee.**

In consideration for the grant of this franchise, the Company shall collect and remit to the Town a sum equal to five percent (5%) of its gross revenues, as defined above, derived annually, excluding the amount received from the Town itself for gas service furnished it. Payment shall be made in quarterly installments not more than thirty (30) days following the close of the month for which payment is to be made. Quarters shall end on March 31, June 30, September 30 and December 31.

Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this franchise. (Ord. 604 Art. IV, 2008)

**Sec. 5-1-70. 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. 604 Art. IV, 2008)

*Division 2  
Conduct of Business*

**Sec. 5-1-110. 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 with best management practices under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the State. (Ord. 604 Art. V, 2008)

**Sec. 5-1-120. Tariffs on file.**

The Company shall keep on file in its nearest office copies of all its tariffs currently in effect and on file with the PUC. Said tariffs shall be available for inspection by the public. (Ord. 604 Art. V, 2008)

**Sec. 5-1-130. Compliance with PUC regulations.**

The Company shall comply with all rules and regulations adopted by the PUC. (Ord. 604 Art. V, 2008)

**Sec. 5-1-140. Compliance with Company tariffs.**

The Company shall furnish gas within the Town to the Town and to all persons, businesses and industries within the Town at the rates and under the terms and conditions set forth in its tariffs on file with the PUC. (Ord. 604 Art. V, 2008)

**Sec. 5-1-150. 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. 604 Art. V, 2008)

**Sec. 5-1-160. Supply.**

The Company's facilities shall be of sufficient quality, durability, and redundancy to provide adequate and efficient gas service to the Town Residents. (Ord. 604 Art. V, 2008)

*Division 3*

*Construction, Installation and Operation of Company Facilities*

**Sec. 5-1-210. Location of facilities; no interference with Town facilities.**

Company Facilities shall not unreasonably interfere with any Town facilities, including water facilities, sanitary or storm sewer facilities, communications facilities or other Town uses of the Streets and Other Public Places. Company Facilities shall be installed and maintained in Town Streets and Other Public Places so as to minimize interference with other property, trees and other improvements and natural features in and adjoining the Streets and Other Public Places. Further, the Company may perform adjustments to Company Facilities, including manholes and other appurtenances in Streets and Other Public Places and Other Town Property, to accommodate Town street maintenance, repair and paving operations at no cost to the Town. (Ord. 604 Art. VI, 2008)

**Sec. 5-1-220. Excavation; construction; restoration.**

All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner that minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable local, state, federal and Mancos land use codes. When the Company does any work in or affecting the Town Streets and Other Public Places, it shall, at its own expense, promptly remove any obstructions therefrom and restore such Town Streets and Other Public Places to substantially their former condition. If weather or other conditions do not permit the complete restoration required by this Section, the Company may, with the approval of the Town, temporarily restore the affected Town Streets and Other Public Places or Other Town Property, provided that such temporary restoration is at the Company's sole expense, and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the Town, the Company shall restore the Streets and Other Public Places to substantially their former condition. The Town reserves the right to restore property and remedy damages caused by Company activities at the expense of the Company in the event the Company fails to perform such work within a reasonable time after notice from the Town. (Ord. 604 Art. VI, 2008)

**Sec. 5-1-230. Relocation of Company facilities.**

If at any time the Town requests the Company to permanently remove, relocate, change or alter the position of any Company Facility in Town Streets and Other Public Places in order to permit the Town to change street grades, pavements, sewers, water mains or other Town projects, 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. (Ord. 604 Art. VI, 2008)

**Sec. 5-1-240. Service to new areas.**

If the territorial boundaries of the Town are expanded during the term of this franchise, the Company may, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time. Service to the expanded area shall be in accordance with the terms of the Company's main extension policy then in effect under Company's tariffs on file with the PUC and this franchise, including the payment of franchise fees. If, during the term of this franchise, the boundaries of the Town are expanded, the Town will promptly notify the Company in writing of any geographic areas annexed by the Town during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to the Company by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as the Company may reasonably require in order to ascertain whether there exist any customers of the Company receiving natural gas service in said annexed area. To the extent there are such Company customers therein, then the gross revenues of the Company derived from the sale and distribution of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of the Company's billing cycle immediately following the Company's receipt of the Annexation Notice. The failure by the Town to advise the Company in writing through proper Annexation Notice of any geographic areas which are annexed by the Town shall relieve the Company from any obligation to remit any franchise fees to the Town based upon gross revenues derived by the Company from the sale and distribution of natural gas to customers within the annexed area until the Town delivers an Annexation Notice to the Company in accordance with the terms hereof. (Ord. 604 Art. VI, 2008; Ord. 634 §1, 2010)

**Sec. 5-1-250. Restoration of service.**

In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time. (Ord. 604 Art. VI, 2008)

**Sec. 5-1-260. 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 residents. (Ord. 604 Art. VI, 2008)

**Sec. 5-1-270. Regulations by the Town.**

The Town reserves the right to adopt, from time to time, reasonable regulations of the Company's facilities in the exercise of its police power, provided that such regulations are not destructive of the rights granted herein. The Company agrees to comply with all such regulations in the construction, maintenance and operation of its facilities and in the provision of gas within the Town. (Ord. 604 Art. VI, 2008)

**Sec. 5-1-280. Compliance.**

The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging and other construction activities, except for permit fees as described in Section 5-1-70 of this Article. The Company shall assure that its contractors working in Town Streets and Other Public Places hold the necessary licenses and permits required by law. (Ord. 604 Art. VI, 2008)

**Sec. 5-1-290. 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 franchise 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. 604 Art. VI, 2008)

**Sec. 5-1-300. Assignment.**

Nothing in this franchise shall prevent the Company from assigning its rights under this franchise. (Ord. 604 Art. VII, 2008)

**Sec. 5-1-310. Saving clause.**

If a court of competent jurisdiction declares any portion of this franchise to be illegal or void, the remainder of the franchise shall survive and not be affected thereby. (Ord. 604 Art. VII, 2008)

**Sec. 5-1-320. 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 uncontrollable forces and includes, but is not limited to, acts of God, strikes, lockouts, wars, terrorism, riots, orders or decrees of any lawfully constituted federal, state or local body; contagions or contaminations hazardous to human life or health; fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe; inability to obtain or the delay in obtaining rights-of-way, materials, supplies or labor permits; temporary failures of gas supply; or necessary repair, maintenance or replacement of facilities, beyond the reasonable control of the party affected, which could not reasonably have been anticipated and avoided, used in the performance of the obligations contained in this franchise. (Ord. 604 Art. VIII, 2008)

**Sec. 5-1-330. 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 therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved. (Ord. 604 Art. IX, 2008)

**Sec. 5-1-340. 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. 604 Art. IX, 2008)

**Sec. 5-1-350. Town held harmless.**

The Company shall indemnify, defend and hold the Town harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise, the exercise by the Company of the related rights or the operations of the Company within the Town, and shall pay the costs of defense plus reasonable attorneys' fees. The Town shall:

(1) Give prompt written notice to the Company of any claim, demand or lien with respect to which the Town seeks indemnification hereunder; and

(2) Unless in the Town's judgment a conflict of interest may exist between the Town and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand or lien with counsel satisfactory to the Town. If such defense is assumed by the Company, the Company shall not be subject to any liability for any settlement made without its consent. If such defense is not assumed by the Company or if the Town determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other.

Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the Town or any of its officers or employees. The Company shall also indemnify, defend and hold harmless against any entity challenging the validity, legality, applicability or constitutionality of this franchise. (Ord. 604 Art. X, 2008)

**Sec. 5-1-360. Immunity.**

Nothing in this Division or any other provision of this franchise shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Town may have under the Colorado Governmental Immunity Act (Section 4-10-101, et seq., C.R.S.) or of any other defenses, immunities or limitations of liability available to the Town by law. (Ord. 604 Art. X, 2008)

*Division 4*  
*Miscellaneous Provisions*

**Sec. 5-1-410. Termination of franchise by Town.**

Both the Company and the Town recognize that 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 this instance, the Company shall use its best efforts to comply in a timely manner and to the extent possible. In the event of a substantial breach by the Company of any material provision of this franchise, the Town, acting by and through its Board, may terminate the franchise and rights granted to Company hereunder; provided, however, that such termination shall not be effective unless and until the procedures described below have been followed:

(1) The Town must deliver to Company, by certified mail or hand-delivery, a written notice. Such notice must:

- a. Fairly and fully set forth in detail each of the alleged acts or omissions of the Company that the Town contends constitutes a substantial breach of any material provision hereof;
- b. Designate which of the terms and conditions hereof the Town contends that the Company breached; and
- c. Specify the date, time and place at which a public hearing will be held by the governing body of the Town for the purpose of determining whether the allegations contained in the notice did, in fact, occur; provided, however, that the date of such hearing may not be less than fifteen (15) days after the date of such notice.

(2) Within ten (10) days following the adjournment of the public hearing described in Paragraph (1) above, the Town must deliver to Company, by certified mail, a written notice setting forth:

- a. The acts and omissions of the Company described in the first notice that the Town Board of Trustees determines to have in fact occurred; and
- b. The specific terms and conditions of this franchise listed in the first notice that the Town Board of Trustees determines to have in fact been breached by such acts or omissions of the Company.

(3) The Town shall permit the Company the opportunity to substantially correct and cure all the breaches hereof set forth in the written notice described in Paragraph (2) above, provided that such breaches are amenable to cure, within thirty (30) days after the Company's receipt of such notice before termination occurs. (Ord. 604 Art. XI, 2008; Ord. 634 §1, 2010)

**Sec. 5-1-420. Applicable law.**

Colorado law shall apply to the construction and enforcement of this franchise. The parties agree that venue for any litigation arising out of this franchise shall be in the District Court for Montezuma County, State of Colorado. (Ord. 604 Art. XI, 2008)

## ARTICLE 2

### Electric Franchise

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

Whenever the word *Town* is hereinafter employed, it shall designate the Town of Mancos and any future annexations or additions thereto, the Grantor. Whenever the word *Company* is used, it shall designate not only Empire Electric Association, Incorporated, the Grantee, but also its successors and assigns. (Ord. 557, Art. I, 2004)

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

The Company is hereby granted a nonexclusive franchise for a period of ten (10) years to erect, construct, maintain and operate an electrical transmission and distribution system and any and all necessary lines, services and other appurtenances and equipment thereunto appertaining in, upon, under, over, across and along the streets, alleys, bridges and public places owned or controlled by the Town for the transmission, distribution and sale of electricity for lighting, heating, industrial and all other uses and purposes in the Town, and for the purpose of transmitting and conveying such electricity into or through the limits of the Town. This franchise shall be renewed for a second ten-year term unless the Town gives the Company written notice prior to ninety (90) days before the expiration of this franchise that it desires to negotiate terms and conditions of this franchise or to cancel this franchise. (Ord. 557, Art. II, 2004)

#### **Sec. 5-2-30. Construction and repair; inspection.**

All construction and repair of facilities within the Town are subject to inspection by the Town and determination by the Town that said construction and repair have been performed in accordance with all applicable ordinances, rules and regulations of the Town. It shall be a condition of the Town's approval that, for any facilities installed, renovated or replaced after the effective date of this franchise, the Company shall provide the Town with as-built drawings of each such facility in such formats as reasonably requested by the Town. The Company shall furnish such information in both hard copy and in digital format, compatible with the Town's information system, referencing state plane coordinates. (Ord. 557, Art. III, 2004; Ord. 634 §1, 2010)

#### **Sec. 5-2-40. New lines underground.**

The Company will endeavor to place all newly constructed or reconstructed electrical distribution lines underground, whenever feasible. The Company and the Town agree that, in some cases, terrain, surrounding improvements, other utilities in the vicinity or other electrical distribution design requirements render an underground line infeasible. The Company will place newly constructed electrical distribution lines underground to serve new residential and/or industrial subdivisions in accordance with the Company's rules and regulations and the Town's subdivision regulations. (Ord. 557, Art. III, 2004)

**Sec. 5-2-50. Excavation permits.**

The Company must obtain an excavation permit prior to any excavation, except for emergency work, for work on private property or for minor work which does not disturb actual street surfaces or other public improvements or other utilities. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any street or other public or private improvement, the Company shall repair, at its own expense and in a workmanlike manner subject to the approval of the Town, such improvement. (Ord. 557, Art. III, 2004; Ord. 634 §1, 2010)

**Sec. 5-2-60. Public telecommunication facilities.**

The Town shall have the right to allow the installation of public telecommunication facilities in the Company's rights-of-way, so long as there is no interference with the Company's functions. Third-party communication antennas will be permitted in the communication space if in accordance with a third-party agreement. (Ord. 557, Art. III, 2004; Ord. 634 §1, 2010)

**Sec. 5-2-70. Easements.**

The Town shall designate the location and the size of any easement on property owned or controlled by the Town, together with any further restrictions or requirements deemed appropriate, as long as the designation complies with the latest edition of the National Electrical Safety Code and common practices of the utility industry. (Ord. 557, Art. III, 2004)

**Sec. 5-2-80. Damage to other facilities; repair.**

The Company shall use due care not to interfere with or damage any water facilities, sanitary sewer facilities, stormwater facilities or other structures now in place or which may hereafter be placed in streets in the Town, and the Company shall, at its own expense, repair in a workmanlike manner, and subject to the approval of the Town, any such water facilities, sanitary sewer facilities, stormwater facilities or other structures which are damaged through the action of the Company; provided, however, that the Town may make such repairs and charge the reasonable cost thereof to the Company if the Company fails to repair the damages within a reasonable time after receipt of written notice from the Town. This grant of authority shall apply to all streets presently platted or otherwise of record, all easements presently owned by or dedicated to the Town or the public within the Town limits and all future streets and easements later acquired by or dedicated to the Town and located within the Town limits. The Company shall be responsible for the remedy of any defects and repair work performed by the Company for a period of two (2) years after completion. The Town shall have the right to inspect and supervise any work on Town property and improvements. The Town shall use due care not to interfere with or damage any facilities of the Company now in place or which may hereafter be placed in streets and other properties owned or controlled by the Town. If the Town causes damage to the Company's facilities, the Company shall make repairs and charge a reasonable cost thereof to the Town. This grant of authority shall apply to all streets presently platted or otherwise of record, all easements presently owned by or dedicated to the Town or the public within the Town limits, all other property owned by the Town and all future streets, easements and property later acquired by or dedicated to the Town and located within the Town limits. (Ord. 557, Art. IV, 2004; Ord. 634 §1, 2010)

**Sec. 5-2-90. New streetlights.**

(a) The Town shall, from time to time, request from the Company new streetlights within the Town limits. The Company shall install lights according to the Company's overhead street-lighting tariffs in effect at the time request for new streetlights is made. The Company shall install all new lights with a luminary (the light head) that is designed to minimize light pollution. The style and light pattern of any new luminaries shall be approved by the Town and the Company prior to installation of the luminary by the Company. The Company agrees to replace, at the Company's cost, twenty percent (20%) of all existing Town streetlight luminaries (provided under the Company's street-lighting tariff) per year for five (5) years, beginning with the downtown area first.

(b) For the term of this franchise, rate increases under the overhead street-lighting tariff are hereby capped at a value not to exceed the Consumer Price Index, published by the Bureau of Labor Statistics for the State. (Ord. 557, Art. V, 2004; Ord. 634 §1, 2010)

**Sec. 5-2-100. Duty to maintain and operate sufficient system; cost.**

(a) The Company agrees for and on behalf of itself, its lessees, successors and assigns that, for and during the term and period of this grant, it will maintain in the Town an adequate, modern, standard and sufficient electrical system and equipment and to maintain and operate the same in a modern and adequate fashion.

(b) The Company also agrees to use its best efforts to obtain the lowest possible wholesale cost on electricity to be distributed; provided, however, that due consideration will be given by the Company to the adequate supply and a reserve to ensure continued operation of the system herein authorized. (Ord. 557, Art. VI, 2004; Ord. 634 §1, 2010)

**Sec. 5-2-110. Enlargements and extensions.**

The Company will, from time to time during the term of this franchise, make such enlargements and extensions of its electrical system as the business of the Company and the growth of the Town justify, in accordance with its rules and regulations relating to customer connections, transmission and distribution line extensions currently in effect and on file from time to time with the Public Utilities Commission or other competent authority having jurisdiction in the premises; provided, however, that no obligation shall extend to or be binding upon the Company to construct to extend its power lines or furnish electricity or electrical service within the Town if the Company is for any reason unable to obtain an adequate supply of electricity from its wholesale power supplier to warrant the construction or extension of its electrical system, for the furnishing of such electricity or electrical service; provided, further, that, when the amount of electricity supplied to the Company is insufficient to meet the firm requirements of connected or new customers, the Company shall have the right to prescribe reasonable rules and regulations for allocating the available supply of electricity. (Ord. 557, Art. VI, 2004)

**Sec. 5-2-120. Surplus power.**

The Company agrees to purchase surplus power from private individuals who are producing electric power for home consumption so long as the sole purchase of surplus power is in accordance with Section 40-9.5-301, et seq., C.R.S. (Ord. 557, Art. VI, 2004)

**Sec. 5-2-130. Grant subject to conditions; jurisdiction.**

This franchise is granted subject to all conditions, limitations and immunities now provided for and applicable to the operations of a public utility by the laws of the State. The rates to be charged for electrical service within the Town and the rules and regulations with reference to character, quality and standards of service to be furnished by the Company shall be under the jurisdiction and control of such regulatory body as may, from time to time during this grant, be vested by law with authority and jurisdiction of the rates, regulations, quality and standards of service to be supplied by the Company. (Ord. 557, Art. VII, 2004)

**Sec. 5-2-140. State law applicable.**

Notwithstanding any provision in this Article to the contrary, it is understood by the Company that all the provisions of the laws of the State and the ordinances of the Town are incorporated herein and made part hereof by reference as fully and to the same extent as though such provisions were fully presented herein. (Ord. 557, Art. VIII, 2004)

**Sec. 5-2-150. Adequate voltage and supply.**

The Company shall, at all times, maintain adequate voltage and adequate supply of electricity not less than that prescribed in its rules and regulations relating thereto in effect and on file from time to time with the Public Utilities Commission or other competent authority having jurisdiction in the premises. (Ord. 557, Art. IX, 2004)

**Sec. 5-2-160. Town held harmless.**

The Company shall hold the Town harmless from any and all claims and actions, litigation or damage arising out of the passage of the ordinance codified herein or of the construction, erection, installation, maintenance or operation of its properties operated by authority of this franchise within the boundaries of the Town or the negligence of its employees in the operation thereof, including the court costs and reasonable attorneys' fees in making defense against such claims. A copy of the process served upon the Town shall be served by the Town upon the Company. The Company shall have the right to defend in the name of the Town and to employ counsel for such purpose. Such right shall not, however, preclude the Town Attorney from participating in any such litigation on behalf of the Town. (Ord. 557, Art. X, 2004; Ord. 634 §1, 2010)

**Sec. 5-2-170. Notice of default; termination.**

If the Company is in default in its performance of any of the terms and conditions of this franchise and continues in default for more than thirty (30) days after receiving notice from the Board of Trustees of such default, the Board of Trustees may, by ordinance duly passed and adopted, terminate all rights granted under this Article to the Company. The notice of default shall specify the provisions in the performance of which it is claimed the Company is in default. Said notice shall be in writing and served in the manner provided by law of the State for the service of original notices in civil actions. (Ord. 557, Art. XI, 2004; Ord. 634 §1, 2010)

**Sec. 5-2-180. Right to condemn.**

The Town has the right to condemn any public utility works or ways, and the rights of the Company in connection therewith, as provided by the Constitution and statutes of the State, and such right is hereby expressly reserved and may be exercised by the Town in accordance with the Constitution and statutes of the State, with the Company entitled to just compensation as set forth in Section 40-9.5-204, C.R.S. (Ord. 557, Art. XII, 2004)

**Sec. 5-2-190. Acquisition.**

The Board of Trustees may authorize the acquisition of the Company's electric facilities, as contemplated in this Article, by ordinance to the extent permitted by the Constitution and the statutes of the State, and the Town retains the right to acquire property outside the Town limits by condemnation as allowed by the state Constitution. In the event the Town proceeds with an acquisition of the Company's facilities, the Company shall continue to provide service until the effective date of the transfer of such facilities. The Company and the Town agree to work together to coordinate the timing of any such acquisition to prevent disruption in service to customers within the Town. (Ord. 557, Art. XII, 2004)

**Sec. 5-2-200. Right of Town to purchase.**

If, at any time during the term of this Franchise, the Company proposes to sell or dispose of any of its real property located in whole or in part within the Town, it shall grant to the Town the right of first refusal to purchase the same. The Town shall have thirty (30) days after written notice of sale is received from the Company in which to notify, in writing, the Company that it will exercise its right. The written notice of sale from the Company shall include the purchase price as determined pursuant to this Article for the property the Company wishes to sell. If the Town wishes to exercise its right, it must close on the purchase within forty-five (45) days from the date of its written exercise of the right. Failure of the Town to close waives the Town's right of first refusal for any future attempt by the Company to sell that particular parcel. The right of first refusal shall not apply or be given effect to any sale or disposition involving such property if it is part of a sale or disposition involving other utility property of the Company located outside the Town limits. (Ord. 557, Art. XII, 2004)

**Sec. 5-2-210. Franchise fee.**

(a) In consideration for this franchise and in compensation for the use and occupancy of the streets, alleys and public grounds, the Company, its lessees, successors and assigns shall pay a franchise fee of five percent (5%) of gross receipts from the sale of electricity within the limits of the Town.

(b) On or before the twentieth day of each month, the Company shall make a report of the gross sales within the limits of the Town and remit five percent (5%) of such sales. An annual adjustment will be made to reflect gross receipts within the Town by deducting the portion of the Company's bad debt write-off attributable to sales within the Town from the next ensuing monthly payment of the franchise fee to the Town. This adjustment normally occurs in July. The five-percent franchise fee shall be surcharged on billings for electric service to consumers within the Town.

(c) It is further agreed that the Company will budget for economic development incentives for business and industrial customers on a case-by-case basis. (Ord. 557, Art. XIII, 2004; Ord. 634 §1, 2010)

**Sec. 5-2-220. Assignment.**

Nothing in this Article shall be so construed as to prevent the Company from assigning all of its right, title or interest granted or authorized under or by virtue of the terms of this Article; provided, however, that the Town is notified at least sixty (60) days in advance of the assigning and that such assignment shall not become effective until approved by the Board of Trustees, except that such approval shall not be unreasonably withheld. (Ord. 557, Art. XV, 2004)

**Sec. 5-2-230. Preference or advantage prohibited.**

The Company shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this Article shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled. (Ord. 557, Art. XVI, 2004)

**Sec. 5-2-240. Relocation.**

If at any time it shall be necessary to relocate any transmission, distribution or service lines or other structures of the Company to permit the Town to lay, make or change streets, grades, pavements, Town-owned storm and sanitary sewers, water mains or other Town-owned works or improvements, the cost of all such changes shall be shared equally between the Town and the Company. (Ord. 557, Art. XVIII, 2004)

**ARTICLE 3**

**Cable Franchise**

**Sec. 5-3-10. Definitions.**

For the purpose of this franchise, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. 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 lowest-priced tier of service that includes the retransmission of local broadcast television signals.

*Cable Act* means the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, 47 U.S.C. § 151, as amended.

*Cable services* means: (1) the one-way transmission to subscribers of (a) video programming, or (b) other programming service; and (2) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

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

a. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

b. A facility that serves only subscribers in one (1) or more multiple-unit dwellings under common ownership, control or management, unless such facility or facilities uses any public way;

c. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of Section 621(c)) to the extent such facility is used in transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

d. An open video system which complies with Section 653 of this title;

e. Any facilities of any electric utility used solely for operating its electric utility system.

*FCC* means the Federal Communications Commission or any successor governmental entity thereto.

*Franchise* means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of the cable system.

*Franchising Authority* means the Town or the lawful successor, transferee or assignee thereof.

*Grantee* means TCI Cablevision of Colorado, Inc., or the lawful successor, transferee or assignee thereof.

*Gross revenues* mean any revenue received by the Grantee from the operation of the cable system in the service area; provided, however, that such phrase shall not include any fees or taxes which are imposed directly or indirectly on any subscriber thereof by any governmental unit or 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 the space above and below, any public street, highway, freeway, bridge, land, path, alley, court, boulevard, sidewalk, 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 rights-of-way dedicated for compatible uses, and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the Franchising Authority in the service area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. *Public way* shall also mean any easement now or hereafter held by the Franchising Authority 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 the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's cable system 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 present municipal boundaries of the Franchising Authority and shall include any additions thereto by annexation or other legal means.

*Subscriber* means a person who lawfully receives services of the cable system with the Grantee's express permission. (Ord. 482 §1.1, 1996; Ord. 634 §1, 2010)

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

The Franchising Authority hereby grants to the Grantee a nonexclusive franchise which authorizes the Grantee to construct and operate a cable system in, along, among, upon, across, above, over, under or in any manner connected with public ways within the service area 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. Nothing in this franchise shall be construed to prohibit the Grantee from offering any service over its cable system that is not prohibited by federal or state law. The Town reserves the right to grant a similar use of said public ways to any other person. (Ord. 482 §2.1, 1996)

**Sec. 5-3-30. Term.**

The franchise granted hereunder shall be for an initial term of fifteen (15) years, commencing on the effective date of the franchise as set forth below, unless otherwise lawfully terminated in accordance with the terms of this franchise. (Ord. 482 §2.2, 1996)

**Sec. 5-3-40. Conditions of street occupancy.**

All transmission and distribution structures, poles, other lines and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so 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 such public ways. (Ord. 482 §3.1, 1996)

**Sec. 5-3-50. Restoration of public ways.**

If, during the course of the Grantee's construction, operation or maintenance of the cable system, there occurs a disturbance of any public way by the Grantee, it shall, at its expense, replace and

restore such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to such disturbance. (Ord. 482 §3.2, 1996)

**Sec. 5-3-60. Relocation at request of Franchising Authority.**

Upon its receipt of reasonable advance notice, not to be less than five (5) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the public way or remove from the public way any property of the Grantee when lawfully required by the Franchising Authority 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 Franchising Authority, but the Grantee shall in all cases have the right of abandonment of its property. If grant funds are available to any person using such street, easement or right-of-way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall make application for such funds on behalf of the Grantee should the Grantee so request. (Ord. 482 §3.3, 1996)

**Sec. 5-3-70. Relocation at request of third party.**

The Grantee shall, on the request of any person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided that:

- (1) The expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and
- (2) The Grantee is given not less than ten (10) business days' advance written notice to arrange for such temporary wire changes. (Ord. 482 §3.4, 1996)

**Sec. 5-3-80. Trimming of trees and shrubbery.**

The Grantee shall have the authority to trim trees or other natural growth overhanging any of its cable system in the service area so as to prevent branches from coming in contact with the Grantee's wires, cables or other equipment. The Grantee shall reasonably compensate the Franchising Authority or affected property owner for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the cable system undertaken by the Grantee. Such replacement shall satisfy any and all obligations the Grantee may have to the Franchising Authority pursuant to the terms of this Section. (Ord. 482 §3.5, 1996)

**Sec. 5-3-90. 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 and the National Electric Safety Code. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the service area. (Ord. 482 §3.6, 1996)

**Sec. 5-3-100. Aerial and underground construction.**

In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate and maintain all of its transmission and distribution facilities underground, provided that such facilities are actually capable of receiving the 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 providing telephone communications and electric services are both aerial and underground, the Grantee shall have the sole discretion to construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this Section shall require the Grantee to construct, operate and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals or other related equipment. 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 providing telephone communications and electric services are placed underground after the effective date of this franchise, the 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' trenches at the time that such are placed underground. (Ord. 482 §3.7, 1996)

**Sec. 5-3-110. New developments.**

The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned commercial or residential developments within the franchise area requiring undergrounding of cable facilities. The Franchising Authority agrees to require, as a condition of issuing the permit, that the developer give the Grantee access to open trenches for deployment of cable facilities and written notice of the date of availability of trenches. Such notice must be received by the Grantee at least ten (10) business days prior to availability. The developer shall be responsible for the digging and backfilling of all trenches. The Grantee shall be responsible for engineering, deployment labor and cable facilities. Installation from utility easements to individual homes or other structures shall be at the cost of the home or building owner or developer, unless otherwise provided. Failure of the Franchising Authority to provide the Grantee with such written notice shall result in no actionable claim against the Franchising Authority. (Ord. 482 §3.7, 1996)

**Sec. 5-3-120. Local improvement district.**

If an ordinance is passed creating a local improvement district which involves placing underground certain utilities including that of the Grantee which are then located overhead, the Grantee shall participate in such underground project and shall remove poles, cables and wires from the surface of the streets within such district and shall place them underground in conformity with the requirements of the Franchising Authority. The Grantee may include its costs of relocating facilities associated with the undergrounding project in said local improvement district if allowed under applicable law. (Ord. 482 §3.7, 1996)

**Sec. 5-3-130. Required extensions of service.**

The cable system, as constructed as of the date of the passage and final adoption of this franchise, substantially complies with the material provisions hereof. Whenever the Grantee receives a request for service from at least fifteen (15) residences within one thousand three hundred twenty (1,320) cable-bearing strand feet (one-quarter [1/4] cable mile) of its trunk or distribution cable, it shall extend its cable system to such subscribers at no cost to said subscribers for cable system extension, other than the usual connection fees for all subscribers, provided that such extension is technically feasible and if it will not adversely affect the operation, financial condition or market development of the cable system, or as provided for under Section 5-3-140 below. (Ord. 482 §3.8, 1996)

**Sec. 5-3-140. Subscriber charges for extensions of service.**

No subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a subscriber's request to locate his cable drop underground, existence 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 fifteen (15) residences per one thousand three hundred twenty (1,320) cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per one thousand three hundred twenty (1,320) cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals fifteen (15) residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance. (Ord. 482 §3.9, 1996)

**Sec. 5-3-150. Service to public buildings.**

The Grantee shall, upon request, provide without charge one (1) outlet of basic service to those Franchising Authority offices, fire stations, police stations, public school buildings and the Town library that are passed by its cable system. The outlets of basic service shall not be used to distribute or sell services in or throughout such buildings, nor shall such outlets be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's cable system in any manner that results in the inappropriate use thereof or any loss or damage to the cable system. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to those arising from copyright liability. The Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds, or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of, one hundred fifty (150) cable feet. If additional outlets of basic service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including but not limited to labor and materials. (Ord. 482 §3.10, 1996; Ord. 634 §1, 2010)

**Sec. 5-3-160. Emergency use.**

(a) In accordance with the provisions of FCC Regulations Part 11, Subpart D, Section 11.51(h)(1), and as such provisions may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Regulations, Section 11.51.

(b) The Franchising Authority shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall indemnify and hold harmless the Grantee, its employees, officers and assigns from any claims arising from use of the cable system or the EAS equipment by the Franchising Authority, its employees, authorized representatives or designees, including but not limited to reasonable attorneys' fees. Additionally, the Franchising Authority shall indemnify, save and hold harmless the Grantee against damage, loss or inappropriate use of the equipment and shall agree to use due care and to take reasonable precautions against such damage, loss or inappropriate use of the EAS equipment or other cable system equipment which may be used during a declared emergency. (Ord. 482 §3.11, 1996)

**Sec. 5-3-170. Access channel.**

The Grantee shall provide one (1) channel of educational and governmental access pursuant to the provisions of Section 611 of the Cable Act, to be promoted and administered by the Franchising Authority. The Grantee shall provide a modulator and channel space only. (Ord. 482 §3.12, 1996)

**Sec. 5-3-180. Franchise fee.**

(a) The Grantee shall pay to the Franchising Authority a franchise fee equal to three percent (3%) of gross revenues, as defined in Section 5-3-10 of this Article, received by the Grantee from the operation of the cable system on an annual basis; provided, however, that gross revenues shall not include:

- (1) Any tax, fee or assessment of any kind imposed by the Franchising Authority or other governmental entity on a cable operator or subscriber, or both, solely because of their status as such;
- (2) Any tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or subscribers (including any such tax, fee or assessment imposed both on utilities and cable operators and their services); and
- (3) Any other special tax, assessment or fee such as a business, occupation and entertainment tax.

For the purpose of this Section, the twelve-month period applicable under this franchise for the computation of the franchise fee shall be one (1) calendar year, unless otherwise agreed to in writing by the Franchising Authority and the Grantee. The franchise fee payment shall be due and payable sixty (60) days after the close of the preceding calendar year. Each payment shall be accompanied by

a brief report from a representative of the Grantee showing the basis for the computation. Upon lawful termination or expiration, the final franchise fee payment shall be due and payable within thirty (30) days of such termination or expiration.

(b) Limitation on franchise fee actions. The period of limitation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment by the Grantee is due. Unless the Franchising Authority initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction within five (5) years from and after such payment due date, such recovery shall be barred and the Franchising Authority shall be estopped from asserting any claims whatsoever against the Grantee relating to any such alleged deficiencies. (Ord. 482 §4.1, 1996)

**Sec. 5-3-190. Rates and charges.**

The Franchising Authority may regulate rates for the provision of basic cable and equipment as expressly permitted by applicable law. (Ord. 482 §4.2, 1996)

**Sec. 5-3-200. Renewal of franchise.**

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

(b) In accordance with the procedures set forth in Subsection 626(a) of the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then-current franchise term. The Franchising Authority further agrees that any such preliminary assessment shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Subsection 626(b) of the Cable Act and complete renewal of the franchise prior to expiration of its term. Notwithstanding anything to the contrary set forth in this Section, the Grantee and the Franchising Authority agree that, at any time during the term of the then-current franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then-current franchise, and the Franchising Authority may grant a renewal thereof. The Grantee and the Franchising Authority consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Act. (Ord. 482 §4.3, 1996)

**Sec. 5-3-210. Conditions of sale.**

(a) If a renewal or extension of the Grantee's franchise is denied or the franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the cable system or by its actions lawfully effects a transfer of ownership of the cable system to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

(b) The Grantee and the Franchising Authority agree that, in the case of a final determination of a lawful revocation of the franchise, at the Grantee's request, which shall be made in its sole discretion,

the Grantee shall be given a reasonable opportunity to effectuate a transfer of its cable system to a qualified third party. The Franchising Authority further agrees that, during such a period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its prior franchise; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its cable system which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that the Grantee's continued operation of its cable system during the six-month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee. (Ord. 482 §4.4, 1996)

**Sec. 5-3-220. Transfer of franchise.**

The Grantee's right, title or interest in the franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an entity controlling, controlled by or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation or by assignment of any rights, title or interest of the Grantee in the franchise or cable system in order to secure indebtedness. Within thirty (30) days of receiving the request for transfer, the Franchising Authority shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given. (Ord. 482 §4.5, 1996)

**Sec. 5-3-230. Books and records.**

The Grantee agrees that the Franchising Authority, upon reasonable notice to the Grantee, may review its books and records at the Grantee's business office during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms hereof. Such records shall include, but shall not be limited to, the public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide subscriber information in violation of Section 631 of the Cable Act. (Ord. 482 §5.1, 1996)

**Sec. 5-3-240. Insurance requirements.**

The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of this franchise, commercial general liability insurance in the amount of one million dollars (\$1,000,000.00) combined single limit for bodily injury and property damage. The Grantee shall provide a certificate of insurance designating the Franchising Authority as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days' prior written notice to the Franchising Authority. (Ord. 482 §6.1, 1996)

**Sec. 5-3-250. Indemnification.**

The Grantee agrees to indemnify, save and hold harmless and defend the Franchising Authority, its officers, boards and employees from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation or maintenance of its cable system, including but not limited to reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within a reasonable time of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority. (Ord. 482 §6.2, 1996)

**Sec. 5-3-260. Notice of violation.**

In the event that the Franchising Authority believes that the Grantee has not complied with the terms of this franchise, it shall notify the Grantee in writing of the specific nature of the alleged noncompliance. (Ord. 482 §7.1, 1996)

**Sec. 5-3-270. Grantee's right to cure or respond.**

The Grantee shall have thirty (30) days from receipt of the notice described in Section 5-3-260 above:

- (1) To respond to the Franchising Authority, contesting the assertion of noncompliance;
- (2) To cure such default; or
- (3) In the event that, by the nature of default, such default cannot be cured within the thirty-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed. (Ord. 482 §7.2, 1996)

**Sec. 5-3-280. Public hearing.**

In the event that the Grantee fails to respond to the notice described in Section 5-3-260 above pursuant to the procedures set forth in Section 5-3-270 above, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to Paragraph 5-3-270(3), the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority which is scheduled at a time no less than five (5) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with an opportunity to be heard. (Ord. 482 §7.3, 1996)

**Sec. 5-3-290. Enforcement.**

Subject to applicable federal and state law, in the event the Franchising Authority, after such meeting, determines that the Grantee is in default of any provision of this franchise, the Franchising Authority may:

- (1) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;
- (2) Commence an action at law for monetary damages or seek other equitable relief; or
- (3) In the case of a substantial default of a material provision of the franchise, declare the franchise agreement to be revoked after affording the Grantee reasonable procedural due process of law. (Ord. 482 §7.4, 1996)

**Sec. 5-3-300. Technical violations.**

The parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the franchise for so-called "technical" breaches or violations of the franchise, which shall include, but are not limited to, the following:

- (1) In instances or for matters where a violation or a breach by the Grantee of the franchise was good-faith error that resulted in no or minimal negative impact on the customers within the service area; or
- (2) Where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the franchise. (Ord. 482 §7.5, 1996; Ord. 634 §1, 2010)

**Sec. 5-3-310. Actions of parties.**

In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld. (Ord. 482 §8.1, 1996)

**Sec. 5-3-320. Force majeure.**

The Grantee shall not be held in default under, or in noncompliance with, the provisions of the franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate and control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which Grantee's cable and/or equipment is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary. (Ord. 482 §8.2, 1996)

**Sec. 5-3-330. Notice.**

- (a) Unless expressly otherwise agreed between the parties, every notice or response required by this franchise to be served upon the Franchising Authority or the Grantee shall be in writing and shall

be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope when hand-delivered or sent by certified mail, postage prepaid.

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

Town of Mancos  
PO Box 487  
Mancos, CO 81328

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

TCI Cablevision of Colorado, Inc.  
PO Box 1097  
Durango, CO 81302

with a copy to:

TCI Cablevision of Colorado, Inc.  
Attention: Legal Department  
4700 S. Syracuse Pkwy.  
Suite 1100  
Denver, CO 80237

(d) The Franchising Authority and the Grantee may designate such other address or addresses, from time to time, by giving notice to the other. (Ord. 482 §8.3, 1996; Ord. 634 §1, 2010)

**Sec. 5-3-340. Effective date.**

The effective date of this franchise is November 7, 1996, pursuant to the provisions of applicable law. This Franchise shall expire on November 11, 2011, unless extended by the mutual agreement of the parties. (Ord. 482 §8.6, 1996)

**Sec. 5-3-350. Descriptive headings.**

The headings of sections contained herein are intended solely to facilitate the reading thereof. Such headings shall not affect the meaning or interpretation of the text herein. (Ord. 482 §8.4, 1996)

**Sec. 5-3-360. 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. (Ord. 482 §8.5, 1996)

## **ARTICLE 4**

### **Emergency Telephone Service**

#### **Sec. 5-4-10. Surcharge imposed; amount.**

The Town hereby imposes a surcharge of seventy cents (\$0.70) per month against each wireless communications access and each subscriber line of all telephone exchange facilities within the Town. (Ord. 504, 2000; Ord. 589, 2007; Ord. 634 §1, 2010)