

CHAPTER 5 Franchises and Communication Systems

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Sec. 5-1-10. Definitions.

Whenever the word "Town" is hereinafter employed, it shall designate the Town of Foxfield, Arapahoe County, Colorado, the Grantor, and whenever the word "Company" is used, it shall designate not only the Intermountain Rural Electric Association, a Colorado Corporation, the Grantee, but also its successors and assigns.

(Ord. [08](#) §1, 2015)

Sec. 5-1-20. Grant of authority.

There is hereby granted by the Town to the Company the franchise right, privilege and authority to construct, purchase, acquire, locate, maintain, operate and extend into, within and through the Town, plants, works, systems and facilities for the generation, transmission and distribution of electrical energy for lighting, heating, cooling, power, or other similar utility purposes, with the right and privilege, for the period, and upon the terms and conditions hereinafter specified, to sell, furnish and distribute electrical energy for lighting, heating, cooling, power or other utility purposes to the Town and the inhabitants thereof, by means of conduits, wires, cables, poles and structures, or otherwise, on, over, under, along and across all public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways and other public places in the Town and on, over, under, along and across any extension, connection with, or continuation of the same, and on, over, under, along and across all new public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways and other public places as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included within the boundaries of the Town, all in accordance with the terms herein. This grant does not include authority to use Company facilities within such public ways and other public places for the provision of telephone, internet, cable broadcasting, or similar services; provided that the Company may license the use of its facilities for such purpose to third parties who have such authorization as may be required by the Town. In the event the Company desires to use facilities installed within Town public ways or other public places for internet, cable broadcasting, or similar services, or for any other purposes not expressly above authorized, the Company shall first secure an amendment to this franchise.

(Ord. [08](#) §1, 2015)

Sec. 5-1-30. Manner of use—Repair.

The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways and other public places under the supervision of properly constituted Town authority for the purpose of bringing electrical energy into, within and through the Town and supplying electrical energy to the Town and the inhabitants thereof and in the territory adjacent thereto, provided, however, that the Company shall so locate its substations, transmission and distribution structures, lines, equipment, and conduits within the Town as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said public and dedicated streets, alleys or other public ways and places. This grant is further subject to permitting, inspection and approval by an official representative of the Town in accordance with the then-applicable ordinances of the Town. The Company shall obtain separate, written consent of the Town prior to the installation of any new facilities within Town parks or open space, which consent shall not be unreasonably denied. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved streets or public place or any other public improvement, the Company shall repair the same in a workmanlike manner and within a reasonable time, in accordance with and subject to the then-applicable ordinances of the Town. The Company shall use due care not to interfere with or damage any water mains, sewers, or other structures in said public and dedicated streets, alleys or other public places. Any interference or damage

to water mains, sewers, or other structures shall be promptly restored to its former condition by the Company at its expense, or in the sole discretion of the Town by the Town at the Company's expense. Such restoration work if completed by the Company shall be subject to inspection and acceptance by the Town. The Town shall have the right to petition the Company for municipal use of trenches the Company may have or intend to open for installation or repair of facilities within the Town limits, for any reasonable Town purpose directly related to the conduct of any municipal business.

(Ord. [08](#) §1, 2015)

Sec. 5-1-40. Town held harmless.

The Company shall so maintain its electrical equipment and distribution system as to afford all reasonable protection against injury or damage to persons or property therefrom, and the Company shall save and hold the Town harmless from all liability or damage and all reasonable expenses, including reasonable attorneys' fees, necessarily accruing against the Town arising out of the negligent exercise by the Company of the rights and privileges hereby granted; provided, that the Company shall have had notice of the pendency of any action against the Town arising out of such exercise by the Company of said rights and privileges and shall be permitted at its own expense to appear and defend or assist in the defense of such action.

(Ord. [08](#) §1, 2015)

Sec. 5-1-50. Relocation of company facilities.

The parties agree that payment of the costs of relocation of Company facilities shall be accomplished as follows:

- (a) The Company will relocate the Company's facilities located in the public right-of-way and other public places at its own cost and expense when the Town deems it necessary to make improvements to municipal public utilities provided by the Town, public parks, open space, or Town building sites, streets or sidewalks, or to change street grades, regardless of the manner in which the improvements are funded, regardless of what entity performs or contracts to perform the actual construction, and regardless of the characterization of the public right-of-way as, by way of example, an unimproved or improved right-of-way, a local or regional right-of-way, a residential or nonresidential right-of-way, or an unplatted or platted right-of-way. The rights granted herein shall permit any relocation requested by the Town without further grant of an easement to the Company from the Town. Relocation of Company facilities shall be made by the Company and shall be completed within a reasonable time from the date that the Town requests such relocation. The parties acknowledge this subsection a. is intended to restate and reflect the common law rule of utility relocation as it exists on the date of this Franchise Agreement.
- (b) The Company shall have no obligation to relocate at its expense any Company facilities located on private property, private easements, or private rights-of-way, whether such private property rights have been acquired by conveyance or by prescription.
- (c) Underground facilities shall be relocated underground. Aboveground facilities may be relocated above ground.
- (d) In the event the Town abandons or vacates any public right-of-way in which the Company has located its facilities, the Town agrees to exercise its authority pursuant to C.R.S. § 43-2-303(3) to reserve the rights granted to Company by this Franchise Agreement; provided, however, this reservation is made on the express condition that the Company agrees to remove and, if necessary, relocate such facilities to the nearest and/or most practicable public right-of-way at the request of a property owner that is burdened by such reservation, so long as the property owner pays the actual costs of said removal and relocation.

(Ord. [08](#) §1, 2015)

Sec. 5-1-60. Use of facilities by Town.

The Town shall have the right at locations to be approved by Company, without cost to Company, to use all poles and suitable overhead structures within the Town for the purpose of installing wires thereon for any reasonable Town use. In addition, the Town shall have the right, without cost, to use illumination poles for the placement of traffic control signs. The Company shall assume no liability or expense in connection with the use of said poles, and Town wires or traffic control signs shall not interfere with Company's use of said poles and structures. To the extent permitted by law, the Town shall indemnify and hold harmless the Company from any claim for any liability which may arise out of or be caused by any negligent or intentional act or omission of the Town or its employees, agents or contractors, related to installation, maintenance, presence, use, condition, repair or removal of The Town's attachment of wires or traffic control signs to any poles or structure and the Town shall assume all risk and responsibility related to the actions of its employees, agents and contractors when working on, at or near the Company's facilities.

(Ord. [08](#) §1, 2015)

Sec. 5-1-70. Rates regulation.

The Company shall furnish electrical energy within the corporate limits of the Town or any addition thereto, to the Town, and to the inhabitants thereof, and to any person or persons or corporation doing business in the Town or any addition thereto, at the rates and under the terms and conditions set forth in the Rates and Regulations promulgated by the Board of Directors of the Company, as amended from time to time.

(Ord. [08](#) §1, 2015)

Sec. 5-1-80. No discrimination.

The Company shall not, as to rates, charges, services, 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 Section 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. [08](#) §1, 2015)

Sec. 5-1-90. Extensions.

The Company will, from time to time during the term of this franchise, make such enlargements and extensions of its distribution systems as the business of the Company and the growth of the Town justify, in accordance with Company's Rates and Regulations, as amended from time to time. Except when otherwise approved by the Town, all new distribution facilities within the Town shall be placed underground.

(Ord. [08](#) §1, 2015)

Sec. 5-1-100. Rules and regulations.

The Company from time to time may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of electrical energy and payment therefor, and the interference with or alteration of any of the Company's property upon the premises of its customers, as shall be necessary to ensure continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefor, provided that the Company shall keep on file in its local office, available to the public, copies of its Rates and Regulations, including such revisions thereto as are adopted by the Company from time to time.

(Ord. [08](#) §1, 2015)

Sec. 5-1-110. Franchise payment.

As a further consideration for this franchise, and in lieu of all occupancy, occupation, use and license taxes, or other taxes on the rights to do business, or other special taxes, assessments or excises upon the property of the Company (except uniform taxes or assessments applicable to all taxpayers or businesses), the Company shall pay to the Town, for the period beginning on the effective date of this article, to the termination of this franchise, a sum equal to three percent (3%) of the first ten thousand dollars (\$10,000.00) of annual gross revenue derived from the sale of electrical energy to each customer at any one (1) location, plus two percent (2%) of the annual gross revenue derived from the sale of electrical energy in excess of ten thousand dollars (\$10,000.00) to each customer for each such service at any one (1) location; provided, however, there shall be excluded from all of such gross revenue all amounts paid to the Company by the Town or any federal, state, or local governmental entities for electrical energy furnished. The franchise percentage payment provided for in this section is established at the Town's sole discretion, and Town shall save and hold the Company harmless from all liability and all reasonable expenses necessarily accruing against the Company arising from or related to the establishment or amount thereof.

(Ord. [08](#) §1, 2015)

Sec. 5-1-120. Payment schedule.

For each quarter of each year of the term hereof, the Company shall pay to the Town the actual amount due to the Town in the months of April, July, October, and January for the quarter immediately preceding the month of payment.

(Ord. [08](#) §1, 2015)

Sec. 5-1-130. Gross revenue.

The term "gross revenue," as used herein, shall be construed to mean any revenue derived by the Company under authorized rates, temporary or permanent, excluding franchise fees, within the Town from the sale of electrical energy to customers other than the Town or any federal, state, or local governmental entities after the net write-off of uncollectible accounts and corrections of bills theretofore rendered.

(Ord. [08](#) §1, 2015)

Sec. 5-1-140. Adjustments.

In the event that the gross revenue of the Company for any period of time during the term of this franchise is reduced as a result of a customer refund after payment of the franchise fee for that period, the

Company shall be entitled to a credit toward further payments for all franchise payments paid in excess of the franchise fee based on the Company's gross revenue as so reduced.

(Ord. [08](#) §1, 2015)

Sec. 5-1-150. Proration.

Payments for the portions of the initial and terminal years of the term of this franchise shall be made on the basis of revenue as above provided for the months and portions of months during which this franchise is in effect.

(Ord. [08](#) §1, 2015)

Sec. 5-1-160. Audit.

For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this article, the Town Clerk and/or any committee or auditor appointed by the Board of Trustees of the Town shall have access to the books of the Company for the purpose of checking the gross revenue received for operations within the Town.

(Ord. [08](#) §1, 2015)

Sec. 5-1-170. Most favored status.

In the event that the Company should, during the term of this franchise, increase its franchise payments to any city or town in any of the counties in which it supplies electric service under a franchise, by reason of an increase in the percentage payments on revenue or a different basis of determining revenue excluded from the percentage payment, the same change or changes to provide increased franchise payments shall be placed in effect in the Town, upon the Town's written request. The Company shall notify the Town of any such increased payments, provided that in no event shall the Company be liable to the Town for damages resulting from any delay or failure to give such notice.

(Ord. [08](#) §1, 2015)

Sec. 5-1-180. Term—Effective date.

This article shall become effective, as provided by law, thirty (30) days after its publication following final passage, upon acceptance in writing by the Company within said period, and the terms, conditions and covenants thereof shall remain in full force and effect for a period of twenty (20) years from and after effective date.

(Ord. [08](#) §1, 2015)

Sec. 5-1-190. Removal.

Upon the expiration of this franchise, if the Company shall not have acquired an extension or renewal thereof and accepted the same, it is hereby granted the right to enter upon the public and dedicated streets, alleys, bridges, viaducts, roads, lanes, public ways and other public places of the Town, for the purpose of removing therefrom any and all of its plants, structures, conduits, cables, poles and wires, and equipment pertaining thereto at any time after the Town has had ample time and opportunity to purchase, condemn or

replace them. In so removing said conduits, cables, poles, wires and equipment, the Company shall, at its own expense and in a workmanlike manner and within a reasonable time, refill, repair, resurface and return to its original state any excavations that shall be made by it in the graveled or paved streets, alleys, bridges, viaducts, roads, lanes, public ways and other public or private places after the removal of conduits, poles or other structures.

(Ord. [08](#) §1, 2015)

Sec. 5-1-200. Police power reserved.

The right is hereby reserved to the Town to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State of Colorado, or with orders of other authorities having jurisdiction. Subject to the terms of this franchise agreement, the Company expressly acknowledges the Town's right to enforce regulations concerning the Company's access to or use of the public ways and other public places, including requirements for permits.

(Ord. [08](#) §1, 2015)

Sec. 5-1-210. Assignment.

Nothing in this article shall be so construed as to prevent the Company from assigning all, but not less than all, of its rights, title or interest, gained or authorized under or by virtue of the terms of this article, subject to the Town's approval, which shall not be unreasonably withheld, conditioned or delayed. Approval shall not be required for an assignment for the purpose of increased capitalization or loan or bond guarantee.

(Ord. [08](#) §1, 2015)

Sec. 5-1-220. Acceptance by company.

This franchise shall be subject to all of the provisions of the laws of the State of Colorado and municipal ordinances of the Town; provided that the Town's municipal ordinances shall be reasonable and not destructive of the rights herein granted. The Company shall accept this Franchise by a writing filed with the Town Clerk within sixty (60) days from and after the passage of this article by the Board of Trustees of the Town.

(Ord. [08](#) §1, 2015)

Sec. 5-1-230. Effect of ordinance.

This article is the entire understanding of the Town and the Company regarding its subject matter and may be changed or modified only by written agreement of the parties. This article repeals, replaces and supersedes all previous Town ordinances granting or amending any franchises to the Company, specifically including Trustee Bill No. 10 granting a franchise by ordinance passed and approved August 24, 1995.

(Ord. [08](#) §1, 2015)

Sec. 5-1-240. Extension or renewal of ordinance.

In the event the parties mutually agree that this article should be continued beyond the termination date set forth in section 5-1-180, and mutually agree to the terms of the extension or renewal, including any adjustment to the franchise payment under section 5-1-110, the parties shall amend this article in writing to reflect the new terms and the Town shall adopt an ordinance to effect the extension or renewal of this article and the inclusion of the new terms. In the event the parties mutually agree that this article should be continued beyond the expiration date set forth in section 5-1-180, but have not agreed to the terms of the extension or renewal or have not amended the Ordinance in writing or passed an ordinance extending the terms of the article on the expiration date of the article, the parties may mutually agree to a month-to-month extension, upon the same terms as are set forth in this article, until such amendment shall be adopted or an ordinance shall be passed giving effect to such new terms as may be agreed upon by the Town and the Company. No agreement under this section shall be effective unless in writing and signed by authorized representatives or agents of the Town and the Company.

(Ord. [08](#) §1, 2015)

Sec. 5-1-250. Termination.

In the event of the failure of either party to comply with any of the material provisions of this article, this article may be terminated by the non-defaulting party; provided that the party in default fails to cure within one hundred twenty (120) days following notice from the non-defaulting party of the existence of said default. Such termination shall not affect or diminish the rights, claims, or remedies available in equity or at law to the non-defaulting party arising by reason of said default.

(Ord. [08](#) §1, 2015)

FOOTNOTE(S):

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Editor's note— Ord. [08](#), § 1, adopted Nov. 5, 2015, repealed the former Art. 1, §§ 5-1-10—5-1-160, and enacted a new article as set out herein. The former Art. 1 pertained to similar subject matter and derived from Ord. 10, adopted in 1995; and Ord. 1, § 1, adopted in 2012. ([Back](#))

ARTICLE 2 Gas Franchise

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Sec. 5-2-10. Definitions.

For the purposes 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 the word *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 Public Service Company of Colorado, and its successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.

Distribution facilities refers to and is only that portion of the Company's gas system which delivers gas from the down side of the regulator station to the point-of-delivery of the customer, including all devices connected to that system.

Facilities refer to and are all facilities reasonable necessary to provide gas into, within and through the Town and include plants, works, systems, equipment, pipes, mains, 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.

Public easements refer to and are public and dedicated easements created and available for use by investor-owned or other public utilities for their facilities.

Public Utilities Commission or 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.

Residents refers to and includes all persons, business, 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.

Revenues refers to and are those amounts of money which the Company receives from its customers within the Town from the sale of gas under rates authorized by the Public Utilities Commission as well as from the transportation of gas to its customers within the Town and represent amounts billed under such rates as adjusted for refunds, the new write-off of uncollectible accounts, corrections or other regulatory adjustments.

Streets and other public places refer to and are streets, alleys, 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.

Town refers to and is the municipal corporation designated as the Town of Foxfield, County of Arapahoe, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the Town.

(Ord. 16 §1, 1995; Ord. 1 §1, 2012)

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

The Town hereby grants to Public Service Company, 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 gas 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 gas within and through the Town and a nonexclusive right to make reasonable use of the 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. 16 §2, 1995; Ord. 1 §1, 2012)

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

This franchise shall take effect on January 28, 1996. The term of this franchise shall be for twenty-five (25) years, beginning with said effective date of this franchise, and expiring on January 27, 2021.

(Ord. 16 §2, 1995; Ord. 1 §1, 2012)

Sec. 5-2-40. Franchise fee.

In consideration for the grant of this franchise, the Company shall pay the Town a sum equal to three percent (3%) of all revenues received from the sale and transportation of gas within the Town, excluding revenues received from the Town for the sale of gas to the Town.

(Ord. 16 §3, 1995; Ord. 1 §1, 2012)

Sec. 5-2-50. Payment schedule.

- (a) For the franchise fee owed on revenues received after the effective date of this franchise from the sale and transportation of gas, 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. 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. 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 result 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.
- (c) In the event an error by the Company results in an underpayment of the franchise fee to the Town, the full amount of such underpayment shall be paid to the Town within thirty (30) days after discovery of such error.

(Ord. 16 §3, 1995; Ord. 1 §1, 2012)

Sec. 5-2-60. Change of franchise fee and other franchise terms.

- (a) Once during each calendar year of the franchise term, the Board of Trustees, upon giving thirty (30) days' notice to the Company of its intention to do so, may review and change the consideration the Town may be entitled to receive as a part of the franchise; provided, however, the Board may only change the consideration to be received by the Town under the terms of this franchise to the equivalent of the consideration paid by the Company to any city or town in the State of Colorado in which the Company supplies gas under franchise.
- (b) The Company shall, upon request, report to the Town within sixty (60) days of the execution of a subsequent franchise or of any change of franchise in other municipalities that could have a significant financial impact on the consideration to be paid by the Company to the Town hereunder. If the Board of Trustees decides the consideration shall be so changed, it shall provide for such change by ordinance; provided, however, that any change in the franchise fee is then allowed to be surcharged by the Company; and provided further that the consideration is not higher than the highest consideration paid by the Company to any municipality within the State of Colorado. For purposes of this Section, *consideration* means the franchise fee established in Section 5-2-40; and also includes any other provision which is of similar significant financial benefit to the Town.

(Ord. 16 §3, 1995; Ord. 1 §1, 2012)

Sec. 5-2-70. 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 on the privilege of doing business of in connection with the 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. 16 §3, 1995; Ord. 1 §1, 2012)

Sec. 5-2-80. Contract obligation.

This franchise constitutes a valid and binding contract between the Company and the Town. In the event 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 declare invalid, the Town shall have the right to impose occupation and licensing fees and permit charges reasonable equivalent on an annual rate to said franchise fee. 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. 16 §3, 1995; Ord. 1 §1, 2012)

Sec. 5-2-90. Supply of gas.

The Company shall take all reasonable and necessary steps to provide an adequate supply of gas to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of gas 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. 16 §4, 1995; Ord. 1 §1, 2012)

Sec. 5-2-100. 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. 16 §4, 1995; Ord. 1 §1, 2012)

Sec. 5-2-110. 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 gas 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 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. 16 §4, 1995; Ord. 1 §1, 2012)

Sec. 5-2-120. Excavation and construction.

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.

(Ord. 16 §4, 1995; Ord. 1 §1, 2012)

Sec. 5-2-130. Relocation of Company facilities.

- (a) Any relocation of the Company's facilities in any 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 cause by conditions not under its control provided that the Company proceeds with due diligence at all times.
- (b) Following relocation, all property affected by such relocation shall be restored to substantially its former conditions 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 relation of the Company's facilities.

(Ord. 16 §4, 1995; Ord. 1 §1, 2012)

Sec. 5-2-140. 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 this expanded area shall be in accordance with the terms of this franchise agreement, including payment of franchise fees.

(Ord. 16 §4, 1995; Ord. 1 §1, 2012)

Sec. 5-2-150. Town not required to advance funds.

Upon receipt of the Town's authorization for billing and construction, the Company shall extend its facilities to provide gas to the Town for municipal uses within the Town limits or for any major municipal facility outside the Town limits, and within the Company certificated service area, without requiring the Town to advance funds prior to construction.

(Ord. 16 §4, 1995; Ord. 1 §1, 2012)

Sec. 5-2-160. Technological improvements.

The Company shall generally introduce and install, as soon as practicable, gas 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 gas 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's request.

(Ord. 16 §4, 1995; Ord. 1 §1, 2012)

Sec. 5-2-170. 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, ordinances and rules and regulations as may be the Town be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens. The Company shall comply with all adopted local laws, rules and regulation. Nothing herein contained, however, shall waive the Company's right to challenge the validity of any such law, rule or regulation.

(Ord. 16 §5, 1995; Ord. 1 §1, 2012)

Sec. 5-2-180. 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 of 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 Town Maintenance Foreman shall be the Town's agent for inspection and for compliance with Town ordinances and regulations on any such programs.

(Ord. 16 §5, 1995; Ord. 1 §1, 2012)

Sec. 5-2-190. Town review of construction and design.

When known, no less than sixty (60) days prior to construction of any significant gas facilities above ground or, for building or similar structures within the Town, 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.

The Company shall incorporate all reasonable changes requested by the Town.

(Ord. 16 §5, 1995; Ord. 1 §1, 2012)

Sec. 5-2-200. Compliance with PUC regulations.

The gas which the Company distributes shall conform with the standards promulgated by the Colorado Public Utilities Commission in the Rules Regulating the Service of Gas and Electric Utilities and with the tariff provisions of the Company setting standards, as the same may be amended from time to time.

(Ord. 16 §5, 1995; Ord. 1 §1, 2012)

Sec. 5-2-210. Compliance with air and water pollution laws.

The Company shall use its best efforts to take measure 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. 16 §5, 1995; Ord. 1 §1, 2012)

Sec. 5-2-220. 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 the 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. In no event shall the rights or inspection granted herein to the Town cause delay in excavation, construction, maintenance and repair work of the Company or interfere with prudent engineering practices of the Company.

(Ord. 16 §5, 1995; Ord. 1 §1, 2012)

Sec. 5-2-230. Repair of damages.

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 the Company's expense unless the Company makes such repairs promptly upon the Town's request.

(Ord. 16 §5, 1995; Ord. 1 §1, 2012)

Sec. 5-2-240. Public Utilities Commission regulation.

The Town and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the Public Utilities Commission which are consistent with the restrictions and limitations of Article XXV of the Colorado Constitution regarding the rights of municipalities to franchise are controlling over any inconsistent provision in this franchise dealing with the same subject matter. In the opinion of the Company, no provision of this franchise is inconsistent with any of the currently effective provisions of the Company's tariffs.

(Ord. 16 §6, 1995; Ord. 1 §1, 2012)

Sec. 5-2-250. Reports on Company operations.

The Company shall submit reasonable and necessary reports containing or based on information readily obtainable from the Company's books and records as the Town may 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 first (1st) of the first year:

- (1) On an annual basis the return earned by the Company on operations and the rate base used for calculation of such return as is currently provided or as may in the future be provided to the Public Utilities Commission in conjunction with various adjustment clause provisions.
- (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 easements. 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, to the extent same exist within the Town or affecting service to the Town and its residents.

(Ord. 16 §7, 1995; Ord. 1 §1, 2012)

Sec. 5-2-260. Copies of tariffs, all PUC filings.

The Company shall keep on file in a local Company office all tariffs, rules, regulations and policies approved by the Colorado Public Utilities Commission ("PUC") relating to service by the Company to the Town and its residents. Upon request by the Town, the Company shall provide the Town with copies of filing affecting said service which it makes with the Colorado PUC.

(Ord. 16 §7, 1995; Ord. 1 §1, 2012)

Sec. 5-2-270. Town held harmless.

The Company shall indemnify, defend and save the Town harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the Company within the Town pursuant to this franchise and the securing of and the exercise by the Company of the franchise rights granted in this Article and shall pay all reasonable expenses arising therefrom. The Town will provide prompt written notice to the Company of the pendency of any claim or action against the Town arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. 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 act or failure to act of the Town or any of its officers or employees (including reimbursement of the Town for all reasonable attorneys' fees and expenses). No expense reimbursed by the Company under this Section shall be surcharged against the Town rate payers. In the event of litigation between the Town and Company regarding this franchise, if the Town prevails, the Company shall pay all costs related thereto, including reasonable attorneys' fees. The right of the Company to seek contribution from the Town for its negligence, as provided by the Colorado Statutes, is hereby expressly reserved.

(Ord. 16 §8, 1995; Ord. 1 §1, 2012)

Sec. 5-2-280. 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 expenses reimbursed by the Company under this Section shall be surcharged against the Town rate payers.

(Ord. 16 §8, 1995; Ord. 1 §1, 2012)

Sec. 5-2-290. 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 Board of Trustees shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld.

(Ord. 16 §9, 1995; Ord. 1 §1, 2012)

Sec. 5-2-300. Transfer fee.

In order that the Town may share in the value of this franchise adds to the Company's operation, any such transfer or assignment of rights under this franchise requiring the approval of the Board of Trustees shall be subject to the conditions that the transferee shall promptly pay to the Town a pro rata share of one million dollars (\$1,000,000.00), which pro rata amount of one million dollars (\$1,000,000.00) shall be calculated by multiplying one million dollars (\$1,000,000.00) by 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 residents or property owners through electric or gas rates of consumers in the Town or by surcharge by the transferee or the Company.

(Ord. 16 §9, 1995; Ord. 1 §1, 2012)

Sec. 5-2-310. 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. 16 §10, 1995; Ord. 1 §1, 2012)

Sec. 5-2-320. 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. 16 §10, 1995; Ord. 1 §1, 2012)

Sec. 5-2-330. Negotiations and condemnation.

No value shall be given to the rights granted under this franchise. If the Town desires to purchase the gas distribution system, the parties shall negotiate in good faith to determine a mutually acceptable purchase price. If the Town and the Company cannot agree within ninety (90) days, the Town may commence condemnation proceedings.

(Ord. 16 §10, 1995; Ord. 1 §1, 2012)

Sec. 5-2-340. Right of first purchase.

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

(Ord. 16 §10, 1995; Ord. 1 §1, 2012)

Sec. 5-2-350. Limitations on Company removal.

- (a) In the event this franchise is not renewed at the expiration of its terms or the Company terminates any service provided herein for any reason whatsoever, and the Town has not purchased or condemned the system and has not provided for alternative gas service, the Company shall have no right to remove said system pending resolution of the disposition of the system. The Company further agrees it will not withhold any temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount than it would have been entitled to were such services provided during the term of this franchise. Only upon receipt of written notice from the Town

stating that the Town has adequate alternative gas sources to provide for the people of the Town shall the Company be entitled to remove any or all of said systems in use under the terms of this franchise.

- (b) Upon such notice from the Town and within a reasonable time, the Company, at its sole expense, shall remove from the public streets and public easements all underground gas distribution facilities belonging to the Company which are not purchased by the Town at the termination of the franchise or which 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. 16 §11, 1995; Ord. 1 §1, 2012)

Sec. 5-2-360. Transportation of gas.

The Town expressly reserves the right to obtain or produce gas. The Company shall transport natural gas purchase by the Town for use in Town facilities pursuant to separate contracts with the Town. The Company agrees to transport gas made available for sale on terms and conditions comparable to other contracts entered into contemporaneously by the Company with similarly situated customers and in accordance with Company tariffs and applicable commission rules and regulations.

(Ord. 16 §12, 1995; Ord. 1 §1, 2012)

Sec. 5-2-370. Forfeiture.

Both the Company and the Town recognize there may be circumstances where by 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 in the Company's control, the Town, acting by and through its Board, 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, shall determine whether any or all rights and privileges granted the Company under this Article shall be forfeited.

(Ord. 16 §13, 1995; Ord. 1 §1, 2012)

Sec. 5-2-380. Judicial review.

Any such declaration of forfeiture shall be subject to judicial review as provided by law.

(Ord. 16 §13, 1995; Ord. 1 §1, 2012)

Sec. 5-2-390. 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. 16 §13, 1995; Ord. 1 §1, 2012)

Sec. 5-2-400. Continued obligations.

Upon forfeiture, the Company shall continue to provide service to the Town and its residents in accordance with 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. 16 §13, 1995; Ord. 1 §1, 2012)

Sec. 5-2-410. 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) day's written notice to the other of the proposed amendment(s) 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 amendment(s) subject to the Company tariffs and applicable Commission rules and regulations. The word *amendment*, as used in this Section, does not include a change authorized in Section 5-2-60.

(Ord. 16 §14, 1995; Ord. 1 §1, 2012)

Sec. 5-2-420. Successors and assigns.

The rights, privileges, franchises and obligations granted and contained in this Article shall inure to the benefit of and be binding upon Public Service Company, its successors and assigns.

(Ord. 16 §15, 1995; Ord. 1 §1, 2012)

Sec. 5-2-430. Third parties.

Nothing contained in this franchise shall be construed to provide rights to third parties.

(Ord. 16 §15, 1995; Ord. 1 §1, 2012)

Sec. 5-2-440. 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 Article. 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 Town and to the Company's East Region Manager. Currently the addresses are as follows:

For the Town:

Town		of		Foxfield
18113	East		Geddes	Place
Foxfield, CO 80016				

For the Company:

Southeast		Metro		Operations
2070	South		Valentia	Street
Denver, CO 80231				

(Ord. 16 §15, 1995; Ord. 1 §1, 2012)

Sec. 5-2-450. 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, 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. 16 §15, 1995; Ord. 1 §1, 2012)

Sec. 5-2-460. 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. 16 §15, 1995; Ord. 1 §1, 2012)

Sec. 5-2-470. Board approval.

This grant of franchise shall not become effective unless approved by a majority vote of the Board of Trustees.

(Ord. 16 §15, 1995; Ord. 1 §1, 2012)

Sec. 5-2-480. Company approval.

The Company shall file with the Town Clerk its written acceptance of this franchise and of all of its terms and provisions within ten (10) days after the adoption of this franchise by the Board of Trustees. The acceptance 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. 16 §15, 1995; Ord. 1 §1, 2012)

ARTICLE 3 Cable Television Franchise

[Sec. 5-3-10. Franchise agreement.](#)

[Sec. 5-3-20. Definition of terms.](#)

[Sec. 5-3-30. Grant of Franchise.](#)

[Sec. 5-3-40. Standards of Service.](#)

[Sec. 5-3-50. Regulation by the Franchising Authority.](#)

[Sec. 5-3-60. Books and records.](#)

[Sec. 5-3-70. Insurance and indemnification.](#)

[Sec. 5-3-80. Enforcement and termination of Franchise.](#)

[Sec. 5-3-90. Miscellaneous provisions.](#)

Sec. 5-3-10. Franchise agreement.

- (a) This Franchise Agreement (this "Franchise") is between the Town of Foxfield, Colorado, hereinafter referred to as "Franchising Authority" and United Cable Television of Colorado, Inc., hereinafter referred to as "Grantee."
- (b) The Franchising Authority, having determined that the financial, legal and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction and operation of a cable system on the terms set forth herein.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

Sec. 5-3-20. Definition of terms.

Terms. 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 is the lowest priced tier of service that includes the retransmission of local broadcast television signals.

Cable Act means 47 U.S.C. § 151, et seq., as amended.

Cable Services shall mean (A) the one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable System shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using 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 that complies with Section 653 of title VI of the Cable Act; or (E) any facilities of any electric utility used solely for operating its electric utility system.

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

Franchise shall mean 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 of Foxfield, Colorado, or the lawful successor, transferee or assignee thereof.

Grantee means United Cable Television 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 to provide Cable Services in the Service Area; provided, however, that such phrase shall not

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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. Gross Revenues shall specifically include franchise fees collected from Subscribers.

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

Public Way shall mean 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. 06 §1, 1998; Ord. 1 §1, 2012)

Sec. 5-3-30. Grant of Franchise.

- (a) Grant. 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.
- (b) 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. 06 §1, 1998; Ord. 1 §1, 2012)

Sec. 5-3-40. Standards of Service.

- (a) 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.

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- (b) 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, in a manner satisfactory to the Town, provided such approval shall not be unreasonably held.
- (c) Relocation at request of the 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 public 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.
- (d) 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: (a) 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 (b) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.
- (e) 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 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.
- (f) 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.
- (g) 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 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' facilities at the time that such are placed underground.

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- (1) **New Developments.** The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned commercial/ residential developments within the Service Area requiring undergrounding of cable facilities. The Franchising Authority agrees to require as a condition of issuing the permit that 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/building owner or developer unless otherwise provided.
 - (2) **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.
- (h) **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 shall receive a request for service from at least fifteen (15) residences within one thousand three hundred twenty (1,320) cable-bearing strand feet (one-quarter [$\frac{1}{4}$] 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 Subsection 5-3-40(i) below.
 - (i) **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.
 - (j) **Service to Public Buildings.** The Grantee shall, upon request, provide without charge one (1) outlet of Basic Service to the Franchising Authority municipal offices, provided that said offices 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.

- (k) Emergency Use.
 - (1) In accordance with and at the time required by 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.
 - (2) The Franchising Authority shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to reasonable attorneys' fees and costs.
- (l) Customer Service Standards. The Grantee shall comply with any applicable Customer Service Standards as contained in Appendix 5-A to this Chapter, as amended from time to time.
- (m) Public, Educational and Governmental Access (PEG). At such time that the Cable System is capable of delivering at least sixty (60) twenty-four-hour analog video services to all Subscribers in the Service Area, the Grantee shall provide one (1) channel for PEG upon receiving one hundred twenty (120) days' written request for such from the Franchising Authority.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

Sec. 5-3-50. Regulation by the Franchising Authority.

- (a) Franchise Fee.
 - (1) The Grantee shall pay to the Franchising Authority a franchise fee equal to three percent (3%) of Gross Revenues (as defined in Section 5-3-20 above) received by the Grantee from the operation of the Cable System to provide Cable Services on an annual basis; provided, however, Gross Revenues shall not include: (i) 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; (ii) 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 (iii) 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 the Franchise for the computation of the franchise fee shall be a 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 quarter ending March, June, September and December of each year. Each payment shall be accompanied by a brief report from a representative of the Grantee showing the basis for the computation.
 - a. Any time during the term of this Agreement the Franchising Authority may, by ordinance, increase the Franchise Fee in an amount not to exceed five percent (5%) of Gross Revenues. In the event the Franchise Fee is increased by ordinance, the Grantee shall begin remitting the increased rate to the Franchising Authority within one hundred twenty (120) days following final adoption of said ordinance and written notice to the Grantee.
 - b. The parties acknowledge that, at present, applicable federal law limits the Franchising Authority to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that, at any time during the duration of this Agreement, this maximum permissible Franchise Fee is increased, the Franchising Authority may, by ordinance,

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increase the Franchise Fee, provided that the maximum permissible Franchise Fee does not exceed seven percent (7%), and provided that the Grantee has received one hundred twenty (120) days' written notice from the Franchising Authority of such amendment.

- (2) 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 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.
- (b) Rates and Charges. The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by applicable law.
- (c) Renewal of Franchise.
 - (1) 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.
 - (2) In addition to the procedures set forth in said Section 626(a), 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 such preliminary assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 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 in formal 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.
- (d) Conditions of Sale.
 - (1) 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.
 - (2) The Grantee and the Franchising Authority agree that, in the case of a final determination of a lawful revocation of the Franchise, at the Grantees 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.
- (e) 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 Grantees request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

Sec. 5-3-60. Books and records.

The Grantee agrees that the Franchising Authority upon reasonable notice to the Grantee may review such of 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, any 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. 06 §1, 1998; Ord. 1 §1, 2012)

Sec. 5-3-70. Insurance and indemnification.

- (a) Insurance Requirements. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the 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.
- (b) 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 ten (10) days 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.
- (c) Guarantee in Lieu of a Bond. Within thirty (30) days of execution of this Franchise, the Grantee shall provide a Corporate Guarantee in Lieu of a Bond executed by United Cable Television Corporation in the amount of five thousand dollars (\$5,000.00) to secure the faithful performance by the Grantee of its obligations under this Franchise. This guarantee, however, shall not limit the liability of the grantee for any failure to perform its obligations under this franchise.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

Sec. 5-3-80. Enforcement and termination of Franchise.

- (a) Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify the Grantee in writing of the exact nature of the alleged noncompliance.
- (b) Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in Subsection (a) above: (a) to respond to the Franchising Authority, contesting the assertion of noncompliance; or (b) to cure such default; or (c) 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.
- (c) Public Hearing. In the event that the Grantee fails to respond to the notice described in Subsection 5-3-80(a) pursuant to the procedures set forth in Subsection (b) above, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to Item 5-3-80(b)(c) above, 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 which is 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.
- (d) 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 the 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 in accordance with the following:
 - a. The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response satisfactory from the Grantee, it may then seek termination of the Franchise at a public meeting. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination.
 - b. At the designated meeting, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.
 - c. The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.
- (e) 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" breach(es) or violation(s) of the Franchise or local cable ordinance, which shall include but are not limited to the following:

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- (1) In instances or for matters where a violation or a breach by the Grantee of the Franchise or local cable ordinance was a 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 local cable ordinance, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise or local cable ordinance.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

Sec. 5-3-90. Miscellaneous provisions.

- (a) **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.
- (b) **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, tidal wave, 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 the Grantee's cable and/or equipment is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.
- (c) **Equal Protection.** In the event the Franchising Authority enters into a Franchise, permit, license, authorization or other agreement of any kind with any other Person or entity other than the Grantee to enter into the Franchising Authority's Public Ways for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one (1) operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.
- (d) **Notice.** 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 or registered mail, postage prepaid.

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

Town of Foxfield
18150 E. Hinsdale Avenue
Foxfield, CO 80016
ATTN: Carasel Yarian

with a copy to:

Bradley Phillips and Shefrin,
Hayes, Phillips and Maloney
1350 Seventeenth Street Ste. 450
Denver, Colorado 80202

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

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United
of
1617
Denver, Colorado 80223

South

Cable
Colorado,

Acoma

Television
Inc.
Street

with a copy to:

United
of
Attention
4700
Suite
Denver, Colorado 80237-2722

South

Cable
Colorado,
Legal

Syracuse

Television
Inc.
Department
Street
1100

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

- (e) Descriptive 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.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

ARTICLE 4 Cable Television Franchise—Comcast

[Sec. 5-4-10. Franchise agreement.](#)

[Sec. 5-4-20. Definition of terms.](#)

[Sec. 5-4-30. Grant of authority.](#)

[Sec. 5-4-40. Construction and maintenance of the cable system.](#)

[Sec. 5-4-50. Service obligations.](#)

[Sec. 5-4-60. Fees and charges to customers.](#)

[Sec. 5-4-70. Customer service standards; customer bills; and privacy protection.](#)

[Sec. 5-4-80. Oversight and regulation by franchising authority.](#)

[Sec. 5-4-90. Transfer of cable system or franchise or control of grantee.](#)

[Sec. 5-4-100. Insurance and indemnity.](#)

[Sec. 5-4-105. System description and service.](#)

[Sec. 5-4-110. Enforcement and termination of franchise.](#)

[Sec. 5-4-120. Competitive equity.](#)

[Sec. 5-4-130. Miscellaneous provisions.](#)

Sec. 5-4-10. Franchise agreement.

- (a) This franchise agreement (hereinafter, the "agreement" or "franchise agreement") is made between the Town of Foxfield, a Colorado municipality (hereinafter, "Town") and Comcast of Colorado IV, LLC (hereinafter, "Grantee").

- (b) The Town, having determined that the financial, legal, and technical ability of the grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable related needs of the community, desires to enter into this franchise agreement with the grantee for the construction, operation and maintenance of a cable system on the terms and conditions set forth herein.

(Ord. 04 §1, 2017)

Sec. 5-4-20. Definition of terms.

For the purpose of this franchise agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act"), unless otherwise defined herein.

Applicable law means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law that determines the legal standing of a case or issue.

Cable system means any facility, including grantee's, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (B) a facility that serves subscribers without using any right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

Customer means a person or user of the cable system who lawfully receives cable service therefrom with the grantee's express permission.

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

Franchise area means the present legal boundaries of the Town as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

Gross revenue means the cable service revenue derived by the grantee from the operation of the cable system in the franchise area to provide cable services, calculated in accordance with generally accepted accounting principles. Cable service revenue includes monthly basic, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenue shall not include refundable deposits, bad debt, late fees, investment income, programming launch support payments, advertising sales commissions, nor any taxes, fees or assessments imposed or assessed by any governmental authority.

Person means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the franchising authority.

Public way means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the franchising authority in the franchise 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 franchise area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the franchising authority and the grantee to the use thereof for the purposes of installing,

operating, and maintaining 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.

Video service provider or *VSP* means any entity using the public rights-of-way to provide video programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used; including cable services, multichannel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

(Ord. 04 §1, 2017)

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

- (a) The franchising authority hereby grants to the grantee a nonexclusive franchise authorizing the grantee to construct and operate a cable system in the public ways within the franchise area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any public way 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, and to provide such services over the cable system as may be lawfully allowed.
 - (1) Subject to federal and state preemption, the provisions of this franchise constitute a valid and enforceable contract between the parties. The material terms and conditions contained in this franchise may not be unilaterally altered by the franchising authority through subsequent amendment to any ordinance, rule, regulation, or other enactment of the franchising authority, except in the lawful exercise of the franchising authority's police power.
 - (2) Notwithstanding any other provision of this franchise, grantee reserves the right to challenge provisions of any ordinance, rule, regulation, or other enactment of the franchising authority that conflicts with its contractual rights under this franchise, either now or in the future.
- (b) Term of franchise. The term of the franchise granted hereunder shall be ten (10) years, commencing on _____ (the "effective date"), unless the franchise is renewed or is lawfully terminated in accordance with the terms of this franchise agreement and the Cable Act.
- (c) Renewal. Any renewal of this franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended. Should the franchise agreement expire without a mutually agreed upon renewed franchise agreement and grantee and Town are engaged in an informal or formal renewal process, the franchise shall continue on a month-to-month basis, with the same terms and conditions as provided in the franchise, and the grantee and Town shall continue to comply with all obligations and duties under the franchise.
- (d) Reservation of authority. Grantee shall comply with the Town Code and the lawful exercise of the Town's police power. Subject to the Town's lawful exercise of its police power, in the event of a conflict between the Town Code and the agreement, the agreement shall govern. Grantee acknowledges that the Town may enforce or modify its generally applicable regulatory policies by lawful exercise of the Town's police powers throughout the term of this agreement, and grantee agrees to comply with such lawful enforcement or modifications; provided however, that such lawful enforcement or modifications shall be reasonable and not materially modify the terms of this agreement. Grantee reserves the right to challenge provisions of any ordinance, rule regulation, or other enactment of the Town that conflicts with its contractual rights under this agreement, either now or in the future.

(Ord. 04 §1, 2017)

Sec. 5-4-40. Construction and maintenance of the cable system.

- (a) Permits and general obligations. The grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the cable system, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the cable system shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the grantee for use in the cable system in accordance with the terms and conditions of this franchise agreement shall be located so as to minimize the interference with the proper use of the public ways and the rights and reasonable convenience of property owners who own property that adjoins any such public way.
- (b) Conditions of street occupancy.
- (1) New grades or lines. If the grades or lines of any public way within the franchise area are lawfully changed at any time during the term of this franchise agreement, then the grantee shall, upon reasonable advance written notice from the franchising authority (which shall not be less than fourteen (14) business days) and at its own cost and expense, protect or promptly alter or relocate the cable system, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the public way for the purpose of defraying the cost of any of the foregoing, the franchising authority shall notify grantee of such funding and make available such funds to the grantee in the same manner as other users of the public way.
 - (2) Relocation at request of third party. The grantee shall, upon reasonable prior written request of any person holding a permit issued by the franchising authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the grantee may impose a reasonable charge on any person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the grantee is given not less than fourteen (14) business days advance written notice to arrange for such temporary relocation.
 - (3) Restoration of public ways. If in connection with the construction, operation, maintenance, or repair of the cable system, the grantee disturbs, alters, or damages any public way, the grantee agrees that it shall at its own cost and expense replace and restore any such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to the disturbance.
 - (4) Safety requirements. The grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the cable system shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the franchise area.
 - (5) 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 franchise area so as to prevent contact with the grantee's wires, cables, or other equipment. All such trimming shall be done at the grantee's sole cost and expense. The grantee shall be responsible for any damage caused by such trimming.
 - (6) Aerial and underground construction. At the time of cable system construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the grantee's cable and other equipment without technical degradation of the cable system's signal quality. In any region(s) of the franchise area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aurally or underground. Nothing in this Section shall be construed to require the grantee to construct, operate, or maintain

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underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

- (7) Undergrounding and beautification projects. In the event all users of the public way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project in the same manner as other users of the public way.
- (c) Reimbursement of grantee costs. Grantee specifically reserves any rights it may have under applicable law for reimbursement of costs related to undergrounding or relocation of the cable system and nothing herein shall be construed as a waiver of such rights.

(Ord. 04 §1, 2017)

Sec. 5-4-50. Service obligations.

- (a) General service obligation. The grantee shall make cable service available to every residential dwelling unit within the franchise area where the minimum density is at least thirty (30) dwelling units per mile and the residential dwelling unit is within one (1) mile of the existing cable system. Subject to the density requirement, grantee shall offer cable service to all new homes or previously unserved homes located within one hundred fifty (150) feet of the grantee's distribution cable.

The grantee may elect to provide cable service to areas not meeting the above density and distance standards. The grantee may impose on a customer an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

- (b) Programming. The grantee shall offer to all customers a diversity of video programming services.
- (c) No discrimination. The grantee shall not discriminate or permit discrimination between or among any Persons in the availability of cable services or other services provided in connection with the cable system in the franchise area. It shall be the right of all persons to receive all available services provided on the cable system so long as such Person's financial or other obligations to the grantee are satisfied. Nothing contained herein shall prohibit the grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.
- (d) New developments. The franchising authority shall provide the grantee with written notice of the issuance of building or development permits for planned developments within the franchise area requiring undergrounding of cable facilities. The franchising authority agrees to require the developer, as a condition of issuing the permit, to give the grantee access to open trenches for deployment of cable facilities and at least fourteen (14) business days written notice of the date of availability of open trenches. Notwithstanding the foregoing, the grantee shall not be required to utilize any open trench.

(Ord. 04 §1, 2017)

Sec. 5-4-60. Fees and charges to customers.

All rates, fees, charges, deposits and associated terms and conditions to be imposed by the grantee or any affiliated person for any cable service as of the effective date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, the grantee shall follow the applicable FCC notice requirements and rules and notify affected customers, which notice may be by any means permitted under applicable law.

(Ord. 04 §1, 2017)

Sec. 5-4-70. Customer service standards; customer bills; and privacy protection.

- (a) Customer service standards. The franchising authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The grantee shall comply in all respects with the customer service requirements established by the FCC.
- (b) Customer bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 5-4-70(a), above, the grantee may, in its sole discretion, consolidate costs on customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).
- (c) Privacy protection. The grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

(Ord. 04 §1, 2017)

Sec. 5-4-80. Oversight and regulation by franchising authority.

- (a) Franchise fees. The grantee shall pay to the Franchising Authority a franchise fee in an amount equal to three percent (3%) of annual gross revenues received from the operation of the cable system to provide cable service in the franchise area; provided, however, that grantee shall not be compelled to pay any higher percentage of franchise fees than any other video service provider providing service in the franchise area. The payment of franchise fees shall be made on a quarterly basis and shall be due sixty (60) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the grantee showing the basis for the computation of the franchise fees paid during that period.
- (b) Franchise fees subject to audit.
 - (1) Upon reasonable prior written notice, during normal business hours at grantee's principal business office, the franchising authority shall have the right to inspect the grantee's financial records used to calculate the franchising authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the franchising authority receives such payment, after which period any such payment shall be considered final.
 - (2) Upon the completion of any such audit by the franchising authority, the franchising authority shall provide to the grantee a final report setting forth the franchising authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the grantee shall have thirty (30) days from the receipt of the report to provide the franchising authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "finally settled amount." For purposes of this Section, the term "finally settled amount(s)" shall mean the agreed upon underpayment, if any, to the franchising authority by the grantee as a result of any such audit. If the parties cannot agree on a "final settlement amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.
 - (3) Any "finally settled amount(s)" due to the franchising authority as a result of such audit shall be paid to the franchising authority by the grantee within thirty (30) days from the date the parties agree upon the "finally settled amount." Once the parties agree upon a finally settled amount and such amount is paid by the grantee, the franchising authority shall have no further rights to audit or challenge the payment for that period. The franchising authority shall bear the expense of its audit of the grantee's books and records.

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- (c) Oversight of franchise. In accordance with applicable law, the franchising authority shall have the right to, on reasonable prior written notice and in the presence of grantee's employee, periodically inspect the construction and maintenance of the cable system in the franchise area as necessary to monitor grantee's compliance with the provisions of this franchise agreement.
- (d) Technical standards. The grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this franchise, the grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The franchising authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.
- (e) Maintenance of books, records, and files.
 - (1) Books and records. Throughout the term of this franchise agreement, the grantee agrees that the franchising authority may review the grantee's books and records regarding customer service performance levels in the franchise area to monitor grantee's compliance with the provisions of this franchise agreement, upon reasonable prior written notice to the grantee, at the grantee's business office, during normal business hours, and without unreasonably interfering with grantee's business operations. All such documents that may be the subject of an inspection by the franchising authority shall be retained by the grantee for a minimum period of three (3) years.
 - (2) Proprietary information. Notwithstanding anything to the contrary set forth in this Section, 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 information disclosed by the grantee and designated as "confidential," "trade secret" or "proprietary" as such and only to disclose such information to those employees, representatives, and agents of the franchising authority that have a need to know in order to enforce this franchise agreement and who agree to maintain the confidentiality of all such information. The grantee shall not be required to provide customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Town's representative. In the event that the franchising authority has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the grantee has designated as confidential, trade secret or proprietary, the franchising authority shall notify grantee of such request and cooperate with grantee in opposing such request.

(Ord. 04 §1, 2017)

Sec. 5-4-90. Transfer of cable system or franchise or control of grantee.

Neither the grantee nor any other person may transfer the cable system or the franchise without the prior written consent of the franchising authority, which consent shall not be unreasonably withheld or delayed. No transfer of control of the grantee, defined as an acquisition of fifty one percent (51%) or greater ownership interest in grantee, shall take place without the prior written consent of the franchising authority, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (A) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the grantee in the franchise or in the cable system in order to secure indebtedness, or (B) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the franchising authority shall, in accordance with FCC rules and regulations, notify the grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the franchising authority has not taken

final action on the grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

(Ord. 04 §1, 2017)

Sec. 5-4-100. Insurance and indemnity.

- (a) Insurance. Throughout the term of this franchise agreement, the grantee shall, at its own cost and expense, maintain comprehensive general liability insurance with policy endorsements designating the franchising authority and its officers, boards, commissions, elected officials, agents, volunteers, and employees as additional insureds. Grantee shall demonstrate to the franchise authority that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of one million dollars (\$1,000,000.00) for bodily injury or death to any one (1) person, and one million dollars (\$1,000,000.00) for bodily injury or death of any two (2) or more persons resulting from one (1) occurrence, and one million dollars (\$1,000,000.00) for property damage resulting from any one (1) accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the franchising authority.

The grantee shall provide workers' compensation coverage in accordance with applicable law. The grantee shall indemnify and hold harmless the franchising authority from any workers compensation claims to which the grantee may become subject during the term of this franchise agreement

- (b) Indemnification. The grantee shall indemnify, defend and hold harmless the franchising authority, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the grantee's construction, operation, maintenance or removal of the 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 and defend the franchising authority within fourteen (14) business days 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. Grantee shall not be obligated to indemnify the city to the extent of the city's negligence or willful misconduct.

(Ord. 04 §1, 2017)

Sec. 5-4-105. System description and service.

- (a) System capacity. During the term of this agreement the grantee's cable system shall be capable of providing a minimum of eighty-five (85) channels of video programming with satisfactory reception available to its customers in the franchise area.
- (b) Service to school buildings. The grantee shall provide free "basic" cable service and free installation at one (1) outlet to each state accredited K-12 public and private school, not including "home schools," located in the franchise area within one hundred twenty-five (125) feet of the grantee's distribution cable.
- (c) Service to governmental and institutional facilities. The grantee shall provide free "basic" cable service and free installation at one (1) outlet to each municipal building located in the franchise area within one hundred twenty-five (125) feet of the grantee's distribution cable. "Municipal buildings" are those buildings owned or leased by the franchising authority for government administrative purposes, and shall not include buildings owned by franchising authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed. Such obligation to provide free basic cable service shall not extend to areas of municipal buildings where the grantee would normally enter into a commercial contract to provide such cable service (e.g., golf courses, airport restaurants and concourses, and recreation center work out facilities). Such cable service shall

not be located in public waiting areas or used to entertain the public nor shall they be used in a way that might violate copyright laws.

- (d) The Town acknowledges that the provision of one (1) outlet of basic service to all Town owned and occupied buildings and schools reflects a voluntary initiative on the part of the grantee and is exempt from Section 5-4-80 of this franchise agreement. Grantee does not waive any rights it may have regarding complimentary services under federal law or regulation. Subject to applicable law, should grantee elect to offset governmental complimentary services against franchise fees, grantee shall first provide the Town with ninety (90) days' prior written notice.

(Ord. 04 §1, 2017)

Sec. 5-4-110. Enforcement and termination of franchise.

- (a) Procedure for remedying franchise violations.

- (1) If the Town reasonably believes that grantee has failed to perform any obligation under this franchise or has failed to perform in a timely manner, the Town shall notify grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:
 - (A) respond to the Town, contesting the Town's assertion that a default has occurred, and requesting a meeting in accordance with subsection (c), below;
 - (B) cure the default; or,
 - (C) notify the Town that grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, grantee shall promptly take all reasonable steps to cure the default and notify the Town in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the Town may set a meeting in accordance with subsection (b) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether grantee's proposed completion schedule and steps are reasonable.
- (2) If grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection 5-4-110(a)(3), or denies the default and requests a meeting in accordance with 5-4-110(a)(1), or the Town orders a meeting in accordance with subsection 5-4-110(a)(1)(C), the Town shall set a meeting to investigate said issues or the existence of the alleged default. The Town shall notify grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.
- (3) If, after the meeting, the Town determines that a default exists, the Town shall order grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the Town shall determine. In the event grantee does not cure within such time to the Town's reasonable satisfaction, the Town may:
 - (A) Recommend the revocation of this franchise pursuant to the procedures in subsection 5-4-110(b); or,
 - (B) Recommend any other legal or equitable remedy available under this franchise or any applicable law.
- (4) The determination as to whether a violation of this franchise has occurred shall be within the discretion of the Town, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under applicable law.

- (b) Revocation.

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- (1) In addition to revocation in accordance with other provisions of this franchise, the Town may revoke this franchise and rescind all rights and privileges associated with this franchise in the following circumstances, each of which represents a material breach of this franchise:
 - (A) If grantee fails to perform any material obligation under this franchise or under any other agreement, ordinance or document regarding the Town and grantee;
 - (B) If grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted cable service;
 - (C) If grantee attempts to evade any material provision of this franchise or to practice any fraud or deceit upon the Town or subscribers; or
 - (D) If grantee becomes insolvent, or if there is an assignment for the benefit of grantee's creditors;
 - (E) If grantee makes a material misrepresentation of fact in the application for or negotiation of this franchise.
 - (2) Following the procedures set forth in subsection 5-4-110(a) and prior to forfeiture or termination of the franchise, the town shall give written notice to the grantee of its intent to revoke the franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.
 - (3) Any proceeding under the paragraph above shall be conducted by the Town Board of Trustees and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.
 - (A) At such proceeding, grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The Town Board of Trustees shall hear any persons people interested in the revocation, and shall allow grantee, in particular, an opportunity to state its position on the matter.
 - (B) Within ninety (90) days after the hearing, the Town Board of Trustees shall determine whether to revoke the franchise and declare that the franchise is revoked or if the breach at issue is capable of being cured by grantee, direct grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Town Board of Trustees determines are reasonable under the circumstances. If the Town determines that the franchise is to be revoked, the Town shall set forth the reasons for such a decision and shall transmit a copy of the decision to the grantee. Grantee shall be bound by the Town's decision to revoke the franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.
 - (C) Grantee shall be entitled to such relief as the Court may deem appropriate.
 - (D) The Town Board of Trustees may at its sole discretion take any lawful action which it deems appropriate to enforce the Town's rights under the franchise in lieu of revocation of the franchise.
- (c) Procedures in the event of termination or revocation.
- (1) If this franchise expires without renewal after completion of all processes available under this franchise and federal law or is otherwise lawfully terminated or revoked, the Town may, subject to applicable law:
 - (A) Allow grantee to maintain and operate its cable system on a month-to-month basis or short-term extension of this franchise for not less than six (6) months, unless a sale of the cable system can be closed sooner or grantee demonstrates to the Town's satisfaction that it needs additional time to complete the sale; or

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- (B) Purchase grantee's cable system in accordance with the procedures set forth in subsection 5-4-110(d), below.
 - (2) In the event that a sale has not been completed in accordance with subsections 5-4-110(c)(1)(A) and/or 5-4-110(c)(1)(B) above, the Town may order the removal of the aboveground cable system facilities and such underground facilities from the Town at Grantee's sole expense within a reasonable period of time as determined by the Town. In removing its plant, structures and equipment, grantee shall refill, at its own expense, any excavation that is made by it and shall leave all right-of-way, public places and private property in as good condition as that prevailing prior to grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions shall remain in full force and effect during the period of removal, and grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.
 - (3) If grantee fails to complete any removal required by subsection 5-4-110(c)(2) to the Town's satisfaction, after written notice to grantee, the Town may cause the work to be done and grantee shall reimburse the Town for the costs incurred within thirty (30) days after receipt of an itemized list of the costs.
 - (4) The Town may seek legal and equitable relief to enforce the provisions of this franchise.
- (d) Purchase of cable system.
- (1) If at any time this franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the Town shall have the option to purchase the cable system.
 - (2) The Town may, at any time thereafter, offer in writing to purchase grantee's cable system. Grantee shall have thirty (30) days from receipt of a written offer from the Town within which to accept or reject the offer.
 - (3) In any case where the Town elects to purchase the cable system, the purchase shall be closed within one hundred twenty (120) days of the date of the Town's audit of a current profit and loss statement of grantee. The Town shall pay for the cable system in cash or certified funds, and grantee shall deliver appropriate bills of sale and other instruments of conveyance.
 - (4) For the purposes of this subsection, the price for the cable system shall be determined as follows:
 - (A) In the case of the expiration of the franchise without renewal, at fair market value determined on the basis of grantee's cable system valued as a going concern, but with no value allocated to the franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of grantee which the Town would assume.
 - (B) In the case of revocation for cause, the equitable price of grantee's cable system.
- (e) Receivership and foreclosure.
- (1) At the option of the Town, subject to applicable law, this franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:
 - (A) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or
 - (B) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this franchise, and have remedied all defaults under the franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this franchise.

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- (2) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of grantee, the Town may serve notice of revocation on grantee and to the purchaser at the sale, and the rights and privileges of grantee under this franchise shall be revoked thirty (30) days after service of such notice, unless:
 - (A) The Town has approved the transfer of the franchise, in accordance with the procedures set forth in this franchise and as provided by law; and
 - (B) The purchaser has covenanted and agreed with the Town to assume and be bound by all of the terms and conditions of this franchise.
- (f) No monetary recourse against the Town. Grantee shall not have any monetary recourse against the Town or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the Town under this franchise are in addition to, and shall not be read to limit, any immunities the Town may enjoy under federal, State or local law.
- (g) Alternative remedies. No provision of this franchise shall be deemed to bar the right of the Town to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Town to recover monetary damages for such violations by grantee, or to seek and obtain judicial enforcement of grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.
- (h) Assessment of monetary damages.
 - (1) The Town may assess against grantee monetary damages (i) up to five hundred dollars (\$500.00) per day for general construction delays or payment obligations, (ii) up to two hundred fifty dollars (\$250.00) per day for any other material breaches, or (iii) up to one hundred dollars (\$100.00) per day for defaults, and collect the assessment as specified in this franchise. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. Such damages shall accrue beginning thirty (30) days following grantee's receipt of the notice required by subsection 5-4-110(a)(1), or such later date if approved by the Town in its sole discretion, but may not be assessed until after the procedures in subsection 5-4-110(a) have been completed.
 - (2) The assessment does not constitute a waiver by Town of any other right or remedy it may have under the franchise or applicable law, including its right to recover from grantee any additional damages, losses, costs and expenses that are incurred by Town by reason of the breach of this franchise.
- (i) Effect of abandonment. If the grantee abandons its cable system during the franchise term, or fails to operate its cable system in accordance with its duty to provide continuous service, the Town, at its option, may operate the cable system; designate another entity to operate the cable system temporarily until the grantee restores service under conditions acceptable to the Town, or until the franchise is revoked and a new franchisee is selected by the Town; or obtain an injunction requiring the grantee to continue operations. If the Town is required to operate or designate another entity to operate the cable system, the grantee shall reimburse the Town or its designee for all reasonable costs, expenses and damages incurred.
- (j) What constitutes abandonment. The Town shall be entitled to exercise its options in subsection 5-4-110(i) if:
 - (1) The grantee fails to provide cable service in accordance with this franchise over a substantial portion of the franchise area for four (4) consecutive days, unless the Town authorizes a longer interruption of service; or
 - (2) The grantee, for any period, willfully and without cause refuses to provide cable service in accordance with this franchise.

(Ord. 04 §1, 2017)

Sec. 5-4-120. Competitive equity.

(a) Competitive equity.

- (1) The grantee acknowledges and agrees that the Town reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide cable services within the Town. If the Town grants such an additional franchise or other similar lawful authorization containing material terms and conditions that differ from Grantee's material obligations under this franchise, then the Town agrees that the obligations in this franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise fees and gross revenues; complementary services; insurance; system build-out requirements; security instruments; public, education and government access channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services (as defined in the Cable Act) delivered over wireless broadband networks are specifically exempted from the requirements of this Section.
- (2) The modification process of this franchise as provided for in Section 5-4-120(a)(1) shall only be initiated by written notice by the grantee to the Town regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from grantee's obligations under this franchise; (2) identifying the franchise terms and conditions for which grantee is seeking amendments; (3) providing text for any proposed franchise amendments to the Town, with a written explanation of why the proposed amendments are necessary and consistent.
- (3) Upon receipt of grantee's written notice as provided in Section 5-4-120(a)(2), the Town and grantee agree that they will use best efforts in good faith to negotiate grantee's proposed franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the Town and grantee reach agreement on the franchise modifications pursuant to such negotiations, then the Town shall amend this franchise to include the modifications.
- (4) In the alternative to franchise modification negotiations as provided for in Section 5-4-120(a)(3), or if the Town and grantee fail to reach agreement in such negotiations, grantee may, at its option, elect to replace this franchise by opting into the franchise or other similar lawful authorization that the City grants to another provider of cable services, with the understanding that grantee will use its current system design and technology infrastructure to meet any requirements of the new franchise, so as to insure that the regulatory and financial burdens on each entity are equivalent. If grantee so elects, the Town shall immediately commence proceedings to replace this franchise with the franchise issued to the other cable services provider.
- (5) Notwithstanding anything contained in this Section 5-4-120(a)(1) through 5-4-120(a)(4) to the contrary, the Town shall not be obligated to amend or replace this franchise unless the new entrant makes cable services available for purchase by subscribers or customers under its franchise agreement with the Town.
- (6) Notwithstanding any provision to the contrary, at any time that wireline facilities based entity, legally authorized by state or federal law, makes available for purchase by subscribers or customers, cable services or multiple channels of video programming within the franchise area without a franchise or other similar lawful authorization granted by the Town, then:

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- (A) Grantee may negotiate with the Town to seek franchise modifications as per Section 5-4-120(a)(3) above; or
 - (i) the term of grantee's franchise shall, upon ninety (90) days written notice from grantee, be shortened so that the franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of grantee's notice; or,
 - (ii) Grantee may assert, at grantee's option, that this franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

(Ord. 04 §1, 2017)

Sec. 5-4-130. Miscellaneous provisions.

- (a) 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, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the cable system, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the grantee's ability to anticipate or control. This provision also covers work delays outside of grantee's control caused by waiting for other utility providers to service or monitor their own utility poles on which the grantee's cable or equipment is attached, as well as documented unavailability of materials or qualified labor to perform the work necessary.
- (b) Furthermore, the parties hereby agree that it is not the grantee's intention to subject the grantor to penalties, fines, forfeiture or revocation of the agreement for violations of the agreement where the violation was a good faith error that resulted in no or minimal negative impact on the subscribers within the service area, or where strict performance would result in practical difficulties and hardship to the grantee which outweigh the benefit to be derived by the grantor and/or subscribers.
- (c) Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service; addressed as follows; and effective upon the date of mailing:

To the franchising authority:

Town	of	Foxfield
P.O.	Box	461450
Foxfield,	CO	80046
Attn: Town Clerk		

with a copy to:

Hoffmann,	Parker,	Wilson	&	Carberry,	P.C.
511	Sixteenth	Street,		Suite	610
Denver,		CO			80202
Attention: Corey Y. Hoffmann					

To the Grantee:

Comcast	of	Colorado	IV,	LLC
8000	E.		Iliff	Ave.
Denver,		CO		802031
Attn: Government Affairs Dept.				

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with a copy to:

Comcast				Cable
Attn.:	Government		Affairs	Department
1701	John	F.	Kennedy	Blvd.
Philadelphia, PA 19103				

- (d) Entire agreement. This franchise agreement embodies the entire understanding and agreement of the franchising authority and the grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.
- (e) Severability. If any section, subsection, sentence, clause, phrase, or other portion of this franchise agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.
- (f) Governing law. This franchise agreement shall be deemed to be executed in the State of Colorado, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Colorado, as applicable to contracts entered into and performed entirely within the State.
- (g) Modification. No provision of this franchise agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the franchising authority and the grantee, which amendment shall be authorized on behalf of the franchising authority through the adoption of an appropriate resolution or order by the franchising authority, as required by applicable law.
- (h) No third-party beneficiaries. Nothing in this franchise agreement is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this franchise agreement.
- (i) No waiver of rights. Nothing in this franchise agreement shall be construed as a waiver of any rights, substantive or procedural, grantee or franchising authority may have under federal or state law unless such waiver is expressly stated herein.

(Ord. 04 §1, 2017)

APPENDIX 5-A
CABLE TELEVISION CUSTOMER SERVICE STANDARDS

I. POLICY

Grantee should be permitted the option and autonomy to first resolve citizen complaints without delay and interference from the Grantor. Where a given complaint is not addressed by Grantee to the citizen's satisfaction, the Grantor may intervene.

II. CUSTOMER SERVICE

1. Grantee shall maintain local telephone access lines that shall be available 24 hours a day, seven days a week for service/repair requests and billing inquiries.
2. Grantee shall have dispatchers and technicians, on call 24 hours a day, 7 days a week, including legal holidays.
3. Grantee shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to service/repair and billing inquiry lines are answered by a customer service representative within 30 seconds or less, and that any transfers are made within 30 seconds. These standards shall be met no less than 90 percent of the time measured monthly.

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4. The total number of calls receiving busy signals shall not exceed 3% of the total telephone calls. This standard shall be met 90 percent or more of the time measured monthly.

III. RESIDENTIAL INSTALLATION

1. Grantee shall complete all standard residential installations requested by customers within 7 business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to 150 feet from the existing distribution system. If the customer requests a nonstandard residential installation, or Grantee determines that a nonstandard residential installation is required, Grantee shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.
2. Residential Installation and Service Appointments
 - (a) . Customers requesting installation of cable service or service to an existing installation may choose any of the following blocks of time for the installation appointment: 8:00 a.m. to 12:00 a.m.; 12:00 Noon to 4:00 p.m.; 4:00 p.m. to 8:00 p.m.; or a four-hour block of time mutually agreed upon by the customer and Grantee. Grantee may not cancel an appointment with a customer after 5:00 p.m. on the day before the scheduled appointment, except for appointments scheduled within twelve (12) hours after the initial call.
 - (b) . Grantee shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves notification of arrival and return time. In such circumstances, Grantee shall contact the customer within forty-eight (48) hours.
3. Residential Service Interruptions
 - a. In the event of system outages (loss of reception on all channels) resulting from Cable Operator equipment failure affecting 5 or more customers, Grantee shall respond to such failure within 2 hours after the 5th customer call is received.
 - b. All other service interruptions resulting from Cable Operator equipment failure shall be responded to by Grantee by the end of the next calendar day.
 - c. All service outages and interruptions for any cause beyond the control of Grantee shall be corrected within 36 hours, after the conditions beyond its control have been corrected.
4. If a customer experiences poor video or audio reception attributable to Grantee's equipment, Grantee shall respond no later than the day following the customer call. If an appointment is necessary, customer may choose the same blocks of time described in Section 111.2.a. At the customer's request, Grantee shall respond to the problem at a later time convenient to the customer.
5. Problem Resolution

Grantee's customer service representatives shall have the authority to provide credit for interrupted service or any of the other credits listed in Schedule A, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the customer within 4 hours and respond to the problem within 48 hours or within such other time frame as is acceptable to the customer and Grantee.

6. Billing, Credits, and Refunds

Grantee shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time, Grantee may apply a five dollar (\$5) administrative fee to the customer's account. If the customer's service bill is not paid within fifty two (52) days of the beginning date of the applicable service period, Grantee may disconnect the customer's service, provided that Grantee has given at least two (2) weeks' notice to the customer that such disconnection may result.

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7. Respectful Treatment of Private Property
 - a. Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, Grantee shall give reasonable notice to property owners or legal tenants prior to entering upon private premises.
 - b. Grantee personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.
8. Services for Customers with Disabilities
 - a. For any customer with a disability, Grantee shall at no charge deliver and pick up converters at customers' homes. In the case of a malfunctioning converter, the technician shall provide another converter, hook it up and ensure that it is working properly, and shall return the defective converter to Grantee.
 - b. Grantee shall provide TDD service with trained operators who can provide every type of assistance rendered by Grantee's customer service representatives for any hearing-impaired customer at no charge.
 - c. Grantee shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with subsection 4, below) customers.
 - d. Any customer with a disability may request the special services described above by providing Grantee with a letter from the customer's physician stating the need, or by making the request to Grantee's installer or service technician, where the need for the special services can be visually confirmed.
9. Customer Information
 - A. Notifications to Subscribers:
 1. The 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:
 - (i) products and services offered;
 - (ii) prices and options for services and conditions of subscription to programming and other services;
 - (iii) installation and service maintenance policies;
 - (iv) instructions on how to use the service;
 - (v) channel positions of programming carried on the Cable System; and
 - (vi) billing and complaint procedures, including the address and telephone number of the local Grantor's cable office.
 2. Subscribers will be notified of any changes in rates, programming services, channel positions, or customer service center location as soon as possible through public announcements. Notice will be given to Subscribers a minimum of 30 days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers 30 days in advance of any significant changes in the other information required by the preceding paragraph.
 3. Grantee shall provide written notification of any change in rates, programming, or channel positions, at least 30 days before the effective date of change.
 4. All officers, agents, and employees of Grantee or its contractors or subcontractors who are in personal contact with cable customers shall wear on their outer clothing identification cards bearing their name and photograph. Grantee shall account for all identification cards at all times. All CSRs shall identify themselves orally to callers immediately following the greeting during each telephone contact with the public. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor.

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- 5. Each CSR, technician or employee of Grantee in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and, upon request, shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed.

10. Satisfaction Guaranteed

Grantee shall guarantee customer satisfaction for every customer who requests new installation of cable service or adds any additional programming service to the customer's cable subscription. Any such customer who requests disconnection of such service within 30 days from its date of activation shall receive a credit to his/her account in the amount of one month's subscription charge for the service that has been disconnected,

11. Non-Compliance with Customer Service Standards.

Non-compliance with any provision of these Standards is a violation of the Agreement,

12. MISCELLANEOUS

A. Severability.

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

B. Non-Waiver.

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of Grantee under said provision, or any other provision of these Standards.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

**SCHEDULE A
SUGGESTED MINIMUM CREDITS TO CUSTOMERS**

1. Telephone access line available twenty-four hours/day seven days/week.	1. \$5 credit to customer
2. Dispatchers and technicians on call twenty-four hours/day seven days/week.	2. \$5 credit to customer
3. Telephone calls answered within thirty seconds or less 90% of the time on a monthly basis.	3. \$5 credit to customer
4. Installations completed within seven days of placement of order.	4. \$5 credit to customer
5. Installation appointments kept within scheduled four-hour appointment window.	5. Installation free

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6. Service appointments kept within scheduled four hour appointment window.	6. \$20 credit to customer
7. System outages from Grantee equipment affecting five or more customers repaired within two hours.	7. One day free for each 24 hour delay
8. Interruptions resulting from Grantee equipment corrected within 24 hours or by the end of the next day.	8. One day free for each 24 hour delay
9. Service outages beyond Grantee's control corrected 36 hours after conditions beyond Grantee control have been corrected.	9. One day free for each 24 hour delay
10. Grantee to respond to customer phone inquiry within 48 hours and written inquiry within 2 weeks.	10. \$5 credit to customer
11. Grantee to attempt to give reasonable notices before entering premises.	11. \$5 credit to customer
12. Grantee to clean up area surrounding work sites and properly disposes of cable materials.	12. \$5 credit to customer
13. Grantee to pick up and deliver converters at homes of customers with disabilities.	13. \$5 credit to customer
14. Grantee to provide specific and timely customer information.	14. \$5 credit to customer
15. Written notification of changes in rates, programming, channel location and location of customer service centers.	15. \$5 credit to customer
16. Employees and contractors of Grantee to wear proper identification.	16. \$5 credit to customer

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)