

CHAPTER 5

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ARTICLE I

Cable Television System

Sec. 5-1. Definitions.

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

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

Effective Date means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided Section 5-3 herein.

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

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

Franchise Agreement or *Agreement* shall mean this Agreement and any amendments or modifications hereto.

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

Franchising Authority means the Town of La Salle, Colorado or the lawful successor, transferee, designee or assignee thereof.

Grantee shall mean Comcast of Colorado IV, LLC.

Gross Revenue means the cable service revenue derived by the Grantee from the operation of the cable system in the Franchise Area to provide cable services, calculated in accordance with generally accepted accounting principles. Cable service revenue includes, by way of illustration and not limitation, monthly fees charged subscribers for cable services, including basic service, expanded basic service, digital service, other tiers of cable service and premium services, cable service installation, disconnection, reconnection and change-in-service fees, leased access channel fees, lease payments for use of the cable system, late fees and administrative fees; payments or other consideration received by the Grantee from programmers for carriage of cable services on the cable system; revenues from rentals of converters or other cable system equipment, net advertising sales revenues consistent with generally accepted accounting principles; revenues from

program guides; additional outlet fees; franchise fees; and revenues from home shopping. *Gross Revenues* shall not include:

a. Bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or

b. Any taxes on services furnished by the Grantee which are imposed directly on any subscriber or user by the State, County or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. The Franchise Fees are not such a tax, and are therefore included in Gross Revenues.

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

Public Way shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including but not limited to public utility easements, dedicated utility strips, easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Franchise Area, which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. *Public Way* shall also mean any easement now or hereafter held by the Franchising Authority within the Franchise Area for the purpose of public travel or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall, within their proper use and meaning, entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing, operating and maintaining the Grantee's cable system over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to the cable system. (Ord. 2-2008 § 2)

Sec. 5-2. Grant of authority.

The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a cable system in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the cable system and to provide such services over the cable system as may be lawfully allowed. (Ord. 2-2008 § 2)

Sec. 5-3. Term of Franchise.

The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act. (Ord. 2-2008 § 2)

Sec. 5-4. Renewal.

Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended. (Ord. 2-2008 § 2)

Sec. 5-5. Reservation of authority.

Nothing in this Franchise Agreement shall:

- (1) Abrogate the right of the Franchising Authority to perform any public works or public improvements of any description;
- (2) Be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority; or
- (3) Be construed as a waiver or release of the rights of the Franchising Authority in and to the Public Ways. (Ord. 2-2008 § 2)

Sec. 5-6. Permits and general obligations.

The Grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain or repair the cable system, or any part thereof, prior to the commencement of any such activity. Construction, installation and maintenance of the cable system shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines and equipment installed by the Grantee for use in the cable system in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way. (Ord. 2-2008 § 2)

Sec. 5-7. New grades or lines.

If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from the Franchising Authority (which shall not be less than ten [10] business days) and at its own cost and expense, protect or promptly alter or relocate the cable system, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall notify the Grantee of such funding and make available such funds to the Grantee. (Ord. 2-2008 § 2)

Sec. 5-8. Relocation at request of third party.

The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure temporarily move its wires to permit the moving of such structure; provided that:

(1) The Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and

(2) The Grantee is given not less than ten (10) business days' advance written notice to arrange for such temporary relocation. (Ord. 2-2008 § 2)

Sec. 5-9. Restoration of Public Ways.

If, in connection with the construction, operation, maintenance or repair of the cable system, the Grantee disturbs, alters or damages any Public Way, the Grantee agrees that it shall, at its own cost and expense, replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance. (Ord. 2-2008 § 2)

Sec. 5-10. Safety requirements.

The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the cable system shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The cable system shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area. (Ord. 2-2008 § 2)

Sec. 5-11. Trimming of trees and shrubbery.

The Grantee shall have the authority to trim trees or other natural growth overhanging any of its cable system in the Franchise Area so as to prevent contact with the Grantee's wires, cables or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming. (Ord. 2-2008 § 2)

Sec. 5-12. Aerial and underground construction.

At the time of cable system construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its cable systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the cable system's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate or maintain underground any ground-mounted appurtenances, such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals or other related equipment. (Ord. 2-2008 § 2)

Sec. 5-13. Undergrounding and beautification projects.

In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, the Grantee shall participate in the planning

for relocation of its aerial facilities contemporaneously with other utilities. The Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. The Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way. (Ord. 2-2008 § 2)

Sec. 5-14. Service obligations.

(a) General service obligation.

(1) The Grantee shall make cable service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and is within one (1) mile of the existing cable system. Subject to the density requirement, the Grantee shall offer cable service to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the Grantee's distribution cable.

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

(b) Programming. The Grantee shall offer to all Customers a diversity of video programming services.

(c) No discrimination. The Grantee shall not discriminate or permit discrimination between or among any Persons in the availability of cable services or other services provided in connection with the cable system in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the cable system so long as such Person's financial or other obligations to the Grantee are satisfied. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts or other such pricing strategies as part of its business practice.

(d) New developments. The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchising Authority agrees to require the developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least ten (10) business days' written notice of the date of availability of open trenches. (Ord. 2-2008 § 2)

Sec. 5-15. Fees and charges to Customers.

All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any cable service as of the Effective Date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law. (Ord. 2-2008 § 2)

Sec. 5-16. Customer service standards; Customer bills and privacy protection.

(a) Customer service standards. The Franchising Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

(b) Customer bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (a) is not misleading and (b) does not omit material information. Notwithstanding anything to the contrary in Subsection (a) above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. § 542(c)).

(c) Privacy protection. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto. (Ord. 2-2008 § 2)

Sec. 5-17. Franchise fees.

(a) The Grantee shall pay to the Franchising Authority a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the cable system to provide cable service in the Franchise Area; provided, however, that the Grantee shall not be compelled to pay any higher percentage of franchise fees than any other video service provider providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period.

(b) The Grantor recognizes that the Grantee, at its sole discretion, may allocate revenue between cable services (which are subject to the franchise fee) and non-cable services (which are not subject to the franchise fee but may be subject to other fees and/or taxes) on bundled packages of services. No allocation shall violate this Franchise or have the effect of remitting an unfair or unlawfully disproportionate payment of franchise fees to the Grantor.

(c) In the event that the Grantor believes that the Grantee's allocation methodology violates Subsection (b) above, the Grantor and the Grantee shall meet upon advance notice from the Grantor to discuss and resolve the Grantor's concerns. If the Grantor and the Grantee cannot agree on the matter within a reasonable period of time, the Grantor and the Grantee shall submit the matter to a mutually agreeable third party for mediation. The cost of the mediation shall be shared equally between the Grantor and the Grantee. If the Grantor and the Grantee are unable to mutually agree on a mediator, then either the Grantor or the Grantee can bring the matter to a court of competent jurisdiction or pursue any other remedies available to them in this Franchise or by law. (Ord. 2-2008 § 2)

Sec. 5-18. Franchise fees subject to audit.

(a) Upon reasonable prior written notice, during normal business hours at the Grantee's principal business office, the Franchising Authority shall have the right to inspect the Grantee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such

inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

(b) Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Grantee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a finally settled amount. For purposes of this Section, the term *Final Settlement Amount(s)* shall mean the agreed-upon underpayment, if any, to the Franchising Authority by the Grantee as a result of any such audit. If the parties cannot agree on a Final Settlement Amount, the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

(c) Any Final Settlement Amounts due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Grantee within thirty (30) days from the date the parties agree upon the final settlement amount. Once the parties agree upon a Final Settlement Amount and such amount is paid by the Grantee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Grantee's books and records. (Ord. 2-2008 § 2)

Sec. 5-19. Oversight of Franchise.

In accordance with applicable law, the Franchising Authority shall have the right to, on reasonable prior written notice and in the presence of the Grantee's employee, periodically inspect the construction and maintenance of the cable system in the Franchise Area as necessary to monitor the Grantee's compliance with the provisions of this Franchise Agreement. (Ord. 2-2008 § 2)

Sec. 5-20. Technical standards.

The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Franchising Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules. (Ord. 2-2008 § 2)

Sec. 5-21. Maintenance of books, records and files.

(a) Books and records. Throughout the term of this Franchise Agreement, the Grantee agrees that the Franchising Authority may review the Grantee's books and records regarding customer service performance levels in the Franchise Area to monitor the Grantee's compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Grantee, at the Grantee's business office, during normal business hours, and without unreasonably interfering with the Grantee's business operations. All such documents that may be the subject of an inspection by the Franchising Authority shall be retained by the Grantee for a minimum period of three (3) years.

(b) Proprietary information. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives and agents of the Franchising Authority that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the cable system design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. The Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. In the event that the Franchising Authority has in its possession and receives a request under a state "sunshine," public records or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Franchising Authority shall notify the Grantee of such request and cooperate with the Grantee in opposing such request. (Ord. 2-2008 § 2)

Sec. 5-22. Transfer of cable system or Franchise or control of Grantee.

Neither the Grantee nor any other Person may transfer the cable system or the Franchise without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined as an acquisition of fifty-one percent (51%) or greater ownership interest in Grantee, shall take place without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for:

- (1) A transfer in trust, by mortgage, hypothecation or by assignment of any rights, title or interest of the Grantee in the Franchise or in the cable system in order to secure indebtedness; or
- (2) A transfer to an entity directly or indirectly owned or controlled by Comcast Corporation.

Within thirty (30) days of receiving a request for consent, the Franchising Authority shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the Franchising Authority has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted. (Ord. 2-2008 § 2)

Sec. 5-23. Insurance.

Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain comprehensive general liability insurance and provide the Franchising Authority certificates of insurance designating the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of one million dollars (\$1,000,000.00) for bodily injury or death to any one (1) Person, and one million dollars (\$1,000,000.00) for bodily injury or death of any two (2) or more Persons

resulting from one (1) occurrence, and one million dollars (\$1,000,000.00) for property damage resulting from any one (1) accident. Such policy or policies shall be noncancelable, except upon thirty (30) days' prior written notice to the Franchising Authority. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Franchising Authority from any workers' compensation claims to which the Grantee may become subject during the term of this Franchise Agreement. (Ord. 2-2008 § 2)

Sec. 5-24. Indemnification.

The Grantee shall indemnify, defend and hold harmless the Franchising Authority, its officers, employees and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the cable system, including but not limited to reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify and defend the Franchising Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority. (Ord. 2-2008 § 2)

Sec. 5-25. System description and service.

(a) System capacity. During the term of this Agreement, the Grantee's cable system shall be capable of providing a minimum of eighty-five (85) channels of video programming with satisfactory reception available to its Customers in the Franchise Area.

(b) Service to school buildings. The Grantee shall provide free "basic" cable service and free installation at one (1) outlet to each public and private school, not including home schools, located in the Franchise Area within one hundred twenty-five (125) feet of the Grantee's distribution cable.

(c) Service to governmental and institutional Facilities. The Grantee shall provide free "basic" cable service and expanded basic cable service and free installation at one (1) outlet to each municipal building, including the public library and fire station, located in the Franchise Area within one hundred twenty-five (125) feet of the Grantee's distribution cable. Such free cable services shall not be extended to areas where the Grantee would normally enter into a commercial contract to provide such cable service (such as recreation center workout facilities or public viewing areas). "Municipal buildings" are those buildings owned or leased by the Franchising Authority for government administrative purposes and shall not include buildings owned by the Franchising Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed. (Ord. 2-2008 § 2)

Sec. 5-26. Notice of violation or default.

In the event the Franchising Authority believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default. (Ord. 2-2008 § 2)

Sec. 5-27. Grantee's right to cure or respond.

The Grantee shall have forty-five (45) days from the receipt of the Franchising Authority's written notice:

- (1) To respond to the Franchising Authority, contesting the assertion of noncompliance or default;
- (2) To cure such default; or
- (3) In the event that, by nature of the default, such default cannot be cured within the forty-five-day period, to initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that the cure will be completed. (Ord. 2-2008 § 2)

Sec. 5-28. Public hearings.

In the event the Grantee fail to respond to the Franchising Authority's notice, or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard. (Ord. 2-2008 § 2)

Sec. 5-29. Enforcement.

Subject to applicable federal and state law, in the event the Franchising Authority, after such public hearing, determines that the Grantee is in default of any material provision of the Franchise, the Franchising Authority may:

- (1) Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages or seek other equitable relief; or
- (2) In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

- a. The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including two (2) or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

b. At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record, and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Franchising Authority shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority *de novo* and to modify or reverse such decision as justice may require. (Ord. 2-2008 § 2)

Sec. 5-30. Technical violation.

The Franchising Authority agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breaches or violations of the Franchise, which shall include, but not be limited to, the following:

(1) In instances or for matters where a violation or a breach of the Franchise by the Grantee was a good-faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

(2) Where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise. (Ord. 2-2008 § 2)

Sec. 5-31. Competitive equity.

(a) The Grantee acknowledges and agrees that the Town reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide cable services within the Town, provided that the Town agrees that, within ninety (90) days of the Grantee's request, it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, or provide relief from existing material terms or conditions, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: franchise fees; insurance; system build-out requirements; security instruments; public, education and government access channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word-for-word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(b) Notwithstanding any provision to the contrary, at any time that a non-wireless-facilities-based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or Customers, cable services or multiple channels of video programming within the Franchise Area without a Franchise or other similar lawful authorization granted by the Town, then the Grantee may seek modification as per Subsection (a) above, or the term of the Grantee's Franchise shall, upon ninety (90) days' written notice from the Grantee, be shortened so that the Franchise shall be deemed

to expire on a date six (6) months from the first day of the month following the date of the Grantee's notice. (Ord. 2-2008 § 2)

Sec. 5-32. Force majeure.

The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the cable system, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. (Ord. 2-2008 § 2)

Sec. 5-33. Notice.

All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first-class mail, registered or certified, return receipt requested, postage prepaid or by reputable overnight courier service and addressed as follows:

To the Franchising Authority:

Town of La Salle
128 North 2nd Street
La Salle, CO 80645

To the Grantee:

Comcast Cable
Attn Government Affairs Department
8000 East Iliff Avenue
Denver, CO 80231

With a copy to:

Comcast Cable
434 Kimbark Street
Longmont, CO 80501

(Ord. 2-2008 § 2)

Sec. 5-34. Entire Agreement.

This Franchise Agreement, including all exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different

from the provisions of this Franchise Agreement are superseded by this Franchise Agreement. (Ord. 2-2008 § 2)

Sec. 5-35. Severability.

If any section, subsection, sentence, clause, phrase or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. (Ord. 2-2008 § 2)

Sec. 5-36. Governing law.

This Franchise Agreement shall be deemed to be executed in the State of Colorado and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of Colorado, as applicable to contracts entered into and performed entirely within the State. (Ord. 2-2008 § 2)

Sec. 5-37. Modification.

No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Grantee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law. (Ord. 2-2008 § 2)

Sec. 5-38. No third-party beneficiaries.

Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement. (Ord. 2-2008 § 2)

Sec. 5-39. No waiver of rights.

Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, the Grantee may have under federal or state law, unless such waiver is expressly stated herein. (Ord. 2-2008 § 2)

Sec. 5-40. Reserved.

ARTICLE II

Emergency Telephone Service Charge

Sec. 5-41. Grant of authority.

The Mayor is authorized to sign the intergovernmental agreement creating an emergency telephone service authority in order to establish and maintain an emergency telephone service system in the County to include the portions of this Town lying within the County. (Ord. 9-1987, § 1)

Sec. 5-42. Levy of charges; amount.

There is hereby imposed, pursuant to Section 29-11-101, et seq., C.R.S., upon all telephone exchange access facilities within that portion of the Town located within the County, an emergency telephone charge in an amount not to exceed two percent (2%) of the tariff rates as approved by the Public Utilities Commission or fifty cents (\$.50), whichever is less. Upon recommendation of the Weld Emergency Telephone Service Authority, the Board of Trustees may, by resolution, raise or lower the emergency telephone charge, but in no event shall such charge exceed the amount of two percent (2%) of the tariff as approved by the Public Utilities Commission. (Ord. 9-1987, § 2)

Sec. 5-43. Collection of charges.

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., and to provide those funds to the Weld Emergency Telephone Service Authority as provided in the Intergovernmental Agreement. (Ord. 9-1987, § 3)

Secs. 5-44—5-60. Reserved.

ARTICLE III

Telephone Utility Tax

Sec. 5-61. Levy.

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 a business. The amount of such tax shall be five thousand dollars (\$5,000.00) annually. (Prior code 3.12.010)

Sec. 5-62. Payment.

The tax levied by this Article shall be due on January 1 of each year and shall be payable in one (1) installment. (Prior code 3.12.020)

Sec. 5-63. 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 3.12.030)

Sec. 5-64. Local purpose.

The tax provided in this Article 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. It is expressly understood that none of the terms of this Article shall be construed to mean that any telephone utility company is issued a franchise by the Town. (Prior code 3.12.040)

Sec. 5-65. Failure to pay.

If any telephone utility subject to this Article fails to pay the taxes as provided in this Article, the full amount thereof shall be due and collected from such company, and the same, together with an addition of ten percent (10%) of the amount of the taxes due, shall be and is declared to be a debt due and owing from such utility to the Town. (Prior code 3.12.050)

Sec. 5-66. Certain offenses and liabilities to continue.

All offenses committed and 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. (Prior code 3.12.060)

Sec. 5-67. Tax in lieu of other occupational taxes.

The tax provided in this Article shall be in lieu of all other occupation taxes, or taxes on the privilege of doing business with the Town, on any telephone utility subject to the provisions of this Article. (Prior code 3.12.070)

Secs. 5-68—5-80. Reserved.

ARTICLE IV

Gas Franchise

Sec. 5-81. Definitions.

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

(1) *Board of Trustees* or *Town Board* refers to and is the legislative body of the Town of LaSalle.

(2) *Company* refers to and is Greeley Gas Company, a division of Atmos Energy Corporation, and its successors and assigns.

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

(4) *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 lines, gas compressors and meters.

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

(6) *Public Utilities Commission* refers to and is The Public Utilities Commission of the State of Colorado or other authority succeeding to the regulatory powers of The Public Utilities Commission of the State of Colorado.

(7) *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 Public Utilities Commission of the State of Colorado and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments.

(8) *Streets and other public places* refer to and are streets, alleys, viaducts, bridges, roads, lanes, easements, public ways and other public places in said Town.

(9) *Town* refers to and is the Town of LaSalle, Weld County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the Town of LaSalle. (Ord. 4-1997, § 1)

Sec. 5-82. Grant of franchise.

(a) Grant of Franchise. The Town hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this Article, the right to furnish, sell and distribute gas to the Town and to all persons, businesses and industries within the Town; the right 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; and the right to make reasonable use of all streets and other public places as may be necessary to carry out the terms of this Article.

(b) Terms of Franchise. The term of this franchise shall be for twenty-five (25) years, beginning August 26, 1997, and expiring August 25, 2022. (Ord. 4-1997, § 1)

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 five percent (5%) 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. Annual franchise fee payments shall be made on or before March 1 for the preceding calendar year ending December 31. Payments at the beginning and end of the franchise shall be prorated.

(b) Future provisions. Once during each calendar year of the Franchise term, the Town Board of Trustees, upon giving thirty (30) days' notice to the Company of its intention to do so, may review and change the franchise fee the Town may be entitled to receive as a part of this Franchise; provided, however, the Board of Trustees may only change the franchise fee to be received by the Town under the terms of this Franchise to the equivalent of that which the Company may pay (or obligate itself to provide the benefit of) to any city or town in the State of Colorado in which the Company supplies gas service under franchise.

The Company shall report to the Town annually on any subsequent franchise or any change of franchise in other Colorado municipalities, which subsequent franchise or change of franchise obligates the Company to pay a franchise fee to another municipality greater than or different from the amount to be paid by the Company to the Town hereunder. If the Town Board of Trustees decides that the franchise fee herein shall be so changed, it shall provide for such change by ordinance; provided, however, that any change in the franchise fee is then allowed to be surcharged by the Company; and provided further, that the franchise fee is not higher than the highest franchise fee paid by the Company to any municipality within the State of Colorado.

(c) Late fee. In the event that any franchise payment is not received by the Town on or before the applicable dates, interest shall be charged from such due date at an annual interest rate of eighteen percent (18%), plus a late charge of five percent (5%) will also be due and owing. No acceptance of any payment by the Town shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable as a franchise fee or for the performance of any other obligation of the Company.

(d) 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 tax not related to the franchise or the physical operation thereof. (Ord. 4-1997, § 1)

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 shall not be in conflict with the laws of the State of Colorado.

(b) Compliance with federal, state and local laws. The Company, its contractors, employees, and agents, shall be familiar and in compliance with all federal, state, local and municipal laws, ordinances, rules and regulations which in any manner affect those engaged or employed in conducting operations for the Company. The Company and the Town have carefully reviewed this franchise and believe that all provisions hereto are in full compliance with all local, state and federal laws and regulations in effect on the date of execution. The Company and the Town shall also be entitled to all rights and be bound by all changes in local, state and federal law which occur subsequent to the effective date of this franchise agreement. The Company and the Town acknowledge that their rights and obligations under this franchise agreement are explicitly subject to all such changes.

(c) 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 Public Utilities Commission. Said tariffs shall be available for inspection by the public.

(d) Compliance with PUC regulations. The Company shall comply with all rules and regulations adopted by the Public Utilities Commission (PUC).

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

(f) 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 Public Utilities Commission are controlling over any inconsistent provision in this franchise dealing with the same subject matter. (Ord. 4-1997, § 1)

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

(a) Location of facilities. Company facilities shall not 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 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 which 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 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 own cost and expense in as good a condition as before the work was commenced. The Company shall comply with the Town's reasonable 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 forty-eight (48) hours after notification from the Town which time period may be enlarged by the mutual agreement of the Town and Company.

(c) Town review of construction and design. Prior to construction of any significant facilities above ground for gas distribution, any transmission lines or generating plant, building, substation or similar structure within the Town, if requested by the Town, the Company shall furnish to the Town the plans for such facilities. In addition, the Company shall assess and report on the impact of such proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain: (1) that all applicable laws including building and zoning codes and air and water pollution regulations are complied with; (2) that aesthetic and good planning principles have been given due consideration; and (3) that adverse impact on the environment has been minimized.

(d) 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 or other public places 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. Following relocation, all property shall be restored to substantially its former condition by the Company at its expense.

(e) Service to new areas. If during the term of this franchise the boundaries of the Town are expanded, the Company shall extend service to the newly incorporated areas. Service to the annexed areas shall be in accordance with the terms of this franchise agreement.

(f) Town not required to advance funds. Upon receipt of the Town's authorization for billing and construction, the Company shall extend its facilities to provide gas service to the Town for municipal uses within the Town limits without requiring the Town to advance funds prior to construction. Gas service to any other municipal facility outside the Town limits and within the Company's certificated service area shall be provided in accordance with the Company's extension policy.

(g) 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.

(h) 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.

(i) Safety regulations by the Town. The Town reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety and welfare of the public, provided that such regulations are not destructive of the rights granted herein. The Company agrees to comply with all such regulations, in the construction, maintenance and operation of its facilities and in the provision of gas within the Town.

(j) Inspection, audit and quality control. The Town shall have the right to inspect, upon prior notice and 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, upon notice, to inspect and conduct an audit of Company records relevant to compliance with any terms of this Article at all reasonable times. The Company agrees to cooperate with the Town in conducting the inspection and/or audit and to correct any reasonable discrepancies affecting the Town's interest in a prompt and efficient manner. Nothing herein shall require the Company to make records or compile information which it does not normally make or compile in its regular course of business. (Ord. 4-1997, § 1)

Sec. 5-86. Insurance provisions.

(a) Comprehensive liability insurance. The Company shall at all times during the existence of this franchise maintain in full force and effect at the Company's own cost and expense, a comprehensive liability insurance policy with a Company which is licensed to do business in the state of Colorado, with minimum liability limits of one million dollars (\$1,000,000.00) for personal injury or death to any one (1) person in any one (1) occurrence, and two million dollars (\$2,000,000.00) for damage to property resulting from any one (1) occurrence. The Town will be provided a certificate of insurance evidencing the coverages required herein.

(b) Other insurance. The Company shall also provide Workmen's Compensation Insurance as required by Colorado law.

(c) Changes in notice to the Town required. All insurance coverage shall provide for at least thirty (30) days' prior written notice to the Town Clerk in the event of material alterations or

cancellation of any coverage afforded in the policies before such alteration or cancellation becomes effective.

(d) Insurance -- no limitation. The Company's maintenance of insurance policies required by this franchise shall not be construed to excuse unfaithful performance by the Company or to limit the liability of the Company to the coverage provided in the insurance policies, or otherwise to limit the Town's recourse to any other remedy available at law or in equity. (Ord. 4-1997, § 1)

Sec. 5-87. Assignment; saving clause; waiver.

(a) Assignment. Nothing in this Article shall prevent the Company from assigning its rights under this franchise.

(b) Saving clause. 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.

(c) Waiver. The failure of the Town at any time to require performance by the Company of any provision hereof shall in no way affect the right of the Town hereafter to enforce the same. Nor shall the waiver by the Town of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself.

(d) Cumulative provision. The rights and remedies reserved to the Town by this franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the Town may have with respect to the subject matter of this franchise, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time. (Ord. 4-1997, § 1)

Sec. 5-88. Indemnification.

The Company shall, at its sole cost and expense, indemnify and hold harmless the Town, Town Board and any officers, boards, commissions, authorized agents and employees thereof at all times and shall pay all damages and penalties which the Town may be legally required to pay as a result of the construction, operation or maintenance of the Company's system. Such damages and penalties shall include, without limitation, damages arising out of the construction, erection, operation, maintenance and repair of the Company's system or distribution facilities, whether or not any act or omission complained of is authorized, allowed or prohibited by this franchise. If legal action is filed against the Town, either independently, or jointly with the Company to recover for any claim or damages, the Company, upon notice to it by the Town, shall defend the Town against the action. In the event of a final judgment being obtained against the Town, either independently or jointly with the Company, for which the Company has indemnified the Town, the Company shall pay the judgment and all costs and hold the Town harmless therefrom. Nothing in the franchise shall be interpreted to abridge or otherwise affect the Town's right to intervene or participate in any suit, action or proceeding at the Town's expense involving any provisions in this franchise. The Company shall pay all expenses incurred by the Company and the Town in defending with regard to all damages as set forth in this section. These expenses shall include, without limitation, all out-of-pocket expenses, reasonable attorneys' fees, witness and discovery costs and expenses. Additionally,

the reasonable value of any services rendered by the Town Attorney and its office, and any other agents and employees of the Town shall also be paid by the Company if the Company requests such services. Notwithstanding any provision herein to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any liability, claim, damage, judgment or loss arises out of or in connection with any negligent act or failure to act on the part of the Town or any of its officers, agents or employees. (Ord. 4-1997, § 1)

Sec. 5-89. Expiration of franchise; removal of Company facilities.

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

(b) Town's right to purchase or condemn. The right of the Town to construct, purchase or condemn any public utility works or ways, and the rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved.

(c) Continued cooperation by Company. In the event the Town exercises its option to purchase or condemn, the Company agrees that at the Town's request, it will continue to supply any service it supplies under this franchise, for the duration of the term of this franchise pursuant to terms and conditions negotiated for such continued operation. (Ord. 4-1997, § 1)

Sec. 5-90. Notices.

Every notice or response to be served upon the Town or the Company shall be in writing, and shall be deemed to have been duly given to the required party after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid.

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

TOWN OF LASALLE
119 Main Street
LaSalle, Colorado 80645

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

Greeley Gas Company
P.O. Box 1200
Greeley, CO 80632-1200

The Town and the Company may designate such other address or addresses from time to time by giving written notice to the other. (Ord. 4-1997, § 1)

Sec. 5-91. Captions.

The captions to Articles and 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. 4-1997, § 1)

Sec. 5-92. Time of the essence.

Whenever the franchise sets forth any time for any act to be performed by either of the parties, such time shall be deemed to be of the essence of this franchise. (Ord. 4-1997, § 1)

Sec. 5-93. No joint venture.

Nothing herein shall be deemed to create a joint venture or principal agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other. (Ord. 4-1997, § 1)

Sec. 5-94. Entire agreement.

(a) Entire agreement. This Franchise Agreement and all attachments represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties. This Franchise Agreement can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to this franchise or to the appropriate attachment and which is signed on behalf of both parties.

(b) Amendments to franchise. At any time during the term of this franchise, the Town, through its Town Board, or the Company may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the proposed amendment(s) desired, and both parties thereafter will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendment(s).

(c) Repeal of Ordinance 7-1972. Upon the effective date of this franchise, the franchise for gas services granted to the Company by Ordinance 7-1972 shall be and hereby is repealed in its entirety.

(d) Company approval. The Company shall file with the Town Clerk its written acceptance of this franchise and of all of its terms and provisions within thirty (30) days after the adoption of this franchise by the Town Board. The acceptance shall be in form and content approved by the Town Attorney. If the Company shall fail to timely file its written acceptance as herein provided, this franchise shall be and become null and void. (Ord. 4-1997, § 1)

Sec. 5-95. Forfeiture.

(a) Forfeiture. It is agreed that, after the final passage of the ordinance codified herein granting the Company a franchise, and the acceptance thereof by the Company, in the case of subsequent failure of the Company to perform and carry out any of the stipulations and agreements herein set

forth in any substantial particular, the Town, acting by and through its Mayor and Board of Trustees, may, after hearing, determine such substantial failure, and thereupon, after notice given the Company of such determination, the Company shall have three (3) months' time in which to remedy the conditions respecting which such finding shall have been made. After the expiration of such three-month period and failure to correct such conditions, the Mayor and Board of Trustees may by ordinance declare this franchise forfeited, and thereupon the Company shall have no further right or authority hereunder.

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

(c) Other legal remedies. Nothing herein contained shall limit or restrict any legal rights that the Town or the Company may possess arising from any alleged violation of this franchise.

(d) Continued obligations. Upon forfeiture, the Company shall continue to provide service to the Town and its residents in accordance with the terms hereof until the Town makes alternative arrangements for such service. If the Company fails to provide continued service, it shall be liable for damages to the Town. (Ord. 4-1997, § 1)

Secs. 5-96—5-110. Reserved.

ARTICLE V

Electric Franchise

Sec. 5-111. Definitions.

For the purpose of this Article, the following words and phrases shall have the meaning given in this Section. When not inconsistent with the context, 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 Section shall be given their common and ordinary meaning.

(1) *Company* refers to and is Public Service Company of Colorado, and its successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.

(2) *Distribution facilities* refers to and is only that portion of the company's electric system which delivers electric energy from the substation breakers to the point-of-delivery of the customer, including all devices connected to that system.

(3) *Facilities* refers to and is all facilities reasonably necessary to provide electricity into, within and through the Town and include plants, works, systems, substations, transmission and distribution structures, lines, equipment, conduit, transformers, underground lines, meters, wires, cables and poles.

(4) *Public easements* refers to and is public and dedicated easements created and available for use by investor-owned or other public utilities for their facilities.

(5) *Public Utilities Commission* or *PUC* refers to and is the Public Utilities Commission of the State or other authority succeeding to the regulatory powers of the Public Utilities Commission.

(6) *Residents* refers to and includes all persons, businesses, industry, governmental agencies and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the Town.

(7) *Revenues* refers to and is those amounts of money which the Company receives from its customers within the Town from the sale of electricity under rates authorized by the Public Utilities Commission and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments.

(8) *Streets* and other public places refers to and is streets, alleys, viaducts, bridges, roads, lanes and other public places in the Town.

(9) *Town* refers to and is the municipal corporation designated as the Town of LaSalle, Weld County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the Town of LaSalle. (Ord. 3-1990, § 1.0)

+Sec. 5-112. Grant of franchise.

The Town hereby grants to Public Service Company, for the period specified in and subject to the conditions, terms and provisions contained in this franchise, a nonexclusive right to furnish, sell and distribute electricity to the Town and to all residents of the Town. Subject to the conditions, terms and provisions contained in this franchise, the Town also hereby grants to the Company a nonexclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to furnish, sell and distribute electricity within and through the Town and a nonexclusive right to make reasonable use of the streets and other public places and public easements as may be necessary to carry out the terms of this franchise. These rights shall extend to all areas of the Town as it is now constituted and to additional areas as the Town may increase in size by annexation or otherwise. (Ord. 3-1990, § 2.1)

Sec. 5-113. Street lighting service.

The rights granted in this franchise encompass the nonexclusive franchise to provide street lighting service to the Town, and the provisions of this franchise apply with full and equal force to the street lighting service provided by the Company. Wherever reference is made to the sale of electricity or to the provision of electric service in this franchise, these references shall be deemed to include the provision of street lighting service. Wherever reference is made to Company facilities, equipment, system or plant in this franchise, this reference shall be deemed to include Company-owned street lighting facilities, equipment, system and plant. (Ord. 3-1990, § 2.2)

Sec. 5-114. Term of franchise.

This franchise shall take effect on September 20, 1990. The term of this franchise shall be for twenty-five (25) years, beginning with said effective date of this franchise and expiring on September 19, 2015. (Ord. 3-1990, § 2.3)

Sec. 5-115. Franchise fee.

In consideration for the grant of this franchise, the Company shall pay the Town a sum equal to three percent (3%) of all revenues received from the sale of electricity within the Town. (Ord. 3-1990, § 3.1)

Sec. 5-116. Payment schedule.

(a) For the franchise fee owed on revenues received after the effective date of this franchise, payment shall be made in monthly installments not more than thirty (30) days following the close of the month for which payment is to be made. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of the ordinance codified in this Article. All payments shall be made to the Town Finance Director. The Town Finance Director, or other authorized representatives, shall have access to the books for the Company for the purpose of auditing or checking to ascertain that the franchise fee has been correctly computed and paid.

(b) In the event an error by the Company results in an overpayment of the franchise fee to the Town and said overpayment is in excess of five thousand dollars (\$5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is five thousand dollars (\$5,000.00) or less, credit shall be taken against the next payment. (Ord. 3-1990, § 3.2)

Sec. 5-117. Change of franchise fee and other franchise terms.

(a) Once during each calendar year of the franchise term, the Board of Trustees, upon giving thirty (30) days' notice to the Company of its intention so to do, may review and change the consideration the Town may be entitled to receive as a part of the franchise; provided, however, that the Board of Trustees may only change the consideration to be received by the Town under the terms of this franchise to the equivalent of the consideration paid by the Company to any city or town in the State in which the Company supplies electric service under franchise.

(b) The Company shall, upon request, report to the Town within sixty (60) days of the execution of a subsequent franchise or of any change of franchise in other municipalities that could have a significant financial impact on the consideration to be paid by the Company to the Town hereunder. If the Board of Trustees decides the consideration shall be so changed, it shall provide for such change by ordinance; provided, however, that any change in the franchise fee is then allowed to be surcharged by the Company; and provided, further, that the consideration is not higher than the highest consideration paid by the Company to any municipality within the State. For purposes of this Section, *consideration* means the franchise fee established in Section 5-115 and the undergrounding program established in Section 10.2 5-141, and also includes any other provision which is of similar significant financial benefit to the Town. (Ord. 3-1990, § 3.3)

Sec. 5-118. Franchise fee payment in lieu of other fees.

Payment of the franchise fee by the Company is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax on the privilege of doing business 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 businesses. (Ord. 3-1990, § 3.4)

Sec. 5-119. 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. (Ord. 3-1990, § 4.1)

Sec. 5-120. Restoration of service.

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. (Ord. 3-1990, § 4.2)

Sec. 5-121. Obligations regarding Company facilities.

The Company shall install, maintain, repair, renovate and replace its facilities +with due diligence in a good and workmanlike manner, and the Company's facilities will be of sufficient quality and durability to provide adequate and efficient electric service to the Town and its residents. Company facilities shall not interfere with the Town's water mains, sewer mains or other municipal use of streets and other public places. The Company shall erect and maintain its facilities in such a way so as to minimize interference with trees and other natural features. Company facilities shall be installed in public easements so as to cause a minimal amount of interference with such property. (Ord. 3-1990, § 4.3)

Sec. 5-122. Excavation and construction.

All excavation and construction work done by the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. All public and private property whose use conforms to restrictions in public easements disturbed by Company excavation or construction activities shall be restored by the Company at its expense to substantially its former condition. (Ord. 3-1990, § 4.4)

Sec. 5-123. Relocation of Company facilities.

(a) Any relocation of the Company's facilities in any street or other public place required, caused or occasioned by any Town project shall be at the cost of the Company. Relocation shall be completed within a reasonable time from the date when the Town makes its request, such time to be established by the Company as soon as possible after the Town's request. The Company shall be

granted an extension of time of completion equivalent to any delay caused by conditions not under its control, provided that the Company proceeds with due diligence at all times.

(b) Relocated underground facilities shall be underground. Relocated aboveground facilities shall be above ground unless the Town either agrees to pay the additional cost of moving them underground or requests that such additional cost be paid out of available funds under Section 10.2 5-141. (Ord. 3-1990, § 4.5)

Sec. 5-124. Service to new areas.

If the boundaries of the Town are expanded during the term of this franchise, the Company shall extend service to residents in the expanded area at the earliest practicable time and in accordance with the Company's extension policy. Service to the expanded area shall be in accordance with the terms of this franchise agreement, including payment of franchise fees. (Ord. 3-1990, § 4.6)

Sec. 5-125. Town not required to advance funds.

Upon receipt of the Town's authorization for billing and construction, the Company shall extend its facilities to provide electric service to the Town for municipal uses within the Town limits or for any major municipal facility outside the Town limits, and within the Company certificated service area, without requiring the Town to advance funds prior to construction. (Ord. 3-1990, § 4.7)

Sec. 5-126. Technological improvements.

The Company shall generally introduce and install, as soon as practicable, electrical energy technological advances in its equipment and service within the Town when such advances are technically and economically feasible and are safe and beneficial to the Town and its residents. Upon request by the Town, the Company shall review and promptly report advances which have occurred in the electric utility industry that have been incorporated into the Company's operations in the Town in the previous year or will be so incorporated in the six (6) months following the Town's request. (Ord. 3-1990, § 4.8)

Sec. 5-127. Town regulation.

The Town expressly reserves, and the Company expressly recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances and rules and regulations as may by the Town be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens. (Ord. 3-1990, § 5.1)

Sec. 5-128. Compliance with Town requirements.

The Company will comply with all Town requirements regarding curb and pavement cuts, excavating, digging and related construction activities. If requested by the Town, the Company shall submit copies of reports of annual and long-term planning for capital improvement projects with descriptions of required street cuts, excavation, digging and related construction activities within thirty (30) days after issuance. Except for emergencies, the Town may require that all installations be coordinated with the Town's street improvement programs. The Town Director of Public Works shall

be the Town's agent for inspection and for compliance with Town ordinances and regulations on any such projects. (Ord. 3-1990, § 5.2)

Sec. 5-129. Town review of construction and design.

Prior to construction of any significant facilities above ground for electrical energy, any transmission lines or generating plant, building, substation or similar structure within the Town, if requested by the Town, the Company shall furnish to the Town the plans for such facilities. In addition, the Company shall assess and report on the impact of such proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain, inter alia:

- (1) That all applicable laws including building and zoning codes and air and water pollution regulations are complied with;
- (2) That aesthetic and good planning principles have been given due consideration; and
- (3) That adverse impact on the environment has been minimized. (Ord. 3-1990, § 5.3)

Sec. 5-130. Compliance with PUC regulations.

The electrical energy which the Company distributes shall conform with the standards promulgated by the Public Utilities Commission in the Rules Regulating the Service of Electrical Utilities and with the tariff provisions of the Company setting standards, as the same may be amended from time to time. (Ord. 3-1990, § 5.4)

Sec. 5-131. Compliance with air and water pollution laws.

The Company shall use its best efforts to take measures which will result in its facilities meeting the standards required by applicable federal and state air and water pollution laws. Upon the Town's request, the Company will provide the Town with a status report of such measures. (Ord. 3-1990, § 5.5)

Sec. 5-132. Inspection.

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 shall also have access to Company records for the purpose of determining Company compliance with this franchise. The Company agrees to cooperate with the Town in conducting the inspection and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner. (Ord. 3-1990, § 5.6)

Sec. 5-133. Public Utilities Commission regulation.

The Town and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the Public Utilities Commission which are consistent with the restrictions and limitations of Article XXV of the Colorado Constitution regarding the rights of municipalities to franchise are controlling over any inconsistent provision in this franchise dealing with the same subject matter. In the opinion of the Company, no provision of this franchise is inconsistent with any of the currently effective provisions of the Company's tariffs. (Ord. 3-1990, § 6.1)

Sec. 5-134. Reports on Company operations.

The Company shall submit reasonable and necessary reports containing or based on information readily obtainable from the Company's books and records as the Town may request with respect to the operations of the Company under this franchise and provide the Town with a list of real property within the Town which is owned by the Company. (Ord. 3-1990, § 7.1)

Sec. 5-135. Copies of tariffs, all PUC filings.

The Company shall keep on file in a local Company office all tariffs, rules, regulations and policies approved by the PUC relating to service by the Company to the Town and its residents. Upon request by the Town, the Company shall provide the Town with copies of filings affecting said service which it makes with the PUC. (Ord. 3-1990, § 7.2)

Sec. 5-136. Town use.

The Town shall have the right, for the purpose of stringing wires, to use all poles and suitable overhead structures constructed by the Company within the Town, which use shall not include the distribution or transmission of electricity. Such use by the Town will be without cost. The Company will allow others holding a franchise, except for electric service, from the Town to so utilize such poles and suitable overhead structures upon reasonable terms and conditions to be agreed upon by the Company and such holder of a franchise from the Town; provided, however, that the Company shall assume no liability nor shall it be put to any additional expense in connection therewith and the use of said poles and structures by the Town or others holding a franchise from the Town shall be in such a manner as not to constitute a safety hazard or to interfere unnecessarily with the Company's use of the same. (Ord. 3-1990, § 8.1)

Sec. 5-137. Underground conduit.

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 conduit and pull wire for the Town. If the Town wants additional similar conduit and pull wire installed, it will so notify the Company and provide similar conduit and pull wire at its expense to the Company which will install it without further expense to the Town, provided that such action by the Town will not unnecessarily interfere with the Company's facilities or delay the accomplishment of the project. (Ord. 3-1990, § 8.2)

Sec. 5-138. Town held harmless.

The Company shall indemnify, defend and save the Town harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the Company within the Town pursuant to this franchise and the securing of and the exercise by the Company of the franchise rights granted in the ordinance codified in this Article, and shall pay all reasonable expenses arising therefrom. The Town will provide prompt written notice to the Company of the pendency of any claim or action against the Town arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim,

demand or lien arises out of or in connection with any negligent act or failure to act of the Town or any of its officers or employees. (Ord. 3-1990, § 9.1)

Sec. 5-139. Payment of expenses incurred by Town in relation to ordinance.

At the Town's option, the Company shall pay in advance or reimburse the Town for expenses incurred in publication of notices and ordinances and for photocopying of documents arising out of the negotiations or process for obtaining the franchise. (Ord. 3-1990, § 9.2)

Sec. 5-140. Underground electrical distribution lines in new areas.

The Company will place newly constructed electrical distribution lines underground to serve new residential subdivision areas in accordance with the Company's tariffs and Town subdivision regulations. (Ord. 3-1990, § 10.1)

Sec. 5-141. Overhead conversion at expense of Company.

(a) As and when requested by the Town, the Company will spend one percent (1%) of the preceding calendar year's electric revenues to move electric distribution facilities located in streets and other public places in the Town underground, provided that the undergrounding shall extend for a minimum distance of one (1) block or seven hundred fifty (750) feet or as mutually agreed to by the parties.

(b) Any unexpended portion of the one percent (1%) of electric revenue may be +carried over to succeeding years and, in addition, upon request by the Town, the Company shall anticipate amounts to be available for up to three (3) years in advance. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated. No relocation expenses which the Company is required to expend pursuant to Section 5-123 shall be charged to this allocation.

(c) Funds to be expended pursuant to this Section shall not be used in any project or situation for which and to the extent that the Town has received federal or state funds for the purpose of undergrounding utilities. Funds to be expended pursuant to this Section may be used for "matching" purposes with state or federal monies.

(d) If the Public Utilities Commission authorizes a system-wide program or programs of undergrounding electric distribution facilities, the Company will allocate to the program of undergrounding in the Town such amount as is authorized by the Public Utilities Commission, but in no case less than one percent (1%) of annual electric revenues.

(e) In addition to the provisions of this Section, the Town may require additional facilities to be moved underground at the Town's expense.

(f) The Town acknowledges that the establishment of this undergrounding fund creates no vested right in the Town to the undergrounding monies. Further, if such monies are not expended pursuant to the conditions hereof, the fund is not convertible to cash or available for any other purposes. (Ord. 3-1990, § 10.2)

Sec. 5-142. Review of undergrounding program.

Representatives of both the Town and the Company shall meet periodically to review the Company's undergrounding program. This review shall include:

- (1) Undergrounding programs, including conversions and replacements which have been accomplished or are underway by the Company, together with the Company's plans for additional undergrounding; and
- (2) Undergrounding projects anticipated by the Town.

Such meetings shall be held to achieve a continuing program for the orderly undergrounding of electrical lines in the Town. (Ord. 3-1990, § 10.3)

Sec. 5-143. Cooperation with other utilities.

When undertaking a project of undergrounding, the Town and the Company shall work with other utilities or companies which have their lines overhead to attempt to have all lines undergrounded as part of the same project. When other utilities or companies are placing their lines underground, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where feasible. The Company shall not be required to pay the costs of any other utility in connection with work under this Section. (Ord. 3-1990, § 10.4)

Sec. 5-144. Consent of Town required.

The Company shall not transfer or assign any rights under this franchise to a third party, excepting only corporate reorganizations of the Company not including a third party, unless the Board of Trustees shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld. (Ord. 3-1990, § 11.1)

Sec. 5-145. Transfer fee.

In order that the Town may share in the value this franchise adds to the Company's operation, any such transfer or assignment of rights under this franchise requiring the approval of the Board of Trustees shall be subject to the conditions that the transferee shall promptly pay to the Town a pro rata share of one million dollars (\$1,000,000.00), which pro rata amount of one million dollars (\$1,000,000.00) shall be calculated by multiplying one million dollars (\$1,000,000.00) times a fraction of which the then population of the Town is the numerator and the then population of the City and County of Denver is the denominator. Such transfer fee shall not be recovered from the Town or from the Town residents or property owners through electric rates of customers in the Town or by surcharge by the transferee or the Company. (Ord. 3-1990, § 11.2)

Sec. 5-146. Town's right to purchase or condemn.

The right of the Town to construct, purchase or condemn any public utility works or ways, and the rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved. (Ord. 3-1990, § 12.1)

Sec. 5-147. Continued cooperation by Company.

In the event the Town exercises its option to purchase or condemn, the Company agrees that, at the Town's request, it will continue to supply any service it supplies under this franchise, for the duration of the term of this franchise pursuant to terms and conditions negotiated for such continued operation. (Ord. 3-1990, § 12.2)

Sec. 5-148. Limitations on Company removal.

In the event this franchise is not renewed at the expiration of its term or the Company terminates any service provided herein for any reason whatsoever, and the Town has not purchased or condemned the system and has not provided for alternative electrical service, the Company shall have no right to remove said system pending resolution of the disposition of the system. The Company further agrees it will not withhold any temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount than it would have been entitled to were such services provided during the term of this franchise. Only upon receipt of written notice from the Town stating that the Town has adequate alternative electrical energy sources to provide for the people of the Town shall the Company be entitled to remove any or all of said systems in use under the terms of this franchise. (Ord. 3-1990, § 13.1)

Sec. 5-149. Company to purchase.

The Town expressly reserves the right to engage in the production of electricity. The Company agrees to negotiate for the purchase of Town-generated power in accordance with its tariffs and applicable Public Utilities Commission Rules and Regulations. (Ord. 3-1990, § 14.1)

Sec. 5-150. Forfeiture.

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 control. In those instances, the Company shall use its best efforts to comply in a timely manner and to the extent possible. If the Company fails to perform any of the terms and conditions of this franchise and such failure is within the Company's control, the Town, acting by and through its Board of Trustees, may determine, after hearing, that such failure is of a substantial nature. Upon receiving notice of such determination, the Company shall have a reasonable time in which to remedy the violations. If during said reasonable time corrective actions have not been successfully taken, the Town, acting by and through its Board of Trustees, shall determine whether any or all rights and privileges granted the Company under the ordinance codified in this Article shall be forfeited. (Ord. 3-1990, § 15.1)

Sec. 5-151. Judicial review.

Any such declaration of forfeiture shall be subject to judicial review as provided by law. (Ord. 3-1990, § 15.2)

Sec. 5-152. Other legal remedies.

Nothing herein contained shall limit or restrict any legal rights that the Town or the Company may possess arising from any alleged violation of this franchise. (Ord. 3-1990, § 15.3)

Sec. 5-153. Continued obligations.

Upon forfeiture, the Company shall continue to provide service to the Town and its residents in accordance with the terms hereof until the Town makes alternative arrangements for such service. If the Company fails to provide continued service, it shall be liable for damages to the Town. (Ord. 3-1990, § 15.4)

Sec. 5-154. Amendments to franchise.

At any time during the term of this franchise, the Town, through its Board of Trustees, or the Company may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the proposed amendment(s) desired, and both parties thereafter will negotiate within a reasonable time in good faith in an effort to agree on the mutually satisfactory amendment(s). The word amendment as used in this Section does not include a change authorized in Section 5-117. (Ord. 3-1990, § 16.1)

Sec. 5-155. Successors and assigns.

The rights, privileges, franchises and obligations granted and contained in the ordinance codified in this Article shall inure to the benefit of and be binding upon Public Service Company, its successors and assigns. (Ord. 3-1990, § 17.1)

Sec. 5-156. Third parties.

Nothing contained in this franchise shall be construed to provide rights to third parties. (Ord. 3-1990, § 17.2)

Sec. 5-157. Representatives.

Both parties shall designate from time to time in writing representatives for the Company and the Town who will be the persons to whom notices shall be sent regarding any action to be taken under the ordinance codified in this Article. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent to the Town Administrator and to the Company's Home Light Division Manager. Currently the addresses are as follows:

For the Town:

P.O. Box 717
LaSalle, Colorado 80645

For the Company:

Michael J. Geile
810 Ninth Street
P.O. Box 8
Greeley, Colorado 80632

(Ord. 3-1990, § 17.3)

Sec. 5-158. 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, that the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties hereunder. (Ord. 3-1990, § 17.4)

Sec. 5-159. 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. 3-1990, § 17.5)

Sec. 5-160. Board of Trustees approval.

This grant of franchise shall not become effective unless approved by a majority vote of the Board of Trustees. (Ord. 3-1990, § 18.1)

Sec. 5-161. Company approval.

The Company shall file with the Town Clerk its written acceptance of this franchise and of all of its terms and provisions within ten (10) days after the adoption of this franchise by the Board of Trustees. The acceptance shall be in form and content approved by the Town Attorney. If the Company shall fail to timely file its written acceptance as herein provided, this franchise shall be and become null and void. (Ord. 3-1990, § 18.2)

Secs. 5-162—5-180. Reserved.