

CHAPTER 5

Franchises and Communication Systems

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ARTICLE I**Provisions Relating to Franchises****Sec. 5-1. Franchise required.**

Any person or entity requesting the privilege to erect, construct, operate or maintain for private benefit a utility, or a cable system, within the meaning of the Cable Communications Policy Act of 1984, as amended, and the Cable Television Consumer Protection and Competition Act of 1992, as amended, utilizing a public right-of-way or other public property shall first obtain a franchise from the Town in accordance with the terms and conditions of this Article and Article XII of the Charter. (Ord. 3-1994 §1)

Sec. 5-2. Application for franchise.

An applicant for a franchise shall give notice in writing to the Town Manager of the applicant's intention to seek the award of a franchise, the renewal of an existing franchise, or the transfer or sale of an existing franchise, hereinafter referred to in this Article as a "franchise." The application shall set forth the date upon which the applicant desires the franchise to become effective. The application shall be delivered to the Town Manager at least four (4) months prior to the effective date requested by the applicant. (Ord. 3-1994 §1)

Sec. 5-3. Reimbursement of processing costs.

The applicant for a franchise shall reimburse the Town for all costs and expenses actually incurred by the Town in processing, reviewing, negotiating and considering an application for a

franchise, whether or not the franchise applied for is granted by the Town Council. The costs and expenses of the Town shall include, without limitation, staff hourly rate determined by the Town Manager to be the fully allocated hourly cost for staff time, staff expenses, consultants' fees and expenses, legal fees and expenses, publication costs and election costs. At the time of filing an application with the Town Manager, a cash bond, an irrevocable letter of credit or other form of security acceptable to the Town Manager as security for the reimbursement of the Town's costs and expenses by the applicant shall be posted. The Town Manager shall determine the amount of the security, based upon the nature of the application. The Town Manager, in his or her sole discretion, may waive the requirements for security. (Ord. 3-1994 §1)

Sec. 5-4. Computation of Town costs.

The Town Manager shall cause to be maintained an account of all expenses incurred by the Town pertaining to the processing review, negotiation and consideration of the application for a franchise. Periodically, the Town shall provide the applicant with statements of the costs and expenses actually incurred by the Town, which shall be due and payable within fifteen (15) days of the date of the statement. If the applicant fails to timely reimburse the Town for its costs and expenses, the Town may deny applicant's application, declare a forfeiture of the unused portion of applicant's security equal to the unreimbursed amount of the Town's costs and expenses, or deny applicant's application and declare a forfeiture of all or a portion of applicant's security. (Ord. 3-1994 §1)

Sec. 5-5. Reasonableness of Town costs.

If the applicant questions the reasonableness of the costs and expenses incurred by the Town pertaining to the processing, review, negotiation and consideration of the application for a franchise, the applicant shall request a review of the costs and expenses by the Town Manager. Provided, however, the applicant's request for a review by the Town Manager shall not extend the time for reimbursement to the Town as set forth in Section 5-4 above. The Town Manager, upon good cause shown by the applicant, may grant an extension of time for the reimbursement of the costs and expenses of the Town payable pursuant to Section 5-4 above. (Ord. 3-1994 §1)

Sec. 5-6. Prohibition against surcharge.

Neither the costs and expenses of the applicant nor the costs and expenses of the Town incurred in the preparation, processing, review, negotiation and consideration of an application for a franchise shall be surcharged by the applicant against or otherwise charged solely to the Town or customers of the applicant within the Town. The costs and expenses of the applicant and the costs and expenses reimbursed to the Town may not be deducted from a franchise fee or other obligation payable to the Town by the applicant. (Ord. 3-1994 §1)

Sec. 5-7. Public hearing.

The Town Council shall hold a public hearing on the application for a franchise after having provided not less than thirty-day advance notice by publication one (1) time. (Ord. 3-1994 §1)

Sec. 5-8. Approval of franchise.

A franchise shall be approved by ordinance requiring the affirmative vote of four (4) members of the Town Council. In accordance with

the provisions of Section 12.4 of the Charter, a franchise term exceeding twenty (20) years shall first be approved by the Town Council, and then approved by a majority of the qualified electors of the Town voting thereon at a regular or special election. (Ord. 3-1994 §1; Ord. 11-1999 §2)

Sec. 5-9. Home rule authority.

The provisions of Section 31-32-101 *et seq.*, C.R.S., concerning public utilities franchises, shall not apply to the processing, review, negotiation and approval or denial of franchises or the transfer of franchises within the Town. (Ord. 3-1994 §1)

Sec. 5-10. Temporary extensions of franchises.

The Town Council is authorized to temporarily extend the term of an existing franchise by resolution, provided that the extension shall not exceed one (1) year. (Ord. 3-1994 §1; Ord. 18-1994 §1)

Secs. 5-11—5-14. Reserved.**ARTICLE II****Cable Television Franchise*****Sec. 5-15. Definitions.**

For the purpose of this Article, 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:

*Editor's note: This franchise expires December 31, 2009.

Access channel means the standard video channel designated for access purposes or otherwise made available to facilitate or transmit access programming and services for public access, educational access and governmental access, collectively.

Affiliate means an entity which owns or controls, is owned or controlled by or is under common ownership with the Grantee.

Basic cable service means the service tier which includes, at a minimum, the signals and programming as defined in 47 U.S.C. §543(b)(7), as amended.

Cable Act means the Cable Communications Policy Act of 1984, as amended, and the Cable Television Consumer Protection and Competition Act of 1992, as amended, and the rules and regulations promulgated thereunder from time to time.

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

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

Channel means a radio frequency band, or its technical equivalent on a cable system, discreetly identified and capable of carrying at least a standard video channel, which may include combinations of any audio, digital or

other nonvideo signals. *Standard video channel* means a six-megahertz (MHz) frequency band, or its technical equivalent on the cable system, before any signal compression.

Connection with regard to connections to public buildings, means installation of fiber optic or coaxial cable or other cable system related facility through the outer wall of the building leaving adequate excess facility to permit further connection to other facilities, plant or cable within the building.

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

Franchise shall mean the nonexclusive and revocable initial authorization, or renewal thereof, issued by the Town whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of the cable system for the purpose of offering cable service or other service to subscribers.

Franchise fee means the fee payable by the Grantee to the Town pursuant to Section 5-39(a).

Gross revenues means all amounts collected by the Grantee, in whatever form and from all sources, in connection with the operation of the Grantee's cable system within the franchise area. *Gross revenues* shall include, without limitation, amounts for all cable service, premium and pay-per-view services, installations and all other revenues derived directly or indirectly from the operation of the Grantee's cable system; provided, however, that *gross revenues* shall not include:

a. Revenues received from any national advertising carried on the cable system; and

b. Franchise fees, or other taxes on cable service which are imposed by law on subscribers which the Grantee is obligated to collect.

Interconnect or *interconnection* means the provision by the Grantee of technical, engineering, physical, financial and all other necessary components to accomplish, complete and adequately maintain a physical linking of the Grantee's cable system and cable services by physical connection with other cable systems in the Roaring Fork Valley.

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

Programming means the process of causing television programs or other patterns of signals of video to be transmitted on a cable system, and includes all programs or patterns of signals transmitted or capable of being transmitted on the cable system, generally considered compatible with the programming provided by a television broadcast station.

Service area or *franchise area* means the area within the municipal boundaries of the Town, and shall include any additions thereto by annexations or other legal means during the term of the franchise.

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

Street means a public right-of-way which has been dedicated to the public or is

hereafter dedicated to the public and maintained under public authority or by others and located within the Town.

Subscriber means a person or user of the cable system who lawfully receives cable services or other service therefrom with the Grantee's express permission. (Ord. 2, 1995 §1)

Sec. 5-16. Grant of franchise.

(a) Grant. The Town hereby grants to the Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the streets within the service area to construct and operate a cable system and offer cable service in, along, upon, across, above, over, under or in any manner connected with streets 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 street and all extensions thereof and additions thereto, such 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. This Article shall constitute both a right and an obligation to provide the services required by, and to fulfill the obligations set forth in, the provisions of this Article. The Town expressly reserves the right to grant additional franchises for the use of the streets to any other person at any time. The grant of this franchise does not constitute a waiver or release of the rights of the Town in and to the streets.

(b) Police powers. This Article is subject to the general police power of the Town. Nothing in this Article shall be deemed to waive the requirements of other codes and lawful ordinances enacted, or hereafter enacted, by the Town.

(c) Term. The franchise granted pursuant to this Article shall commence at 12:01 a.m. on March 1, 1995, and terminate at 11:59 p.m. on December 31, 2009, unless otherwise lawfully terminated in accordance with the terms of this Article. (Ord. 2, 1995 §1)

Sec. 5-17. Conditions of street occupancy.

All transmission and distribution structures, 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 said public ways. (Ord. 2, 1995 §1)

Sec. 5-18. Construction.

(a) Subject to applicable regulations of the Town and the provisions of this Article, the Grantee may perform all construction necessary for the operation of its cable system. All construction and maintenance of any and all facilities in, on, under, across and along streets incident to the Grantee's cable system shall, regardless of who performs the construction, be and remain the Grantee's responsibility. When the Grantee's construction of facilities in the streets is completed, the Grantee shall provide the Town with a map showing the location of the installed facility in the streets.

(b) The Grantee shall comply with all applicable Town construction codes including, without limitation, Article I, Chapter 11 of this Code, and subsequent amendments thereto, the building code, the fire code, the mechanical code, zoning ordinances and permit procedures. The Town may charge reasonable permit and inspection fees to recover any inspection costs imposed by the construction of the cable system.

(c) All construction practices shall be in accordance with all applicable sections of federal and state occupational safety and health acts and any amendments thereto as well as all state and local codes and standards where applicable.

(d) All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Code, as amended, and all applicable state and local codes, and in such a manner so as not to interfere with any installations of the Town, any other franchises or any public utilities. (Ord. 2, 1995 §1)

Sec. 5-19. Location of facilities.

The Grantee shall at all times during the term of the franchise agreement comply with the terms and conditions set forth in Section 9-1.5-101 *et seq.*, C.R.S., as it presently exists or may hereafter be amended. (Ord. 2, 1995 §1)

Sec. 5-20. Restoration of streets.

If, during the course of the Grantee's construction, operation or maintenance of the cable system, there occurs a disturbance of any street by the Grantee, it shall, at its expense, promptly replace and restore such street in accordance with the provisions of this Code. (Ord. 2, 1995 §1)

Sec. 5-21. Relocation.

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 or remove any property of the Grantee 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; but the Grantee shall in all cases have the right of abandonment of its property. Nothing described in this Section shall be considered a taking of the Grantee's property, and the Grantee is not entitled to additional compensation as a result of these actions. If the Grantee fails to comply with the foregoing, the Town, after providing the Grantee with additional notice of not less than five (5) business days, may cause the protection, support, temporary disconnection, relocation or removal of any property of the Grantee to be completed at the Grantee's sole cost and expense. (Ord. 2, 1995 §1)

Sec. 5-22. 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 first comply with all local codes and ordinances prior to beginning work under this Section, and shall at all times use proper arboricultural practices. The Grantee shall be permitted to charge persons who own, or are responsible for, such trees or natural growth for the cost of such trimming, provided that similar charges are assessed by and paid to the utilities or the Town for tree trimming. The Grantee shall compensate the Town or property owner for any damages caused by such trimming, or shall, at its own cost and expense, replace all trees or shrubs damaged as a result of any action by the Grantee. (Ord. 2, 1995 §1)

Sec. 5-23. Installation of cable system underground.

All cable system facilities shall be installed underground except by written permission of the Town. (Ord. 2, 1995 §1)

Sec. 5-24. Stop work.

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

(b) The stop work order shall be:

(1) In writing;

(2) Given to the individual doing the work, or posted on the work site; and

(3) Sent to the Grantee by express mail or overnight delivery service at the address given herein, and shall indicate the nature of the alleged violation or unsafe condition and establish conditions under which work may be resumed. (Ord. 2, 1995 §1)

Sec. 5-25. Grantee's contractors.

The Grantee's contractors shall be licensed and bonded in accordance with the Town's ordinances, regulations or requirements of any contractors working in the public rights-of-way. (Ord. 2, 1995 §1)

Sec. 5-26. Private property.

The Grantee shall obtain approval of property owners prior to entering upon private property. Nothing contained in this Article shall authorize the Grantee to enter upon private property without having first obtained the approval of the property owner. (Ord. 2, 1995 §1)

Sec. 5-27. Burial standards.

(a) Depths. The Grantee shall comply with the following burial standards:

(1) Cable drops from the curb shall be buried at a minimum depth of twelve (12) inches.

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

(3) Trunk lines shall be buried at minimum depth of forty-eight (48) inches.

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

(b) Timeliness. Temporary cable drops installed by the Grantee shall be buried according to the foregoing standards within one (1) calendar week of initial installation. In the event that soil conditions prevent the Grantee from burying a cable drop within one (1) calendar week of initial installation, then the Grantee shall cause the cable drop to be buried as soon as soil conditions reasonably allow for the cable drop to be buried. (Ord. 2, 1995 §1)

Sec. 5-28. Use of Grantee's equipment by Town.

With the approval of the Grantee, the Town shall have the right to install or affix and maintain equipment owned by the Town for municipal purposes upon any and all of the Grantee's ducts, conduits or equipment in the streets and other public places, without charge to the Town, to the extent space therein or thereon is not needed by the Grantee. (Ord. 2, 1995 §1)

Sec. 5-29. Safety requirement.

Construction, installation and maintenance of the cable system shall be performed in an

orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state and local regulations. The Grantee shall at all times keep and maintain the cable system and shall not endanger or unreasonably interfere with the safety of persons or property in the service area. (Ord. 2, 1995 §1)

Sec. 5-30. Universal service.

(a) It is the Town's general policy that all dwelling units in the Grantee's franchise area have equivalent service availability from the Grantee's cable system under nondiscriminatory rates and reasonable terms and conditions. The Grantee shall not arbitrarily refuse to provide cable services to any person within the franchise area.

(b) The Grantee shall provide equivalent cable services to all residential subscribers at similar rates.

(c) The Grantee shall provide equivalent cable service to all commercial subscribers at similar rates for each type and class of service requested by the subscriber. The Grantee shall not be precluded from providing volume rates, depending upon the nature of the service requested by a commercial subscriber.

(d) The Grantee is authorized to initiate promotional rates from time to time. (Ord. 2, 1995 §1)

Sec. 5-31. Service availability.

The Grantee shall provide cable services within seven (7) days of a request by any person within its franchise area, under normal operating conditions. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee,

receipt of a written request by the Grantee or receipt by the Grantee of a verified verbal request. Notwithstanding the requirements of this Section, the Grantee shall not be required to construct its cable system in any area that has less than ten (10) customers per one thousand three hundred twenty (1,320) cable-bearing strand feet ($\frac{1}{4}$ cable mile) of its trunk or distribution cable. All required extensions of service shall be made at no cost to subscribers other than the usual connection fees charged for all subscribers. (Ord. 2, 1995 §1)

Sec. 5-32. 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 or her 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 ten (10) subscribers per one thousand three hundred twenty (1,320) cable-bearing strand feet of trunk or distribution cable, cable service or other 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 cable service may be expanded, the Grantee will contribute an amount equal to the number of potential subscribers per one thousand three hundred twenty (1,320) cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals ten (10) subscribers. Potential subscribers will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance. (Ord. 2, 1995 §1)

Sec. 5-33. Interconnection with other cable systems.

The Grantee shall diligently pursue the interconnection of the cable system at its master head end with all other cable systems in the Roaring Fork Valley and shall provide the Town with a status report on the interconnection at the review of system performance and quality of service required in Section 5-45. (Ord. 2, 1995 §1)

Sec. 5-34. Service to public buildings.

The Grantee shall, at its sole expense, provide the connections to the public buildings designated by the Town and basic service and expanded basic service for one (1) outlet per building. The Grantee shall be permitted to charge its usual installation fees, and charges for the provision of cable services, for any additional outlets serving any public buildings. (Ord. 2, 1995 §1)

Sec. 5-35. Technical and safety standards.

(a) The cable system shall meet or exceed all applicable technical and performance standards of the Federal Communications Commission, or its successor agency, as a minimum.

(b) The Grantee shall at all times employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public or to employees of the Grantee.

(c) The Grantee shall install and maintain its cable system in accordance with the requirements of the National Electrical Safety Code and all applicable FCC regulations, and in such

manner that the cable system shall neither interfere with any installations of the Town nor unreasonably interfere with any public utility, telecommunication utility, franchisee, licensee or permittee of the Town.

(d) The Grantee shall provide and put in use such equipment and appliances as shall control on closed circuit basis and effectually carry all electric currents and the Grantee television and other system signal impulses in a manner so as to prevent injury to the wires, pipes, structures and property belonging to the Town or to any person within the Town's jurisdiction.

(e) The Grantee, at its own expense, shall repair, renew, change and improve its cable system from time to time as may be necessary to accomplish these purposes. (Ord. 2, 1995 §1)

Sec. 5-36. Test and compliance procedure.

The Grantee shall submit to the Town all cable system tests to determine compliance with the provisions of the FCC technical standards, if requested in writing by the Town. (Ord. 2, 1995 §1)

Sec. 5-37. Test records.

The Grantee shall maintain written records of all results of its cable system tests, performed by or for the Grantee. Such test results shall be available for inspection by the Town upon request in accordance with applicable FCC regulations. (Ord. 2, 1995 §1)

Sec. 5-38. Specific technical facilities or capabilities.

The following specific technical facilities or capabilities shall be provided on the cable system by the Grantee:

(1) 100% emergency standby power. On or before July 1, 1996, the Grantee shall maintain system standby power supplies, rated at least at two (2) hours' duration, throughout the trunk and distribution networks. In addition, throughout the term of the franchise, the Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours. The outage plan and evidence of requisite implementation resources shall be provided to the Town upon request.

(2) Emergency override. The Grantee shall provide restricted audio override of all audio portions of video channels during emergencies, with override to be placed under the Town's control. If directed by the Town, the emergency alert system shall provide for activation from the Town's designated emergency centers, with coded access. If directed by the Town, the audio override shall include a squeal alert tone to precede the verbal messages. Upon request by the Town, the Grantee shall cooperate with the Town to test the emergency override system, for periods not to exceed one (1) minute in duration and not to occur more often than once every six (6) months. (Ord. 2, 1995 §1)

Sec. 5-39. Franchise fee.

(a) Franchise fee. The Grantee shall pay to the Town an initial franchise fee equal to three percent (3%) of annual gross revenues received by the Grantee from the operation of the cable system on a calendar semiannual basis. The franchise fee for the preceding six (6) months shall be paid on or before August 15 And February 15 of each year, commencing on August 15, 1995. The Town expressly reserves the right to notify the Grantee of a revision to the franchise fee to a different percentage of gross revenue prior to October 1 of the even numbered years during the term of the franchise, which revised franchise fee shall become effective upon the immediately succeeding January 1. Provided, however, that the maximum amount of the franchise fee shall at all times be in compliance with the Cable Act.

(b) Limitation on franchise fee actions. The period of limitation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment by the Grantee is due. Unless within five (5) years from and after said payment due date the Town initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, such recovery shall be barred and the Town shall be estopped from asserting any claims whatsoever against the Grantee relating to any such alleged deficiencies. Notwithstanding any language to the contrary contained in this Section, the limitation on franchise fee action shall not apply if the information upon which the action is based was lawfully required to be disclosed by the Grantee to the Town, and was withheld or not disclosed for any unreasonable period of time.

(c) Acceptance of payment and re-computation. No acceptance of any payment shall be construed as an accord by the Town that the amount paid is, in fact, the correct amount, nor

shall any acceptance of payments be construed as a release of any claim the Town may have for further or additional sums payable or for the performance of any other obligations of the Grantee.

(d) Franchise fee reports. Each payment shall be accompanied by a written report to the Town verified by an officer of the Grantee, containing an accurate statement in summarized form, as well as in detail, of the Grantee's gross revenues, an itemization of all permissible deductions therefrom and a computation of the payment amount. (Ord. 2, 1995 §1)

Sec. 5-40. Financial controls.

(a) Audits. At any time, upon thirty (30) days' prior written notice, the Town shall have the right to conduct an independent audit of the Grantee's records, in accordance with generally accepted accounting principles. Provided, however, that such independent audit shall be at the Grantee's sole cost and expense should the audit disclose that the Grantee has not timely paid the franchise fee in full.

(b) Interest on late payments. Payments not received within thirty (30) days from the due date shall be assessed an interest charge compounded at the prime rate as published in the Wall Street Journal plus one percent (1%) per month from the due date. If payment is not received within seventy-five (75) days of the due date, plus interest, then the Town may, in its sole discretion, declare a material breach of the franchise agreement.

(c) Cost of publication. The Grantee shall pay the cost of publication of the franchise agreement and any amendments thereto as such publication is required by the Town.

(d) Tax liability. Payment of the franchise fee shall not exempt the Grantee from the payment of any other generally applicable and lawful license fee, tax or charge on the business, occupation, property or income of the Grantee that may be imposed by the Town, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge.

(e) Rates and charges/reserved authority. The Town reserves all regulatory authority arising from the Cable Act of 1992, the Cable Act of 1984, any amendments or superseding statutes thereto and any other relevant provisions of federal, state or local law. (Ord. 2, 1995 §1)

Sec. 5-41. Cable system upgrade/rebuild and provision of interactive EG access.

(a) General requirements. On or before December 31, 1996, the Grantee shall complete an upgrade of the cable system to provide a capacity to subscribers of at least sixty (60) downstream standard video channels, corresponding to an upper operating frequency range of four hundred fifty Megahertz (450 Mhz).

(b) Cable system improvement. If the Grantee provides any technology, cable system upgrade or rebuild, or increase in channel capacity, not provided to the Town on the effective date of the agreement to any portion of the Aspen Service Area, at the Town's request, the Grantee shall provide such technology, cable system upgrade or rebuild or additional channel capacity to the Town or subscribers within the franchise area, and shall provide same to the Town at the Grantee's sole expense. The Grantee shall have a continuing obligation to improve and expand the cable system consistent with changes and developments in the cable

industry, the public interest, prudent business judgment and reasonable economic considerations. (Ord. 2, 1995 §1)

Sec. 5-42. Reports and records.

(a) Books and records. The Town shall have the right to inspect at any time during normal business hours all the Grantee books, records, maps, plans, service complaint logs, performance test results and other like materials as are necessary to ensure compliance with the terms of this Article; provided that records regarding subscriber privacy shall be kept confidential. If any such books or records are not kept in the local office, or made available to the Town upon request, and if the Town determines that an examination of such records is necessary or appropriate to the performance of any of the Town's duties, then the Grantee shall make such books or records available for inspection by the Town at the local office within five (5) business days.

(b) Annual reports. Within sixty (60) days after the close of the Grantee's fiscal year, the Grantee shall submit to the Town a written annual report, which shall include, but not necessarily be limited to, the following information for the franchise area:

(1) A revenue statement signed by an officer of the Grantee;

(2) A summary of the previous year's activities in development of the cable system, including, but not limited to, services begun or discontinued during the reporting year, and the number of subscribers for each class of service;

(3) A statement of projected construction, if any, for the next five (5) years.

(c) Copies of federal and state reports. If requested by the Town, the Grantee shall submit to the Town copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Grantee or its parent corporations and action by, any federal, state or local courts, regulatory agencies and other government bodies relating to the operations of the Grantee's cable system within the franchise area. The Grantee shall submit such documents to the Town no later than thirty (30) days after written request.

(d) Complaint file and reports.

(1) The Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the cable system, in a manner consistent with the privacy rights of subscribers, and the Grantee's actions in response to those complaints. These files shall remain open to the Town and the public during normal business hours. The Grantee shall provide the Town an executive summary quarterly, which shall include information concerning customer complaints.

(2) A summary of service requests, identifying the number and nature of the requests and their disposition, shall be submitted to the Town quarterly.

(3) A log of all service interruptions shall be maintained and provided to the Town quarterly.

(e) Grantee's financials. Prior to the effective date hereof, the Grantee shall provide the Town with accurate copies of its audited financial statements for its two (2) most recently completed years of operation and for all quarters completed in its current year. The Grantee represents and warrants that these financial statements fairly and accurately represent its business and assets and the results of its operations for the

period indicated and were prepared in accordance with generally accepted accounting principles consistently applied. (Ord. 2, 1995 §1)

Sec. 5-43. Negotiated renewal.

(a) Notwithstanding the formal renewal procedures mandated by the Cable Act, the Grantee may submit to the Town a proposal for extension or renewal of the franchise agreement at any time before the expiration of the agreement.

(b) The Town and the Grantee at any time may elect to negotiate a franchise renewal agreement.

(c) The provisions of this Section shall constitute the informal renewal proceedings described in the Cable Act. (Ord. 2, 1995 §1)

Sec. 5-44. Transfer of ownership or control.

(a) In this Section, the following words have the meanings indicated:

Control means actual working control in whatever manner exercised. *Control* includes, but may not necessarily require, majority stock ownership.

Proposed transferee means a proposed purchaser, transferee, lessee, assignee or person acquiring ownership or control of the franchise or the Grantee.

(b) The Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, merger, share exchange, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, or suffer or permit any direct or indirect change in control of the Grantee or the franchise (each of the foregoing a "transfer") without the prior consent

of the Town, and then only upon such terms and conditions as the Town may lawfully require, except that such prior consent shall not be required for an intracorporate transfer from one (1) wholly owned subsidiary to another wholly owned subsidiary. The consent required by the Town shall be given or denied no later than one hundred twenty (120) days following any written request and delivery to the Town of all information reasonably requested by the Town.

(c) In seeking the Town's consent to any transfer, the proposed transferee shall indicate whether it:

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

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

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

(4) Is financially solvent, by submitting the financial data including financial statements that are audited by a certified public accountant along with any other data that the Town may reasonably require; and

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

The Grantee shall cause the proposed transferee to provide such evidence of the foregoing and

such other information as the Town shall reasonably request.

(d) The consent or approval of the Town to any transfer by the Grantee does not constitute a waiver or release of the rights of the Town in or to its public rights-of-way or easements and any transfer shall by its own terms be expressly subject to the terms and conditions of this Article.

(e) A transfer may not be approved without the successor in interest becoming a signatory to the franchise agreement.

(f) Notwithstanding anything contained in this Article, the Grantee may pledge or hypothecate the assets of the cable system for the purposes of financing, provided that such pledge or hypothecation of assets shall not impair or mitigate the Grantee's responsibility and capability to meet all of its obligations under the provisions of this Article. (Ord. 2, 1995 §1)

Sec. 5-45. Review of performance and quality of service.

(a) At the request of the Town, commencing during the second half of the calendar year 1995 and yearly thereafter, the Town and the Grantee shall meet publicly to review system performance and quality of service. The various reports required pursuant to this Article, results of technical performance tests, records of subscriber complaints in an executive summary format and the Grantee's response to complaints and any other information as either party reasonably deems appropriate shall be utilized as the basis for this review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered. In connection with these meetings, an assessment of the Town's future cable-related community needs and interests will also be addressed.

(b) If, after such review, the Town determines that the Grantee is not in compliance with any of the requirements of this Article, the Town may direct the Grantee to correct the areas of noncompliance within a reasonable period of time. (Ord. 2, 1995 §1)

Sec. 5-46. Insurance requirements.

(a) The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the franchise agreement, comprehensive general liability insurance in the amount of not less than one million dollars (\$1,000,000.00) combined single limit for bodily injury, and property damage. The insurance shall provide coverage at all times for not less than one hundred fifty thousand dollars (\$150,000.00) for personal injury to each person, six hundred thousand dollars (\$600,000.00) aggregate for each occurrence and one hundred fifty thousand dollars (\$150,000.00) for each occurrence involving property damages, plus cost of defense. Said insurance shall designate the Town as an additional insured and loss payee, as applicable. Such insurance shall be noncancelable except upon thirty (30) days' prior written notice to the Town. A certificate of insurance for said insurance shall be filed annually with the Town. The insurance limits hereunder shall be revised upward in the event the statutory maximums applicable to local governments in Colorado are raised during the term of the franchise agreement, upon sixty (60) days' advance written notice to the Grantee by the Town. The insurance company providing insurance pursuant to this Section shall be licensed in the State having a rating of not less than "A" by Best and shall provide insurance pursuant to this Section comparable to general liability insurance of commercial quality.

(b) Nothing herein shall be in any way construed as a waiver on behalf of the Town of

any of the protections or provisions of the Colorado Governmental Immunity Act. (Ord. 2, 1995 §1)

Sec. 5-47. Indemnifications.

(a) General indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Town, its officers, elected or appointed officials, employees, agents, boards and employees, from any action or claim for injury damage, loss, liability, cost or expense, including court and appeal costs and attorneys' and experts witness fees and expenses, arising from any casualty, accident, injury or loss to person or property, including, without limitation, copyright infringement and defamation, and all other damages in any way arising out of, or by reason of any construction, excavation, operation, maintenance, reconstruction of the cable systems, or any act done under or in connection with this Article, by or for the Grantee, its agents or its employees, or by reason of any neglect or omission of the Grantee. The Grantee shall consult and cooperate with the Town while conducting its defense of the Town.

(b) Additional circumstances. The Grantee shall also indemnify, defend and hold the Town harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' and expert witness fees or expenses in any way arising out of:

(1) The action of the Town in granting this franchise;

(2) Damages arising out of any failure by the Grantee to secure consents from the owners, authorized distributors or licensees, licensors of programs to be delivered by the cable system, whether or not any act or omission complained of is authorized, allowed or prohibited by this franchise.

(c) Procedures and defense. If a claim or action arises, the Town or any other indemnified party shall tender the defense of the claim to the Grantee. The Town may participate in the defense of a claim. The Grantee may settle any claims affecting the Town without the Town's approval, or the Grantee may relieve itself of all duty to defend and indemnify the Town by paying to the Town that sum which the claimant has offered to accept and which the Grantee would have paid but for the Town's objection, but in any such case, only if such settlement or payment would fully discharge and satisfy all claims against the Town arising from or related to such claim.

(d) Nonwaiver. The fact that the Grantee carries out any activities under this Article through independent contractors shall not constitute an avoidance of or defense to the Grantee's duty to defend and indemnify under this Section. (Ord. 2, 1995 §1)

Sec. 5-48. Bonds and other surety.

Except as expressly provided herein, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the franchise or continuing its existence. The Town acknowledges that the legal, financial and technical qualifications of the Grantee are currently sufficient to afford compliance with the terms of the franchise and the enforcement thereof. The Grantee and the Town recognize that the costs associated with bonds and other surety may ultimately be borne by the subscribers in the form of increased rate for cable services. In order to minimize such costs, the Town agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor. Initially, no bond or other surety will be required. In the event that one is required in the future, the Town agrees to give the Grantee

at least sixty (60) days' prior written notice thereof stating the reason for the requirement. Such reason must demonstrate a change in technical, legal or financial qualifications which would materially prohibit or impair its ability to comply with the terms of the franchise or afford compliance therewith, or may be based upon the Grantee's demonstrated failure to comply with the terms of this franchise in a timely manner. (Ord. 2, 1995 §1)

Sec. 5-49. Public access/service requirements.

(a) PEG access channel. On or before January 1, 1997, the Grantee shall provide at least one (1) channel for PEG use by the Town on the cable system. Alternatively, the Grantee shall provide access to Grassroots Channel 12 for PEG use by the Town, provided that the Town may require the Grantee to provide at least one (1) channel for PEG use by the Town on the cable system by six (6) months' advance written notice.

(b) Two-way programming and PEG access equipment. On or before April 1, 1995, the Grantee shall activate a return path from a location in Snowmass Village designated by the Town to the Grantee's headend facility to facilitate the transfer of live programming to the Grantee's cable system. On or before April 1, 1996, the Grantee shall provide the following PEG access equipment to the Town at the Grantee's sole cost and expense, not to exceed seven thousand five hundred dollars (\$7,500.00):

- (1) Two (2) video cameras with tripods;
- (2) One (1) video mixer;
- (3) One (1) audio mixer;

(4) One (1) character generator; and

(5) Associated equipment including microphones and cables.

(c) Relocation of PEG channels. If the Grantee relocates any PEG access channel to a different channel number, the Grantee shall reimburse the Town for any out-of-pocket Town costs incurred as a result of the relocation. The Grantee shall provide the Town and all subscribers with at least thirty (30) days' written notice of any such relocation.

(d) PEG channel on basic tier. All PEG access channels shall be provided by the Grantee in its basic cable service.

(e) Change in technology. In the event the Grantee makes any change in the cable system and related equipment and facilities or in the Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of access services and programming, the Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance including the acquisition of all necessary equipment, and full training of the Town's access personnel at the Grantee's cost, to insure that the capabilities of access services are not diminished or adversely affected by such change.

(f) Promotion of PEG access. The Grantee shall allow the Town to place bill stuffers related to PEG access in the Grantee's subscriber statements upon the written request of the Town, and at such times that the placement of such materials would not affect the Grantee's cost for the mailing of such statements. The Grantee shall also make available access information provided by the Town in subscriber packets at the time of installation. (Ord. 2, 1995 §1)

Sec. 5-50. Consumer protection.

(a) Customer service standards. The Grantee shall comply with all customer service obligations set forth in 47 C.F.R. §76.309, as amended from time to time.

(b) Noncompliance with standards. A repeated and verifiable pattern of noncompliance with the customer service standards, after the Grantee's receipt of notice and an opportunity to cure, may be deemed a material breach of this franchise.

(c) Additional customer service standards. If, after public hearing where the Grantee is provided an opportunity to comment, the Town determines that it is in the best interest of the citizens of the Town for additional customer service standards to be adopted, the Town may adopt such lawful standards as it deems appropriate. (Ord. 2, 1995 §1)

Sec. 5-51. Notice of violation.

In the event that the Town believes that the Grantee has not complied with any term of the franchise, it shall notify the Grantee in writing in reasonable detail of the nature of the alleged noncompliance. (Ord. 2, 1995 §1)

Sec. 5-52. Grantee's right to cure or respond.

An informal meeting may be held to review the alleged failure. If the meeting does not result in a resolution that is satisfactory to the Town, or if the Town has not opted to hold a meeting, the Grantee shall have thirty (30) days from receipt of the notice described in Section 5-51:

(1) To respond to the Town contesting the assertion of noncompliance;

(2) To cure such default; or

(3) In the event that, by the nature of default, such default cannot be cured within the thirty-day period, to initiate reasonable steps to remedy such default, notify the Town of the steps being taken and the projected date that they will be in compliance and continuously and diligently pursue such cure to completion in not more than sixty (60) days. (Ord. 2, 1995 §1)

Sec. 5-53. Public hearing.

In the event that the Grantee fails to respond to the notice described in Section 5-51 pursuant to the procedures set forth in this Section or in the event that the alleged default is not remedied within thirty (30) days (sixty [60] days in the case of Section 5-52(3)) after the Grantee is notified of the alleged default pursuant to Section 5-51, the Town may hold a public hearing to investigate the default. Such public hearing shall be held after not less than twenty (20) days' notice. The Town shall notify the Grantee of the time and place of such hearing and provide the Grantee with an opportunity to be heard, and to compel testimony of witnesses and production of evidence. (Ord. 2, 1995 §1)

Sec. 5-54. Enforcement.

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

(1) Foreclose on all or any part of any security provided under this franchise, if any, including without limitation, any bonds or other surety; provided, however, that the foreclosure shall only be in such a manner and in such amount as the Town reasonably determines is necessary to remedy the default;

(2) In the case of a material breach of the franchise, declare the franchise agreement to be revoked; or

(3) Require specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the franchise by reason of any failure of the Town to enforce prompt compliance. (Ord. 2, 1995 §1)

Sec. 5-55. Revocation.

In addition to revocation in accordance with other provisions of this Article, the Town may revoke the franchise agreement and rescind all rights and privileges associated herewith in the following circumstances, each of which represents a material breach of this Article:

(1) If the Grantee fails to perform any of its obligations under this franchise or under any ordinances, documents or other terms and provisions entered into by and between the Town and the Grantee;

(2) If the Grantee fails to comply with applicable customer service standards;

(3) If the Grantee fails for more than twenty-four (24) hours to provide continuous and uninterrupted cable service;

(4) If the Grantee practices any fraud or deceit upon the Town or any subscriber; or

(5) If the Grantee becomes insolvent, or if there is an order for relief in favor of the Grantee in a bankruptcy proceeding. (Ord. 2, 1995 §1)

Sec. 5-56. Acts of God.

The Grantee shall not be held in default or noncompliance with the provisions of this Article, nor suffer any enforcement or liquidated damages relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control. (Ord. 2, 1995 §1)

Sec. 5-57. Procedures in the event of termination or revocation.

(a) If this franchise expires without renewal or is otherwise lawfully terminated, the Town may, subject to applicable law:

(1) Allow the Grantee to maintain and operate its cable system on a month-to-month or short-term extension of this franchise; or

(2) Order the removal of the above-ground system facilities from the franchise area at the Grantee's sole expense within a reasonable period time as determined by the Town.

(b) In removing its plant, structures and equipment, the Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all streets, public places and private property in as good condition as that prevailing prior to the Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions shall remain in full force and effect during the period of removal, and the Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefor.

(c) If the Grantee fails to complete any removal required by this Section, or any other work required by law within ninety (90) days

after the date of written notice and to the satisfaction of the Town, the Town may cause the work to be done and the Grantee shall reimburse the Town for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs.

(d) The Town may seek legal and equitable relief to enforce the provisions of this franchise. (Ord. 2, 1995 §1)

Sec. 5-58. Miscellaneous provisions.

(a) Preemption. If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the franchise, then to the extent such jurisdiction shall as a matter of law preempt and supersede or preclude the exercise of the like jurisdiction by the Town, the jurisdiction of the Town shall cease and no longer exist.

(b) Actions of Town. In any action by the Town or representative thereof 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.

(c) Notice. Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Town 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 by certified mail, postage prepaid, at a post office or branch thereof regularly maintained by the U.S. Postal Service. The notices or responses to the Town shall be addressed as follows:

Town of Snowmass Village
 16 Kearns Road
 P.O. Box 5010
 Snowmass Village, CO 81615
 Attn: Town Manager

with a copy to:

Town of Snowmass Village
 16 Kearns Road
 P.O. Box 5010
 Snowmass Village, CO 81615
 Attn: Town Attorney

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

TCI of Northern New Jersey, Inc.
 c/o TCI Cablevision of Colorado, Inc.
 201 Aspen Airport Business Center
 Aspen, CO 81611

with a copy to:

TCI Central, Inc.
 Attention: Legal Department
 4700 South Syracuse Parkway,
 Suite 1100
 Denver, CO 80237

The Town and the Grantee may designate such other address or addresses from time to time by giving notice to the other. (Ord. 2, 1995 §1)

Sec. 5-59. 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. 2, 1995 §1)

Sec. 5-60. Severability.

If any section, sentence, paragraph, term or provision hereof is determined to be illegal,

invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise agreement, or any renewal or renewals thereof. (Ord. 2, 1995 §1)

ARTICLE III

Electric Franchise*

Sec. 5-61. Title.

This Article shall be known and may be cited as the "Holy Cross Energy Franchise." (Ord. 15-1999 §1)

Sec. 5-62. Definitions.

For the purpose of this Article, all terms shall have the meaning defined in Section 1-21 of this Code, except the following terms shall have the meanings given herein:

Company refers to Holy Cross Energy, a Colorado corporation, its successors and assigns.

Facilities refers to all overhead and underground electric facilities, buildings and structures necessary to provide electricity into, within and through the Town including, but not limited to, such essential apparatus, appliances, plants, systems, substations, works, transmission and distribution lines and structures, anchors, cabinets, cables, conduits, guy posts and guy wires, meters, microwave and communication facilities, overhead and underground lines, pedestals, poles, regulators, sectionalizers, switchgear, transformers, various pad mounted and pole

*Editor's note: This franchise expires April 30, 2020.

mounted equipment, vaults, wires, and all other related electrical equipment required for the distribution, generation, maintenance, operation, purchase and transmission of electrical energy.

Public easements refers to easements created and available for use by any public utility for its facilities.

Residents refers to and includes all persons, businesses, industry, governmental agencies, and any other entity whatsoever, presently maintaining a residence, business, farm, ranch or other enterprise located within, in whole or in part, the Town boundaries.

Revenues, unless otherwise specified, refer to and are the gross amounts of money that the Company receives from its customers within the Town boundaries from the sale or delivery of electrical energy for any particular period of time, except *revenues* shall not include amounts of money received by the Company in satisfaction of the surcharge levied on customers within the surcharge area boundary that also lie within the Town as described in Town Council Resolution 34, Series of 2003, and pursuant to the Company's Line Extension Policy to reimburse the Company for costs incurred in the construction of the Snowmass Transmission Line, Snowmass Substation and the acquisition of land on which to locate the Snowmass Substation pursuant to that certain contract to buy and sell vacant land, by and between Holy Cross Energy and the Town, dated April 21, 2003.

Street refers to the definition contained in Section 1-21 on the effective date of this Franchise.

Town boundaries refers to the territorial limits of the Town as such limits currently exist, or may hereafter be enlarged or expanded from time to time through annexation, including the Snowmass Ski Area. (Ord. 15-1999 §1; Ord. 1-2006 §1)

Sec. 5-63. Grant of franchise.

(a) Grant of Right to Serve. Subject to the conditions, terms and provisions contained in this Franchise, the Town hereby grants to the Company a nonexclusive right, privilege and authority to locate, build, install, construct, acquire, purchase, extend, maintain, repair and operate into, within and through all of the Town boundaries all necessary and convenient facilities for the purchase, generation, transmission and distribution of electrical energy. Such grant is made together with the nonexclusive right and privilege to furnish, sell and distribute said electrical energy to the residents of the Town for light, heat, power and other purposes.

(b) Scope of Grant. Such grant includes the nonexclusive right and the obligation to furnish electrical energy using the Company's facilities or otherwise, on, over, under, along, across and through any and all streets, and on, over, under, along, across and through any extension, connection with or continuation of the same and on, over, under, along, across and through all such new streets as may be hereafter laid out, opened, located or constructed within the Town boundaries. The Company is further granted the nonexclusive right, privilege and authority to excavate in, occupy and use any and all streets. Any such excavation, occupation and use must be in accordance with Town standards and regulations, and will be undertaken under the supervision of the properly constituted authority of the Town for the purpose of bringing electrical energy into, within and through the Town boundaries and supplying electrical energy to the residents.

(c) Service to Town Facilities. The Town hereby grants to the Company the nonexclusive right, privilege and authority to provide street and security lighting to the Town, and to serve all Town owned or operated structures, plants, equipment or Town apparatus and facilities, including the right, privilege and authority to furnish, sell and distribute electrical energy necessary for such.

(d) **Underground Policy of the Town.** Except for the maintenance, relocation and repair of the Company's existing overhead facilities, the Company shall at all times recognize the Town's preference, and mandated policies, including the provisions set forth in this Code, that utilities be located underground. Transformers, switchgear, and other similar equipment associated with underground construction, must, by necessity, be located above ground. The Company's recognition of such preference and mandated policies shall at all times be subject to Section 5-83, Undergrounding.

(e) **Duration of Franchise.** This Franchise shall commence at 12:00 a.m. on May 2, 2000, and the terms, conditions and covenants hereof shall remain in full force and effect until its termination at 11:59 p.m. on April 30, 2020. (Ord. 15-1999 §1)

Sec. 5-64. Trees and shrubs.

The Company shall have the right to control the growth of trees and shrubs as may be reasonably necessary to protect its facilities. The Company may use machinery or other lawful methods to control such growth, but shall not use chemicals for such purpose. Annually, on a date mutually agreed to by both parties, representatives of each party shall meet and/or consult to discuss problems related to the means and methods of controlling such growth. Prior to cutting down or removing any tree, the Company shall consult with the Planning Director for the purpose of determining whether such cutting or removal is the only reasonable and cost effective means of protecting the Company's facilities. (Ord. 15-1999 §1)

Sec. 5-65. Location of Company's facilities.

Wherever reasonable and practicable, the Company will endeavor to install its facilities within public easements. The Company shall locate its facilities within the Town boundaries so as to cause minimum interference with any of

the Town's property and facilities, including the proper use of streets, and so as to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said streets. (Ord. 15-1999 §1)

Sec. 5-66. Restoration of public and private improvements.

Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved street, road, alley, water line, sewer line, storm drain, or any other public or private improvement, the Company shall at its own expense and in a quality workmanlike manner, repair or cause to be repaired and restored to its original condition such sidewalk, graveled or paved street, road, alley, water line, sewer line, storm drain, or other public or private improvement after the installation of its facilities; provided, however, that upon failure of the Company to do such required repairs within a reasonable time and in a workmanlike manner, the Town may perform the required work and charge the Company for all reasonable costs thereof. (Ord. 15-1999 §1)

Sec. 5-67. Use of facilities.

The Company shall have the right to make such use of its facilities and other property owned by the Company, for uses other than the uses contemplated in the Franchise, as it deems proper so long as such other uses do not interfere with its ability to supply electrical energy. (Ord. 15-1999 §1)

Sec. 5-68. Changed conditions - overhead.

If at any time it shall be necessary to change the position of any overhead electrical facilities of the Company to permit the Town to lay, make or change street grades, pavements or other Town works, such changes shall be made by the Company at its own expense, after reasonable notice from the Town. (Ord. 15-1999 §1)

Sec. 5-69. Compliance with Town requirements.

The Company shall comply with the applicable provisions contained in this Code, including without limitation provisions regarding curb and pavement cuts, excavating, digging and related construction, maintenance and operational activities, and land use and development application and review, except as otherwise provided for in this Franchise. A complimentary copy of the current Municipal Code, and all amendments thereto, shall be provided to Holy Cross Energy, when requested. Such copy of this Code need not be a published version, but may be in the form of electronic media. (Ord. 15-1999 §1)

Sec. 5-70. Town review of construction and design.

Prior to construction of any significant facilities within the Town boundaries, the Company shall furnish to the Town the plans for such proposed construction. In addition, the Company shall assess and report on the impact of its proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain, inter alia:

- (1) That all applicable provisions of this Code are complied with;
- (2) That aesthetic and good planning principles have been given due consideration to address visual impacts; and
- (3) That adverse impact on the environment has been minimized. (Ord. 15-1999 §1)

Sec. 5-71. Capital improvement projects.

The Company and the Town shall inform one another of any capital improvement projects anticipated within the Town boundaries that may impact the facilities or operations of either party. The party proposing such capital improvements shall inform the other party of the nature of such improvements within a reasonable time after

plans for such improvements have been substantially formulated. Each party shall cooperate in the timely exchange of all necessary information, design data, drawings and reports to properly assess and evaluate the potential impacts of said improvements. (Ord. 15-1999 §1)

Sec. 5-72. Maintenance of facilities.

The Company shall install, maintain, repair, replace and upgrade its facilities to ensure both the adequacy of, and quality of, electric service to the Town and all residents. All excavation and construction work done by or under the authority of the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the Town and all residents. (Ord. 15-1999 §1)

Sec. 5-73. Town not required to advance funds.

Upon receipt from the Town of an authorization to proceed, and a promise to pay for construction, the Company shall extend its facilities to the Town for municipal uses therein or for any municipal facility outside the Town boundaries and within the Company's certificated service area, without requiring the Town to advance funds prior to construction. (Ord. 15-1999 §1)

Sec. 5-74. Scheduled interruptions.

The Company shall, whenever possible, give notice, either oral or written, to the Town and its affected residents of planned service interruptions of significant duration. (Ord. 15-1999 §1)

Sec. 5-75. Cooperation with other utilities.

When undertaking a project of undergrounding, the Town and the Company shall work with other utilities or companies to attempt to have all lines undergrounded as part of the same project. The Company shall not be required to pay the costs of any other utility in connection with work under this Article. (Ord. 15-1999 §1)

Sec. 5-76. Rates, regulations, uniformity of service and upgrades.

(a) **Furnishing Electrical Energy.** The Company shall furnish electrical energy within the Town boundaries, and to the residents thereof at the Company's applicable and effective 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, adopted by and on file with the Company, subject only to regulations thereof as is provided by law. 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 resident, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.

(b) **Facility Upgrades.** The Company will, from time to time, during the term of this Franchise make such improvements, enlargements and extensions of its Facilities incorporating, when reasonable and practical, technological advances within the industry as the business of the Company and the growth of the Town justify, in accordance with its Standards for Service, Rules and Regulations, and Service Connection and Extension Policies for electric service concurrently in effect and on file with the Company, subject only to regulations thereof as is provided by law.

(c) **Reliable Supply of Electricity.** The Company shall take all reasonable and necessary steps to provide an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of electricity to its customers should be interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time. In the event the Company's electric system, or any part

thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

(d) **Maps and Regulations.** The Company shall submit copies of its Standards for Service, Service Connection and Extension Policies, Rules and Regulations and maps of its facilities within the Town boundaries to the Town Clerk. All changes in such maps, Standards for Service, Rules and Regulations, and policies, shall be submitted to the Town as the same may from time to time occur. Such documents need not be a published version, but may be in the form of electronic media.

(e) **Development Review.** The Company shall analyze any development applications, subdivision plats or planned unit development plans submitted to it by the Town and respond to any request by the Town for information regarding the adequacy of its facilities necessary to serve such proposed plat or plan and answer any other questions posed to the Company by the Town regarding said plat or plan as are within the knowledge of the Company. The Company shall respond to said requests or questions within reasonable time limits set by the Land Use and Development Code.

(f) **Interrelationship of Laws, Rates, Regulations and Ordinances.** The Company shall comply with all county, state or federal laws, and rules and regulations related to the subject matter hereof. The Company also agrees to abide by all ordinances and resolutions of the Town, unless and except to the extent that this Franchise shall relieve the Company of the obligation to comply with the terms and conditions of such other ordinances or any other provisions hereof. The Company, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the use of electrical energy and the 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 provide a safe, continuous and uninterrupted service to each and all of such customers and the proper measurement thereof and payment therefor. Any such rules, regulations, terms and conditions must not be inconsistent with this Franchise, but no ordinance of the Town may regulate the Company's rates or charges for the furnishing of electrical energy, or shall lessen the safety of providing such energy to its customers, nor shall any such ordinance alter the manner in which service is extended to such customers. (Ord. 15-1999 §1)

Sec. 5-77. Joint use of trenches.

If the Company installs new electric underground conduit or opens a trench or replaces such conduit, the Company shall provide adequate advance notice to permit additional installation of similar facilities in the same trench by the Town, or installation of other types of municipal facilities, subject to applicable rules and regulations. If the Town elects to use the trench it will so notify the Company. The Town shall provide the materials at no expense to the Company. The Town shall reimburse to the Company only those monies paid by the Company to an independent contractor for labor costs to install Town-furnished materials by such independent contractor. The Company shall include copies of invoices from the independent contractor to substantiate the Company's request for reimbursement. If the installation of Town-furnished materials is performed solely by the Company's employees, there will be no labor charge to the Town. Such action by the Town shall not unnecessarily interfere with the Company's facilities or delay the accomplishment of the project. The Town shall be responsible for ensuring that required vertical and horizontal separations between its facilities and that of the Company's are strictly maintained. The Town and Company shall jointly hold each other harmless from any liability or

damage resulting from their respective facilities being installed in a joint trench. (Ord. 15-1999 §1)

Sec. 5-78. Indemnification and police power.

(a) Town Held Harmless. The Company shall indemnify, defend and save the Town, its officials, employees and agents, 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 boundaries 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 shall 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 of any claim, demand or lien arising out of, or in connection with, any negligent act or failure to act by the Town or any of its officials, employees or agents unless the Company shall become obligated to indemnify, defend or hold the Town harmless by virtue of the comparative negligence laws of Colorado.

(b) 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, or with orders of other authorities having jurisdiction in the premises. (Ord. 15-1999 §1)

Sec. 5-79. Franchise fee.

(a) Franchise Fee. In consideration for the grant of this Franchise, the Company shall pay to the Town a sum equal to three percent (3%) of its gross revenues collected from the sale or delivery of electricity within the Town boundaries. Electric revenues received from service to the Town facilities will not be assessed a three-percent fee under this Section nor will the Town be paid the three-percent fee from such revenues collected from Town facilities. To the extent required by law, the three percent (3%) shall be surcharged to the residents within the Town boundaries. This surcharge is in addition to any charges specified in the Company's tariffs and any applicable taxes.

(b) Change of Franchise Fee - Town Initiated. The Town expressly reserves the right to notify the Company of a revision to the franchise fee to a different percentage of gross revenue prior to October 1 of the even-numbered years during the term of the franchise. The revised franchise fee shall become effective on the next billing cycle of the Company commencing on or after January 1 of the year following the year in which notification was given by the Town. Provided, however, that the maximum amount of the franchise fee shall be five percent (5%) of the revenues collected within the Town boundaries.

(c) Payment. Payment of the franchise fee shall be made by the Company to the Town on or before thirty (30) days after the end of each quarter of each calendar year for the preceding three-month period, but shall be adjusted for the portions of the calendar quarters at the beginning and at the end of this Franchise. All payments shall be made to the Town Clerk.

(d) Revenue Audit. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this Article, the Company shall file with the Town Clerk, or such

other official as shall be designated by the Town from time to time, a statement, in such reasonable form as the Town may require, showing the total gross receipts received by the Company from the sale of electricity to residents within the Town boundaries for the preceding three-month period. The Town Clerk or any official appointed by the Town Council shall have access to the books of said Company for the purpose of confirming the gross revenues received from operations within the Town boundaries.

(e) Correction of Underpayment/Overpayment. Should either the Company or Town discover either an underpayment or overpayment of the franchise fee, the party making such discovery shall inform the other party within a reasonable time. If the error is substantiated as an underpayment, the Company shall make payment of the deficiency within thirty (30) days of the date the error was substantiated. If the error is substantiated as an overpayment, a credit equal to the overpayment will be applied to the next Franchise payment due the Town.

(f) Occupation Tax Alternative. In the event the said franchise fee levied herein should be declared invalid and/or shall be set aside by a court of competent jurisdiction, then, and in such event, and in lieu thereof, the Town may thereafter levy an occupation tax upon the Company, not to exceed in any one (1) calendar year five percent (5%) of the gross revenue collected from the sale of electricity within the Town boundaries for that calendar year. Such occupation tax shall be adjusted for any franchise fees previously paid to the Town in such calendar year. In the event the Town shall enact such an occupation tax, in lieu of the franchise fee, all of the remaining terms, conditions and provisions of this Article shall remain in full force and effect for the period stated herein. Such occupation tax ordinance or enactment shall be designed to meet all legal requirements to ensure that it is not construed as an income tax.

(g) Franchise Fee Payment in Lieu of Other Fees. The franchise fee paid by the Company is accepted by the Town in lieu of any occupation tax, license tax or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its 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 business. The provisions of this Section shall exempt the Company from the provisions of this Code pertaining to business license fees, permit fees regarding curb and pavement cuts, excavating, digging and related construction, maintenance and operational activities, land use and development application and review, and building permit and occupancy fees, as such are prescribed in Chapters 4, 11, 16A and 18 of this Code, respectively.

(h) Termination of Franchise. If this Franchise is terminated by either the Company or the Town for whatever reason, or is declared null and void, all franchise fees or occupation taxes levied herein shall be suspended as of the date the Franchise is legally terminated. Final payment of any franchise fee or occupation tax owed and due the Town shall be made on or before thirty (30) days after the date the Franchise is legally terminated. (Ord. 15-1999 §1)

Sec. 5-80. Reports.

(a) Reports. The Company shall submit reasonable and necessary reports containing, or based upon, 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, and shall, if requested, provide the Town with a list of real property within the Town boundaries which is owned by the Company. Such documents need not be a published version, but may be in the form of electronic media.

(b) Copies of Tariffs. The Company shall furnish the Town with copies of any tariffs currently in use. Such documents need not be a published version, but may be in the form of electronic media. (Ord. 15-1999 §1)

Sec. 5-81. Administration.

(a) Amendments. At any time during the term of this Franchise, the Town through the Town Council, or the Company, may propose amendments to this Franchise by giving thirty (30) days' written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, shall within a reasonable time, negotiate in good faith in an effort to agree upon a mutually satisfactory amendment(s). No amendment(s) to this Franchise shall be effective until mutually agreed upon in writing by the Town and the Company and until all public notice requirements pursuant to Colorado statutes, and ordinance requirements of the Town, have been met. This Section shall not apply to franchise fee changes under Section 5-79.

(b) Revocation of Privileges by Condemnation. In the event, at any time during the term of this Franchise, the Town shall condemn any of the facilities of the Company within the Town boundaries, and thereby revoke all or any part of the privilege and authority herein granted to the Company to serve the residents within the Town boundaries, then and in such event the Town shall pay to the Company just compensation as provided by the laws of the State for such rights and facilities by reason of such condemnation.

(c) Compliance Impaired. Both the Company and the Town recognize there may be circumstances whereby compliance with the provisions of this Franchise is impossible or is delayed because of circumstances beyond the Company's or Town's control. In those instances, the Company or Town shall use its best efforts to comply in a timely manner and to the extent possible.

(d) Company's Failure to Perform. It is agreed that in case of the failure of the Company to perform and carry out any of the stipulations, terms, conditions and agreements herein set forth in any substantial particular, wherein such failure is within the Company's control and with respect to which redress is not otherwise herein provided, the Town, acting through the Town Council, may, after hearing, determine such substantial failure; and, thereupon, after notice given the Company of such failure, the Company may have a reasonable time, not less than ninety (90) days, unless otherwise agreed by the parties, in which to remedy the conditions respecting which such notice shall have been given. After the expiration of such time and the failure to correct such conditions, the Town Council shall determine whether any or all rights and privileges granted the Company under this Article shall be forfeited and may declare this Franchise null and void.

(e) Ownership of Facilities. All facilities used or placed by the Company within the Town boundaries shall be and remain the property of the Company.

(f) Transfer of Ownership or Control.

(1) In this Subsection (f), the following words have the meanings indicated:

Control means actual working control in whatever manner exercised. *Control* includes, but may not necessarily require, majority stock ownership.

Proposed transferee means a proposed purchaser, transferee, lessee, assignee or person acquiring ownership or control of the franchise or the Company.

(2) The Company shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, merger, share

exchange, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, or suffer or permit any direct or indirect change in control of the Company or the franchise (each of the foregoing a "transfer") without the prior consent of the Town, and then only upon such terms and conditions as the Town may lawfully require, except that such prior consent shall not be required for an intra-corporate transfer from one (1) wholly owned subsidiary to another wholly owned subsidiary. The consent required by the Town shall be given or denied no later than one hundred twenty (120) days following any written request and delivery to the Town of all information reasonably requested by the Town, which consent shall not be unreasonably withheld.

(3) In seeking the Town's consent to any transfer, the proposed transferee shall indicate whether it:

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

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

c. Has pending any legal claim, lawsuit or administrative proceeding arising out of or involving an electric utility;

d. Is financially solvent, by submitting the financial data including financial statements that are audited by a certified public accountant along with any other data that the Town may reasonably require; and

e. Has the legal, financial and technical capability to enable it to maintain and operate the facilities for the remaining term of the franchise agreement.

The Company shall cause the proposed transferee to provide such evidence of the foregoing and such other information as the Town shall reasonably request.

(4) The consent or approval of the Town to any transfer by the Company does not constitute a waiver or release of the rights of the Town in or to the streets, and any transfer shall by its own terms be expressly subject to the terms and conditions of this Article.

(5) A transfer may not be approved without the successor in interest becoming a signatory to the franchise agreement.

(g) **Removal of Facilities.** Upon the expiration of this Franchise, if thereafter the Company facilities shall not be used for electric, telephone or cable TV purposes for a period of twelve (12) successive months, the Town shall have the option of having the Company remove such facilities or claim such facilities as its own. If the Town should require the Company to remove its facilities, such removal shall only apply to those facilities that are above ground and have a visual impact on the surrounding area. If the Town elects to have the Company remove the facilities, it shall give written notice to the Company within thirty (30) days after expiration of the twelve-month period above described directing it to remove such facilities, and the Company shall remove the same no later than ninety (90) days after the date of such notice, unless the Company and the Town agree to a longer period within which removal shall occur. Any facilities, either underground or overhead, remaining after the twelve-month, thirty-day and ninety-day periods above described, that have not been expressly claimed by the Town or removed by the Company, shall be deemed to have been abandoned. Any cost incurred by the Town in removing abandoned

facilities and any liability associated with facilities abandoned by the Company shall be the liability of the Company. For any facilities claimed by the Town, any liability associated with such facilities shall become the liability of the Town.

(h) **Nonrenewal of Franchise; Alternative Electric Service.** If this Franchise is not renewed, or if it is declared null and void, or the Company terminates any service provided for herein for any reason, and the Town has not provided for alternative electric service to the residents within the Town boundaries, the Company shall not remove its facilities and shall be obligated to continue electric service to the residents until alternative electric service is provided. The Company will not withhold any temporary services necessary to protect the public. (Ord. 15-1999 §1)

Sec. 5-82. Community Enhancement Fund.

(a) **Purpose.** The Company is committed to programs designed to make a difference in people's lives and the communities in which they reside. The Company will voluntarily make monetary resources available to the Town for such programs and/or activities. Programs for which such funds shall be spent shall be limited to:

- (1) Beautification projects;
- (2) Energy conservation projects;
- (3) Equipment and technology upgrades for schools;
- (4) Scholarship funds;
- (5) Acquisition of open space and/or park land and development thereof;
- (6) Sponsorship of special community events;
- (7) Undergrounding of overhead electric and other utilities.

Funds made available under this Section may be spent for other purposes only with the express written consent of the Company. This program has been initiated solely by the Company; the Town has not made the program a requirement for this Franchise. Funding for this program is not a cost of doing business, but is a voluntary contribution by the Company.

(b) Payments to the Fund. The Company will establish an initial fund amount of two thousand dollars (\$2,000.00). The Company shall then make annual payments to the fund equal to one percent (1%) of its prior year's gross revenues, prorated for the portions of the months at the beginning and end of the term of this Franchise, collected from the sale of electricity within the Town boundaries, or two thousand dollars (\$2,000.00), whichever amount is greater. Said payments shall be made into the fund no later than February 15 of the year subsequent to the year in which the gross revenues are received by the Company.

(c) The Fund. The fund established by the Company shall be maintained in a bank account in the name of the Town, but shall be maintained separately from all other funds and accounts held by the Town.

(d) Payments from the Fund. All payments from the fund shall be for projects described in Subsection (a) hereof. Prior to any such expenditure, authorization to withdraw from the fund shall be given by resolution duly enacted by the Town Council, and such resolution shall clearly describe the nature and purpose of the project for which the expenditure is made. Prior to any expenditure, the Town shall notify the Company of its intended use of the funds. Unless the Company objects, in writing, prior to such expenditure, the Company shall have waived its right to object in the future if the funds are expended for the use identified in the notice.

(e) Audits. The Town may audit the Company's books related to gross revenues collected within the Town boundaries at any reasonable time and with reasonable prior notice. The Company may audit the fund account, expenditures from the fund and resolutions and ordinances authorizing such expenditures at any reasonable time and with reasonable prior notice.

(f) Forfeiture of Enhancement Funds. The Company shall have the express right to temporarily suspend or terminate in full its annual contributions to the Enhancement Fund if it is determined that funds allocated and paid to the Town are being, or have been, misappropriated, administered with bias or discrimination or for other inappropriate actions.

(g) Advances of Funds. The Company shall consider advances of funds, subject to the provisions of this Section, for all such projects that specifically involve undergrounding of overhead lines or projects acceptable to the Company which are related to the Company's existing facilities. The Town shall make all reasonable attempts to plan and budget use of the fund without advancement of future funds. However, if the Town requests and the Company and the Town agree that it is in the mutual interest of both, the Company shall anticipate fund amounts to be available for up to three (3) years in advance. Both parties shall enter into a special agreement concerning the advanced funds. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated. (Ord. 15-1999 §1)

Sec. 5-83. Undergrounding.

(a) At Consumer's Request. If a customer within the Town boundaries should request that new facilities be installed underground, or for the conversion of existing overhead facilities to underground facilities, or if Town ordinances or resolutions require a customer or customers to

install facilities underground, the Company shall proceed in accordance with its Line Extension Policy, Advice Letter Number 8, dated July 30, 1976 (herein "Line Extension Policy") and in accordance with its Policy Statement, Conversion From Overhead to Underground Facilities, June 15, 1988 (herein "Underground Conversion Policy"), as each may from time to time be amended.

(b) Town Requested Undergrounding. Except for the Company's contributions to the Community Enhancement Fund, which may be used by the Town to pay for the undergrounding of the Company's facilities, any request, requirement imposed by resolution or ordinance, or other communication from the Town to the Company, asking or requiring the Company to underground new facilities or existing overhead facilities, or move, remove or replace existing underground facilities, shall be responded to in accordance with the provisions of the Company's Line Extension Policy, Underground Conversion Policy or other customary practice in use by the Company. The Town acknowledges receipt of a copy of both policies.

(c) Relocation of Underground Facilities. No provision contained in this Article shall be construed to obligate the Company to pay for the removal and relocation of its facilities where such is at the request or demand of a person, or a public or private entity under circumstances which require the party requesting or demanding such to pay for the relocation under other provisions hereof, or under the provisions of the Company's Line Extension Policy, Underground Conversion Policy or other customary practice in use by the Company.

(d) Governmental Mandates. This Franchise or this Code, as either may be amended from time to time, shall not prohibit or limit the Company's right to enforce its collection of the cost increase in accordance with the provisions of the Company's Line Extension Policy, Underground Conversion Policy or other customary practices of the Company. (Ord. 15-1999 §1)

Sec. 5-84. Changes in utility regulation.

(a) In the event new legislation materially affects the terms and conditions of this Franchise, the parties agree to renegotiate the affected terms and conditions in good faith as an amendment hereto. The parties hereto acknowledge that regulatory and legislative changes in the electric utility, gas utility and other energy industries are currently being discussed nationwide and statewide; that some changes in utility industry sectors have already been implemented; and that other changes may be made in the future, during the term of this Franchise. One likely scenario is the implementation of open access to electric customers, and other energy customers, making such customers available to all utilities, thus eliminating or limiting territorial protections. Under this scenario one utility may contract to sell a type of energy to a customer, while another utility transports the energy to the customer for a fee charged to the other utility or the customer.

(b) The parties agree, that insofar as future changes in the utility laws will allow, the Company shall always retain the right to bill customers for utility transportation services and energy sales within the Town boundaries if it is the provider of either the energy product or the transportation of such product. The parties agree that this will provide the most efficient and convenient utility service to the residents within the Town boundaries and provide assurance to the Town of franchise fee collection for each component charged for the sale and delivery of energy products within the Town boundaries. (Ord. 15-1999 §1)

Sec. 5-85. Successors and assigns.

The rights, privileges, franchises and obligations granted and contained in this Franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns. (Ord. 15-1999 §1)

Sec. 5-86. Representatives.

Both parties shall designate from time to time in writing representatives to act as franchise agents for the Company and the Town. Such will be the persons to whom notices shall be sent regarding any action to be taken under this Franchise. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party. Until any such change shall hereafter be made, notices shall be sent to the Town Manager and to the Company's General Manager. Currently the addresses for each are as follows:

For the Town:

Town of Snowmass Village
16 Kearns Road
Post Office Box 5010
Snowmass Village, Colorado 81615
Attention: Town Manager

For the Company:

Holy Cross Energy
3799 Highway 82
Post Office Drawer 2150
Glenwood Springs, Colorado 81602
Attention: General Manager

(Ord. 15-1999 §1)

Sec. 5-87. 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 provisions that will achieve the original intent of stricken provisions. (Ord. 15-1999 §1)

Sec. 5-88. 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. 15-1999 §1)

Sec. 5-89. Approval.

(a) Town Approval. This grant of Franchise shall not become effective until approved by the Town in accordance with its ordinances and the statutes of the State.

(b) Company Approval. The Company shall file with the Town Clerk its written acceptance of this Franchise and of all its terms and provisions within fifteen (15) business days after the final adoption of this Franchise by the Town. The acceptance shall be in the 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 become null and void. (Ord. 15-1999 §1)

Sec. 5-90. Reserved.**ARTICLE IV****Gas Franchise*****Sec. 5-91. Short title.**

This Article shall be known and may be cited as the "Rocky Mountain Natural Gas Company Franchise Ordinance." (Prior code Ch. VIII Appx. A-1)

Sec. 5-92. Definitions.

For the purpose of this Article, the following terms shall have the meaning given herein:

Company is the Rocky Mountain Natural Gas Company, Inc., the grantee of rights under this franchise.

*Editor's note: This franchise expires September 19, 2003.

Town is the Town of Snowmass Village, Pitkin County, Colorado, the grantor of rights under this franchise. (Prior code Ch. VIII Appx. A-1)

Sec. 5-93. Grant of authority.

There is hereby granted to the Company the right, privilege and authority to locate, build, construct, acquire, purchase, extend, maintain and operate into, within and through the Town a plant or plants and works, for the purchase, manufacture, transmission and distribution of gas, either natural, artificial or mixed, with the right and privilege for the period and upon the terms and conditions hereinafter specified to furnish, sell and distribute gas to the Town, and the inhabitants thereof, for heating, cooking or other purposes, by means of pipes, mains or otherwise, over, under, along, across and through any and all streets, alleys, viaducts, bridges, roads, lanes and other public ways and places in the Town and over, under, along, across and through any extension, connection with or continuation of the same and/or over, under, along, across and through any and all such new streets, alleys, viaducts, bridges, roads, lanes and other public ways and places as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of the Town. (Prior code Ch. VIII Appx. A-1)

Sec. 5-94. Manner of use; repair.

The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all streets, alleys, viaducts, bridges, roads, lanes, parkways and other public ways and places under the supervision of the properly constituted authority for the purpose of bringing gas into, within and through the Town, and supplying gas to the Town and the inhabitants thereof and in the territory adjacent thereto; provided, however, that the Company shall so locate its plants, works, transmission and distribution structures, equipment, mains and pipes

within the Town in a manner to meet with the approval of the Town and further in locating said facilities shall do so in such manner 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 said 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, roads or alleys, or any other public or private improvement, the Company shall repair at its own expense in a workmanlike manner, subject to the approval by the Town, such sidewalk, graveled or paved street, road, alley or other improvement after the installation of its pipes or other structures. The Company shall use due care not to interfere with or damage any water mains, sewers or other structures now in or which may hereafter be placed in said streets, alleys or other public places; and said Company shall, at its own expense, repair in a workmanlike manner, subject to the approval of the Town, any of such water mains, sewers or other structures which are damaged through the negligence of the Company; provided, however, that the Town may make such repairs and charge the reasonable cost thereof to the Company. (Prior code Ch. VIII Appx. A-1)

Sec. 5-95. Town held harmless.

The Company shall so maintain its structures, apparatus, mains, pipes and other equipment as to afford all reasonable protection against injury or damage to persons or property therefrom, and the Company shall save the Town harmless from all liability or damage and all reasonable expenses necessarily accruing against the Town arising out of the negligent exercise by the Company of the rights and privileges hereby granted; and for this purpose the Company shall maintain public liability insurance in an amount

not less than five hundred thousand dollars (\$500,000.00), and shall furnish a certificate to the Town so showing; provided that the Company shall have had notices 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. (Prior code Ch. VIII Appx. A-1)

Sec. 5-96. Moving of equipment.

If at any time it shall be necessary to change the position of any gas main or service connection of the Company to permit the Town to lay, make or change street grades, pavements, sewers, water mains or other Town works, such changes shall be made by the Company at its own expense. (Prior code Ch. VIII Appx. A-1)

Sec. 5-97. Nonexclusive right.

The right to use and occupy said streets, alleys, public ways and places shall not be exclusive, and the Town reserves the right to grant the use of said streets, alleys, public ways and places to any person during the period of this franchise. (Prior code Ch. VIII Appx. A-1)

Sec. 5-98. Service standards.

The Company shall maintain and operate its plants and system and render efficient service in accordance with the rules and regulations of the Public Utilities Commission of the State and the terms and conditions of this Article, including specifically, but without limitation, the following requirements:

(1) Heating value. Gas sold, supplied and delivered under this franchise shall be maintained at a monthly average of not less than nine hundred fifty (950) British Thermal Units of heat value per cubic foot. A *cubic foot of gas* means that amount of gas which when saturated with water vapor at a temperature of sixty degrees Fahrenheit (60°F) and subject to an absolute pressure equal to

thirty (30) inches of mercury, at thirty-two degrees Fahrenheit (32°F) (14.73 pounds per square inch) occupies a volume of one (1) cubic foot. Gas sold under this franchise shall be accurately measured utilizing metering equipment of a type approved by the Public Utilities Commission of the State, which shall also be subject to approval of the Town.

(2) Calorimeter test required. The Company shall equip itself with a complete standard calorimeter and shall determine the heat value of the gas weekly. The tests may be made at any point within the limits of the distribution system, at any point on the pipeline or at the Glenwood Springs border station, at the option of the Company. The monthly average heating value of the gas shall be obtained by averaging the heat value found as a result of the weekly calorimeter tests as provided hereunder.

(3) Gas pressure. Gas pressure, as measured at the outlet of the Company's service to any consumer, shall conform with the requirement of the Public Utilities Commission of the State. The Company shall maintain a graphic recording pressure gauge at the point in the distribution system to be designated by the Town as typical of average pressure. The Company shall also keep and maintain a portable graphic recording gauge which shall be used at the request of the Town or any customer of the Company within the limits of the Town to test the pressure at any point in the distribution system where it connects with the service of a customer.

(4) Natural gas. Natural gas shall be furnished to the Town in its natural state as it is produced at the wells, without dilution, except that the Company shall remove such noxious gases therefrom and add such odorizing agent as may be required by law, regulations or proper authorities.

(5) Expense of adjustment. If, after natural gas has been made available, it should later be necessary to revert to manufactured, artificial or other suitable or mixed gas, the Company shall defray all necessary expenses incident to the adjustment of domestic appliances, including the changing or redrilling of orifices and burners.

(6) Maintenance of system. The Company shall maintain its gas plant equipment and distribution system in good condition and repair at all times.

(7) Maps. Before commencement of installation of pipes in Town streets and alleys, the Company shall prepare and submit to the Town Council a map showing the location of its distribution system, showing location, size and depth of lines, locations of shut-off valves and gates, and all appurtenances incident to the distribution system, so far as such facilities can reasonably be projected. In addition, the Company shall submit a construction plan indicating a construction schedule, showing the streets and alleys where excavations will be simultaneously open at any given time, making provision for traffic routing in the event of interruption, setting forth the places where pavement cuts are expected, and where underground boring will occur for pipe installation. Construction may then proceed upon approval of said map and plan by the Town. Thereafter, the map shall be kept current by addition of the information hereby required

as the system is extended or revised. If the Company fails to keep such map current and provide the required information, the Town can cause such work to be done and charge all costs thereof to the Company.

(8) Copies of all calorimeter tests and pressure gauge recordings shall be filed with the Town Clerk monthly.

(9) In making installation of its natural gas distribution system, the Company shall make adequate provision for providing service to customers, and it shall be the responsibility of the Company at the Company's cost to extend gas service lines to the property lines of customers who have ordered gas. (Prior code Ch. VIII Appx. A-1)

Sec. 5-99. Failure of supply of natural gas.

If during the term of this franchise there occurs a failure or partial failure of the supply of natural gas available to the Company because of depletion of such supply, the Company shall take all reasonable steps to obtain an additional natural gas supply from other sources to be delivered to the Company, and if unable to procure the same, it is hereby authorized to supply artificial or mixed gas for the unexpired term of this franchise. If the Company within a reasonable period after failure of the supply of natural gas shall fail to supply to its customers artificial and/or mixed gas, the franchise rights granted herein shall terminate. (Prior code Ch. VIII Appx. A-1)

Sec. 5-100. Service regulations and standards.

The Company shall furnish gas within the corporate limits of the Town and to inhabitants thereof, and to any person 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, filed with or fixed by the Public Utilities Commission of the State, or by any other competent authority having jurisdiction in the premises. (Prior code Ch. VIII Appx. A-1)

Sec. 5-101. Preferential service prohibited.

The Company shall not, as to rates, charges, services, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person or subject any 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 of charges and classified rate schedules to which any customer coming within an established classification would be entitled. (Prior code Ch. VIII Appx. A-1)

Sec. 5-102. Industrial users.

The rates to be charged by the Company for industrial gas used in the Town may be lower and different from those charged for gas used for other purposes, provided that contracts for industrial gas contain a "cut off" clause which recognizes the preferred right of the other users over industrial users. (Prior code Ch. VIII Appx. A-1)

Sec. 5-103. Enlargements and extension of service.

The Company shall from time to time during the term of this franchise make such enlargements and extensions of its distribution system as the business of the Company and the growth of the Town justify, in accordance with its Standards for Service, Rules and Regulations and Service Connection and Extension Policies for gas service concurrently in effect and on file with the Public Utilities Commission of the State or other competent authority having jurisdiction in the premises. (Prior code Ch. VIII Appx. A-1)

Sec. 5-104. Rules and regulations; filing of copies.

The Company from time to time may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of gas and payment therefor, and the interference with or alteration of any of the Company's property upon the premises of its customers, as shall be necessary to ensure a 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 the office of the Town Clerk and in its office in Denver, Colorado, available to the public, copies of its Rate Schedules, Standards for Service, Rules and Regulations and Service Connection and Extension Policies concurrently in effect and as filed with the Public Utilities Commission of the State or other competent authority having jurisdiction in the premises. (Prior code Ch. VIII Appx. A-1)

Sec. 5-105. Annual revenue payments.

(a) As a further consideration for this franchise and accepted by the Town in lieu of all occupancy and license taxes and all other special taxes, assessments or excises upon the pipes, mains, meters or other property of the Company, or other levies that might be imposed, either as a franchise tax, occupancy tax, license tax, permit, charge or for the inspection of pipes, mains, meters or other property of the Company, or otherwise, the Company shall pay to the Town a sum equal to three percent (3%) of its annual gross revenue derived from the sale of gas within the corporate limits of the Town, excluding the revenue received from the sale of industrial gas, and excluding the amount received from the Town itself for gas service furnished it and other adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered; provided, however, that the Town may, after the initial construction of the distribution system, require the payment of a reasonable permit charge for the opening of streets, alleys or other public ways and places, and a reasonable fee for the inspection of repairs thereto. Payments of the franchise tax shall be made on or before the first day of March of each year for the calendar year next previous, in the amount of one thousand two hundred dollars (\$1,200.00) and shall be made to the Town by the Company on or before December 15, 1978, which down payment shall be credited to the Company against the remaining obligation due under this agreement for 1978 which is to be paid the first day of March 1979, and which payment is to be used for planned expenditures by the Town which are necessary

for the welfare of the citizenry. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this Section, the Town Clerk and/or any committee appointed by the Town Council shall have access to the books of the Company for the purpose of checking the gross income received from operations within the Town.

(b) Said sum of three percent (3%) shall be surcharged and collected only from customers within the territory now or hereafter included in the boundaries of the Town. (Prior code Ch. VIII Appx. A-1)

Sec. 5-106. Option of Town to purchase.

After the expiration of five (5) years from the granting of the instant franchise and not before, the Town shall have the right, option and privilege of purchasing the Company's entire plant and distribution system operating in the Town and, at the option of the Town, in the immediate environs of the Town, for the following purchase price: the actual cost of constructing the system (the entire system shall include all additions and extensions to the original system), including as a part of the cost thereof all engineering costs, legal costs, interest during construction, the administrative cost incident to construction, plus ten percent (10%) of the total cost of the system as a bonus for development of the system. (The ten percent [10%] bonus referred to shall be reduced proportionately after the five-year period to the end of the franchise period.) In no event shall the value of the franchise or right-of-way be included in computing cost of the system. (Prior code Ch. VIII Appx. A-1)

Sec. 5-107. Town's acquisition of system by purchase an alternative.

The purchase price of the system herein set forth is a method of acquisition of the system by the Town, which is alternative to any other lawful means of acquiring title to the system by the Town, and said right and privilege of purchasing the Company's entire system shall be in addition to all of the rights and privileges granted and reserved to the Town by the laws of the State in all matters relating to franchises. (Prior code Ch. VIII Appx. A-1)

Sec. 5-108. Acquisition by Town.

In the event that the Town shall acquire the distribution system of the Company under any lawful method of acquisition, then the Company agrees to supply and the Town agrees to purchase natural gas at the Town limit gate from the pipeline of the Company, for the balance of the unexpired terms of the franchise, at a price to be fixed by the Public Utilities Commission of the State. (Prior code Ch. VIII Appx. A-1)

Sec. 5-109. Effective date.

This Article shall be in full force and effect from and after its passage, approval and publication, as by law required, upon acceptance thereof in writing by the Company, within thirty (30) days after final passage, and the terms, conditions and covenants hereof shall remain in full force and effect for a period of twenty-five (25) years from and after the effective date following final passage. (Prior code Ch. VIII Appx. A-1)

Sec. 5-110. Franchise expiration.

Upon the expiration of this franchise, if the Company shall not have acquired an extension or renewal thereof and accept same, it may have, and it is hereby granted, the right to enter upon the streets, alleys, bridges, viaducts, roads, lanes and other public places of the Town, for the purpose of removing therefrom any or all of its plants, structures, pipes, mains 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 pipes, mains or other property, the Company shall, at its own expense, and in a workmanlike manner, refill any excavations that shall be made by it in the graveled or paved streets, alleys, bridges, viaducts, roads, lanes and other public places after the removal of its mains, pipes or other structures. (Prior code Ch. VIII Appx. A-1)

Sec. 5-111. Rates.

Rates charged by the Company for service hereunder shall be fair and reasonable and designed to meet all necessary costs of service, including a fair rate of return on the net valuation of its properties devoted thereto, under efficient and economical management. The Company agrees that it shall be subject to all authority now or hereafter possessed by any regulatory body having jurisdiction to fix just, reasonable and compensatory gas rates. The Company further agrees that the system shall be so designed, constructed and sources of gas utilized as to provide the most economic development and favorable rate structure possible, taking into account deliverability of gas, reserves and other pertinent conditions. (Prior code Ch. VIII Appx. A-1)

Sec. 5-112. Assignment.

The Company shall not assign this franchise, or the rights granted hereunder, without first obtaining written consent of the Town; provided, however, that the consent to assignment shall not be unreasonably withheld, and further that this condition shall not be construed to restrict or prevent the issuance of bonds, debentures or other evidence of indebtedness, or the issue of additional stock, needed or useful for the purpose of financing the system or any portion thereof. (Prior code Ch. VIII Appx. A-1)

Sec. 5-113. Bond.

Within fifteen (15) days after the Public Utilities Commission of the State has granted to the Company a Certificate of Public Convenience and Necessity and after appeal rights have expired, the Company shall deposit with the Town Clerk a bond in the penal sum of ten thousand dollars (\$10,000.00) executed by the Company with surety to be approved by the Town, conditioned upon compliance with the terms and conditions of this Article and further conditioned that the Company and its surety shall pay to the Town all costs, expenses and damages resulting to the Town from the failure of the Company to comply with the terms and conditions of this Article, and further conditioned that the Town shall recover all costs and expenses incurred in enforcing collection of said bond. Such bond shall be maintained in full force and effect during the period of this franchise, and additional

security may be required from time to time, or security may be adjusted, revised or substituted upon consent of the Town. (Prior code Ch. VIII Appx. A-1)

Sec. 5-114. Forfeiture.

The Town reserves the right to declare a forfeiture of this franchise for the breach of a substantial and material provision thereof. No forfeiture shall be declared until the Company shall have had an opportunity to be heard and to correct the alleged breach. Upon failure of the Company to exercise reasonable diligence to correct such condition, the Town may declare this franchise forfeited. In the event that this franchise is forfeited, then the Company agrees to continue to render service as theretofore, for a period of six (6) months to give the Town time to decide upon its course of action. (Prior code Ch. VIII Appx. A-1)

Sec. 5-115. Reserved rights.

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, or with orders of other authorities having jurisdiction in the premises. (Prior code Ch. VIII Appx. A-1)

Secs. 5-116—5-130. Reserved.

ARTICLE V**Telephone Utility Tax****Sec. 5-131. Levy of tax.**

There is hereby levied against every telephone utility which is engaged in the business of providing local exchange telephone service within the Town a tax on the privilege of engaging in such business. The amount of such tax shall be fourteen thousand dollars (\$14,000.00) annually. (Prior code Ch. XIV §2-1)

Sec. 5-132. Local application.

The tax levied in this Article is upon the affected occupations and businesses in their performance of local functions and is not a tax upon those functions related to interstate commerce. (Prior code Ch. XIV 2-2)

Sec. 5-133. Payment of tax.

The tax levied in this Article shall be due on the first day of January of each year. The tax shall be payable in twelve (12) equal monthly installments, each installment to be paid on the last business day of each calendar month. (Prior code Ch. XIV 2-3)

Sec. 5-134. Failure to pay.

If any telephone utility subject to this Article fails to pay the taxes as provided herein, the full amount thereof shall be due and collected from such utility, and such taxes, plus ten percent (10%) of the amount of such taxes, shall be declared to be a debt due and owing from such utility to the Town. (Prior code Ch. XIV 2-4)

Sec. 5-135. Inspection of records.

The Town, its officers, agents or representatives, shall have the right at any reasonable time to examine the books and records of any telephone utility which is subject to the tax imposed by this Article, and to make copies of the entries and contents thereof. (Prior code Ch. XIV 2-5)

Sec. 5-136. Scope of tax.

The tax provided in this Article shall be in lieu of all of the occupation taxes on the privilege of doing business within the Town on any telephone utility subject to the provisions of this Article. (Prior code Ch. XIV 2-6)

Secs. 5-137—5-150. Reserved.**ARTICLE VI****Emergency Telephone Service Charge****Sec. 5-151. Charge imposed.**

There is hereby imposed, pursuant to Section 29-11-101 *et seq.*, C.R.S., upon all telephone exchange facilities within the Town an emergency telephone charge in an amount not to exceed seventy cents (\$.70), as approved by the Public Utilities Commission. Upon recommendation of the Emergency Telephone Service Authority, the Town Council may, by resolution, raise or lower the emergency telephone charge, but in no event shall such charge exceed the amount of seventy cents (\$.70), as approved by the Public Utilities Commission. (Ord. 3-1990 §2; Ord. 21, 1994 §2)

Sec. 5-152. Collection by service suppliers.

Telephone service suppliers providing telephone service in the Town are hereby authorized to collect the emergency telephone charge imposed by this Article in accordance with Section 29-11-101 *et seq.*, C.R.S. (Ord. 3-1990 §3; Ord. 21, 1994 §3)

Secs. 5-153—5-170. Reserved.

