

TITLE 12. FRANCHISES

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- Chapter 2. Wasatch Community TV, Inc., 12-2-1 to 12-2-19.**
- Chapter 3. Utah Power & Light Company, 12-3-1 to 12-3-21.**
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Chapter 1. Mountain Fuel Supply Company

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- 12-1-10. Nature of Franchise.
- 12-1-11. Excavations, etc.; Indemnification.

12-1-1. Grant of Franchise for System. There is hereby granted to Mountain Fuel Supply Company, a Utah corporation, its successors or assigns, hereinafter called grantee, the right, privilege, and franchise to construct, maintain and operate in the present and future streets, alleys and parkways, and other public places in Clinton City, a system of gas mains, supply pipes, and laterals with all necessary or desirable appurtenances, for the purpose of supplying gas for light, heat, power and other purposes to Clinton City, the inhabitants thereof, and persons and corporations beyond the corporate limits thereof, for the term and under the conditions hereinafter set forth.

History: 5/62, 9/84

12-1-2. Placement. All mains, pipes, and laterals shall be so laid as to interfere as little as possible with traffic over the streets and alleys. The location of all mains, pipe lines, and laterals may be fixed under the supervision of the city council.

History: 5/62, 9/84

12-1-3. Rules and Regulations. Grantee may make and enforce reasonable rules and regulations in the conduct of its business and may require before furnishing service the execution of a contract therefor. Grantee shall have the right to contract with each consumer with reference to the installation of service pipe lines and the control of service pipes from the

connection thereof with the supply lines of the grantee in the streets, to and including the meter located on the consumer's premises. For the purpose of securing safety and good service to the consumer and in the public interest, grantee shall have the right to prescribe the sizes and kinds of the pipe to be used by the consumer in conveying gas on consumer's premises and shall have the right to refuse service to any consumer who neglects or refuses to comply with the rules and regulations of the grantee prescribing such conditions. Grantee shall have the right to classify the consumers of said gas in the corporate limits of Clinton City, according to the time of use, character of use, quantity of gas required, and such other conditions as may be reasonable; and subject to the regulations herein provided for and the rights herein prescribed and such reasonable classifications, the grantee shall furnish gas without unjust discrimination and at a uniform price to all consumers of the same class, and to all persons along the established lines or mains of the grantee, who have properly observed such rules and regulations and acceded to the rights herein reserved to said grantee.

History: 5/62, 9/84

12-1-4. Grant of Franchise for Gas. The right is hereby granted unto the said grantee to furnish, distribute, supply, sell and require payment for gas to all persons and corporations in Clinton City, through the said system of gas mains, supply pipes and laterals, and to do all things necessary and incident thereto, in accordance with the terms and conditions herein specified.

History: 5/62, 9/84

12-1-5. Measurement. The gas furnished by the grantee shall be sold and delivered to the consumers through standard meters and Clinton City reserves the right to test the accuracy of any meter in service by a competent officer or agent appointed for that purpose by the mayor and city council.

History: 5/62, 9/84

12-1-6. Rates and Prices. The rates and prices which the grantee, its successors or assigns, may charge for gas and gas service furnished and delivered and the conditions of service under the terms of this franchise shall be fixed in accordance with the laws and constitution of the State of Utah and the laws and constitution of the United States.

History: 5/62

12-1-7. Right of Assignment. Permission is hereby granted unto the said Mountain Fuel Supply Company, its successors or assigns, to assign this franchise and all rights hereunder, and upon assignment of this franchise in accordance herewith, said successors or assigns, whether individuals or corporations, shall become entitled to all the rights and privileges herein granted and shall assume all the obligations and duties herein provided.

History: 5/62

12-1-8. Term. This franchise and all the rights herein granted shall terminate at the end of 50 years after the date of passage of this ordinance, unless sooner terminated by virtue of the provisions herein contained.

History: 5/62, 9/84

12-1-9. Condition. This act and the rights herein conferred shall be null and void unless within 90 days after the passage and posting hereof the said grantee, its successors or assigns, shall file with the clerk of Clinton City a written instrument, declaring its acceptance of the terms and conditions hereof and its intention to be bound by and perform the same, and unless construction of the gas distribution system is begun within six (6) months after passage and posting hereof.

History: 5/62, 9/84

12-1-10. Nature of Franchise. This franchise is granted in consideration of the acceptance by the grantee of the terms and conditions of this chapter as hereinbefore provided and the commencement of construction by the grantee within the time above provided of the necessary facilities to accomplish gas service to Clinton City, thereby making the advantages of said service available to said town and its inhabitants.

History: 5/62, 9/84

12-1-11. Excavations, etc.; Indemnification. When the grantee shall make or cause to be made excavations, or shall place obstructions in any street, alley, or other public place, the public shall be protected by barriers and lights placed, erected and maintained by the grantee; and in the event of injury to any person or damage to any property by reason of negligence of the grantee in the construction, operation or maintenance of the gas distribution system of the grantee, the grantee shall indemnify and keep harmless Clinton City from any and all liability in connection therewith and comply with Title 9 of the Clinton City Code.

History: 5/62, 9/84

Chapter 2. Wasatch Community TV, Inc.

- 12-2-1. Definitions.
- 12-2-2. Grant of Authority.
- 12-2-3. Non-Exclusive Grant.
- 12-2-4. Term of Franchise.
- 12-2-5. Conditions of Street Occupancy.
- 12-2-6. Safety Requirements.
- 12-2-7. System Construction and Extension.
- 12-2-8. Operational Standards; Force Majeure.
- 12-2-9. Local Office; Complaints.
- 12-2-10. Rates.
- 12-2-11. Franchise Payments.
- 12-2-12. Indemnification of City.
- 12-2-13. Procedures.
- 12-2-14. Procedure Upon Termination.
- 12-2-15. Approval of Transfer.
- 12-2-16. Miscellaneous Provisions.
- 12-2-17. Compliance with Applicable Laws and Ordinances.
- 12-2-18. Violations; Penalties.
- 12-2-19. Line Severing.

12-2-1. Definitions. When used in this ordinance, unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given (and when not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural):

- (1) "**City**" means the City of Clinton.
- (2) "**Council**" means the governing body of the city.
- (3) "**Grantee**" means Wasatch Community TV, Inc., its successors and assigns, the grantee of rights under this ordinance.
- (4) "**Person**" means any natural person, company or entity of any kind.
- (5) "**Franchise area**" means that area within the corporate limits of the city as now or hereafter constituted.
- (6) "**Street**" means the surface of and the space above and below any public street, way, place, right of way, road, highway, freeway, bridge, tunnel, lane, path, bike path, alley, court, sidewalk, parkway, drive, communications or utility easement, by whatever name called, now or hereafter existing as such within the franchise area.

(7) **"Property of Grantee"** means all property owned, installed or used by the grantee in the conduct of a CATV business in the city.

(8) **"CATV"** means a cable television system.

(9) **"Cable Television System"** means a system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable radio, television or other electronic or electrical signals to and from persons, subscribers and locations in the franchise area.

(10) **"Basic CATV Service"** means the distribution of broadcast television signals by the grantee.

(11) **"Subscriber"** means any person or entity receiving and paying for basic CATV service.

(12) **"Basic Subscriber Revenues"** means all remuneration received directly by the company from subscribers in payment for regularly furnished basic CATV service, but shall not include any taxes on services furnished by the grantee imposed on any subscriber or user by any government, governmental unit, political subdivision, agency or instrumentality, and collected by the grantee.

History: 2/80, 6/82

12-2-2. Grant of Authority. There is hereby granted by the city to the grantee the right and privilege to engage in the business of operating and providing a CATV system in the city, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street or streets laid out or dedicated and all extensions thereof and additions thereto in the franchise area, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or other grantee franchised or permitted to do business in the city.

History: 2/80, 6/82

12-2-3. Non-Exclusive Grant. The right to use and occupy said streets for the purposes herein set forth, shall not be exclusive to the grantee.

History: 2/80, 6/82

12-2-4. Term of Franchise. The franchise and rights herein granted shall commence 30 days from the final passage hereof and shall continue in force and effect for 15 years after said effective date. Upon application by the grantee to the city, the franchise may be renewed for subsequent 15 year periods.

History: 2/80, 6/82

12-2-5. Conditions of Street Occupancy. (1) All transmission and distribution structures, poles, lines, and equipment installed or erected by the grantee within the franchise area shall be so located as to cause minimum interference with the proper use of streets and with the rights and reasonable convenience of property owners who adjoin any of said streets. The CATV system shall be constructed and operated in compliance with applicable governmental construction and electrical codes.

(2) In case of disturbance of any street or paved area, the grantee shall, at its expense and in a manner approved by the city, replace and restore such street or paved area in as good condition as theretofore.

(3) The grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the grantee when lawfully required by the city by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the city; but, the grantee shall in all cases have the right of abandonment of its property, subject to city ordinances, and if public funds are available to any utility company for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the grantee.

(4) The grantee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings, provided:

(a) The expense of such temporary raising or lowering of wires is paid by said person, including, if required by the grantee, making such payment in advance; and

(b) The grantee is given not less than three (3) business days advance notice to arrange for such temporary wire changes.

(5) The grantee shall have the authority to trim trees overhanging any streets in the franchise area so as to prevent branches from coming in contact with the grantee's wires and cables, except that at the option of the city, such trimming may be done by it or under its supervision and direction at the grantee's expense.

(6) Subject to any applicable state or federal regulations or tariffs, the city shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the grantee in any street, provided: (a) such use by the city does not interfere with the use by the grantee; and (b) the city holds the grantee harmless against and from all claims, demands, causes of actions, suits, actions, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits.

History: 2/80, 6/82

12-2-6. Safety Requirements. (1) The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(2) All structures and all lines, equipment and connections in, over, under and upon all streets of the franchise area shall be kept and maintained in a safe and suitable condition and in good order and repair.

History: 2/80, 6/82

12-2-7. System Construction and Extension. (1) The grantee is hereby authorized to extend the system within the franchise area to the extent that such extension is or may become technically and economically feasible.

(2) Whenever the grantee shall have received written requests for service from at least 15 subscribers within 400 cable meters (1300 cable feet) of its aerial trunk cable, or from at least 25 subscribers within 400 cable meters (1300 cable feet) of its underground trunk cable, it shall extend its system to such subscribers solely for the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The 400 meters shall be measured in extension length of grantee's cable required for service located within the public way or easement and shall not include length of necessary drop to the subscriber's home or premises.

(3) No person in the grantee's service area shall be arbitrarily refused service; but in recognition of the

capital costs involved in unusual circumstances, including, without limitation, instances when the distance from distribution cable to connection of service to subscribers is more than 45 meters (150 cable feet) or when a subscriber density exists less than the density specified hereinabove, service may be made available on the basis of costs of materials, labor and easements, in order to prevent inequitable burdens on cable subscribers in more densely populated areas.

(4) For all residential structures hereinafter erected which are to be served by underground utilities, the developer of the subdivision or development may acquire CATV service for this development under the following conditions; but otherwise the grantee shall not be obligated to construct CATV system in such new development: Developer shall perform all trenching and backfilling necessary for the provision of cable television service, including furnishing of any imported backfill material required, and will furnish and install for the grantee any necessary distribution conduit and substructures, including pedestals, required in accordance with the grantee's plans and specifications. Developer may enter into a written agreement with the grantee whereby such costs may be reimbursed to the developer by grantee at the rate of 50% of basic subscriber revenues generated from CATV service supplied within the development over a period not to exceed three (3) years.

(5) In addition to providing plans and specifications to the developer, the grantee shall inspect the facilities required hereunder, and certify to the city prior to final approval of the subdivision or development that the facilities required herein are properly installed. The city shall have the right to review and require its approval of the maps and specifications provided by the grantee. The cost of that portion of an extension to a subdivision or development from the grantee's existing facilities in excess of 60 meters (200 feet) outside the boundaries of the subdivision or development shall be borne by the developer. Facilities installed hereunder shall be owned, operated, and maintained by grantee.

History: 2/80, 6/82

12-2-8. Operational Standards; Force Majeure. (1) The grantee shall operate and maintain its cable television system in full compliance with the standards set forth by the Federal Communications Commission.

(2) The grantee shall have no obligation to construct or extend the system, nor to provide, repair, replace, maintain or operate CATV service, for any cause beyond grantee's control, including, without limitation, acts of God, fire, flood, earthquakes, hurricane,

unavoidable casualty, extraordinary delays in transportation, strikes, lockouts, picketing, boycotts, embargoes, government orders or other requirements, acts of civil or military authorities, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, energy shortages, acts or omissions of carriers, or activities or other emergency conditions including weather conditions incompatible with good quality workmanship.

History: 2/80

12-2-9. Local Office; Complaints. The grantee shall maintain a local business office or agent which subscribers may telephone during regular business hours without incurring added message or toll charges, so that complaints regarding cable television operations may be promptly reported to the grantee.

History: 2/80, 6/82

12-2-10. Rates. The grantee shall maintain on file with the city treasurer a schedule setting forth all rates and charges to be made to subscribers for "basic," "tier," and "pay" television service, including connection and service charges. Notice of changes in rates and charges shall be filed with the finance director at least 30 days in advance of the effective date thereof.

History: 6/82

12-2-11. Franchise Payments. (1) The grantee shall pay the director of finance of this city a sum equal to three percent (3%) of the gross revenue per annum derived by the grantee from all local gross service revenue received from subscribers located within the city.

(2) Gross revenues for purposes of this ordinance are defined as all revenues received from "basic," "tier," and "pay" television supplied to subscribers within the city, including connection and service charges.

(3) Within 60 days after the first days of January and July of each year, during the term of this ordinance, the grantee shall file with the finance director of the city a report of such revenues as described within this section for the next preceding six (6) month period, which report shall include a computation of the tax due. The rates fixed in this amendment shall be paid from and after July 1, 1982. The calculation of all franchise fees prior to July 1, 1982, will be deemed properly calculated using the prior method outlined in the original ordinance. The amount of tax so earned and calculated shall be paid within 30 days after filing of

said report. The director of finance of the city shall determine the accuracy of the tax computation, and if he finds any errors, shall report the same to grantee for correction. The records of the grantee reflecting the information relevant in determining revenues described in this section shall be available for inspection by the Clinton City Council or its duly authorized representative at all reasonable hours and upon reasonable notice.

(4) The payments described in this section shall be in lieu of any and all other franchise, occupation, privilege, pole, wire, instrument, excise or other taxes except general ad valorem property taxes, sales taxes, city license tax and other special improvement taxes lawfully levied by the city or any other subdivision of the State of Utah pursuant to law.

(5) The business of cable television is hereby classified as a "retail business" for licensing purposes and the franchise shall pay the annual license fee for such business at the rate in effect each year for such businesses, but it will not be singled out for tax treatment different from other members of that general class of business. The grantee is authorized to charge and collect this franchise fee in addition to the charges for services heretofore or hereafter approved by the city in the same manner as such billing and collection is authorized under the utility franchises issued by the city.

History: 6/82

12-2-12. Indemnification of City. (1) The grantee shall at all times protect and hold the city harmless from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs, and reasonable attorney's fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the grantee in the ownership, construction, repair, replacement, maintenance and operation of said cable television system and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of said system, provided the city gives the grantee prompt notice of any such claims, actions, and suits, without limitation, in writing. The grantee shall maintain in full force and effect during the life of any franchise, public liability and property damage insurance for an amount of at least \$300,000.00 single limit liability from the time of commencement of construction of the CATV system.

(2) All such insurance may contain reasonable deductible provisions not to exceed \$1,000.00 for any

type of coverage. The city may require that any and all investigation of claims made by any person against the city arising out of any use or misuse of privileges granted to the grantee hereunder shall be made by, or at the expense of the grantee or its insurer. The grantee may bring its obligations to carry any insurance required hereby within the coverage of any so-called blanket policy or policies of insurance now or hereafter carried, by appropriate amendment, endorsement or otherwise, provided, however, the interests of the city shall be as fully protected thereby as if the grantee had obtained individual policies of insurance.

History: 2/80, 6/82

12-2-13. Procedures. (1) Any inquiry, proceeding, investigation or other action to be taken or proposed to be taken by the city in regard to the operations of the grantee's cable television system, shall be taken only after 30 days written notice to the grantee of such action or proposed action, and the grantee has been given an opportunity to respond in writing and at any hearing which may be specified by the city.

(2) The notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response and the person or persons in authority to whom such responses should be addressed, and such other procedures as may be specified by the city. If a hearing is to be held, the notice shall give the date and the time of such hearing, whether public participation will be allowed and the procedures by which such participation may be obtained. The company shall be a necessary party to any hearing conducted in regard to its operations.

History: 2/80, 6/82

12-2-14. Procedure Upon Termination. Upon expiration of the franchise, if the grantee shall not have acquired an extension renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets or other property of the city, for the purposes of removing therefrom any or all of its property or otherwise. In so removing said property, the grantee shall refill, at its expense, any excavation that it shall make and shall leave said streets in as good condition as that prevailing prior to the grantee's removal of its property.

History: 2/80, 6/82

12-2-15. Approval of Transfer. The grantee shall not sell or transfer its plant or system to another, other than a person controlling, controlled by or under common control with the grantee, nor transfer any rights under

this franchise to another without council approval. No sale or transfer of the grantee's assets used in the performance of this franchise shall be effective until the vendee, assignee or lessee has filed in the office of the city clerk an instrument duly executed reciting the fact of such sale, assignment or lease, accepting the terms of the franchise and agreeing to perform all the conditions thereof. Such council approval shall not be unreasonably withheld and neither this section or other sections of this franchise shall preclude the mortgaging, hypothecating, or assigning of rights in the system, or the pledge of stock by the grantee for the purpose of financing.

History: 2/80, 6/82

12-2-16. Miscellaneous Provisions. (1) When not otherwise prescribed herein, all matters herein required to be filed with the city shall be filed with the city clerk.

(2) The grantee shall assume the cost of publication of this franchise ordinance when such publication is required by law. A bill for publication costs shall be presented to the grantee by the city clerk.

(3) The grantee shall provide without charge one (1) outlet of basic CATV service to each governmental office building, fire station, police station, and public school building that is passed by its cable. The distribution of the cable facility inside such buildings and the extent thereof shall be at the option, duty and expense of the building owner.

(4) In the case of any emergency or disaster, the grantee shall, upon request of the city make available its facilities to the city for emergency use during the emergency or disaster period.

History: 2/80, 6/82

12-2-17. Compliance with Applicable Laws and Ordinances. The grantee shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the city. The city reserves the right to adopt from time to time in addition to the provisions herein contained such ordinances as may be necessary to the exercise of police power. Such regulation shall be reasonable and not in derogation of the rights herein granted, nor in conflict with the laws of the state or other local or federal laws or regulations.

History: 2/80, 6/82

12-2-18. Violations; Penalties. (1) From and after the effective date of this title, it shall be unlawful for any person to construct, install or maintain within any

public street in the city, or within any other public property of the city, or within any privately-owned area within the city which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the city, any equipment or facilities for distributing any television signals or radio signals through a CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect.

(2) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the franchised CATV system within this city for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound, or other transmission, without payment to the grantee.

(3) It shall be unlawful for any person, without the consent of the owner, willfully to tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, sound or other transmission.

(4) Any person violating or failing to comply with any of the provisions of this section shall be guilty of a class C misdemeanor.

History: 2/80, 6/82, 05/99

12-2-19. Line Severing. If at any time the grantee's cable and/or other equipment is disturbed, damaged, or severed the cost of repair shall be paid by the party responsible for said damage. The grantee may charge the responsible party for the time and materials expended for repair of said damage. The city will cooperate with the grantee to assist in enforcing any charge or penalty arising from cable severing or other damage to grantee's property.

History: 2/80, 6/82

Chapter 3. Utah Power & Light Company

- 12-3-1. Purpose.
- 12-3-2. Franchise Grant.
- 12-3-3. Term.
- 12-3-4. Acceptance by Company.
- 12-3-5. Non-Exclusive Franchise.
- 12-3-6. City Regulatory Authority.
- 12-3-7. Extension of City Limits.
- 12-3-8. Indemnification.
- 12-3-9. Franchise Fee.
- 12-3-10. Annexation.
- 12-3-11. Small Power Production and Cogeneration.

- 12-3-12. City Authority.
- 12-3-13. Plan, Design, Construction and Installation of Company Facilities.
- 12-3-14. Company Excavations and Relocations.
- 12-3-15. No Waiver.
- 12-3-16. Transfer of Franchise.
- 12-3-17. Changing Conditions.
- 12-3-18. Amendment.
- 12-3-19. Non-Contestability--Breach of Contract.
- 12-3-20. Notices
- 12-3-21. Early Termination, Revocation or Forfeiture.
- 12-3-22. Severability.

12-3-1. Purpose. The purpose of this franchise ordinance is to grant to PacifiCorp, doing business as Utah Power & Light Company, its successors and assigns, a non-exclusive right to use the public streets, alleys, public ways and public places within Clinton City for its business purposes, under the constraints and for the consideration enumerated in this franchise ordinance.

History: 4/93

12-3-2. Franchise Grant. There is hereby granted to PacifiCorp, doing business as Utah Power & Light Company, its successors and assigns (herein sometimes called the "Company"), the franchise right, privilege, and authority to construct, maintain and operate in, under, along, over and across the present and future streets, alleys, public ways and public places in Clinton, Utah (herein sometimes called the "City"), and its successors, electric light and power lines, together with all the necessary or desirable appurtenances (including underground conduits and structures, poles, towers, wires, transmission lines, and telegraph and telephone lines for its own use), for the purpose of supplying electric power and energy to said City, the inhabitants thereof and persons and corporations beyond the limits thereof, for light, heat, power and other purposes. This franchise does not grant to the Company the right, privilege or authority to engage in the community antenna (or cable) television business, although nothing herein contained shall preclude the Company (1) from permitting those lawfully engaged in such business to utilize Company's facilities within the City for such purposes, or (2) from providing such service if appropriate authority is obtained.

History: 5/43, 9/84, 4/93

12-3-3. Term. The term of the franchise granted herein is for a period from and after its effective date, until June 1, 2018. The Company shall pay all costs of legal notices required for the public hearing prior to

ordinance adoption and the ordinance publication costs thereafter.

History: 4/93

12-3-4. Acceptance by Company. Within thirty days after the passage of this ordinance, the Company shall file an unqualified written acceptance thereof, with the City Recorder of Clinton, otherwise the ordinance and the rights granted herein shall be null and void.

History: 4/93

12-3-5. Non-Exclusive Franchise. The right to use and occupy said streets, alleys, viaducts, bridges, roads, lanes, and other public ways for the purposes herein set forth is not, and shall not be deemed to be, an exclusive franchise, and the City reserves the right to itself make or grant a similar use in the said public ways and places to any other person, firm, or corporation.

History: 4/93

12-3-6. City Regulatory Authority. 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 ordinances and rules and regulations as may by the City be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Utah, the law of Utah, or City Ordinance.

History: 4/93

12-3-7. Extension of City Limits. Upon the annexation of any territory to the City, the right and franchise granted herein shall extend to the territory so annexed to the extent the City has authority. All facilities owned, maintained, or operated by the Company located within, under, or over any public ways of the territory so annexed shall thereafter be subject to all terms hereof.

History: 4/93

12-3-8. Indemnification. The City shall in no way be liable or responsible for any loss or damage to property or any construction, operation or maintenance by the Company of its lines and appurtenances hereunder. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this Franchise, the exercise

by the Company of the related rights, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorneys' fees.

The City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder and (b) unless in the City's judgment a conflict of interest exists between the City and the Company with respect to such claim, demand or lien, permit the Company to assume the defense of such claim, demand, or lien with counsel satisfactory to City. If such defense is not assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City 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 City or any of its officers or employees.

History: 4/93

12-3-9. Franchise Fee. (1) As further consideration for this franchise, which provides for the use by the Company of the streets and other public places within the City, the Company shall pay to the City a franchise fee in the amount of four percent (4%) of the gross revenue, as defined below in subsection (4). Any sums paid by the Company as a gross receipts based utility revenue tax under the provisions of any other City ordinances shall be credited against the fee due hereunder.

(2) Within forty five days after the last day of each calendar year month, the Company shall file with the City's finance officer, a report of such gross revenues for such month, together with a check for the amount due. Such report shall contain a statement of gross revenues and any deductions made because of adjustments or corrections as herein provided. Within thirty (30) days from the submission of the statement of gross revenues and franchise fee owing, or within such reasonable additional time as he may request, the finance officer shall investigate the statement and determine the accuracy of the amounts reported, and if the finance officer finds any mathematical errors, report them to the company for correction. If the franchise fee as paid shall be found deficient, the Company shall promptly remit the difference, and if the fee as paid be found excessive, the City shall promptly refund the difference. In the event of a disagreement, the Company shall make payment under protest during the resolution of the dispute between the parties or through the courts. Neither payment of the franchise fee nor failure to make such investigation shall be deemed to estop the City or the Company in any way or prevent

subsequent investigation by either and collection or return of any amount properly due. The aforesaid thirty (30) day period is not intended and shall not act as a statute of limitations or repose, which shall be governed by State law.

(3) The records of the Company pertaining to the report(s) required in this Section shall be open for inspection by the City and its duly authorized representatives at all reasonable hours for the purpose of verification. The Company will advise the City of the identity of consumers and suppliers of electric power wheeled by the Company to consumers within the City, to the extent the Company is able to provide such information.

(4) "Gross Revenue" refers to any revenue of the Company derived from the sale and use of electric power within the corporate limits of the City, plus revenues derived from wheeling electric power to consumers within the City, but excluding those revenues derived from wheeling electric power to consumers within the City pursuant to wheeling obligations in existence at the effective date of this ordinance.

History: 4/93

12-3-10. Annexation. When any property owned by the Company becomes eligible for voluntary annexation to the City, the Company will petition to annex that property upon request by the City, provided that no condition of such annexation shall impair the Company's ownership of its property. Except as herein provided, the Company agrees to comply with all terms and conditions imposed upon the annexation by the City which are no more stringent than those generally imposed upon property owners seeking annexation of their land to the City. The foregoing obligation shall not apply with respect to the Company's transmission corridor(s) extending beyond City boundaries, except to the extent that such corridor is or will be contiguous to and parallel with a City boundary.

History: 4/93

12-3-11. Small Power Production and Cogeneration. The City expressly reserves the right to engage in the production of electric energy, both from conventional power plants and from cogeneration and small power production facilities. The Company agrees to negotiate long term contracts consistent with other Company contracts of a similar nature being entered into at that time, to purchase City-generated power made available for sale, consistent with state and federal law.

History: 4/93

12-3-12. City Authority. The City's Mayor, or any successor head of the executive branch of government, is hereby designated the official of the City having full power and authority to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of this Franchise and to investigate any alleged violations or failures of the Company to comply with the provisions hereof or to adequately and fully discharge its responsibilities and obligations hereunder.

The failure or omission of the Mayor to so act shall not constitute any waiver or estoppel. The Mayor may delegate certain oversight responsibilities to the department directors responsible for construction within the public rights-of-way or for the finances of the City. When acting as the Mayor's designee, a department director shall have all the power and authority conferred herein upon the Mayor. In order to facilitate such duties of the Mayor, the Company agrees to grant the Mayor reasonable access to the books and records of the Company insofar as they relate to any matters covered by this Franchise; to provide the Mayor with such reasonable and necessary reports containing or based on information readily obtainable from the Company's books and records as he may from time to time request with respect to the electric service supplied under this Franchise; and to provide the Mayor, upon request not more than every two years, a list of utility related real property owned or leased by the Company within the City.

History: 4/93

12-3-13. Plan, Design, Construction and Installation of Company Facilities. (1) Upon request by either the City or the Company not more often than every year, the Company and the City shall meet for the purpose of exchanging information and documents regarding construction and other similar work within the City, with a view towards coordinating their respective activities in those areas where such coordination may prove mutually beneficial. Any information regarding future capital improvements that may involve land acquisition shall be treated with confidentiality upon request.

(2) In addition to the installation of underground electric distribution lines as provided in the applicable Rules and Regulations of the Public Service Commission, the Company shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground in new residential subdivision areas as may be required by subdivision regulations adopted by the City.

(3) The City shall have the right without cost to the City to use all poles and suitable overhead structures owned by the Company within the City for City wires used by the City in connection with its fire alarms and police signal systems; provided, however, that the Company shall assume no liability nor shall it have to incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as not to constitute a safety hazard or to interfere with the Company's use of same. Nothing herein shall be construed to require the Company to increase pole size, or alter the manner in which Company attaches its equipment to poles, or alter the manner in which it operates and maintains its equipment. Such City attachments shall be installed and maintained in accordance with the reasonable requirements of Company and the then current National Electrical Safety Code pertaining to such construction. Further, said City attachments shall be attached or installed only after written approval by the Company, which approval will be timely processed and will not be unreasonably withheld.

(4) Whenever the Company proposes to install new underground conduits or replace existing underground conduits within or under the present and future streets, alleys or public ways in the City, it shall, prior to the commencement of such work, advise, or cause to be advised, the City of such work and shall allow the City, at its own expense, to share the trench of the Company to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with the Company's facilities or delay the accomplishment of the project.

(5) All electric distribution facilities constructed by the Company within the City shall be located so as to cause minimum interference with public use of streets, alleys and other public ways and places, and shall be maintained in good repair and condition. Facilities located on, upon, over and under property in which the City has a property interest shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules and regulations of the City. The Company will acquire permits in accordance with such rules and regulations, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. It is understood that this work involves the health, safety, and welfare of the community and from time to time must be done under circumstances which will make the prior acquisition of a permit infeasible.

(6) The Company shall continue to use its best efforts to take measures which will result in its facilities within

the City meeting the standards required by applicable Federal and State air and water pollution laws. Upon the City's request, the Company will provide the City with a status report of such measures.

(7) All electric lines, poles, towers, pipes, conduits, equipment, property and other structures or assets installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations, as required by law.

(8) If, during the course of work on its facilities, the Company causes damage to or alters any street, alley, right-of-way or public property, the Company shall (at its own cost and expense and in a manner approved by the City's Director of Public Works) replace and restore it in as good a condition as existed before the work commenced. Except in case of emergency, Company shall, prior to commencing work in the public way or street or other public places, make application for a permit to perform such work from the City Engineer or other agency designated by the City. Such permit shall not be unreasonably withheld. The Company will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the City Engineer for such work(s).

History: 4/93

12-3-14. Company Excavations and Relocations.

(1) The Company shall have the right to excavate in, occupy and use any and all such streets, alleys, viaducts, bridges, roads, lanes, public ways and other public places subject to the conditions and requirements of the ordinances and rules and regulations of the City; provided, however, that the Company shall not, pursuant to this Franchise, place any poles, mains, cables, structures, pipes, conduits or wires on, over, or within any City park, pleasure ground or other recreational area owned by the City. Nothing contained herein shall preclude the City from granting a revocable permit therefore, or effect already existing rights.

(2) Whenever the City shall, in the interest of the public convenience, necessity, health, safety or welfare, require the relocation or reinstallation of any property of the Company or its successors in any of the streets, alleys, rights-of-way or public property of the City, it shall be the obligation of the Company, upon notice of such requirement to promptly commence work to remove and relocate or reinstall such property as may be reasonably necessary to meet the requirements of the City. Such relocation, removal or reinstallation by the Company shall be at no cost to the City. Any money and all rights to reimbursement from the State of Utah,

the federal government or other parties to which the Company may be entitled for work done by the Company pursuant to this paragraph, shall be the property of Company. City shall assign or otherwise transfer to Company all right it may have to recover costs for such work performed by the Company and shall support the efforts of the Company to obtain reimbursement; provided that the City shall not be required to incur or expend any costs or legal fees.

History: 4/93

12-3-15. No Waiver. Neither the City nor the company shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

History: 4/93

12-3-16. Transfer of Franchise. The Company shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of the Company's mortgage(s) shall not constitute a transfer or assignment.

History: 4/93

12-3-17. Changing Conditions. The Company and the City recognize that many aspects of the electric utility industry are currently the subject of discussion, examination and inquiry by different segments of the 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.

History: 4/93

12-3-18. Amendment. 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 30 days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and the Company and formally adopted as an ordinance amendment.

History: 4/93

12-3-19. Non-Contestability--Breach of Contract.

(1) Neither the City nor the Company will take any action for the purpose of securing modification of this Franchise before either the Public Service Commission or any Court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall the Company be precluded from seeking relief from the Courts in the event Public Service Commission orders, rules or regulations make performance under the Franchise illegal.

(2) In the event the Company or the City fails to fulfill any of their respective obligations under this Franchise, the City, or the Company, whichever the case may be will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

History: 4/93

12-3-20. Notices. Unless otherwise specified herein, all notices from the Company to the City pursuant to or concerning this Franchise shall be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to the Company pursuant to or concerning this Franchise shall be delivered to the President of Utah Power & Light company at 201 South Main, 23rd Floor, Salt Lake City, Utah 84111 and such other office as the Company may advise the City of by written notice.

History: 4/93

12-3-21. Early Termination, Revocation or Forfeiture. (1) The City may terminate or revoke this Franchise and all rights and privileges herein provided for any of the following reasons:

(a) The Company fails to make timely payments of the Franchise Fee as required under Section 8 of this Franchise and does not correct such failure within thirty (30) calendar days after written notice by the City of such failure;

(b) The Company, by act or omission, materially violates a duty or obligation herein set forth in any particular within the Company's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its Council, may after hearing determine that such failure is of a material nature; and thereupon, after written notice given Company of such determination, Company shall have six (6) months from the date it receives notice to remedy the conditions identified in the notice. After the expiration of such six (6) months period and failure to correct such conditions, the City may declare this Franchise forfeited, and thereupon the Company shall have no further rights or authority hereunder, provided, however, that any such declaration of forfeiture shall be subject to judicial review as provided by law, and provided further that in the event such failure is of such nature that it cannot be reasonably corrected within the six (6) months time provided above, the City shall provide additional time for the reasonable correction of such alleged failure in lieu of the six (6) months time provided above.

(c) The Company becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt, or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the Company within thirty (30) days.

(2) No franchise revocation or termination may be effected under this Section 21 until the City Council shall first adopt an ordinance terminating the Franchise and set forth therein the reasons therefor, following not less than thirty (30) days prior written notice to the Company of the public hearing on the ordinance. The Company shall have an opportunity at the public hearing to be heard upon the proposed termination and, if terminated, the Council shall make findings of fact and state its reasons for such action.

(3) Nothing contained herein shall be deemed to preclude Company from pursuing any legal or equitable rights or remedies it may have to challenge the action of the City Council or any successor governing body of the City following said ordinance's adoption.

History: 4/93

12-3-22. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason

determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and 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 or any renewal or renewals thereof.

History: 4/93

Chapter 4. Insight Communications Company, L.P.

- 12-4-1. Definitions.
- 12-4-2. Grant of Authority.
- 12-4-3. Non-Exclusive Grant.
- 12-4-4. Term of Franchise.
- 12-4-5. Conditions of Street Occupancy.
- 12-4-6. Safety Requirements.
- 12-4-7. System Construction and Extension.
- 12-4-8. Operational Standards; Force Majeure.
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- 12-4-11. Franchise Payments.
- 12-4-12. Indemnification of City.
- 12-4-13. Procedures.
- 12-4-14. Procedure Upon Termination.
- 12-4-15. Approval of Transfer.
- 12-4-16. Miscellaneous Provisions.
- 12-4-17. Compliance with Applicable Laws and Ordinances.
- 12-4-18. Violations; Penalties.
- 12-4-19. Line Severing.
- 12-4-20. Separability.
- 12-4-21. Effective Date.

12-4-1. Definitions. When used in this section, unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given (and when not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural):

- (1) "City" means the City of Clinton, Utah.
- (2) "Council" means the governing body of the City.
- (3) "Grantee" means Insight Communications Company, L.P., its successors and assigns, the grantee of rights under this section.

4) "Person" means any natural person, company or entity of any kind.

(5) "Franchise area" means that area within the corporate limits of the City as now or hereafter constituted.

(6) "Street" means the surface of and the space above and below any public street, way, place, right of way, road, highway, freeway, bridge, tunnel, lane, path, bike path, alley, court, sidewalk, parkway, drive, communications or utility easement, by whatever name called, now or hereafter existing as such within the franchise area.

(7) "Property of Grantee" means all property owned, installed or used by the Grantee in the conduct of a CATV business in the City.

(8) "CATV" means a cable television system.

(9) "Cable Television System" means a system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable radio, television or other electrical signals to and from persons, subscribers and location in the franchise area.

(10) "Basic CATV Service" means the distribution of broadcast television signals by the Grantee.

(11) "Subscriber" means any person or entity receiving and paying for basic CATV service.

(12) "Basic Subscriber Revenues" means all remuneration received directly by the Grantee from subscribers in payment for regularly furnished basic CATV service, but shall not include any taxes on services furnished by the Grantee imposed on any subscriber or user by any government, governmental unit, political subdivision, agency or instrumentality, and collected by the Grantee.

History: 11/89, 12/94

12-4-2. Grant of Authority. There is hereby granted by the City to the Grantee the right and privilege to engage in the business of operating and providing a CATV system in the City, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street or streets laid out or dedicated and all extensions thereof and additions thereto in the franchise area, such poles, wires, cable, conductors, ducts,

conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or other grantee franchised or permitted to do business in the City.

History: 11/89, 12/94

12-4-3. Non-Exclusive Grant. The right to use and occupy said streets for the purpose herein set forth, shall not be exclusive to the Grantee.

History: 11/89, 12/94

12-4-4. Term of Franchise. The franchise and rights herein granted shall commence thirty (30) days from the final passage hereof and shall continue in force and effect for fifteen (15) years after said effective date. Upon application by the Grantee to the City, the franchise may be renewed for subsequent fifteen (15) year periods.

History: 11/89, 12/94

12-4-5. Conditions of Street Occupancy. (1) All transmission and distribution structures, poles, lines, and equipment installed or erected by the Grantee within the franchise area shall be so located as to cause minimum interference with the proper use of streets and with the rights and reasonable convenience of property owners who adjoin any of said streets. The CATV system shall be constructed and operated in compliance with applicable governmental construction and electrical codes.

(2) In case of disturbance of any street or paved area, the Grantee shall, at its expense and in a manner approved by the City, replace and restore such street or paved area in as good condition as theretofore as reasonably as possible.

(3) The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Grantee when lawfully required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City; but the Grantee shall in all cases have the right of abandonment of its property, subject to City ordinances, and if public funds are available to any utility company

for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

(4) The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings, provided:

(a) the expense of such temporary raising or lowering of wires is paid by such person, including, if required by the Grantee, making such payment in advance;

(b) the Grantee is given not less than three (3) business days advance notice to arrange for such temporary wire changes.

(5) The Grantee shall have the authority to trim trees overhanging any streets in the franchise area so as to prevent branches from coming in contact with the Grantee's wires and cables, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the Grantee's expense.

(6) Subject to any applicable state or federal regulations or tariffs, the City shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any street, provided:

(a) such use by the City does not interfere with the use by the Grantee;

(b) the City holds the Grantee harmless against and from all claims, demands, causes of action, suits, actions, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits.

History: 11/89, 12/94

12-4-6. Safety Requirements. (1) The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(2) All structures and all lines, equipment and connections in, over, under and upon all streets of the franchise area shall be kept and maintained in a safe and suitable condition and in good order and repair.

History: 11/89, 12/94

12-4-7. System Construction and Extension. (1) The Grantee is hereby authorized to extend the System within the franchise area to the extent that such extension is or may become technically and economically feasible.

(2) Whenever the Grantee shall have received written requests for service in an area not serviced by another cable operator from at least fifteen (15) subscribers within 400 cable meters (1320 cable feet) of its aerial trunk cable, or from at least twenty-five (25) subscribers within 400 cable meters (1320 cable feet) of its underground trunk cable, it shall extend its System to such subscribers solely for the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The 400 meters shall be measured in extension length of Grantee's cable required for service located within the public way or easement and shall not include length of necessary drop to the subscriber's home or premises.

(3) No person in the Grantee's service area shall be arbitrarily refused service; but in recognition of the capital costs involved in unusual circumstances, including, without limitation, instances when the distance from distribution cable to connection of service to subscribers is more than 45 meters (150 cable feet) or when a subscriber density exists less than the density specified hereinabove, service may be made available on the basis of cost of materials, labor and easements, in order to prevent inequitable burdens on cable subscribers in more densely populated areas. For the purpose of determining the amount of capital contribution to be borne by Grantee and subscribers in the area in which cable service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential subscribers per 400 cable-bearing strand meters (1320 feet) of its trunk and distribution cable, and whose denominator equals fifteen (15) homes. Potential subscribers will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital contribution in aid to construction borne by such potential subscribers be paid in advance.

(4) For all residential structures, subdivisions or developments hereinafter erected which are to be served by underground utilities, the developer of the subdivision or development may acquire CATV service for this development under the following conditions; otherwise, the Grantee shall not be obligated to construct its CATV system in such new development: Developer shall perform all trenching and backfilling necessary for the provision of cable television service,

including furnishing any imported backfill material required, and will furnish and install for the Grantee any necessary distribution conduit and substructures under roadways, including pedestals, required in accordance with the Grantee's plans and specifications. The developer shall notify the Grantee a minimum of thirty (30) days in advance of the availability of such open trench. The developer will provide conduit at road crossings for the Grantee to place its cable lines within based upon City approved designs provided by Grantee.

Developer may enter into a written agreement with the Grantee whereby such costs may be reimbursed to the developer by Grantee at the rate of fifty percent (50%) of basic subscriber revenues generated from CATV service supplied within the development over a period not to exceed three (3) years.

In addition to providing plans and specifications to the developer, the Grantee shall inspect the facilities required hereunder, and certify to the City prior to final approval of the subdivision or development that the facilities required herein are properly installed. The City shall have the right to review and require its approval of the maps and specifications provided by the Grantee. The cost of that portion of an extension to a subdivision or development from the Grantee's existing facilities in excess of 60 meters (200 feet) outside the boundaries of the subdivision or development shall be borne by the developer. Facilities installed hereunder shall be owned, operated and maintained by Grantee.

(5) Notwithstanding the forgoing, Grantee shall not be required to place the cable television system by another grantee's cable television system or in an area that another Grantee plans to serve.

History: 11/89, 12/94

12-4-8. Operational Standards; Force Majeure. (1)

The Grantee shall operate and maintain its cable television system in full compliance with the standards set forth by the Federal Communications Commission.

(2) The Grantee shall have no obligation to construct or extend the system, nor to provide, repair, replace, maintain or operate CATV service, for any cause beyond Grantee's control, including, without limitation, acts of God, fire, flood, earthquakes, hurricane, unavoidable casualty, extraordinary delays in transportation, strikes, lockouts, picketing, boycotts, embargoes, government orders or other requirements, acts of civil or military authorities, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, energy shortages, acts or omissions of carriers, or activities or other emergency conditions including weather

conditions incompatible with good quality workmanship.

History: 11/89, 12/94

12-4-9. Local Office; Complaints. The Grantee shall maintain a local business office or agent which subscribers may telephone during regular business hours without incurring added message or toll charges, so that complaints, regarding cable television operations may be promptly reported to the Grantee.

History: 11/89, 12/94

12-4-10. Rates. The Grantee shall maintain on file with the City Clerk a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including connection and service charges. Notice of changes in rates and charges shall be filed with the City Clerk at least thirty (30) days in advance of the effective date thereof.

History: 11/89, 12/9

12-4-11. Franchise Payments. The Grantee shall pay the City, on or before each March 31, a utility revenue tax of six percent (6%) of basic subscriber revenues received for cable television operations in the City for the preceding calendar year in accordance with the Clinton Code of Ordinances Section 22-3-2, in lieu of any other fee or tax; and no other fee, charge or consideration shall be demanded of or payable by Grantee. Sales tax or other taxes levied on a per subscription basis and collected by the Grantee shall be deducted from the gross annual basic subscriber revenues in computing any sums due the City. The Grantee shall provide an annual summary report showing gross annual basic subscriber revenues received during the preceding year.

History: 11/89, 12/94

12-4-12. Indemnification of City. (1) The Grantee shall at all times protect and hold the City harmless from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs, and reasonable attorney's fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the Grantee in the ownership, construction, repair, replacement, maintenance and operation of said cable television system and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of said system, provided the City gives the Grantee prompt notice of any such claims, actions, and suits, without

limitation, in writing. The Grantee shall maintain in full force and effect during the life of any franchise, public liability and property damage insurance in any amount of at least Three Hundred Thousand Dollars (\$300,000.00) single limit liability from the time of commencement of construction of the CATV system.

All such insurance may contain reasonable deductible provisions not to exceed One Thousand Dollars (\$1,000.00) for any type of coverage. The City may require that any and all investigation of claims made by any person against the City arising out of any use or misuse of privileges granted to the Grantee hereunder shall be made by, or at the expense of the Grantee or its insurer. The Grantee may bring its obligations to carry any insurance required hereby within the coverage of any so-called blanket policy or policies of insurance now or hereafter carried, by appropriate amendment, endorsement or otherwise, provided, however, the interests of the City shall be as fully protected thereby as if the Grantee had obtained individual policies of insurance.

History: 11/89, 12/94

12-4-13. Procedures. (1) Any inquiry, proceeding, investigation or other action to be taken or proposed to be taken by the City in regard to the operations of the Grantee's cable television system, shall be taken only after thirty (30) days written notice to the Grantee of such action or proposed action, and the Grantee has been given an opportunity to respond in writing and at any hearing which may be specified by the City.

(2) The notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response and the person or persons in authority to whom such responses should be addressed, and such other procedures as may be specified by the City. If a hearing is to be held, the notice shall give the date and the time of such hearing, whether public participation will be allowed and the procedures by which such participation may be obtained. The Company shall be a necessary party to any hearing conducted in regard to its operations.

History: 11/89, 12/94

12-4-14. Procedure Upon Termination. Upon expiration of the franchise, if the Grantee shall not have acquired an extension renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets or other property of the City, for the purposes of removing there from any or all of its property or otherwise. In so removing said property, the Grantee shall refill, at its expense, any excavation

that it shall make and shall leave said streets in as good condition as that prevailing prior to the Grantee's removal of its property, as reasonably as possible.

History: 11/89, 12/94

12-4-15. Approval of Transfer. The Grantee shall not sell or transfer its plant or system to another, other than a person controlling, controlled by or under common control with the Grantee, nor transfer any rights under this franchise to another without Council approval. No sale or transfer of the Grantee's assets used in the performance of this franchise shall be effective until the vendee, assignee or lessee has filed in the office of the City clerk an instrument duly executed reciting the fact of such sale, assignment or lease, accepting the terms of the franchise and agreeing to perform all the conditions thereof. Such Council approval shall not be unreasonably withheld and neither this Section nor other Sections of this franchise shall preclude the mortgaging, hypothecating, or assigning of rights in the system or this franchise ordinance, or the pledge of stock by the Grantee for the purpose of financing.

History: 11/89, 12/94

12-4-16. Miscellaneous Provisions. (1) When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the City Clerk.

(2) The Grantee shall assume the cost of publication of this franchise ordinance when such publication is required by law. A bill for publication costs shall be presented to the Grantee by the City Clerk.

(3) The Grantee shall provide without charge one outlet of basic CATV service to each governmental office building, fire station, police station, and public school building that is passed by its cable. The distribution of cable facility inside such buildings and the extent thereof shall be at the option, duty and expense of the building owner.

(4) In the case of any emergency or disaster, the Grantee shall, upon request of the City make available its facilities to the City for emergency use during the emergency or disaster period.

(5) Nothing in this franchise shall be deemed to prohibit the mortgage or the pledge of the CATV system or any part thereof or this franchise ordinance, or a leasing by a Grantee from another person of said CATV system or part thereof for financing purposes or otherwise. However, any such mortgage, pledge or

lease shall be subject to the rights of the City under this franchise or other applicable laws.

History: 11/89, 12/94

12-4-17. Compliance with Applicable Laws and Ordinances. The Grantee shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the City. The City reserves the right to adopt from time to time in addition to the provisions herein contained such ordinances as may be necessary to the exercise of such police power. Such regulation shall be reasonable and not in derogation of the rights herein granted, nor in conflict with the laws of the state or other local or federal laws or regulations.

History: 11/89, 12/94

12-4-18. Violations; Penalties. (1) From and after the effective date of this ordinance, it shall be unlawful for any person to construct, install or maintain within any public street in the City, or within any other public property of the City, or within any privately-owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, any equipment or facilities for distributing any television signals or radio signals through a CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect.

(2) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, within any part of the franchised CATV system within this City for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound, or other transmission, without payment to the Grantee.

(3) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, sound or other transmission.

(4) Any person violating or failing to comply with any of the provisions of this Section shall be guilty of a class C misdemeanor.

History: 11/89, 12/94, 05/99

12-4-19. Line Severing. If at any time the Grantee's cable and/or other equipment is disturbed, damaged, or severed the cost of repair shall be paid by the party responsible for said damage. The Grantee may charge

the responsible party for the time and materials expended for repair of said damage. The City will cooperate with the Grantee to assist in enforcing any charge or penalty arising from cable severing or other damage to Grantee's property.

History: 11/89, 12/94

12-4-20. Separability. If any part of this ordinance is for any reason held invalid by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Grantee. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

History: 11/89, 12/94

12-4-21. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage on December 13, 1994.

History: 11/89, 12/94