

## CHAPTER 5

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## ARTICLE 1

### Electric Franchise

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

Whenever the word *Town* is hereinafter employed, it shall designated 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. Whenever the Public Utilities Commission of the State of Colorado is referred to, it shall be deemed to include any authority succeeding to the regulatory powers thereof. (Ord. 10, 1995; Ord. 1 §1, 2012)

#### 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 said 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 any or all of said products 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 in the boundaries of said Town, in accordance with the terms hereinbelow. (Ord. 10, 1995; Ord. 1 §1, 2012)

#### 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 said 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 said 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. 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, 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. (Ord. 10, 1995; Ord. 1 §1, 2012)

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

The Company shall so maintain its electric 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 expense 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 be permitted at its own expense to appear and defend or assist in the defense of the same. (Ord. 10, 1995; Ord. 1 §1, 2012)

**Sec. 5-1-50. Changes at Company expense.**

If at any time it shall be necessary to change the position of any pole, conduit or service connection of the Company to permit the Town to change street grades or make street or sidewalk improvements, such changes shall be made by the Company at its own expense. (Ord. 10, 1995; Ord. 1 §1, 2012)

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

The Town shall have the right, without cost, to use all poles and suitable overhead structures within the Town for the purpose of installing wires thereon for any reasonable Town use; provided, however, that the Company shall assume no liability or expense in connection therewith and such use of said poles and structures shall not interfere in any unreasonable manner with the Company's use of same. The Town shall not allow any cable company to use the facilities for commercial use without the prior approval of the Company. (Ord. 10, 1995; Ord. 1 §1, 2012)

**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 Rate Schedules, Standards for Service, Rules and Regulations and Service Connection and Extension Policies, as are effective from time to time and approved by the Board of Directors of IREA, all of which collectively are hereinafter referred to as the "Company's Tariffs." (Ord. 10, 1995; Ord. 1 §1, 2012)

**Sec. 5-1-80. No discrimination.**

The Company shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale or charges and classified rate schedules to which any customer coming within an established classification would be entitled. (Ord. 10, 1995; Ord. 1 §1, 2012)

**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 the Company's Tariffs. (Ord. 10, 1995; Ord. 1 §1, 2012)

**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 or 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 insure 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 Rate Schedules, Standards for Service, Rules and Regulations and Service Connection and Extension Policies currently in effect and as are effective from time to time with the Public Utilities Commission of the State of Colorado. (Ord. 10, 1995; Ord. 1 §1, 2012)

**Sec. 5-1-110. Franchise payment.**

(a) As a further consideration for this franchise, and accepted by the Town in lieu of all occupancy, occupation, uses 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 business), the Company shall pay to the Town, for the period beginning August 24, 1995, to the termination of this franchise, a sum equal to three percent (3%) or the first ten thousand dollars (\$10,000.00) of annual gross revenue derived from the sale of electric energy to each customer at any one (1) location and a sum equal to two percent (2%) of the annual gross revenue derived from the sale of electric energy in excess of ten thousand dollars (\$10,000.00) to each customer for each such service, so used 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 for electrical energy furnished. The term "gross revenue" as used herein shall be construed to mean any revenue derived under authorized rates, temporary or permanent, within the Town from the sale of electrical energy after the net write-off of uncollectible accounts and corrections of bills theretofore rendered, and in the event that the gross revenue of the Company for any period of time during the term of this franchise is subsequently reduced by virtue of a refund to any of the customers of the Company upon which the above referred to franchise payment is calculated and as a result thereof the Company has paid in excess of the percent of its gross revenue provided herein as so adjusted for any such period of time, the Company shall be entitled to a refund from the Town of all said amounts paid in excess of said percentage of its gross revenue as adjusted by such refund.

(b) Payments shall be made as follows: For each year of the term hereof, the Company shall pay to the Town the actual amount due for each quarter of each year of the term hereof, said payment being due to the Town on or before April 10, July 10, October 10 and January 10 for the quarter immediately preceding the above date.

(c) For the purposes of ascertaining or auditing the correct amount to be paid under the provisions of this Section, the Town Clerk and/or any committee or auditor appointed by the Board of

Trustees shall have access to the books of said Company for the purpose of checking the gross revenue received for operations within said Town.

(d) In the event that the Company should during the term of this franchise increase its franchise payments to any city or town in the counties of Adams, Arapahoe and Jefferson 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. (Ord. 10, 1995; Ord. 1 §1, 2012)

**Sec. 5-1-120. Term, effective date.**

This franchise 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 the effective date. (Ord. 10, 1995; Ord. 1 §1, 2012)

**Sec. 5-1-130. Removal.**

Upon the expiration of this franchise, if the Company shall not have acquired an extension or renewal thereof and accepted 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 or all of its plants, structures, conduits, cables, poles and wire or 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, wire and equipment, the Company shall, at its own expense and in a workmanlike manner, 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. 10, 1995; Ord. 1 §1, 2012)

**Sec. 5-1-140. 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 in the premises. (Ord. 10, 1995; Ord. 1 §1, 2012)

**Sec. 5-1-150. Assignment.**

Nothing in this Article shall be so construed as to prevent the Company from assigning all of its rights, title or interest, gained or authorized under or by virtue of the terms of this Article; subject to Town approval, not to be unreasonable withheld. Approval shall not be required for an assignment for the purpose of increased capitalization or loan or bond guarantee. (Ord. 10, 1995; Ord. 1 §1, 2012)

**Sec. 5-1-160. Acceptance by Company.**

It is hereby expressly agreed that this franchise is granted subject to all of the provisions of the laws of the State of Colorado, and that the Company shall accept this franchise by a writing filed with the Town Clerk and the Town shall pass the ordinance codified herein within sixty (60) days from and after the date of acceptance by the Company; provided, however, that such time for passage of said ordinance may be extended by the Board of Trustees. (Ord. 10, 1995; Ord. 1 §1, 2012)

**ARTICLE 2**

**Gas Franchise**

**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 (1<sup>st</sup>) 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.**

(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 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.

(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.

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

(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 Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given. (Ord. 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:

(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 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:

United Cable Television  
of Colorado, Inc.  
1617 South Acoma Street  
Denver, Colorado 80223

with a copy to:

United Cable Television  
of Colorado, Inc.  
Attention Legal Department  
4700 South Syracuse Street  
Suite 1100  
Denver, Colorado 80237-2722

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)

**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.
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 III.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.

### 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.
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
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)