

CHAPTER 5

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ARTICLE I

Cable Television System

Sec. 5-1. Grant of franchise; term.

Pursuant to that cable franchise agreement between the Town and AT&T Broadband HC of Colorado, LLC, duly authorized and approved by the Board of Trustees on April 9, 2002, a nonexclusive franchise is hereby granted to AT&T Broadband HC of Colorado, LLC, to occupy and use public rights-of-way within the Town for the construction, installation, maintenance, operation, expansion, repair, upgrading and rebuilding of a cable television system for a term of five (5) years commencing April 13, 2002, and terminating on April 12, 2007. If the cable television system operated under the franchise granted under this Section is upgraded to a minimum bandwidth of not less than 550 MHz and can deliver both upstream and downstream transmissions prior to the expiration of the initial five-year term of the franchise as provided for in Section 11-1 of the franchise agreement, then the term of the franchise shall be extended by an additional term of ten (10) years, or to and until April 12, 2017. (Ord. 6-2002 §2)

Sec. 5-2. Use of public rights-of-way and easements.

(a) Subject to the Town's regulations governing access and excavations or construction on or within public rights-of-way and/or other property, the franchise awarded the franchise specified in this Article may erect, install, construct, repair, replace, reconstruct and retain such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as necessary and appurtenant to the operation of the cable television system within the Town in, on, over, under, upon, across and along rights-of-way, easements and other real property dedicated to or owned by the Town for public use.

(b) The franchisee must follow established requirements for the placement of cable system facilities in public rights-of-way and easements, including the specific location of facilities in such rights-of-way or easements, and must in any event install cable system facilities in a manner that minimizes interference with the use of the rights-of-way and/or easements by others, including others who may install communications facilities. Within limits reasonably related to protecting public health, safety and welfare, the Town may require that cable system facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular right-of-way or easement, and access may be denied if the franchisee is not willing to comply with Town's lawful requirements. Franchisee may also be required, at its cost, to remove any facility that is not installed in compliance with the requirements lawfully established by the Town, and may be required to cooperate with others to minimize adverse impacts on rights-of way and easements through joint trenching and other arrangements. (Ord. 6-2002 §2)

Sec. 5-3. Franchise nonexclusive.

The franchise awarded under this Article shall be nonexclusive and subject to all prior rights, interests, easements or licenses granted by the Town to any person to use or occupy any property, right-of-way, interest or license for any purpose whatsoever, including the right of the Town to use same for any purpose it deems fit, including the same or similar purposes allowed the franchisee under this Article. The Town may also at any time in the future grant authorization to use the rights-

of-way and easements for any purpose not incompatible with franchisee's authority under the franchise, inclusive of franchises for additional cable television systems as the Town deems appropriate.

Sec. 5-4. Reservation of police powers.

The rights and interests vested in the franchisee under the franchise awarded under this Article shall remain subject to the Town's police powers, and the Town shall maintain authority and power to adopt from time to time ordinances of general application that are necessary to protect the public health, safety and welfare, provided that such ordinances shall not be destructive of the rights granted to the franchisee under the franchise. Any conflict that may arise between the provisions of the franchise agreement and the present or future lawful exercise by the Town of its police power shall be resolved in favor of the latter. (Ord. 6-2002 §2)

Sec. 5-5. Tree Trimming.

Franchisee may prune or cause to be pruned, using proper pruning practices, any tree in or encroaching upon a public right-of-way or easement that interferes with the proper operation or maintenance of franchisee's cable system. Franchisee shall comply with all general ordinances or regulations of the Town regarding tree trimming. Except in emergencies, franchisee may not prune trees at a point below thirty (30) feet above sidewalk grade unless one (1) week's prior written notice of such pruning has been given to the owner or occupant of the premises abutting the right-of-way or easement in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during the one-week notice period. If the owner or occupant fails to do so, franchisee may prune such tree as necessary at its own expense. For purposes of this Section, emergencies exist when it is necessary to prune to protect public safety or the franchisee's facilities from imminent injury or destruction. (Ord. 6-2002 §2)

Sec. 5-6. Stop work orders.

(a) Upon notice to the Town that any work is being performed contrary to the provisions of this Article or the franchise agreement awarded thereunder, or in an unsafe or dangerous manner as determined by the Town, or in violation of the terms of any generally applicable permit, law, regulation, ordinance or standard, such work may immediately be stopped by the Town by written order.

(b) A stop work order shall:

- (1) Be in writing;
- (2) Be given to the person doing the work if present to receive same at the work site and/or posted on the work site;
- (3) Be sent to the franchisee by overnight delivery or by facsimile at the address and/or number given in the franchise agreement;
- (4) Indicate the nature of the alleged violation or unsafe condition; and

(5) Establish conditions under which work may be resumed.

(c) The provisions contained in this Section shall be in addition to any and all other police powers and law enforcement authority possessed by the Town. (Ord. 6-2002 §2)

Secs. 5-7—5-50. Reserved.

ARTICLE II

Electric Franchise

Sec. 5-51. Definitions.

The word Town, as hereinafter employed, shall designate the Town of Buena Vista, Chaffee County, Colorado, the grantor, and the word Association shall designate the Sangre de Cristo Electric Association, Inc., a corporation, its successors and assigns, the grantee. (Ord. 3-1972 Art. I; Ord. 4-1997 Art. I)

Sec. 5-52. Grant of franchise.

The franchise and right are hereby granted by the Town to the Association, its successors and assigns, to locate, build, construct, acquire, extend, maintain and operate into, within and through said Town, a plant or plants and works, for the purchase, manufacture, generation, transmission and distribution of electricity for illuminating, heating and power, or other purposes, with the right and privilege for the period and upon the terms and conditions hereinafter specified, to furnish, sell and distribute electricity to the Town and the inhabitants thereof by means of generating plants, substations, transmission lines, conduits, cables and lines or poles with wires strung thereon, or otherwise, on, over, under, along, across and through any and all streets, alleys, viaducts, bridges, roads, public ways and places in the Town; and to build, construct, extend, maintain and operate into and through the corporate limits, or any additions thereof, for distribution of electric energy within, without and beyond the corporate limits of the Town or any additions thereto; and on, over, under, along, across and through any extension, connection with or continuation of the same, and/or on, over, under, along, across and through any and all new streets, alleys, viaducts, bridges, roads, 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. (Ord. 3-1972 Art. II §1; Ord. 4-1997 Art. II §1)

Sec. 5-53. Nonexclusive right.

The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the Town reserves the right to grant a similar use of said streets, alleys and other public ways and places, to any other person or corporation at any time during the period of this franchise. (Ord. 3-1972 Art. II §2; Ord. 4-1997 Art. II §2)

Sec. 5-54. Location of equipment.

All transmission and distribution structures, lines and equipment erected by the Association within the Town shall be so located 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 who adjoin any of said streets, alleys or other public ways and places. Should it become necessary for the Association in exercising its rights and performing its duties hereunder to interfere with any sidewalk or pavement, or any other public or private improvement, the Association shall repair such sidewalk, pavement or other improvement and leave it in as good order and condition as it formerly was. (Ord. 3-1972 Art. II §3; Ord. 4-1997 Art. II §3)

Sec. 5-55. Generation of electricity.

The Association shall have the right, power and authority to employ any means, in its discretion, to secure, acquire or generate electric energy to operate any of its structures or plants, in order to supply and furnish electricity for light, heat, power and other purposes, to the Town and inhabitants thereof under this franchise. (Ord. 3-1972 Art. II §4; Ord. 4-1997 Art. II §4)

Sec. 5-56. Maintenance of equipment.

The Association shall so maintain its structures, apparatus and equipment as to afford all reasonable protection against injury or damage to persons or property therefrom; and the Town shall be saved harmless from any liability or damage accruing against the Town arising out of the negligent exercise by the Association of the rights and privileges hereby granted. The Town shall have the right, without cost, to use all poles of the Association within the Town for the purpose of stringing wires thereon for its fire alarm and police signal systems; provided, however, that the Association assumes, and shall be subjected to, no liability, and shall be subjected to no additional expense in connection therewith. It is further provided that the use of said poles by the Town shall not interfere in any unreasonable manner with the Association's use of the same. (Ord. 3-1972 Art. II §5; Ord. 4-1997 Art. II §5)

Sec. 5-57. Maintenance of electric service.

In consideration of and as compensation for the granting of this franchise, the Association will maintain twenty-four-hour electric service except when prevented from so doing by acts of God, unavoidable accidents, strikes or other causes beyond its control, in which event the Association shall restore its service as promptly as possible and will supply and distribute electricity for lighting, heating, power and other lawful purposes to the Town and its inhabitants. (Ord. 3-1972 Art. II §6; Ord. 4-1997 Art. II §6)

Sec. 5-58. Service to new areas.

The Association shall furnish electricity and electric power for light, heat, power or for any other lawful purpose under the terms and provisions of this franchise within the corporate limits of the Town, or any additions thereto, at rates and upon such conditions and regulations as may be hereafter filed with or promulgated by the Public Utilities Commission of the State, or by any other regulatory commission, board or authority which may hereafter acquire and have jurisdiction thereof. (Ord. 3-1972 Art. III §1; Ord. 4-1997 Art. III §1)

Sec. 5-59. Review of rate.

Nothing in Section 5-58 shall be construed to limit the right of the Association or the Town to a review of any rates so filed with or promulgated by said Public Utilities Commission of the State, or

other authority having jurisdiction thereof, at any time as may be by law provided. (Ord. 3-1972 Art. III §2; Ord. 4-1997 Art. III §2)

Sec. 5-60. Rules and regulations on file with Town.

The Association, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization, extension and protection of service and property, as shall be reasonably necessary to enable the Association to exercise its rights and perform its obligations under this franchise, and to assure uninterrupted service to each and all of its consumers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or laws of the State, and shall be subject to approval by the Public Utilities Commission of the State or other competent authority having jurisdiction in the premises. The Association shall keep on file in its office, available to the public, copies of such rules, regulations, terms and conditions from time to time adopted by it for the conduct of its business, and copies thereof shall also be filed with the Town Clerk. (Ord. 3-1972 Art. III §3; Ord. 4, 1997 Art. III §3)

Sec. 5-61. Franchise fee.

As further consideration for this franchise, the privileges granted and the obligations imposed hereunder, the Association shall pay to the Town a sum equal to a percentage of its gross revenues arising from the sale of electric energy, including consumer charges and fixed charges, within the corporate limits of the Town to the inhabitants thereof, under the terms and provisions of this franchise, as follows: 1997 - three and one-half percent (3½%), 1998 – three percent (3%), 1999 – two and one-half percent (2½%), 2000 – two percent (2%), 2001 – one and one-half percent (1½%), 2002 and thereafter for the balance of the term of the agreement - one percent (1%); provided, however, that the income derived from the sale of electricity to the Town shall not be subject to the franchise fee, and no franchise fee shall be charged or paid for said income. It is hereby agreed that the amount above specified shall be and hereby is accepted by the Town in lieu of any and all license or occupation taxes and all other special taxes, assessments or excises upon the poles, wires or other property of the Association, either as a franchise tax, occupation tax, license tax or for the inspection of poles, wires or other property of the Association or otherwise. Payment of the franchise fee accruing after the effective date of the ordinance codified herein shall be made in quarterly installments not more than thirty (30) days following the close of the calendar quarter for which payment is to be made. The initial and final payments shall be prorated for the portions of the quarters at the beginning and the end of the term of the ordinance codified in this Article. (Ord. 3-1972 Art. IV §1; Ord. 4-1997, Art. IV §1)

Sec. 5-62. Effective date.

The ordinance codified in this Article shall be in full force and effect from and after its passage, approval and publication, as by law required, and acceptance and approval thereof in writing by the Association within thirty (30) days from and after said publication. (Ord. 3-1972 Art. V §1; Ord 4-1997 Art. V §1)

Sec. 5-63. Town's right to purchase or condemn.

The Town may, as provided by law, by purchase or condemnation, and upon payment of just compensation therefor, acquire and take over the property of the Association actually used and useful for the convenience of the Town and its inhabitants. (Ord. 3-1972 Art. V §2; Ord. 4-1997 Art. V §2)

Sec. 5-64. Term of franchise.

The franchise and rights herein granted shall take effect and be in force from and after the final passage and publication hereof, as required by law, and upon filing of acceptance by the Association as provided elsewhere herein; and shall continue in force and effect for a term of twenty-five (25) years from and after the effective date of the ordinance codified in this Article and franchise. (Ord. 3-1972 Art. V §3; Ord. 4-1997 Art. V §3)

Secs. 5-65—5-80. Reserved.

ARTICLE III

Gas Franchise

Sec. 5-81. Definitions.

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

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

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

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

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

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

PUC refers to and is the Public Utilities Commission of the State of Colorado or other authority succeeding the Public Utilities Commission of the State of Colorado.

Revenues refer to and are those amounts of money which the Company receives from its customers within the Town for the sale of gas under rates, temporary or permanent, authorized by

the PUC and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments.

Streets refer to and are streets, alleys, viaducts, bridges, roads, lanes, easements (excluding any easements the terms of which do not permit the use thereof by the Company) and public rights-of-way within the Town. Streets shall also include other public places within the Town that are suitable locations for the placement of facilities as specifically approved in writing by the Town.

Town refers to and is the Town of Buena Vista, Chaffee County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the Town of Buena Vista. (Ord. 1 §1, 2013)

Sec. 5-82. Grant of franchise.

(a) The Town hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this agreement, the nonexclusive right to make reasonable use of the streets:

(1) To furnish, transport, sell and distribute gas to the Town and to all persons, businesses and industries within the Town; and

(2) To acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to provide gas to the Town and to all persons, businesses and industries within the Town and in the territory adjacent thereto.

(b) The term of this franchise shall be for twenty (20) years, beginning March 31, 2013, and expiring March 31, 2033.

(c) Conditions and limitations.

(1) Scope of franchise. Nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of gas.

(2) Subject to Town usage. The right to make reasonable use of the streets under this agreement is subject to and subordinate to any Town usage of said streets. Except as otherwise specifically set forth herein, the Town retains the right through the exercise of its police power to use, control and regulate the use of the streets. The Town retains the right to impose such other regulations as may be determined by the Town to be necessary in the reasonable exercise of its police power to protect the health, safety and welfare of the public. The Company expressly acknowledges the Town's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers.

(d) Franchise not exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the Town reserves the right to make or grant a franchise to any other person, firm or corporation.

(e) Regulation of streets or other Town property. The Company expressly acknowledges the Town's right to enforce regulations concerning the Company's access to or use of the streets, including requirements for permits. The Company shall not be required to pay for such permits, however.

(f) Compliance with laws. The Company and its contractors shall promptly and fully comply with all laws, regulations, permits and orders enacted by the Town that are applicable to the Company's activities within the Town, provided that such regulations are not destructive of the rights granted herein. (Ord. 1 §1, 2013)

Sec. 5-83. Franchise fee.

(a) Franchise fee. In consideration for the grant of this franchise, the Company shall collect and remit to the Town a sum equal to one percent (1%) of the revenues derived annually from the sale of gas within the Town, excluding the amount received from the Town itself for gas service furnished it. Franchise fee payments shall be made in quarterly installments not more than thirty (30) days following the close of the month for which payment is to be made. Quarters shall end on March 31, June 30, September 30 and December 31. Payments at the beginning and end of the franchise shall be prorated.

(b) Franchise fee payment in lieu of other fees. Payment of the franchise fee by the Company is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax, assessment or excise upon the pipes, mains, meters or other personal property of the Company or on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its real property or any other tax not related to the franchise or the physical operation thereof.

(c) Change of franchise fee. Once during each calendar year of the franchise, the Board of Trustees, upon giving thirty (30) days' notice to the Company, may review and change the franchise fee that the Town may be entitled to receive as part of the franchise; provided, however, that the Board of Trustees may only change the franchise fee amount such as to cause the Town to receive a franchise fee, under this franchise, equivalent to the franchise fee that the Company may pay to any other city or town in any other franchise under which the Company renders gas service in the State.

(d) Obligation in lieu of fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the Town, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Town streets so long as the Company maintains the right provided in this agreement. The Company shall collect the amounts agreed upon through a surcharge from the sale of gas within the Town. (Ord. 1 §1, 2013)

Sec. 5-84. Conduct of business.

(a) Conduct of business. The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise; provided,

however, that such rules, regulations, terms and conditions are approved by the PUC and shall not be in conflict with the laws of the State or applicable Town ordinances and regulations.

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

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

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

(e) Applicability of Company tariffs. The Town and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the PUC are controlling over any inconsistent provision in this franchise dealing with the same subject matter. (Ord. 1 §1, 2013)

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

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

(b) Excavation and construction. All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner that minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable Town, state and federal codes. All public and private property whose use conforms to restrictions in easements disturbed by Company construction or excavation activities shall be restored as soon as practicable by the Company at its expense to substantially its former condition. The Company shall comply with the Town's requests for reasonable and prompt action to remedy all damage to private property adjacent to streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The Town reserves the right to restore property and remedy damages caused by Company activities at the expense of the Company in the event the Company fails to perform such work within a reasonable time (not to exceed ninety [90] days) after notice from the Town.

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

(d) Service to new areas. If, during the term of this franchise, the boundaries of the Town are expanded, the Town will promptly notify the Company in writing of any geographic areas annexed by the Town during the term hereof ("annexation notice"). Any such annexation notice shall be sent to the Company by certified mail, return receipt requested, and shall contain the effective date of the annexation and maps showing the annexed area. If in possession of the Town, the Town shall provide such other information as the Company may reasonably require in order to ascertain whether there exist any customers of the Company receiving natural gas service in said annexed area. To the extent there are such customers therein, then the gross revenues of the Company derived from the sale and distribution of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of the Company's billing cycle immediately following the Company's receipt of the annexation notice. The failure by the Town to advise the Company in writing through proper annexation notice of any geographic areas which are annexed by the Town shall relieve the Company from any obligation to remit any franchise fees to the Town based upon gross revenues derived by the Company from the sale and distribution of natural gas to customers within the annexed area until the Town delivers an annexation notice to the Company in accordance with the terms thereof.

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

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

(g) Inspection, audit and quality control. The Town shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the Town and its residents. The Town also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this agreement at all reasonable times. The Company agrees to cooperate with the Town in conducting the inspection and/or audit and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner.

(h) Condition of work. The Company agrees to coordinate its activities in Town streets with the Town. The Town and the Company will meet annually upon the written request of the Town to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Town streets. The Town and the Company shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial, and so that the Town will be assured that all provisions of this franchise, building and zoning codes and air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

(i) Permit and inspection. The installation, renovation and replacement of any Company facilities in the Town streets by or on behalf of the Company shall be subject to permit, inspection and approval by the Town. Such inspection and approval may include, but not be limited to, the following matters: location of Company facilities, cutting and trimming of trees and shrubs and disturbance of pavement, sidewalks and surfaces of Town streets. The Company agrees to cooperate

with the Town in conducting inspections and shall promptly perform any remedial action lawfully required by the Town pursuant to any such inspection.

(j) Compliance. The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits and standards, including but not limited to requirements of all building and zoning codes and requirements regarding curb and pavement cuts, excavating, digging and other construction activities. The Company shall assure that its contractors working in Town streets hold the necessary licenses and permits required by law, but in no case shall the Company or its contractors be required to pay for such licenses or permits when necessary for the provision of gas service pursuant to this agreement.

(k) As-built drawings. Upon reasonable written request of the Town in furtherance of Subsection (h) above, the Company shall provide as-built drawings of any Company facility installed within the Town streets or contiguous to the Town streets. As used in this Section, as-built drawings refer to the facility drawings as maintained in the Company's geographical information system or any equivalent system. The Company shall not be required to create drawings that do not exist at the time of the request. All maps or drawings temporarily provided by the Company to the Town shall be deemed confidential, shall be clearly identified as such by the Company when provided to the Town and will be provided solely for the Town's use. The Town agrees to maintain the confidentiality of any nonpublic information obtained from the Company to the extent allowed by law. The Town agrees that any such drawings or maps provided by the Company shall not be used in lieu of physically locating Company facilities in compliance with the laws of the State. (Ord. 1 §1, 2013)

Sec. 5-86. Force majeure.

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event the Company is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which the Company is so prevented shall not be counted against the Company for any reason. The term *force majeure*, as used herein, shall mean any extraordinary cause, including but not limited to acts of God, strikes, lockouts, wars, terrorism, riots, orders or decrees of any lawfully constituted federal, state or local body; contagions or contaminations hazardous to human life or health; fires, storms, floods, washouts, explosions, breakages or accidents to machinery or lines of pipe; inability to obtain or the delay in obtaining rights-of-way, materials, supplies or labor permits; temporary failures of gas supply; or necessary repair, maintenance or replacement of facilities used in the performance of the obligations contained in this agreement. (Ord. 1 §1, 2013)

Sec. 5-87. Indemnification and immunity.

(a) Town held harmless. The Company shall indemnify, defend and hold the Town harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this agreement, the exercise by the Company of the related rights or from the operations of the Company within the Town, and shall pay the costs of defense plus reasonable attorneys' fees. The Town shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the Town seeks indemnification hereunder and (b) unless, in the Town's judgment, a conflict of interest may exist between the Town and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand or lien

with counsel satisfactory to the Town. If such defense is assumed by the Company, the Company shall not be subject to any liability for any settlement made without its consent. If such defense is not assumed by the Company or if the Town determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the Town or any of its officers, employees, contractors, agents or vendors, including but not limited to any defect in the design, manufacture or maintenance of any Town-owned traffic signal device.

(b) Immunity. Nothing in this Section or any other provision of this agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Town may have under the Colorado Governmental Immunity Act (Section 24-10-101, et seq., C.R.S.), or of any other defenses, immunities or limitations of liability available to the Town by law.

(c) Payment of ordinance expenses. The Company shall reimburse the Town for actual out-of-pocket expenses incurred in publishing notices and ordinances related to this agreement. (Ord. 1 §1, 2013)

Sec. 5-88. Breach.

(a) Notice/cure/remedies. Except as otherwise provided in this franchise, if a party (the "breaching party") to this agreement fails or refuses to perform any of the terms and conditions of this agreement (a "breach"), the other party (the "nonbreaching party") may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach. If the breaching party does not remedy the breach within the time allowed in the notice, the nonbreaching party may exercise the following remedies for such breach:

(1) Specific performance of the applicable term or condition; and

(2) Recovery of actual damages from the date of such breach incurred by the nonbreaching party in connection with the breach, but excluding any consequential damages.

(b) Termination of franchise by Town. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this agreement (a "material breach"), the Town may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, in which to remedy the material breach. If the Company does not remedy the material breach within the time allowed in the notice, the Town may, at its sole option, terminate this franchise. This remedy shall be in addition to the Town's right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide utility service to the Town and its residents until the Town makes alternative arrangements for such service and until otherwise ordered by the PUC, and the Company shall be entitled to collect from residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Town streets.

(c) No limitation. Except as provided herein, nothing in this agreement shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise. (Ord. 1 §1, 2013)

Sec. 5-89. Miscellaneous.

(a) Assignment. Nothing in this agreement shall prevent the Company from assigning its rights under this franchise upon written approval of the Town, which shall not be unreasonably delayed or withheld.

(b) Saving clause. If a court of competent jurisdiction declares any portion of this agreement to be illegal or void, the remainder of the agreement shall survive and not be affected thereby.

(c) Earlier franchise superseded. This agreement shall constitute the only franchise between the Town and the Company for the furnishing of utility service within the Town, and it supersedes and cancels all former franchises or agreements between the parties hereto.

(d) Titles not controlling. Titles of the paragraphs herein are for reference only and shall not be used to construe the language of this agreement.

(e) Applicable law. Colorado law shall apply to the construction and enforcement of this agreement. (Ord. 1 §1, 2013)

Secs. 5-90—5-140. Reserved.

ARTICLE IV

Emergency Telephone Service

Sec. 5-141. Definitions.

As used in this Article:

Emergency telephone charge means the charge to pay the equipment costs, the installation costs and the directly related costs of the continued operation of an emergency telephone service according to the rates and schedules filed with the Public Utilities Commission, if applicable.

Emergency telephone service means a telephone system utilizing the single three-digit number 911 for reporting police, fire, medical or other emergency situations.

Exchange access facilities means the access, as defined in the tariffs approved by the Public Utilities Commission, from a specific customer's premises to the telecommunications network to effect the transfer of information.

Service supplier means any person providing exchange telephone services to any service user in the State.

Tariff rates means the rates billed by a service supplier, as stated in the service supplier's tariffs, which rates have been approved by the Public Utilities Commission and which represent the service supplier's recurring charges for exchange access facilities or their equivalent, exclusive of all taxes, fees, licenses or similar charges. (Prior code 5.40.010)

Sec. 5-142. Initial emergency telephone charge.

Pursuant to Section 29-11-101, et seq., C.R.S., there is hereby imposed upon all telephone exchange access facilities within the Town a monthly emergency telephone charge in an amount not to exceed fifty cents (\$.50). (Prior code 5.40.020; Ord. 11-1990 §1)

Sec. 5-143. Annual fixing of emergency telephone charge.

Commencing in 1991, the Board of Trustees shall, at least once each year, establish a rate of charge, not to exceed the fifty cent (\$.50) limitation set forth in Section 5-142 above, which, together with any surplus revenues carried forward, will produce sufficient revenues to fund the expenditures required to operate the emergency telephone service within the Town for the next year. The Board of Trustees shall make its determination of such rate not later than September 1 of each year, commencing in 1991, and shall fix the new rate to take effect commencing with the first billing period of each customer on or following the next January 1. Immediately upon making such determination and fixing such rate, the Board of Trustees shall publish in its minutes the new rate, and shall notify by registered mail every service supplier at least ninety (90) days before such new rate will become effective. (Prior code 5.40.030; Ord. 11-1990 §2)

Sec. 5-144. Collection of emergency telephone charge.

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., commencing with the effective date of the ordinance codified in this Article. Remittance of charges so collected shall be made to the Town on a monthly basis in accordance with the provisions of Section 29-11-103, C.R.S. (Prior code 5.40.040; Ord. 11-1990 §3)

Sec. 5-145. Use of funds collected.

Funds collected from the charge imposed pursuant to this Article shall be spent solely to pay for the equipment costs, installation costs and monthly recurring charges billed by the service supplier for the Town's emergency telephone service. Funds collected from the charge imposed pursuant to this Article shall be credited to a special cash fund, apart from the Town's general fund, for payments to be made as set forth above. Any moneys remaining in such cash fund at the end of any fiscal year shall remain therein for payments required to be made during the succeeding year. (Prior code 5.40.050)

Sec. 5-146. Limitation on emergency telephone charge.

The emergency telephone charge imposed by this Article shall not impose upon more than one hundred (100) exchange access facilities or their equivalent per customer billing. Such charge shall be imposed only upon service users in those portions of the Town for which emergency telephone

service shall be provided. No emergency telephone charge shall be imposed upon any state or local governmental entity. (Ord. 11-1990 §4)

Secs. 5-147—5-160. Reserved.

ARTICLE V

Telephone Utility Tax

Sec. 5-161. Levy of tax.

There is levied against every telephone utility which is engaged in the business of furnishing local exchange telephone service within the Town a tax on the privilege of engaging in such business. The amount of the tax shall be three thousand dollars (\$3,000.00). (Prior code 5.08.010)

Sec. 5-162. Payment of tax.

The tax levied by this Article shall be due on the fifteenth day of January, April, July and October of each year and shall be paid in quarterly installments of seven hundred fifty dollars (\$750.00) each. (Prior code 5.08.020)

Sec. 5-163. 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 or contents thereof. (Prior code 5.08.030)

Sec. 5-164. Local purpose.

The tax provided herein is upon the affected occupations and businesses in their performance of local functions and is not a tax upon those functions relating to interstate commerce. (Prior code 5.08.040)

Sec. 5-165. 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 company, and the same, together with an additional ten percent (10%) of the amount of taxes due, shall be and is declared to be a debt due and owing from such utility to the Town. (Prior code 5.08.050)

Sec. 5-166. Certain offenses and liabilities to continue.

All offenses committed and all liabilities incurred prior to the effective date of the ordinance codified in this Article shall be treated as though all prior applicable ordinances and amendments thereto were in full force and effect for the purpose of sustaining any proper suit, action or prosecution with respect to such offenses and liabilities. All taxes, the liability for which has been accrued under the terms and provisions of Ordinance No. 1974-4 on or before the effective date of the ordinance codified in this Article, shall be and remain unconditionally due and payable, and shall

constitute a debt to the Town, payable in conformity with the terms and provisions of said Ordinance 1974-4 prior to the adoption of the ordinance codified in this Article, shall be and remain in full force and effect for the purpose of the collection and payment of any and all such taxes due and payable thereunder, notwithstanding the provisions of this Article. (Prior code 5.08.060)

Sec. 5-167. Tax in lieu of other occupation taxes.

The tax herein provided shall be in lieu of all other occupation taxes, or taxes on the privilege of doing business within the Town, on any telephone utility subject to the provisions of this Article. (Prior code 5.08.070)

Secs. 5-168—5-180. Reserved.

ARTICLE VI

Cable Television Rate Regulations

Sec. 5-181. Definitions.

As used in this Article, unless the context clearly requires otherwise:

Basic cable rates means the monthly charges for a subscription to the basic service tier and the associated equipment.

Basic service tier means a separately available service tier to which subscription is required for access to any other tier of service, including as a minimum, but not limited to, all must-carry signals, all PEG channels and all domestic television signals other than superstations.

Benchmark means a per channel rate of charge for cable service and associated equipment which the FCC has determined is reasonable.

Cable Act of 1992 means the Cable Television Consumer Protection and Competition Act of 1992.

Cable operator means any person or group of persons:

- a. Who provide cable service over a cable system and directly or through one (1) or more affiliates owns a significant interest in such a cable system; or
- b. Who otherwise control or are responsible for, through any arrangement, the management and operation of such a cable system.

Channel means a unit of cable service identified and selected by a channel number or similar designation.

Cost of service showing means a filing in which the cable operator attempts to show that the benchmark rate or the price cap is not sufficient to allow the cable operator to fully recover the costs of providing the basic service tier and to continue to attract capital.

FCC means the Federal Communications Commission.

Initial basic cable rates means the rates that the cable operator is charging for the basic service tier, including charges for associated equipment, at the time the Town notifies the cable operator of the Town's qualification and intent to regulate basic cable rates.

Must-carry signal means the signal of any local broadcast station (except superstations) which is required to be carried on the basic service tier.

PEG channel means the channel capacity designated for public, educational or governmental use and facilities and equipment for the use of that channel capacity.

Price cap means the ceiling set by the FCC on future increases in basic cable rates regulated by the Town, based on a formula using the GNP fixed weight price index, reflecting general increases in the cost of doing business and changes in overall inflation.

Reasonable rate standard means a per channel rate that is at, or below, the benchmark or price cap level.

Superstation means any nonlocal broadcast signal secondarily transmitted by satellite. (Ord. 3-1994 §1)

Sec. 5-182. Initial review of basic cable rates.

(a) Notice. Upon the adoption of this Article and the certification of the Town by the FCC, the Town shall immediately notify all cable operators in the Town by certified mail, return receipt requested, that the Town intends to regulate subscriber rates charged for the basic service tier and associated equipment as authority by the Cable Act of 1992.

(b) Cable operator response. Within thirty (30) days of receiving notice from the Town, a cable operator shall file with the Town its current rates for the basic service tier and associated equipment and any supporting material concerning the reasonableness of its rates.

(c) Expedited determination and public hearing.

(1) If the Board of Trustees is able to expeditiously determine that the cable operator's rates for the basic service tier and associated equipment are within the FCC's reasonable rate standard, as determined by the applicable benchmark, the Board of Trustees shall:

a. Hold a public hearing at which interested persons may express their views; and

b. Act to approve the rates within thirty (30) days from the date the cable operator filed its basic cable rates with the Town.

(2) If the Board of Trustees takes no action within thirty (30) days from the date the cable operator filed its basic cable rates with the Town, the proposed rates will continue in effect.

(d) Extended review period.

(1) If the Board of Trustees is unable to determine whether the rates in issue are within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the Board of Trustees shall, within thirty (30) days from the date the cable operator filed its basic cable rates with the Town, and by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

a. Ninety (90) days if the Board of Trustees needs more time to ensure that a rate is within the FCC's reasonable rate standard; and

b. One hundred fifty (150) days if the cable operator has submitted a cost-of-service showing seeking to justify a rate above the applicable benchmark.

(2) If the Board of Trustees has not made a decision within the ninety (90) or one hundred fifty (150) day period, the Board of Trustees shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate and on whose behalf the amounts are paid.

(e) Public hearing. During the extended review period and before taking action on the proposed rate, the Board of Trustees shall hold at least one (1) public hearing at which interested persons may express their views and record objections.

(f) Objections. Any interested person who wishes to make an objection to the proposed initial basic rate may request the Town Clerk to record the objection during the public hearing or may submit the objection in writing any time before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the Town Clerk with the objector's name and address.

(g) Benchmark analysis. If a cable operator submits its current basic cable rate schedule as being in compliance with the FCC's reasonable rate standard, the Board of Trustees shall review the rates using the benchmark analysis in accordance with the standard form authorized by the FCC. Based on the Board of Trustees' findings, the initial basic cable rates shall be established as follows:

(1) If the current basic cable rates are below the benchmark, those rates shall become the initial basic cable rates and the cable operator's rates will be capped at that level.

(2) If the current basic cable rates exceed the benchmark, the rates shall be the greater of the cable operator's per channel rate on September 30, 1992, reduced by ten percent (10%), or the applicable benchmark, adjusted for inflation and any change in the number of channels occurring between September 30, 1992, and the initial date of regulation.

(3) If the current basic cable rates exceed the benchmark, but the cable operator's per channel rate was below the benchmark on September 30, 1992, the initial basic cable rate shall be the benchmark, adjusted for inflation.

(h) Cost-of-service showings. If a cable operator does not wish to reduce the rates to the permitted level, the cable operator shall have the opportunity to submit a cost-of-service showing in an attempt to justify initial basic cable rates above the FCC's reasonable rate standard. The Board of Trustees will review a cost-of-service submission pursuant to FCC standards for cost-of-service

review. The Board of Trustees may approve initial basic cable rates above the benchmark if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in rates below the benchmark or below the cable operator's September 30, 1992 rates minus ten percent (10%), will prescribe the cable operator's new rates.

(i) Decision.

(1) By formal resolution. After completion of its service of the cable operator's proposed rates, the Board of Trustees shall adopt its decision by formal resolution. The decision shall include one (1) of the following:

a. If the proposal is within the FCC's reasonable rate standard or is justified by a cost-of-service analysis, the Board of Trustees shall approve the initial basic cable rates proposed by the cable operator; or

b. If the proposal is not within the FCC's reasonable rate standard and the cost-of-service analysis, if any, does not justify the proposed rates, the Board of Trustees shall establish initial basic cable rates that are within the FCC's reasonable rate standard or that are justified by a cost-of-service analysis.

(2) Rollbacks and refunds. If the Board of Trustees determines that the initial basic cable rates as submitted exceed the reasonable rate standard or that the cable operator's cost-of-service showing justifies lower rates, the Board of Trustees may order the rates reduced in accordance with subparagraph (g) or (h) above, as applicable. In addition, the Board of Trustees may order the cable operator to pay to subscribers refunds of the excessive portion of the rates with interest (computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments), retroactive to September 1, 1993. The method for paying any refund and the interest rate will be in accordance with FCC regulations as directed in the Board of Trustees' decision resolution.

(3) Statement of reasons for decision and public notice. If rates proposed by a cable operator are disapproved in whole or in part, or if there were objections made by other parties to the proposed rates, the resolution must state the reasons for the decision and the Board of Trustees must give public notice of its decision. Public notice will be given by advertisement once in the official newspaper of the Town.

(j) Appeal. The Board of Trustees' decision concerning rates for the basic service tier or associated equipment may be appealed to the FCC in accordance with applicable federal regulations. (Ord. 3-1994 §1)

Sec. 5-183. Review of request for increase in basic cable rates.

(a) Notice. A cable operator in the Town who wishes to increase the rates for the basic service tier or associated equipment shall file a request with the Town and notify all subscribers at least thirty (30) days before the cable operator desires the increase to take effect. This notice may not be given more often than annually and not until at least one (1) year after the determination of the initial basic cable rates.

(b) Expedited determination and public hearing.

(1) If the Board of Trustees is able to expeditiously determine that the cable operator's rate increase request for basic cable service is within the FCC's reasonable rate standard, as determined by the applicable price cap, the Board of Trustees shall:

a. Hold a public hearing at which interested persons may express their view; and

b. Act to approve the rate increase within thirty (30) days from the date the cable operator filed its request with the Town.

(2) If the Board of Trustees takes no action within thirty (30) days from the date the cable operator filed its request with the Town, the proposed rates will go into effect.

(c) Extended review period.

(1) If the Board of Trustees is unable to determine whether the rate increase is within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the Board of Trustees shall, by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

a. Ninety (90) days if the Board of Trustees needs more time to ensure that the requested increase is within the FCC's reasonable rate standard as determined by the applicable price cap; and

b. One hundred fifty (150) days if the cable operator has submitted a cost-of-service showing seeking to justify a rate increase above the applicable price cap.

-(2) The proposed rate increase is tolled during the extended review period.

(3) If the Board of Trustees has not made a decision within the ninety (90) or one hundred fifty (150) day period, the Board of Trustees shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate increase and on whose behalf the amounts are paid.

(d) Public hearing. During the extended review period and before taking action on the requested rate increase, the Board of Trustees shall hold at least one (1) public hearing at which interested persons may express their views and record objections.

(e) Objections. Any interested person who wishes to make an objection to the proposed rate increase may request the Town Clerk to record the objection during the public hearing or may submit the objection in writing any time before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the Town Clerk with the objector's name and address.

(f) Delayed determination. If the Town Council is unable to make a final determination concerning a requested rate increase within the extended time period, the cable operator may put the increase into effect, subject to subsequent refund if the Board of Trustees later issues a decision disapproving any portion of the increase.

(g) Price cap analysis. If a cable operator presents its request for a rate increase as being in compliance with the FCC's price cap, the Board of Trustees shall review the rate using the price cap analysis in accordance with the standard form authorized by the FCC. Based on the Board of Trustees' findings, the basic cable rates shall be established as follows:

(1) If the proposed basic cable rate increase is within the price cap established by the FCC, the proposed rates shall become the new basic cable rates.

(2) If the proposed basic cable rate increase exceeds the price cap established by the FCC, the Board of Trustees shall disapprove the proposed rate increase and order an increase that is in compliance with the price cap.

(h) Cost-of-service showings. If a cable operator submits a cost-of-service showing in an attempt to justify a rate increase above the price cap, the Board of Trustees will review the submission pursuant the FCC standards for cost-of-service review. The Board of Trustees may approve a rate increase above the price cap if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in a rate below the price cap or below the cable operator's then current rate will prescribe the cable operator's new rate.

(i) Decision. The Board of Trustees' decision concerning the requested rate increase shall be adopted by formal resolution. If a rate increase proposed by a cable operator is disapproved in whole or in part, or if objections were made by other parties to the proposed rate increase, the resolution must state the reasons for the decision. Objections may be made at the public hearing by a person requesting the Town Clerk to record the objection or may be submitted in writing at any time before the decision resolution is adopted.

(j) Refunds. The Board of Trustees may order refunds of subscribers' rate payments with interest if:

(1) The Board of Trustees was unable to make a decision within the extended time period as described in Paragraph (c) above;

(2) The cable operator implemented the rate increase at the end of the extended review period; and

(3) The Board of Trustees determines that the rate increase as submitted exceeds the applicable price cap or that the cable operator failed to justify the rate increase by a cost-of-service showing, and the Board of Trustees disapproves any portion of the rate increase.

(k) Appeal. The Board of Trustees' decision concerning rates for the basic service tier or associated equipment may be appealed to the FCC in accordance with applicable federal regulations. (Ord. 3-1994 §1)

Sec. 5-184. Cable operator information.

(a) Town may require.

(1) In those cases when the cable operator has submitted initial rates or proposed an increase that exceeds the reasonable rate standard, the Board of Trustees may require the cable operator to produce information in addition to that submitted, including proprietary information, if needed to make a rate determination. In these cases, a cable operator may request the information be kept confidential in accordance with this Section.

(2) In cases where initial or proposed rates comply with the reasonable rate standard, the Board of Trustees may request additional information only in order to document that the cable operator's rates are in accord with this Section.

(b) Request for confidentiality.

(1) A cable operator submitting information to the Board of Trustees may request in writing that the information not be made routinely available for public inspection. A copy of the request shall be attached to and cover all of the information and all copies of the information to which it applies.

(2) If feasible, the information to which the request applies shall be physically separated from any information to which the request does not apply. If this is not feasible, the portion of the information to which the request applies shall be identified.

(3) Each request shall contain a statement of the reasons for withholding inspection and a statement of the facts upon which those reasons are based.

(4) Casual requests which do not comply with the requirements of this Subsection shall not be considered.

(c) Board of Trustees action. Requests which comply with the requirements of Subsection (b) will be acted upon by the Board of Trustees. The Board of Trustees will grant the request if the cable operator presents by a preponderance of the evidence a case for nondisclosure consistent with applicable federal regulations. If the request is granted, the ruling will be placed in a public file in lieu of the information withheld from public inspection. If the request does not present a case for nondisclosure and the Board of Trustees denies the request, the Board of Trustees shall take one (1) of the following actions:

(1) If the information has been submitted voluntarily without any direction from the Town, the cable operator may request that the Town return the information without considering it. Ordinarily, the Town will comply with this request. Only in the unusual instance that the public interest so requires will the information be made available for public inspection.

(2) If the information was required to be submitted by the Board of Trustees, the information will be made available for public inspection.

(d) Appeal. If the Board of Trustees denies the request for confidentiality, the cable operator may seek review of that decision from the FCC within five (5) working days of the Board of Trustees' decision and the release of the information will be stayed pending view. (Ord. 3-1994 §1)

Sec. 5-185. Automatic rate adjustments.

(a) Annual inflation adjustment. In accordance with FCC regulations, the cable operator may adjust its capped base per channel rate for the basic service tier annually by the final GNP-PI index.

(b) Other external costs.

(1) The FCC regulations also allow the cable operator to increase its rate for the basic service tier automatically to reflect certain external cost factors to the extent that the increases in cost of those factors exceed the GNP-PI. These factors include retransmission consent fees, programming costs, state and local taxes applicable to the provision of cable television service, and costs of franchise requirements. The total cost of an increase in a franchise fee may be automatically added to the base per channel rate, without regarding to its relation to the GNP-PI.

(2) For all categories of external costs other than retransmission consent and franchise fees, the starting date for measuring changes in external costs for which the basic service per channel rate may be adjusted will be the date on which the basic service tier becomes subject to regulation, or February 28, 1994, whichever occurs first. The permitted per channel charge may not be adjusted for costs of retransmission consent fees or changes in those fees incurred before October 6, 1994.

(c) Notification and review. The cable operator shall notify the Town at least thirty (30) days in advance of a rate increase based on automatic adjustment items. The Town shall review the increase to determine whether the item or items qualify as automatic adjustments. If the Town makes no objection within thirty (30) days of receiving notice of the increase, the increase may go into effect. (Ord. 3-1994 §1)

Sec. 5-186. Enforcement.

(a) Refunds. The Town may order the cable operator to refund to subscribers a portion of previously paid rates under the following circumstances:

(1) A portion of the previously paid rates have been determined to be in excess of the permitted tier charge or above the actual cost of equipment; or

(2) The cable operator fails to comply with a valid rate order issued by the Town.

(b) Fines. If the cable operator fails to comply with a rate decision or refund order, the cable operator shall be subject to a fine of five hundred dollars (\$500.00) for each day the cable operator fails to comply. (Ord. 3-1994 §1)

Secs. 5-187—5-200. Reserved.