

CHAPTER 5¹

Franchises and Cable Television System

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¹ **Editor's Note:** Specialized short-term franchises for services such as railroad, shuttle services and horse carriage service have not been included in the Code.

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ARTICLE I

Cable Television System

Sec. 5-1-10. Grant of franchise.

The City grants to CAP Cable LLC dba USA Communications and its successors and assigns the nonexclusive right to furnish, sell and distribute "cable service" as defined by the Communications Act of 1934, as amended, to the City and to all persons, businesses and industries within the City; a nonexclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City all facilities reasonably necessary to provide "cable service" as defined by the Communications Act of 1934, as amended, within and through the City and includes plants, works, systems, lines, equipment, underground links, switches, wires and radio links; and a nonexclusive right to make reasonable use of all streets, alleys, viaducts, bridges, roads, lanes, easements, public ways and other similar public places which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and are located in said City as may be necessary to carry out the terms of the franchise subject to all definitions, terms and conditions as set forth in the Cable Television Franchise Agreement between the City and CAP Cable LLC dba USA Communications, a copy of which is available for review in the office of the City Clerk. (Prior code 5-1.1)

Sec. 5-1-20. Term of franchise.

The term of the franchise granted pursuant to the Cable Television Franchise Agreement between the City and CAP Cable LLC dba USA Communications, a copy of which is available for review in the office of the City Clerk, shall be ten (10) years from the date which is five (5) days after publication following final passage of the ordinance approving the Agreement. (Prior code 5-1.2)

Sec. 5-1-30. Nonexclusivity.

The Cable Television Franchise Agreement between the City and CAP Cable LLC dba USA Communications, a copy of which is available for review in the office of the City Clerk, shall be nonexclusive and subject to all prior rights, interests, easements or licenses granted by the City or its predecessors to any person to use any property, right-of-way, easement, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed the franchisee under the Cable Television Franchise Agreement. The City may at any time grant authorization to use the public rights-of-way for any purpose not incompatible with the Company's authority under the Cable Television Franchise Agreement between the City and CAP Cable LLC dba USA Communications and for such additional franchises for "Cable Television System" as defined by the Communications Act of 1934, as amended, as the City deems appropriate; provided however, that such additional grants shall not contain terms and conditions which give rise to a materially competitive advantage to the franchisees of such grants. (Prior code 5-1.3)

ARTICLE II

Gas and Electric Franchise

Reserved ²

ARTICLE III

Emergency Telephone Service

Sec. 5-3-10. Intent and applicability.

The City Council finds, determines and declares that it is necessary to protect and preserve the health, safety and welfare of the citizens of the City and the County through the construction, installation and use of a 911 enhanced emergency telephone service. (Prior code 5-101)

Sec. 5-3-20. Intergovernmental agreement.

The City Council authorizes the City to enter into an intergovernmental agreement with the County for the purpose of providing emergency telephone service. (Prior code 5-102)

Sec. 5-3-30. Authority authorization.

The City Council constitutes, authorizes and empowers the Gilpin County Emergency Telephone Service Authority as a separate entity with full powers to enter into contracts, to sue and be sued, and otherwise do all things necessary to carry out the duties delegated under the intergovernmental agreement. (Prior code 5-103)

ARTICLE IV

Electric Franchise

Sec. 5-4-10. 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.

City refers to and is the municipal corporation designated as City of Central City, Gilpin County, Colorado and includes the territory as currently is or may in the future hereafter be

² **Note:** The current gas and electric franchise was approved pursuant to Ordinance 11-12, effective October 4, 2011. In accordance with Article XII, Section 12.5 of the Home Rule Charter, a full and complete copy of the franchise agreement with Public Service Company of Colorado (d/b/a Xcel Energy) is on file with the City Clerk's office.

included within the boundaries of the City of Central City, which are situated in United Power, Inc.'s certificated service area.

City Council refers to and is the legislative body of the City.

City Manager means the duly appointed City Manager of Central City, or his or her designee.

Company refers to and is United Power, Inc., and its successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.

Distribution facilities refers to and is only that portion of the Company's 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.

Facilities refers to and are all facilities reasonably necessary to provide electricity into, within and through the City and includes plants, works, systems, substations, transmission and distribution structures, lines, equipment, conduit, transformers, underground lines, meters, wires, cables and poles.

Franchise means the rights granted by this Article as well as all rights associated therewith pursuant to the laws of the State of Colorado.

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

Public streets and other public places means streets, alleys, boulevards, viaducts, bridges, roads and lanes that are dedicated to, conveyed to or acquired by the City and are used as routes for transportation by the public and all other public places within the City.

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 City.

Revenues refers to and are those amounts of money which the Company receives from its customers within the City from the sale of electricity and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments, as well as money received by the Company from the use by others of its overhead utility facilities within the City. (Prior code 5-121)

Sec. 5-4-20. Grant of franchise.

The City hereby grants to the United Power, Inc., 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 City and to all residents of the City located within the Company's service area. Subject to the conditions, terms and provisions contained in this franchise, the City also hereby grants to the Company a nonexclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City all facilities reasonably necessary to furnish, sell and distribute electricity within and through the City and a nonexclusive right to make reasonable use of

the public 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 City which are created within United Power's certificated service area, and to additional areas as the City may increase in size by annexation or otherwise. (Prior code 5-122)

Sec. 5-4-30. Street lighting service.

The rights granted in this franchise encompass the nonexclusive right to provide street lighting service to the City 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. (Prior code 5-123)

Sec. 5-4-40. Term of franchise.

The term of this franchise shall be for twenty (20) years, beginning with the effective date of the Ordinance, expiring March 5, 2016. (Prior code 5-124)

Sec. 5-4-50. Franchise fee.

In consideration for the grant of this franchise, the Company shall pay the City a sum equal to three percent (3%) of all revenues received from the sale of electricity within the City and three percent (3%) of the revenues received by the Company for the use by others of its overhead utility facilities within the City. All amounts paid to the Company by the City or any of its departments for electric service shall be excluded from computation of the franchise fee. (Prior code 5-125)

Sec. 5-4-60. Payment schedule.

(a) For the franchise fee owed on revenues received after the effective date of this franchise from the sale of electricity, 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. For the franchise fee owed on revenues received from the use by others of the Company's overhead utility facilities, payment shall be made within ninety (90) days following the close of the calendar year for which they are due. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this ordinance. All payments shall be made to the City Clerk's office. The City Clerk, or other authorized representatives, shall have access to the books of the Company for the purpose of auditing or checking to ascertain that the franchise fee has been correctly computed and paid.

(b) In the event an error by the Company results in an overpayment of the franchise fee to the City and said overpayment is in excess of five hundred dollars (\$500.00), credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is five hundred dollars (\$500.00) or less, credit shall be taken against the next payment. (Prior code 5-126)

Sec. 5-4-70. Change of franchise fee and other franchise terms.

Once during each calendar year of the franchise term the City Council, upon giving thirty (30) days' notice to the Company, may review and change the franchise fee and other significant financial benefit the City may be entitled to receive as a part of the franchise; provided, however, the City Council may only change the franchise fee payments, or other provision of this franchise to cause the City to receive a franchise fee, or other significant financial benefit, under this franchise equivalent to the franchise fee or other significant financial benefit that the Company may pay to (or obligate itself for) any other city or town in any other franchise under which the Company renders any electric service in Colorado. (Prior code 5-127)

Sec. 5-4-80. Company to report.

The Company shall report to the City, within sixty (60) days of execution, the terms of any franchise or of any change of franchise in any other municipality that may be greater than or different from the franchise fee or other significant benefit is then allowed to be surcharged by the Company and such charged franchise fee to the City contained in this franchise. If the City Council decides the franchise fee or other significant financial benefit should be changed or incorporated into the franchise, it shall provide for such change by ordinance; provided, however, that any changed franchise fee or other significant financial benefit shall not be higher than the highest franchise fee or other significant benefit paid by the Company to any municipality within the State of Colorado. Any such change of franchise fee or other significant financial benefit shall not be considered an amendment, renewal or enlargement of this franchise. (Prior code 5-128)

Sec. 5-4-90. Franchise fee payment in lieu of other fees.

Payment of the franchise fee by the Company is accepted by the City 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 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. (Prior code 5-129)

Sec. 5-4-100. Contract obligation.

The franchise ordinance constitutes a valid and binding contract between the Company and the City. In the event that the franchise fee specified in this Article is declared illegal, unconstitutional or void for any reason by any court or other proper authority, the Company shall be contractually bound to pay the City, on the same schedule as provided herein for the franchise fee, an aggregate amount equal to the amount which would have been paid as a franchise fee. In the alternative, if the franchise fee is so declared invalid, the City shall have the right to impose occupation and licensing fees and permit charges reasonably equivalent on an annual rate to said franchise. If the Company fails to fulfill any substantial obligation under this ordinance, the City will have a breach of contract claim against the Company, in addition to any other remedy provided by law. (Prior code 5-130)

Sec. 5-4-110. 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. (Prior code 5-131)

Sec. 5-4-120. 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. (Prior code 5-132)

Sec. 5-4-130. 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 City and its residents. Company facilities shall not interfere with any existing City telecommunications facilities, traffic signal lights or with water mains, sewer mains or other municipal use of public 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. (Prior code 5-133)

Sec. 5-4-140. Excavation and construction.

(a) 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 its former condition.

(b) Repair of damage. The Company shall promptly repair any and all damage caused by Company activities or facilities. If such damage poses a threat to health, safety or welfare of the public or individuals, the City may cause repairs to be made at the Company's expense unless the Company makes such repairs promptly upon the City's request.

(c) Inspection. All work is subject to inspection by the City pursuant to the City's ordinances. The Company shall promptly perform reasonable remedial action required by the City pursuant to said inspection.

(d) Contractors. The Company and any and all contractors thereof shall comply with all City ordinances and regulations. All contractors of the Company working in public streets and public places shall hold the necessary contracting licenses required by City ordinance. (Prior code 5-134)

Sec. 5-4-150. Relocation of Company facilities.

(a) Any relocation of the Company's facilities in any public street or other public place required, caused or occasioned by any City project shall be at the cost of the Company. The Company shall use its best efforts to complete any such relocation within a reasonable time from the date when the City makes its request, such time to be established by the Company as soon as possible after the City'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 above ground facilities shall be above ground unless the City 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 5-4-320 of this Article.

(c) Following relocation, all property affected by such relocation shall be restored to its former condition by the Company at its sole expense. Nothing herein contained shall be construed to impose any obligation upon the City to make any payment for any relocation of the Company's facilities. (Prior code 5-135)

Sec. 5-4-160. Service to new areas.

If the boundaries of the City 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. (Prior code 5-136)

Sec. 5-4-170. Technological improvements.

The Company shall generally introduce and install, as soon as practicable, electrical energy technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its residents. Upon request by the City, 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 City in the previous year or will be so incorporated in the six (6) months following the City's request. In no event shall this Section be construed to authorize the installation of fiber optic facilities, not related to electric utility service provided by the Company. (Prior code 5-137)

Sec. 5-4-180. City regulation.

The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such Charter provisions, ordinances and rules and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and the Company shall comply with all lawfully adopted local laws, rules and regulations. Nothing herein contained shall waive the Company's right to challenge the validity of such law, rule or regulation. (Prior code 5-138)

Sec. 5-4-190. Compliance with City requirements.

The Company will comply with all City requirements regarding curb and pavement cuts, excavating, digging and related construction activities. If requested by the City, the Company shall submit copies of reports of annual and long-term planning for capital improvement projects with descriptions or required street cuts, excavation, digging and related construction activities within thirty (30) days after issuance. Except for emergencies affecting health and safety concerns, the City may require that all installations be coordinated with the City's street improvement programs. The City Manager shall be the City's agent for inspection and for compliance with City ordinances and regulations on any such projects. (Prior code 5-139)

Sec. 5-4-200. City review of construction and design.

When known, no less than sixty (60) days prior to construction of any transmission lines or generating plant, building, substation or similar structure within the City, the Company shall advise the City Manager of such planned construction, and, if requested by the City, the Company shall furnish to the City the plans for such facilities. In addition, the Company shall assess and report on the impact of such proposed construction on the City's environment. Such plans and reports may be reviewed and approved by the City to ensure (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. (Prior code 5-140)

Sec. 5-4-210. Compliance with regulations.

The electrical energy which the Company distributes shall conform with the standards promulgated by the Company and with the tariff provisions of the Company setting standards, as the same may be amended from time to time. (Prior code 5-141)

Sec. 5-4-220. Compliance with air and water pollution laws.

The Company shall take measures which will result in its facilities meeting the standards required by applicable federal and state air and water pollution laws. The Company will provide the City with a status report of such measures. (Prior code 5-142)

Sec. 5-4-230. Inspection.

All work and any portion of the Company's system used to serve the City and its residents is subject to inspection by the City Manager. The Company shall promptly perform remedial action required by the City pursuant to said inspection. The City shall also have access to Company records for the purpose of determining Company compliance with this franchise. The Company agrees to cooperate with the City in conducting the inspection and to correct any discrepancies affecting the City's interest in a prompt and efficient manner. (Prior code 5-143)

Sec. 5-4-240. Repair of damage.

The Company shall promptly repair all damage caused by Company activities or facilities. If such damage poses a threat to health, safety or welfare of the public or individuals, the City may cause

repairs to be made at the Company's expense unless the Company makes such repairs promptly upon the City's request. (Prior code 5-144)

Sec. 5-4-250. Reports on Company operations.

The Company shall submit reasonable financial and other necessary reports contained or based on information available from the Company's books and records as the City may from time to time request with respect to the operations of the Company under this franchise, provided that such reports and information can be provided in the normal course of business at a reasonable cost. Such reports may be changed from time to time as may be mutually agreeable between the City and the Company. Initially the City's requests the following reports, on or before, May 1st of each year:

(1) On an annual basis a copy of the Company's statement of operations showing the return earned by the Company on operations.

(2) A list of all real property and leasehold interests in real property owned by the Company within the municipal boundaries of the City as the same may be changed from time to time, excepting public and other assessments. Upon request by the City, such list shall include the legal description and land area of each listed property and shall be accompanied by a map showing the location of each listed property.

(3) Short term (less than three years) and long range (over three years) plans for all capital improvements, construction and excavation within the City or affecting service to the City and its residents. (Prior code 5-145)

Sec. 5-4-260. Copies of tariffs.

The Company shall provide the City with all tariffs, rules, regulations and policies relating to service by the Company to the City and its residents. (Prior code 5-146)

Sec. 5-4-270. City use.

The City shall have the right, for City purposes, to reasonably use all poles and suitable overhead structures constructed by the Company within the City to string wire, which use shall not include the distribution or transmission of electricity. Such use by the City will be without cost. The company will allow others holding a franchise, except for electric service, from the City 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 City. The Company shall assume no liability nor shall it be put to any additional expense in connection with the City's or other franchisee's use, and the use of said poles and structures by the City or others holding a franchise from the City shall be in such a manner as not to constitute a safety hazard or to interfere unnecessarily with the Company's use of same. (Prior code 5-147)

Sec. 5-4-280. 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 City. If the City 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 City provided that such action by the City will not unnecessarily interfere with the Company's facilities or delay the accomplishment of the project. (Prior code 5-148)

Sec. 5-4-290. City held harmless.

The Company shall construct, maintain and operate its facilities in a manner which provides reasonable protection against injury or damage to persons or property; provided, however, said obligation of the Company hereunder shall not increase or decrease its liability on third party claims; and provided further that the Company's obligation to the City hereunder shall not be diminished by said exception. The Company shall save the City harmless and indemnify the City from and against all lawsuits, liability, damage, claims, demands, judgments and losses whatsoever in nature filed by third parties, and reimburse the City for all its reasonable expenses including attorney fees arising out of the operations of the Company within the City and the securing of and the exercise by the Company of the franchise rights granted in this Article including any third party claims, administrative hearings and litigation. Nothing herein contained shall obligate the Company to save the City harmless and indemnify the City to the extent any lawsuits, liability, damage, claims, demands, judgments and losses shall have been found, by final decision of a court of competent jurisdiction in an action where the City is a party, to have arisen out of or in connection with any negligent act or failure to act of the City or of its officers, agents or employees. The parties specifically acknowledge and agree that the Company, in exercising its rights and obligations under this franchise, is an independent entity and is not an entity controlled by or subject to the control of the City for the purposes of Section 24-91-103.5, C.R.S. The right of the Company to seek contribution from the City for its negligence is hereby expressly reserved. (Prior code 5-149)

Sec. 5-4-300. Payment of expenses incurred by City in relation to ordinance.

At the City's option, the Company shall pay in advance or reimburse the City for expenses incurred in publication of notices and ordinances and for photocopying of documents arising out of the negotiations or process for obtaining the franchise. None of the City's expenses reimbursed by the Company under this Section shall be surcharged against the City of Central City rate payers. (Prior code 5-150)

Sec. 5-4-310. 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 City subdivision regulations. (Prior code 5-151)

Sec. 5-4-320. Overhead conversion at expense of Company.

(a) As and when requested by the City, the Company will spend one and a half percent (1½%) of the preceding calendar year's electric revenues derived from customers within the City to move electric distribution facilities located in public streets and other public places in the City underground, provided that the undergrounding shall occur in Company's certificated service area.

(b) Any unexpended portion of the one and a half percent (1½%) of electric revenue may be carried over to succeeding years and, in addition, upon request by the City, 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 5-4-150 of this Article 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 City has received federal or state funds for the purpose of underground 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 City such amount as is authorized by the Public Utilities Commission, but in no case less than one and a half percent (1½%) of annual electric revenues.

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

(f) The City acknowledges that the establishment of this undergrounding fund creates no vested right in the City 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.

(g) The City and the Company shall mutually plan in advance the undergrounding projects which shall be undertaken according to the provisions of this Section. The Company shall not withhold approval of the plans of the City except where reasonably necessary for safety or to protect the operational integrity of the Company's electric system. (Prior code 5-152)

Sec. 5-4-330. Review of undergrounding program.

Representatives of both the City 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.
- (2) Undergrounding projects anticipated by the City.
- (3) The status of technology in the field of electric undergrounding.
- (4) Construction, operation and maintenance costs of underground lines versus overhead lines.

Such meetings shall be held to achieve a continuing program for the orderly undergrounding of electrical lines in the City. (Prior code 5-153)

Sec. 5-4-340. Cooperation with other utilities.

When undertaking a project of undergrounding, the City 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 or Company in connection with work under this Section. (Prior code 5-154)

Sec. 5-4-350. Consent of City 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 City shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be reasonably withheld. (Prior code 5-155)

Sec. 5-4-360. Transfer fee.

In order that the City 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 City shall be subject to the conditions that the transferee shall promptly pay to the City a pro rata share of seven hundred thousand dollars (\$700,000.00), which pro rata amount of seven hundred thousand dollars (\$700,000.00) shall be calculated by multiplying seven hundred thousand dollars (\$700,000.00) times a fraction of which the then-population of Central City 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 City or from the City's residents or property owners through electric rates of customers in the City or by surcharge by the transferee or the Company. (Prior code 5-156)

Sec. 5-4-370. City's right to purchase or condemn.

The right of the City to construct, purchase or condemn any public utility works or ways, and the rights of the Company in connection herewith, as provided by the Colorado Constitution and statutes, is hereby expressly reserved. The City shall have the option to purchase or condemn these facilities at any time during the term of this franchise, upon ninety (90) days' written notice to the Company or within ninety (90) days of the termination date of this franchise. (Prior code 5-157)

Sec. 5-4-380. Continued cooperation by Company.

In the event the City exercises its option to purchase or condemn, the Company agrees that, at the City'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. (Prior code 5-158)

Sec. 5-4-390. Negotiated purchase price or condemnation award.

Upon the exercise of the City's option to purchase, the parties shall negotiate in good faith to determine a mutually acceptable purchase price. No value shall be given to the franchise or to public rights-of-way. If the City and Company cannot reach agreement as to the purchase price or

acceptable payment terms within ninety (90) days after commencement of negotiations, the City may commence condemnation proceedings, and each party shall have the rights provided by law relating to condemnation; provided, however, that no award shall be made for the value of the franchise or public rights-of-way. (Prior code 5-159)

Sec. 5-4-400. Limitations on Company removal.

(a) In the event this franchise is not renewed at the expiration of its terms, the Company shall not be required to remove its facilities immediately from the public streets and public easements.

(b) At the City's request and within a reasonable time not to exceed nine (9) months, the Company, at its sole expense, shall remove from the public streets and public easements all overhead distribution facilities belonging to the Company which are not purchased by the City at the termination of the franchise. Further, the Company, at the request of the City, shall remove at the Company's expense all underground facilities which are not purchased by the City within nine (9) months after the receipt by the Company of a written notice from the City that said underground distribution facilities constitute a hazardous condition or interfere with a public use of the subsurface of said public streets and public places. All property affected by such removal shall be restored by the Company to substantially its former condition after said removal. The Company need not remove any property from said public streets and public easements which property the Company shall continue to use and maintain pursuant to contractual arrangements with the City. (Prior code 5-160)

Sec. 5-4-410. Company to purchase.

The City expressly reserves the right to engage in the production of electricity. The Company agrees to negotiate for the purchase of City-generated power in accordance with its tariffs, federal and state laws and regulations and applicable Public Utilities Commission Rules and Regulations. (Prior code 5-161)

Sec. 5-4-420. Forfeiture.

Both the Company and the City 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 City, acting by and through its Council, may determine, after hearing, that such failure is of a substantial nature. Upon receiving notice of such determination, the Company shall have a reasonable time not to exceed one hundred eighty (180) days in which to remedy the violations, unless the parties otherwise agree in writing. If during said reasonable time corrective actions have not been successfully taken, the City acting by and through its Council, shall determine whether any or all rights and privileges granted the Company under this Article shall be forfeited. (Prior code 5-162)

Sec. 5-4-430. Judicial review.

Any such declaration of forfeiture shall be subject to judicial review as provided by law. (Prior code 5-163)

Sec. 5-4-440. Other legal remedies.

Nothing herein contained shall limit or restrict any legal rights that the City or the Company may possess arising from any alleged violation of this franchise. (Prior code 5-164)

Sec. 5-4-450. Continued obligations.

Upon forfeiture, the Company shall continue to provide service to the City and its residents in accordance with the terms hereof until the City makes alternative arrangements for such service. If the Company fails to provide continued service, it shall be liable for damages to the City. (Prior code 5-165)

Sec. 5-4-460. Conduct of business.

The Company, from time to time, may establish 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 established contrary to or in conflict with the laws of the State of Colorado. (Prior code 5-166)

Sec. 5-4-470. Annexation to City.

When any property owned by the Company becomes eligible for voluntary annexation to the City and is not eligible for voluntary annexation to another municipality, the Company shall, upon the request of the City, petition to annex the same so long as the annexation does not impair the Company's ownership or the then existing use of its property and water or water rights for public utility purposes. Further, the Company shall be exempted from any public donation of land or money arising from such mandatory annexation so long as the land to be annexed is used solely for the purposes of generating, transmitting or distributing electric energy. Otherwise, the Company agrees to meet all terms and conditions imposed upon the annexation by the Company that are no more stringent than those imposed generally upon property owners seeking annexation of similarly situated land to the City. (Prior code 5-167)

Sec. 5-4-480. Notice.

The City will provide notice to the Company of the pendency of any claim or action arising under this franchise against the City, to the extent the City has actual knowledge, arising out of the exercise by the Company of its franchise rights. The Company will not be relieved of any of its obligations under this agreement in the event the City fails to provide such notice. The Company will be permitted at its own expense to appear and defend or to assist in the defense of such claim. The Company shall provide notice to the City of the pendency of any claim or action arising under this franchise against the Company, to which the Company has actual knowledge, arising out of the exercise by the Company of its franchise rights. (Prior code 5-168)

Sec. 5-4-490. Amendments to franchise.

At any time during the term of this franchise, the City, through its City Council, or the Company may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the

proposed amendments desired, and both parties thereafter, through their designated representatives, will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendments. The word *amendment* as used in this Section does not include a change authorized in Section 5-4-70 of this Article. (Prior code 5-169)

Sec. 5-4-500. Changing conditions.

The Company and the City recognize that many aspects of the electric utility business are currently the subject of discussion, examination and inquiry by different segments of industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the Company conducts its business and meets its service obligations. In recognition of the present state of uncertainty respecting these matters, the Company and the City each agree, on request of the other during the term of this franchise, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this franchise, to amend this franchise or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments. (Prior code 5-170)

Sec. 5-4-510. Successors and assigns.

The rights, privileges, franchises and obligations granted and contained in this Article shall inure to the benefit of and be binding upon United Power, Inc., its successors and assigns. (Prior code 5-171)

Sec. 5-4-520. Third parties.

Nothing contained in this franchise shall be construed to provide rights to third parties. (Prior code 5-172)

Sec. 5-4-530. Representatives.

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

For the City of Central City:

City Manager
Central City
P.O. Box 249
Central City, Colorado 80427

For the Company:

David I. Dunnell
General Manager
United Power
P.O. Box 929
Brighton, Colorado 80601

(Prior code 5-173)

Sec. 5-4-540. 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. (Prior code 5-174)

Sec. 5-4-550. Entire agreement.

This franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this franchise. (Prior code 5-175)

Sec. 5-4-560. Company approval.

The Company shall file with the City Clerk its written acceptance of this franchise and of all of its terms and provisions at least ten (10) days prior to adoption of the ordinance by the City Council. The Company shall file with the City Clerk its written ratification thereof no later than ten (10) days after the approval of this franchise by the City Council. The acceptance and ratification shall be in form and content approved by the City Attorney. If the Company shall fail to timely file its written acceptance as herein provided, this franchise shall be and become null and void. (Prior code 5-176)

Appendix 5-A

Television Services – Residential

<i>Service</i>	<i>Fee</i>
Basic	\$31.23 + tax
Cable +	\$46.48 + tax
HBO Only	\$13.49*
*Basic or Cable+	
HBO/HBO2/HBO Sig*	\$13.49*
*Cable+ Only – BOX REQ.	
Cinemax/MoreMax*	\$12.49*
*Cable+ Only – BOX REQ.	
Multichannel HBO/Max*	\$22.95
*Cable+ Only – BOX REQ	
<u>Internet</u>	
Internet only	\$39.95
Internet with Basic Cable	\$39.95
Internet with Basic Cable+	\$34.95
<u>Bundle Pricing</u>	
Basic & Internet	\$65.44
Cable+ & Internet	\$76.44
Installation Fee (INST)	\$35.00
Reconnect Fee (REC)	\$20.00
A/O Wiring (AOI)	\$35.00 per a/o
Transfer (TRAN)	\$15.00