Regulations

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Regulation 3.01.340 - Reserved 33

Regulation 3.01.350 - Reserved 33

Unless otherwise noted, all references herein to Chapter 3.01 or to any Section or subsection shall refer to Chapter 3.01 of the City of Lakewood Municipal Code.

Regulation 3.01.010 Reserved.
Regulation 3.01.020(1) Reserved
Regulation 3.01.010(2) Reserved

Regulation 3.01.020(3) Auction or Auction Sale

"Auction" or "Auction sale" includes any sale conducted or transacted at a permanent place of business operated by an auctioneer or a sale conducted and transacted at any location where tangible personal property is sold by an auctioneer when such auctioneer is acting as agent for the owner of such personal property or is in fact the owner thereof. The auctioneer at any sale defined in section 3.01.020 of Chapter 3.01 of the City Code, except when acting as an agent for a duly licensed retailer or vendor or when selling only tangible personal property which is exempt under the provisions of Section 3.01.180 of Chapter 3.01 of the City Code, is a retailer or vendor as defined in subsection 3.01.020 of Chapter 3.01 of the City Code, and the sale made by him is a retail sale, as defined in subsection 3.01.020 of Chapter 3.01 of the City Code, and the business conducted by said auctioneer in accomplishing such sale is the transaction of a business as defined by subsection 3.01.020 of Chapter 3.01 of the City Code.

Every auctioneer acting for an unknown or undisclosed principal, and who is entrusted with possession of any bill of lading, customhouse permit, or warehouseman's receipt for delivery of any tangible personal property, or who is entrusted with possession of any such personal property for the purpose of sale shall be deemed to be the owner thereof, and upon the sale of such property, shall be required to collect the tax, file a return, and remit the tax thereon. (See Section 3.01.130 A.)

A sale by an auctioneer when acting for a known or disclosed and properly licensed principal shall be deemed to be a sale by the principal. The principal shall be responsible for collecting and remitting the tax and filing the return.

This Regulation applies to lien holders, including storagement, pawnbrokers, mechanics and artisans who sell at auctions.

Gross receipts from retail sales by an auctioneer at his established auction house, sales yard or other place of business are taxable, regardless of how the property may have been acquired or by whom it may be owned, and the auctioneer is required to obtain a sales tax license.

Regulation 3.01.020(3.5) Reserved
Regulation 3.01.020(4) Reserved
Regulation 3.01.020(5) Reserved
Regulation 3.01.020(5.5) Reserved
Regulation 3.01.020(6) Reserved
Regulation 3.01.020(7) Reserved
Regulation 3.01.020(8) Reserved
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Regulation 3.01.020(12) Reserved

Regulation 3.01.020(12.5) Reserved
Regulation 3.01.020(13) Reserved
Regulation 3.01.020(14) Reserved
Regulation 3.01.020(15) Reserved
Regulation 3.01.0(16) Reserved

Regulation 3.01.020(17) Doing business in the City

"Doing business in the City" under Section 3.01.020 of the City Code requires that the person obtain a City sales tax license.

Regulation 3.01.020(18) Farmer or Rancher

In a "Farm close-out sale, a farmer or rancher may retain ownership of his improved and unimproved real property and his personal property not used in the farming or ranching operations and still be eligible for this exemption if he is abandoning his farming or ranching operations.

Regulation 3.01.020(19) Reserved
Regulation 3.01.020(20) Reserved

Regulation 3.01.020(21) Food – Bakers, Caterers, Drug Stores, Restaurant & Liquor

"Food."

(1.) Baker or Pastry Shops: All food and drink sold by bakeries or pastry shops shall be subject to sales tax.

(2.) Caterers: All food and drink sold by caterers shall be subject to sales tax.

(3.) Drug Stores: All food and drink sold by drug stores shall be subject to sales tax.

(4.) Restaurants, Snack Bars, Carryouts, and Similar Establishments: All food and drink sold by restaurants and similar establishments shall be subject to sales tax.

(5.) Delicatessens: All food and drink sold by delicatessens shall be subject to sales tax.

(6.) Grocery Stores: All food and drink sold by grocery-type food stores shall be subject to sales tax.

(7.) Liquor Stores: All food and drink sold by liquor stores, including ice and mixes, shall be subject to sales tax.

(8.) Street Vendors: By the very nature of their operation, street vendors shall be subject to sales tax on all their sales.

(9.) Vending Machines: All sales of food and drink vended through coin-operated machines shall be subject to sales tax except that vending machine sales of thirty cents ($.30) or less shall be exempt.

(10.) Tangible personal property specifically excluded from the "food" definition in Section 3.01.020 of Chapter 3.01 of the City Code is subject to sales tax when purchased at retail unless otherwise exempted in Section 3.01.180 of Chapter 3.01 of the City Code.

Regulation 3.01.020(22) Reserved

Regulation 3.01.020(22.5) Gross Taxable Sales

"Gross taxable sales" means the gross sales of a person during any given reporting period, excluding:

(1) The sales price of any property returned during the period after the sales price has been included in taxable sales, but only after the full sales price including the tax has been refunded by cash or credit;

(2) Sales exempt from the sales tax;

(3) The fair market value of property taken in exchange by a retailer for resale in the usual course of his business;

(4) Any worthless account actually charged off for income tax purposes during the reporting period to the extent that such account has been included in taxable sales, except that a loss from a worthless check in excess of the taxable sale is not allowed as a bad debt deduction for the excess (See Section 3.01.170); and

(b) Including any recovery of a bad debt previously deducted from gross sales to determine taxable sales.

See Regulation 3.01.160 for credit sales.

Adjustments in a sales price, such as allowable discounts, rebates and credits, cannot be anticipated, i.e., the tax must be based upon the original price unless the adjustments actually have been made prior to the filing of the return wherein such sale is reported. If the price upon which the tax was computed and paid to the City by the vendor is subsequently adjusted prior to payment of the tax by the purchaser, however, a proper credit may be taken by the vendor against the tax due on the next return.

No credit for discount shall be allowed to a vendor unless the related decrease in sales tax actually is passed on to the purchaser.
A cash discount allowed for payment on or before a given date is not an allowable adjustment to the selling price in determining taxable sales.

If any vendor makes overpayment of the tax or is entitled to a credit on his tax payments because of mistake, errors or canceled sales, credit for the amount of overpayment may be taken by the vendor on a subsequent return, but if the vendor is no longer engaged in business, then he should apply for a refund. (See Regulation 3.01.250 C.)
If any sold article is returned to the vendor for adjustment, replacement or exchange under a guarantee as to quality or service, and if another article is substituted pursuant to the guarantee free or at a reduced price, then the tax shall be recomputed on the actual amount paid to the vendor for the substituted article, taking into consideration any other adjustments made at the time of the replacement.

Regulation 3.01.020(22.6) Reserved
Regulation 3.01.020(22.7) Reserved
Regulation 3.01.020(23) Reserved
Regulation 3.01.020(24) Reserved
Regulation 3.01.020(24.3) Reserved
Regulation 3.01.020(24.5) Reserved
Regulation 3.01.020(25) Reserved
Regulation 3.01.020(26) Reserved
Regulation 3.01.020(26.1) Reserved
Regulation 3.01.020(26.2) Reserved
Regulation 3.01.020(26.3) Reserved

Regulation 3.01.020(27) Purchase price

"Purchase price" includes:

(1) The amount of money received or due in cash and credits.

(2) Property at fair market value in exchange, but not for resale, in the usual course of the retailer's business.

(3) Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.

(4) The total price charged on credit sales including finance, service and other charges that are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note, except that the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.

(5) Installation, delivery and wheeling-in charges included in the purchase price and not separately stated.

(6) Transportation and other charges to effect delivery to the purchaser if the sales agreement requires such delivery to consummate the sale. Generally, charges for transportation to the place where title is to pass are included in the purchase price, and charges for transportation after title passes are not included. The determining factor is the agreement between the vendor and the purchaser. The manner of payment of the transportation charges does not control but may be evidence of the sales agreement. An actual discount given to a purchaser based on freight charges may be deducted from the gross price billed.

(7) Indirect federal manufacturer's excise taxes, such as taxes on automobiles, tires and floor stock.

(8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon. (See Regulation 3.01.140 A..)

"Purchase price" does not include the fair market value of property exchanged if such property is to be sold thereafter in the retailer's usual course of business. This interpretation is not limited to exchanges in the City. Trade ins outside the City are an allowable adjustment to the purchase price. Mathews v. State of Colo., Dept. of Revenue, 193 Colo. 44, 562 P.2d 415 (1977).

Regulation 3.01.020(27.1) Reserved

Regulation 3.01.020(28) Reserved

Regulation 3.01.020(29) Retail sales, purchase at retail or selling at retail

"Retail sale" or "purchased at retail" or "selling at retail" includes all sales of tangible personal property and the sales of those services specifically enumerated in Chapter 3.01 as taxable, including: (i) telecommunication services; (ii) gas, electric and steam services; (iii) pay television services; (iv) security system and sound system services; (v) linen services; (vi) warranty and maintenance services; (vii) modified or customized computer program services; (viii) services providing admission or access to motion picture performances and to establishments which are licensed to serve malt, vinous or spirituous liquors; and (ix) services providing rooms or accommodations or lodging. All such sales are subject to the tax imposed by Chapter 3.01. A retail sale is a sale to the user or consumer of such tangible personal property or service. "Retail sale" does not include a wholesale sale. A retail sale is a sale to the user or consumer of such tangible personal property or service whether such sale is between a licensed vendor and a vendee or between private parties.

Regulation 3.01.020(29.1) Reserved

Regulation 3.01.020(29.2) Room, Accommodation

A "room" is a regular sleeping room or unit which is a part of a hotel, apartment hotel, inn, lodging house, guest house, motor hotel, motel, mobile home, dude ranch, or guest ranch for which a charge is made for its use.

"Accommodation" includes the furnishing of space in any camp grounds, auto camp, trailer court or park under any concession, permit, right of access, license to use, or any other agreement by or through which any such space may be used or occupied. Accommodations are exempt from taxation if rented for at least thirty (30) consecutive days during the calendar year or preceding year. (See Regulation 3.01.180 E.)

Regulation 3.01.020(30) Sale or sale and purchase

"Sale" or "sale and purchase" shall mean any transaction whereby a person, in exchange for any consideration, such as money or its equivalent, property, the rendering of a service, or any promise thereof: (i) transfers or agrees to transfer all or part of his interest, or the interest of any other for whom he is acting as an agent, in any tangible personal property to any other person; or (ii) performs or furnishes, or agrees to perform or furnish, or contracts to have another perform or furnish, any service taxable under Chapter 3.01 for any other person. Whether the transaction is absolute or conditional, it shall be considered a sale if it transfers from a seller to a buyer the ownership or possession of tangible personal property or specified services.

A bona fide gift of tangible personal property is not a "sale."

Regulation 3.01.020(30.1) Reserved
Regulation 3.01.020(31) Reserved
Regulation 3.01.020(31.1) Reserved
Regulation 3.01.020(31.2) Reserved
Regulation 3.01.020(32) Reserved
Regulation 3.01.020(33) Reserved

Regulation 3.01.020(34) Tangible personal property

"Tangible personal property" embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances which are dealt in, and capable of being possessed and exchanged. Tangible personal property does not include real property, such as land and buildings, nor tangible personal property that loses its identity when it becomes an integral and inseparable part of the realty, irremovable without damage to the premises. Property severed from real estate becomes tangible personal property.

"Tangible personal property" does not include intangible personal property constituting mere rights of action and having no intrinsic value, such as contracts, deeds, mortgages, stocks, bonds, certificates of deposit or membership, or redeemable United States postage or revenue stamps sold for postage or revenue purposes. "Tangible personal property" also does not include water in pipes, conduits, ditches or reservoirs, but does include water in bottles, wagons, tanks or other containers.

Regulation 3.01.020(35) Specific statutory exemptions

"Tax."

Except in the case of specific statutory exemptions, the retail sales tax is imposed upon the sale of tangible personal property to the user or consumer in this City and also upon the sale of those services specifically enumerated in Chapter 3.01 as taxable, including: (i) telecommunication services; (ii) gas, electric and steam services; (iii) pay television services; (iv) security system and sound system services; (v) linen services; (vi) warranty and maintenance services; (vii) modified or customized computer program services; (viii) services providing admission or access to motion picture performances and to establishments which are licensed to serve malt, vinous or spirituous liquors; and (ix) services providing rooms or accommodations or lodging. This tax is imposed upon the transaction called the sale and is applicable whether the transaction is between a licensed vendor and a vendee or between private parties.

Regulation 3.01.020(35.1) Reserved
Regulation 3.01.020(35.2) Reserved
Regulation 3.01.020(35.3) Reserved

Regulation 3.01.020(36) Taxpayer

"Taxpayer" means any person obligated to make a return and to pay over to the Finance Director the tax collected or to be paid under the provisions of Chapter 3.01, whether such person is a retailer, consumer or purchaser. J.A. Tobin Construction Co. v. Hugh H.C. Weed, Jr., 158 Colo. 430, 407 P.2d 350 (1965).

Regulation 3.01.020(37) Reserved
Regulation 3.01.020(37.1) Reserved
Regulation 3.01.020(38) Reserved

Regulation 3.01.020(39) Wholesale sale

"Wholesale sale" means all sales of tangible personal property or specified services to a licensed retail merchant, jobber, dealer, or wholesaler that purchases the property for resale, and all sales of tangible personal property or services specified in Section 3.01.120 of the City Code to manufacturers and compounders that incorporate such tangible personal property or service into a substance, commodity or product for resale.

All sales to the user or consumer of tangible personal property or services specified in Section 3.01.120 of the City Code are taxable retail sales, regardless of the purchaser's trade or business. A reporting form shall be furnished annually to wholesalers to report such retail sales.

It is the duty of the vendor to collect the tax unless he is furnished with satisfactory proof that the sale is exempt under Chapter 3.01. Also, it is the duty of the vendor to obtain the sales or store license number or other satisfactory proof if the purchase is for resale. In case of doubt, the Finance Department should be contacted, or the tax should be collected.

It shall be presumed that any purchaser not having a valid sales tax license or store license is the ultimate user or consumer of any property that is purchased. Any sale to such a person shall be a taxable retail sale regardless of the disposition of the property sold, unless the vendor can establish that the purchase was for resale in the ordinary course of the vendee's business.

Regulation 3.01.030(1) Reserved
Regulation 3.01.030(2) Reserved
Regulation 3.01.030(3) Reserved
Regulation 3.01.030(4) Reserved
Regulation 3.01.030(5) Reserved

Regulation 3.01.040 Duty to collect tax

Every retailer or vendor, except one selling malt, vinous or spirituous liquors by the drink and electing to include the tax in the selling price, and except vending machine operators, shall collect sales tax on all taxable sales as an item separate and distinct from the selling price. It is unlawful for a vendor, with the above exceptions, to hold out or state, directly or indirectly, that the tax or any part thereof shall be assumed, absorbed or refunded by the vendor or that the tax shall not be added to the purchase price.

Regulation 3.01.050 Reserved
Regulation 3.01.060 Reserved

Regulation 3.01.065 Record Keeping

(a) General.

It is the duty of every Taxpayer, and the duty of every lessor and lessee of tangible personal property for use in the City to keep adequate and complete records. Unless the Finance Department authorizes an alternate method of recordkeeping in writing, these records should show:

(1) Gross receipts from sales or rental payments from leases of tangible personal property (including any services that are a part of the sale or lease) made in the City, irrespective of whether the seller or lessor regards the receipts to be taxable or nontaxable.

(2) All deductions allowed by law and claimed in filing returns.

(3) Total purchase price of all tangible personal property purchased for sale, consumption or lease in the City.

These records must include the normal books of account maintained by the ordinarily prudent business person engaged in such business, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of accounts together with all schedules or working papers used in connection with the preparation of tax returns.

(b) Microfilm records.

Records may be microfilmed. Microfilm reproductions of general books of account, however, such as cash books, journals, voucher registers, ledgers, and similar items are not acceptable as original records. Where microfilm reproductions of supporting records are maintained, such as sales invoices, purchase invoices, credit memoranda, and similar items, the following conditions must be met:

(1) Appropriate facilities must be provided for preservation of the films for the required periods.

(2) Microfilm rolls must be indexed, cross-referenced, and labeled to show the beginning and ending numbers and to show the beginning and ending alphabetical listing of documents included and must be systematically filed.

(3) The Taxpayer must agree to provide transcriptions of any information contained on microfilm that may be required for verification of tax liability.

(4) Proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records.

A posting reference must be on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support claimed exemptions from tax liability, such as bill of lading and purchase orders, must be maintained in an order which can be readily related to the transaction for which exemption is sought.

(c) Records prepared by automated data processing systems.

An ADP tax accounting system must be capable of producing visible and legible records for verification of the Taxpayer's tax liability.

(1) Recorded or reconstructible data.

ADP records must provide an opportunity to trace any transaction back to the original source or forward to a final total. If detail printouts are not

made of transactions at the time that they are processed, then the system must have the ability to reconstruct these transactions.

(2) General and Subsidiary Books of Account.

A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be written out periodically.

(3) Supporting Documents and Audit Trail.

The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Finance Department upon request. The system should be designed so that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and similar items are readily available.

(4) Program Documentation.

A description of the ADP portion of the accounting system should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate: (A) the application being performed; (B) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams, or other satisfactory description of the input or output procedures); and (C) the controls used to ensure accurate and reliable processing. Important changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

(d) Record Retention.

All records pertaining to transactions involving sales or use tax liability must be preserved for a period of not less than three (3) years.

(e) Examination of Records.
All of the foregoing records must be made available for examination on request by the Finance Director or his authorized representatives.

(f) Coordinated Audit Procedure.

(1) Any taxpayer licensed in the City pursuant to Chapter 3.01, Section 3.01.110 and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided herein.

(2) Within 14 days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the finance director of this City, by certified mail, return receipt requested, a

written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the vendor holds a current sales tax license and a declaration that the vendor will sign a waiver of any passage-of-time based limitation upon the City's right to recover tax owed by the taxpayer for the audit period.

(3) Except as provided in paragraph (7), any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of the three year statute of limitations may be audited by this City during the succeeding twelve month period only through a coordinated audit involving all municipalities electing to participate in such an audit.

(4) If the City desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to paragraph (3), the finance director shall so notify the finance director of the municipality whose notice of audit prompted the taxpayer's request within ten days after receipt of the taxpayer's request for a coordinated audit. The finance director shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

(5) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, the City's finance director shall facilitate arrangements between this City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The finance director shall cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors that will be present on the vendor's premises to conduct the coordinated audit on behalf of the participating municipalities.

(6) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, the City's finance director shall, once arrangements for the coordinated audit between this City and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The finance director shall also propose a schedule for the coordinated audit.

(7) The coordinated audit procedure set forth in this section shall not apply:

(i) When the proposed audit is a jeopardy audit.

(ii) To audits for which a notice of audit was given prior to the effective date of this section.

(iii) When a taxpayer refuses to promptly sign a waiver of the three year statute of limitation.

(iv) When a taxpayer fails to request the coordinated audit within the specified time.

Regulation 3.01.070 Reserved.
Regulation 3.01.075 Reserved.
Regulation 3.01.076 Reserved.
Regulation 3.01.080 Reserved.
Regulation 3.01.090 Reserved.
Regulation 3.01.100 Reserved.
Regulation 3.01.110(1)(a) Reserved.
Regulation 3.01.110(1)(b) Reserved.
Regulation 3.01.110(2) Reserved.
Regulation 3.01.110(3) Reserved.
Regulation 3.01.110(4) Reserved.
Regulation 3.01.110(5) Reserved.
Regulation 3.01.110(6) Reserved.

Regulation 3.01.120(1) Tax imposed upon the purchaser

Unless otherwise exempt, all sales of tangible personal property at retail in the City, whether between a licensed vendor and a vendee or between private parties, are subject to the imposition of the sales tax. "Tangible personal property" is defined in Section 3.01.020(34).

The tax is imposed upon the purchaser. However, if the transaction involves a licensed vendor, then the duty is imposed upon the vendor to add the tax to the sales price and to collect and remit the tax to the City. In the event that a licensed vendor fails to collect the appropriate sales tax, the Finance Directors, at his option, may assess the tax due against the vendor or the purchaser. If no licensed vendor is involved in the transaction, or if the vendor fails to collect the sales tax, then the purchaser shall pay the
sales tax directly to the City. J. A. Tobin Construction Co. v. Hugh H. C. Weed, Jr., 158 Colo. 430, 407 P.2d 350 (1965).

Regulation 3.01.120(2) Trade in of Tangible personal property

When a trade-in of tangible personal property is received by a retailer upon the sale of tangible personal property, the tax imposed by Section 3.01.140 shall be based upon the purchase price of the tangible personal property sold, less the trade-in allowance, provided that the property taken in trade is to be resold in the usual course of the retailer's trade or business. This rule is not limited to exchanges in the City. Trade-in's outside the City are an allowable adjustment to the purchase price. Mathews v. State of Colorado, Dept. of Revenue, 193 Colo. 44, 562 P.2d 415 (1977).

Regulation 3.01.120(C) Telecommunication: Intrastate, Mobile & Data

(1) Intrastate telecommunication service furnished within the City is subject to the tax imposed by Section 3.01.140, whether furnished by public, private, mutual, cooperative, or governmental corporations or agencies. The term "service" includes access services, additional listings, joint-user service, nontalking circuits, leased circuits and facilities, local exchange service (whether on a flat or measured basis), information charges, and any other charges assessed or passed on to the consumer. Telephone service is taxable where either local or toll calls are made or telegrams are sent from telephone pay stations.

(2) a. In accordance with 4 U.S.C. Secs. 116 to 126 of the Mobile Telecommunications Sourcing Act, the City may only impose a sales tax on Mobile Telecommunications service taxable within the geographical boundaries of the City if the customer's Place of Primary Use is within the geographical boundaries of the City.

b. Any customer that believes a tax, charge, or fee assessed by the City in the customer's bill for Mobile Telecommunications Services is erroneous, or that an assignment of Place of Primary Use or taxing jurisdiction on said bill is incorrect, shall notify the Home Service Provider in writing within two years after the date the bill was issued. The notification from the customer shall include the street address for the customer's Place of Primary Use, the account name and number for which the customer seeks a correction, a description of the alleged error, and any other information that the Home Service Provider may require. No later than sixty days after receipt of notice from a customer, the Home Service Provider shall review the information submitted by the customer and any other relevant information and documentation to determine whether an error was made. If the Home Service Provider determines that an error was made, the Home Service Provider shall refund or credit to the customer any tax, fee, or charge erroneously collected from the customer for a period not to exceed two years. If the Home Service Provider determines that no error was made, the Home Service Provider shall provide a written explanation of its determination to the customer.

c. Any customer that believes that a tax, charge, or fee assessed by the City in the customer's bill for Mobile Telecommunications services is erroneous, or that an assignment of Place of Primary Use or taxing jurisdiction on said bill is incorrect may file a claim in the appropriate District Court only after complying with the provisions of this Regulation 3.01.120 (C)(2).

(3) Electronic Database.

a. The State may provide an electronic database to a Home Service Provider or, if the State does not provide such an electronic database to a Home Service Provider, then the designated database provider may provide an electronic database to a Home Service Provider.

b. Such electronic database, whether provided by the State or the designated database provider, shall be provided in a format approved by the American National Standards Institute's Accredited Standards Committee X12, that, allowing for de minimis deviations, designates for each street address in the State, including to the extent practicable, any multiple postal street addresses applicable to one street location, the appropriate taxing jurisdictions, and the appropriate code for each taxing jurisdiction, for each level of taxing jurisdiction, identified by one nationwide standard numeric code.

i. Such electronic database shall also provide the appropriate code for each street address with respect to political subdivisions, which are not taxing jurisdictions when reasonably needed to determine the property-taxing jurisdiction.

ii. The nationwide standard numeric codes shall contain the same number of numeric digits with each digit or combination of digits referring to the

same level of taxing jurisdiction throughout the United States using a format similar to FIPS 55-3 or other appropriate standard approved by the Federation of Tax Administrators and the Multistate Tax Commission or their successors. Each address shall be provided in standard postal format.

iii. The State or designated database provider that provides or maintains an electronic database described in subsection (i) shall provide notice of the availability of the then current electronic database, and any subsequent revisions thereof, by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers.

(4) User Held Harmless - A Home Service Provider using the data contained in an electronic database described in section 3(b) above shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in such database provided by the State or designated database provider. The Home Service Provider shall reflect changes made to such database during a calendar quarter not later than 30 days after the end of such calendar quarter for each State that issues notice of the availability of an electronic database reflecting such changes.

(5) Safe Harbor.

a. If neither the State nor designated database provider provides an electronic database, a Home Service Provider shall be held harmless from any tax, charge, or fee liability in the State that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, the Home Service Provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the Home Service Provider must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for such enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with section 121 of the Mobile Telecommunications Sourcing Act is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a Home Service Provider has exercised due diligence if such Home Service Provider demonstrates that it has: (1) expended reasonable resources to implement and maintained an appropriately detailed electronic database of street address assignments to taxing jurisdictions; (2) implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and (3) used all reasonably obtainable and usable data pertaining to municipal annexations, incorporation, reorganizations and any other changes in jurisdictional boundaries that materially affect the accuracy of such database.

Correction of Erroneous Data for Place of Primary Use.

The City or State on behalf of the City, may:

a. determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges or fees for mobile telecommunications services are remitted does not meet the definition of Place of Primary Use and give notice to the Home Service Provider to change the Place of Primary Use on a prospective basis from the date of notice of determination if: (a) the City obtains the consent of all affected taxing jurisdictions within the State before giving such notice of determination, and (b) before the City gives such notice of determination, the customer is given an opportunity to demonstrate in accordance

with applicable State or local tax, charge, or fee administrative procedures that the address is the customer's place of Primary Use;

b. determine that the assignment of a taxing jurisdiction by a Home Service Provider does not reflect the correct taxing jurisdiction and give binding notice to the Home Service Provider to change the assignment on a prospective basis from the date of notice of determination if: (a) the City obtains the consent of all affected taxing jurisdictions within the State before giving such notice of determination; and (b) the Home Service Provider is given an opportunity to demonstrate in accordance with applicable State or local tax, charge, or fee administrative procedures that the assignment reflects the correct taxing jurisdiction.

Regulation 3.01.120(3)(b) Reserved

Regulation 3.01.120(4)(a) Gas, Electric & Steam services furnished

Gas or electric service furnished within the City is subject to the tax imposed by Section 3.01.140, whether furnished by public, private, mutual, cooperative, or governmental corporations or enterprises for domestic or commercial use. The tax attaches to all amounts paid by the user or consumer for gas or electric service, whether or not there is actual consumption, and regardless of the manner in which the payment is made.

Steam, whether furnished for domestic, commercial, or industrial use, by public, private, mutual, cooperative, or governmental corporations or enterprises, is subject to he tax imposed by Section 3.01.140 unless purchased for resale in its original form.

(See Regulation 3.01.180(21) for certain limited exemptions.)

Regulation 3.01.120(4)(b) Gas & Electric used by residences

Gas and electricity is used by occupants of residences if the gas or electricity is used by such occupants exclusively for domestic purposes such as lighting, refrigeration, cooking, water, heating, space heating and air conditioning in a private home or individual living unit served through a single meter or a master metered multi-unit apartment, condominium, townhouse or mobile/trailer home used exclusively for domestic purposes. Residential use of gas and electricity includes service to a building appurtenant to the residence, including garages, barns, and other minor buildings for use of the residents served through the residential meter.

Users in a private home or individual living unit, such as apartments, condominiums, townhomes, and mobile/trailer homes, who are served through a sign meter and whose rate has been classified by P.U.C. statute or regulations as residential are subject to sales tax.

Users in multi-unit apartments, mobile/trailer home parks or condominium and townhouse associations who are billed through a master meter and are taking service under a commercial rate are subject to sales tax if the gas or electricity is used for residential use as defined herein.

Sales of butane, propane, fuel oils, coal, coke or wood are subject to sales tax if used for residential use as defined above.

Regulation 3.01.120(5)(a) Food

Tangible personal property specifically excluded from the "food" definition in Section 3.01.020(21) of Chapter 3.01 of the City Code is subject to sales tax when purchased at retail unless otherwise exempted in Section 3.01.180 of Chapter 3.01 of the City Code.

Regulation 3.01.120(5)(b) Nontaxable gratuities

Nontaxable gratuities include cash tips (money left by the patrons for use of those providing the service), charge tips (amounts added to the sales check by the patron for use of those providing the service), banquet tips and tips separately stated and added to the sales check by the vendor at a flat rate, and the amount is distributed by the vendor to the persons who actually render the service.

Regulation 3.01.120(6) Accommodation or Lodging payments or Deposit

Amounts paid for the use of furnished rooms or accommodations or lodging, as defined under Section 3.01.020(29.2), are subject to the tax imposed under Section 3.01.140 unless the rental period is for a term of thirty (30) consecutive days or more, in which case the rental paid is exempt. (See also Section 3.01.180(6) and Regulation 3.01.180(6).)

Deposits paid for rooms or accommodations or lodging are not taxable when paid in advance. When rooms or accommodations or lodging are furnished, then any deposits previously paid are taxable. If rooms or accommodations or lodging are not furnished, then any deposits previously paid are taxable to the extent that such deposits are not refunded to the customer.

Regulation 3.01.120(7) Reserved

Regulation 3.01.120(8) Registration, licensing or title of auto's transferred by gift

The collection of sales tax as provided in Section 3.01.120(8) does not apply to the registration, licensing or titling of automotive vehicles transferred by gift or operation of law or where the transaction is otherwise exempt from the imposition of sales tax. See Regulation 3.01.020(30) for bona fide gifts.

Regulation 3.01.120(9) Reserved

Regulation 3.01.120(10) Security system services

Security system services includes the amount paid or charged for electronic monitoring whether the system is leased, rented or owned. Any amount paid or charged for installation of a security system would not be subject to sales tax, if separately stated.

All materials and equipment used in providing such services that are located inside the City are subject to use tax, if the requisite sales tax has not been paid. If title of the material or equipment is transferred to the customer, then the material or equipment is deemed a retail sale and subject to the City sales tax. Sales of material and equipment are considered separate and distinct retail transactions from the charges for security system services.

Regulation 3.01.120(11) Reserved

Regulation 3.01.120(12) Warranty & Maintenance contracts

If a separate warranty, service or maintenance contract is purchased at the time of acquiring tangible personal property or subsequent to the purchase of tangible personal property, regardless of whether the tangible personal property is rented, leased or purchased, then the entire sales price of the warranty, service or maintenance contract is subject to sales tax.

When an item of tangible personal property is rented with a warranty for the maintenance or servicing of the property for a given period of time, then the sales tax shall be imposed, collected, and paid upon the rentals payable, including the value of the warranty, if the rental is subject to the sales tax under the provisions of Section 3.01.120(9).

Regulation 3.01.120(13) Modified or Customized software

"Modified or customized computer program" services include, but are not limited to, analysis of the customer's requirements, consulting, programming, testing, and updates, regardless of which vendor supplies each of the services.

The internalized instruction code which controls the basic operations (i.e., arithmetic and logic) of the computer causing it to execute instructions contained in system programs is an integral part of the computer. It is not normally accessible or modifiable by the user. Such internal code systems are considered part of the hardware and are subject to sales tax. It is immaterial that the vendor does or does not charge separately for such internal code systems.

A program is one in which instructions and routines (programs) are determined necessary to program the customer's electronic data processing equipment to enable the customer to accomplish specific functions with his electronic data processing system.

The program may be in the form of:

(1) System programs (except for the instruction codes which are considered tangible personal property as described above that control the hardware itself and allow it to compile, assemble, and process application programs).

(2) Applications programs that are created to perform business functions or to control or to monitor processes.

(3) Pre-written programs (canned programs) that are either systems programs or application programs and are not written specifically for the user.

(4) Custom programs: programs created specifically for the user.

Section 3.01.020(24.5) defines a "modified or customized computer program" as meeting the following elements:

(a) the preparation or selection of the program for the customer's use requires an analysis of the customer's requirements by any vendor; and

(b) the program must be created or requires adaptation by any vendor to be used in a specific output device. One example, a vendor offers for sale a pre-written sort program which can be used in several computer models. Prior to operation, instructions must be added by any vendor which specify the particular computer model in which the program shall be utilized.

In subsections (4)(a)(b) above "vendor" includes, but is not limited to, a vendor from whom the program is acquired, or who provides consulting, or who provides programming.

Programs, meeting the criteria in (a) and (b) above, whether placed on cards, tape, disc pack, or other machine readable media or entered into a computer directly are modified or customized programs and are subject to tax pursuant to Section 3.01.120(13).

Programs which do not meet the criteria are subject to sales tax pursuant to Section 3.01.120(1). For example, a software retailer or supplier that sells prepackaged programs for use with home television games or other personal computer equipment, when such programs are fully

usable by the customers without modification, is considered to be a vendor of tangible personal property and is subject to sales tax on the purchase price of such property pursuant to Section 3.01.120(1).

Consulting service or analysis time charges are not subject to sales or use tax, if a program is not purchased, modified, or created.

Regulation 3.01.120(14) Reserved

Regulation 3.01.130(1)(a) Vendor of tangible personal property

The vendor of tangible personal property (other than a vending machine operator who is subject to the provisions of Section 3.01.180(24) or a vendor electing to include the tax in the sale price pursuant to Section 3.01.140(3)(b)), acting as an agent for the City, must collect the sales tax on the selling price of commodities and services specified in Chapter 3.01 and account for and remit the full amount of the tax. The vendor is liable for the payment of any amount equal to three percent (3%) of the total amount received from taxable sales made in each month, including all sales made for less than the minimum amount subject to tax.

Regulation 3.01.130(1)(b) Filing frequencies

Approval of requests for quarterly, seasonal, annual, or thirteen-four week reporting periods shall be granted only if, in the opinion of the Finance Director, such approval shall not jeopardize the collection of the tax. Permission to change the time or interval for filing reports and paying tax shall not be granted to a vendor who is delinquent.

If any vendor has been granted permission to file reports and pay tax on other than a monthly basis, and such vendor becomes delinquent, then the permission may be revoked by the Finance Director at any time. Immediately following notice of such revocation, such vendor shall be required to file reports and pay tax, interest and penalties on a monthly basis.

Applications for permission to file reports and pay tax on a quarterly basis, if approved, shall take effect on the first (1st) day of the next calendar quarter which begins at least fifteen (15) days after the date of approval.

If the vendor has an average tax liability of fifteen dollars ($15) or less per month, then the Finance Director may permit reports to be filed and tax paid on an annual basis. Wholesalers shall be required to report and pay any sales taxes owed on the same basis as any other vendor, but a licensed wholesaler who makes no retail sales can submit a no-tax return on an annual basis.

Application for permission to file reports and pay tax on an annual basis, if approved, shall take effect on January 1 of the next calendar year beginning at least fifteen (15) days after the date of approval. Following the approval by the Finance Director to file on a quarterly or annual basis, the filing of the reports and payments of the tax shall be due on the twentieth (20th) day of the month following the end of the approved reporting period.

If the vendor is engaged in a seasonal business not operated at all in the City during certain months of the year, then he may apply on the prescribed application form for permission to file the reports and remit that tax only for the months of the year in which the business is operated. The applicant shall state the months during which he expects to operate the business in the City and the place or places where the business shall be operated and must notify the Finance Department of any changes thereof.

Regulation 3.01.130(1)(c) Filing extensions

Section 3.01.130(1)(c) gives the Finance Director authority to grant extensions of time for filing sales tax returns, but extensions shall not be granted unless the Taxpayer can show that filing on or before the due date would result in an undue hardship.

Regulation 3.01.130(1)(d) Exempt sales documentation

The vendor must establish that a sale is tax exempt, and he must have records sufficient to demonstrate the validity of the exemption with reference to each sale. Exempt organizations must be able to prove to the satisfaction of the vendor that they are exempt.

If the purchase is represented by the customer to be for resale, it shall be the duty of the vendor to have on file and available to any qualified representative of the Finance Department satisfactory proof that the purchase is for resale and the sales tax account number for any customer representing to the vendor that he is purchasing for resale. The vendor may call the Finance Department to verify that the customer is properly licensed.

Regulation 3.01.130(1)(e) Duty of the vendor to collect tax

It is the duty of the vendor to collect the tax unless he is furnished with satisfactory proof that the sale is exempt under Chapter 3.01.

Whenever there is a disagreement between a vendor and a buyer as to whether a given sale is tax exempt under Chapter 3.01, it shall be the duty of the vendor to collect, and the duty of the buyer to pay the tax. The vendor shall thereupon give to the buyer a receipt (a copy of the sales invoice showing the amount of sales tax collected by the vendor shall usually be sufficient), and the buyer may then make application to the Finance Department for a refund.

Regulation 3.01.130(1)(f) Reserved

Regulation 3.01.130(2) Reserved

Regulation 3.01.140(1) Sales / Use tax of manufacturing, producing & fabricating

Sales and use tax applies to charges for manufacturing, producing, fabricating, and processing tangible personal property which has been made-to-order or tailor-made for the customer. Manufacturing, producing, fabricating, or processing is usually deemed to have occurred when tangible personal property is created, transformed or reduced to a different state, quality, form, property or thing. Transformation may occur by hand, machine, art, chemical action or natural means.

An operation which restores a used or worn item of tangible personal property to its essentially original form and use is not considered manufacturing, producing, fabricating or processing within the meaning of this Regulation.

The amount charged the purchaser for labor or services rendered in installing and applying purchased tangible personal property is not subject to tax, provided that such amount is separately stated, and such separate statement is not to avoid the tax upon the actual sales price of tangible personal property.

Any person making a sale subject to this Regulation must be licensed and may purchase tax-free all articles of tangible personal property which enter into and become a component part of the

article sold. Purchases of all other articles of tangible personal property not becoming an ingredient or component part of the finished product are taxable.

Regulation 3.01.140(2) Imposed sales tax schedule & rounding

The sales tax imposed pursuant to Section 3.01.140(2) shall be imposed in accordance with the following schedule:

Purchase Price	Lakewood Sales Tax at three percent (3%)
$0.00 - 0.16	$.00
0.17 - 0.49	.01
0.50 - 0.83	.02
0.84 - 1.16	.03
1.17 - 1.49	.04
1.50 - 1.83	.05
1.84 - 2.16	.06
2.17 - 2.49	.07
2.50 - 2.83	.08
2.84 - 3.16	.09
3.17 - 3.49	.10
3.50 - 3.83	.11
3.84 - 4.16	.12
4.17 - 4.49	.13
4.50 - 4.83	.14
4.84 - 5.16	.15
5.17 - 5.49	.16
5.50 - 5.83	.17
5.84 - 6.16	.18
6.17 - 6.49	.19
6.50 – 6.83	.20

On all sales in excess of six dollars and eighty - three cents ($6.83), three cents ($.03) shall be added for each dollar ($1.00) in excess of six dollars and eighty - three cents ($6.83). The sales tax imposed pursuant to Section 3.01.140(1) shall be equivalent to three cents ($.03) for every dollar of the purchase price. Fractional amounts equal to or greater than one-half cent ($.005) shall be rounded upward to the next highest cent.

Regulation 3.01.140(3)(a) Sales tax on multiple items

If the sale consists of a number of items, each of which has a sales price less than the minimum taxable sale, then sales tax must be collected on the total sales prices of all the items.

Any retailer or taxpayer adding the sales tax imposed by this Chapter 3.01 of the City Code, or the average equivalent thereof, to the sale price or charge for tangible personal property and taxable services, in addition to showing such tax as a separate and distinct item to the customer must provide the customer with a receipt showing and identifying the purchase price and sales tax charged as separate items on such receipt, including the total rate of sales tax charged.

Regulation 3.01.140(3)(b) Taxation of malt, vinous or spirituous liquors

A vendor who sells malt, vinous or spirituous liquors by the drink shall at the time of making his first retail sale of such beverage, elect either of the following methods to impose the tax:

(a) The tax may be included in the price of the drink; or

(b) The tax may be separately stated and added to the price of the drink.

The vendor may elect to operate under method (a) for drinks sold at the bar and method (b) for drinks sold at the tables, or he may elect to operate under the same method for drinks sold at the bar and tables. Once having made the election, he must continue to collect the tax in the manner elected, unless permission to change the election is first obtained from the Finance Department. If the vendor elects to use different methods on bar and table sales, he must continue to collect the tax in the manner elected, unless permission to change the election is first obtained from the Finance Department. If the vendor elects to use different methods on bar and table sales, then he must keep adequate records.

If the vendor elects to include the tax in the price of the drink, the following method must be used to determine taxable sales: exempt sales are deducted from gross sales, and the difference is divided by the total of one hundred percent (100%) plus the applicable sales tax percentage.

Vendors dispensing liquor, wine or beer by the drink, who purchase ingredients which they use in mixing the drink, are not required to pay sales tax on the purchase of such ingredients.

Regulation 3.01.150 Multiple location / Consolidated filing

A retailer required to collect tax imposed under Section 3.01.140 who is doing business in two or more locations within the City may:

(1) File a separate sales tax return for each business location within the City; or

(2) File a consolidated sales tax return covering all business locations within the City. If consolidated sales tax returns are filed, then the retailer must complete and return all accompanying supplemental schedules if required by the Finance Director.

Undercollections and overcollections may not be offset. See Regulation 3.01.130(1)(a).

Regulation 3.01.160(1) Credit card sales

This Regulation deals only with credit sales. Credit card sales are cash sales not credit sales. Cash sales must be reported currently.

For the purpose of this Regulation, a "credit sale" is a retail sale that is created by a time payment plan, a conditional sale, or a sale secured by a chattel mortgage whereby the remittance of the full selling price is to be paid at a future date.

If the retailer elects to report the credit sales on the cash basis, then he must keep adequate and complete records to show separately the sales price of the tangible personal property, the sales tax applicable to each credit sale, and any interest, insurance or carrying charges that have been added to the sale.

If the retailer reports the credit sale on the accrual basis, then he shall include the selling price in the return for the month in which the sale was made and remit the entire applicable sales tax.

The retailer on the accrual basis is allowed a deduction for bad debts on the taxable portion of worthless credit sales. No deduction for bad debts is allowable when the retailer is reporting his taxable sales on the cash basis.

When a repossessed article is resold, the transaction constitutes an entirely new, separate and distinct sale upon which the sales tax shall be collected in the regular manner.

A cash discount allowed for payment on or before a given date is not an allocable adjustment to the selling price in determining taxable sales.

Regulation 3.01.160(2) Reserved

Regulation 3.01.170 Reserved

See Regulation 3.01.020(22.5).

Regulation 3.01.180(1) Sales to the United States Government, State or Local

There is no sales tax on sales to the United States government and to the State, or any department, institution, or subdivision of the federal or State government, when purchased within its governmental capacities. To secure exemption from the sales tax, the order for the goods must be on a prescribed government form or purchase order and paid for directly to the seller by warrant or check drawn on governmental funds.

Regulation 3.01.180(2) Sales to charitable organization / exemptions

There is no sales tax on articles sold to charitable organizations in the conduct of their regular charitable functions and activities. To determine whether an organization qualifies for the exemption so that the Finance Department may issue an exemption certificate, the following information must be submitted to the Finance Department by the organization:

(1) A copy of the organization's federal exemption letter; and

(2) The organization's financial statement showing the source of funds and its expenditures.

A charitable organization which makes repeated sales of tangible personal property to the public and otherwise meets the definition of a retailer must have a sales tax license and collect and remit tax in the same manner as any other retailer. The fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable purposes does not make the sale exempt from tax.

Whenever a charitable organization, not holding a State store license or a City sales tax license, purchases tangible personal property (such as cards, cookies, candies, food, religious articles, and similar items) which is to be transferred to anyone else for personal use and all or part of the price of the goods is recouped from the user through direct payment, donation or games of chance, then the organization's exempt status does not apply, and sales tax must be paid to the vendor by the exempt organization. If such purchases are made outside the City or in the City without payment of the City sales tax, then the tax must be paid directly to the City by the organization.

Purchases by a nonprofit organization or association are subject to the tax if they are not charitable organizations.

Regulation 3.01.180(3) Constitutional, Delivery & Railroad seals exemption

(1) All sales which the City is prohibited from taxing under the constitution or laws of the United States or the State or under the City's charter are exempt, including sales to ambassadors, consuls, and their employees who are citizens of the nation that they are representing.

(2) Sales involving interstate commerce are exempt only in cases where the tax would be unconstitutional.

(3) Sales of tangible personal property located within the City at the time of sale and delivered within the City are taxable, irrespective of the ultimate destination of the property sold, or where the parties to the contract of sale are located, or where the contract was made or accepted or the funds paid.

(4) Sales of tangible personal property located within the City at the time of sale and delivered to the purchaser by the vendor or by common carrier to a destination outside the City for use outside the City are not taxable. Vendor's shipping records, bills of lading, or other proof satisfactory to the Finance Director must be retained to substantiate any exemption allowed for such sales in interstate commerce.

(5) Sales of merchandise ordered for delivery in the City are not necessarily exempt even though the merchandise may be shipped from outside the City directly to the purchaser or indirectly through the vendor.

(6) All sales to railroads, except as provided in Section 3.01.180(10), and to other common carriers doing an interstate business, to telecommunication companies, and to all other agencies engaged in interstate commerce are taxable in the same manner as are sales to other persons.

Regulation 3.01.180(4) Cigarette / Tobacco

"Cigarette" is defined as a well-known, recognized, and definite article consisting of tobacco of a peculiar kind distinguished by its light color and mildness and rolled in a paper wrapper. "Cigarette" does not include an article consisting of a cylindrical roll of cigar-leaf tobacco.

The sale of any tobacco product that is not a cigarette is subject to sales tax.

Regulation 3.01.180(5) Prescription

A "prescription" means any order in writing, dated and signed by a practitioner of the healing arts, or given orally by a practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and address of the person for whom a medicine or drug is offered and directions, if any, to be placed on the label.

Regulation 3.01.180(5.1) Reserved

Regulation 3.01.180(6) Permanently occupied room / Accommodation

Rooms and accommodations permanently occupied are exempt. "Permanently occupied" is defined by Section 3.01.180(6) as occupancy for a period of thirty (30) or more consecutive days.

"Written agreement" includes a hotel registration or a rent receipt. A canceled check by itself shall not qualify as a written agreement.

Regulation 3.01.180(7) Sales to schools - Exemptions

Sales to "Schools" as defined under Section 3.01.020(31), are exempt from sales tax. If a school is conducted for private or corporate profit, sales thereto are subject to the sales tax.

Regulation 3.01.180(8) Reserved
Regulation 3.01.180(9) Reserved
Regulation 3.01.180(10) Reserved
Regulation 3.01.180(11) Reserved
Regulation 3.01.180(12) Reserved
Regulation 3.01.180(13) Reserved
Regulation 3.01.180(14) Reserved
Regulation 3.01.180(15) Reserved
Regulation 3.01.180(16) Reserved
Regulation 3.01.180(17) Reserved

Regulation 3.01.180(18) Contractors and subcontractors

Contractors and subcontractor should be aware that the exemption for charitable organizations applies only to those that qualify under Section 3.01.020(5) and to schools, as defined in Section 3.01.020(31).

Every contractor or subcontractor shall apply for a certificate of exemption prior to the time that the work is started. Every contractor or subcontractor shall also obtain the exemption number from the exempt organization for whom the work is performed.

Regulation 3.01.180(19) Reserved

Regulation 3.01.180(20) Containers, label or shipping case / Manufacturing aids

The sale of tangible personal property to a person engaged in the manufacture or compounding of a product or service, where such tangible personal property becomes a physical part of such product or service, is a wholesale sale and exempt from sales tax. Any container, label or shipping case used to encase or enclose such product may be purchased tax-free by the manufacturer or compounder.

Sales tax applies to the sale of tangible personal property to the manufacturer or compounder that purchases it for use as an aid in manufacturing, producing or processing tangible personal property and not for the purpose of physically incorporating it into the manufactured article to be sold. Examples of such property are machinery, tools, furniture, office equipment, and chemicals used as catalysts or otherwise to produce a chemical or physical reaction such as the production of heat or the removal of impurities.

"For all the reasons we have heretofore mentioned we must conclude that to be exempt from the operation of the acts, tangible personal property purchased by manufacturer and which enters into the processing of the manufactured product, must be a constituent part thereof, wholly or partially, by either chemical or mechanical means . . . ."

"Applying these definitions to the words under consideration, it would seem certain they mean that to enter into the processing of an article, substance or commodity, tangible personal property must of necessity become a constituent part of such final product in the series of continuous operations and treatment leading to this result." Bedford v. C.F. and I., 102 Colo. 538, 81 P.2d 752 (1938); reaffirmed, Western Electric v. Weed, Jr., 185 Colo. 340, 524 P.2d 1369 (1974).

Examples of manufacturing aids include but are not limited to the following:

(1) Sales of carbon dioxide; gas for use in the sale of draft beer shall be taxable to the vendor of the beer since the vendor buys the gas for use in forcing the draft beer through the pipes rather than for the purpose of reselling the gas.

If the gas is purchased for the sole purpose of incorporating it into a product to be sold and is so incorporated into a product to be sold as in soda water or other beverages, then the sale of the gas is exempt as a sale for resale.

(2) Phosphoric and sulphuric acid used in a process known as anodizing aluminum are primarily used as electrolytes, acting as a catalyst, and do not become a component part of the aluminum objects that are processed. Accordingly, the processor is the consumer of such acids which are taxable to the processor at the time of purchase of such items.

(3) Flux, if used as a cleaning agent or as means of reducing oxidation, is taxable to the manufacturer at the time of purchase. It may also be used for transmitting desirable alloys to the deposited metal. To the extent that it is used for the latter purpose, it is not subject to sales tax to the manufacturer at the time of purchase. Since the different functions are not mutually exclusive, exempt and nonexempt purposes may be served simultaneously, and in such cases the tax shall have to be apportioned between the various users.

(4) Sulphur used in drying and curing fruit is regarded as used by the manufacturer, not as incorporated and resold, and the tax is to be paid by the manufacturer when he purchases the sulphur.

(5) Forged steel balls are used in a ball mill to grind silica sand to a desired fineness. In the course of the grinding, the balls wear out, and they become incorporated into the finished product which is sold. The steel balls are purchased for the purpose of using them in the manufacturing processes and not primarily for the purpose of incorporating steel into a finished product. Accordingly, the manufacturer must pay sales tax on the steel balls at the time of purchase.

(6) If ice is in fact used for the sole purpose of becoming an ingredient of the finished product, as where it is used solely to supply all or a part of the water content of the sausage and luncheon meats, then the sale of the ice may be regarded as a sale for resale, and the processor is not required to pay tax at the time of purchase of the ice.

If the ice or dry ice is used for any purpose other than to become an ingredient or component part of the finished product, then it is purchased for a purpose other than for resale and is subject to tax to be paid at the time of purchase by the processor.

(7) A rubber chemical used as a lubricant to facilitate mold release of rubber products, such as tires, and which may remain as a film on the finished rubber product is a manufacturing aid used as a lubricant by the manufacturer who is required to pay the sales tax at the time of purchase.

(8) Cleaners purchased for use in preparing metal part surfaces prior to rust proofing do not become incorporated in the product, and, therefore, the manufacturer is the user and must pay sales tax at the time of purchase.

(9) When paint thinner, abrasives, cleaning compounds, masking tape and similar items are used by a person in painting tangible personal property, that person is the user of such items and must pay sales tax at the time of purchase.

(10) Talc used as an anti-adhesive or lubricant in the manufacture of rubber products is a manufacturing aid, and sales tax is imposed on the manufacturer at the time of purchase.

Regulation 3.01.180(21) Electricity, coal, gas, fuel, coke or nuclear fuel used for mining

Section 3.01.180(21) exempts the sales of electricity, coal, gas, fuel oil, coke, or nuclear fuel when used for any of the following purposes: mining (including oil and gas exploration and production), refining, irrigation, construction, telecommunication services, and street and railroad transportation services.

The use of electricity, coal, gas, fuel oil, coke or nuclear fuel in a continuing business activity of manufacturing or producing tangible personal property or services as set forth in Section 3.01.120(4)(a) is subject to sales tax.

Vendors must collect the tax on all sales of equipment and materials to publishers of newspapers and commercial printers, except on sales of newsprint and printer's ink, which are expressly exempt as wholesale sales.

"Newsprint" is defined as cheap, machine-finished paper, chiefly from wood pulp, and used mostly for newspapers.

Regulation 3.01.180(22) Reserved

Regulation 3.01.180(23) Livestock & Poultry

"Livestock" means domestic animals as found on a farm or ranch such as cattle, sheep, swine, goats, mares and stallions. "Livestock" does not include animals kept as pets for pleasure and recreation. Sales of feed for horses are exempt.

"Poultry" means domesticated birds kept for eggs or meat.

Regulation 3.01.180(24)(a) Vending sales tax of greater or less than (.30)

When the selling price of the item is more than thirty cents ($.30), tax applies to the selling price, not just the amount in excess of thirty cents ($.30).

A vendor making vending machine sales of individual items of merchandise at a selling price of thirty cents ($.30) or less and also making vending machine sales at a price of more than thirty cents ($.30) must be licensed and may purchase tax-free all items so vended. He must include the sales price of all vended items in the gross sales on his sales tax return but may deduct the tax-free sales of thirty cents ($.30) or less to determine taxable sales.

Regulation 3.01.180(24)(b) Reserved

Regulation 3.01.180(25) Livestock & Poultry

The terms livestock and poultry are restricted to the definitions given in Regulation 3.01.180(23).

Regulation 3.01.180(26) Factory built home, Modular or Sectional

"Price" or "Purchase price" means the price to the final user/consumer as defined in Section 3.01.020(27).

Factory-built housing includes, but is not limited to, modular homes or sectional homes, as defined in the Special Regulations entitled "Modular or Sectional Homes." Factory-built housing includes mobile homes as defined in Section 42-1-102(82)(b) of the Colorado Revised Statutes, which are used primarily for residential occupancy. See the Special Regulations entitled "Manufacturers and Prefabricators Acting as Contractors."

Regulation 3.01.180(27) Reserved
Regulation 3.01.180(28) Reserved
Regulation 3.01.180(29) Reserved

Regulation 3.01.180(30) Sale of equipment to publisher & Newspapers

Vendors must collect tax on all sales of equipment and materials to publishers of newspapers and commercial printers, except on sales of newsprint and printer's ink, which are expressly exempt from sales tax.

"Newsprint" is defined as cheap, machine-finished paper, chiefly from wood pulp, and used mostly for newspapers.

Regulation 3.01.180(31) Reserved
Regulation 3.01.180(32) Reserved
Regulation 3.01.180(33) Reserved
Regulation 3.01.190 Reserved
Regulation 3.01.200 Reserved

Regulation 3.01.210 Use tax

The primary purpose of the use tax is to impose a tax upon the privilege of storing, using, or consuming any tangible personal property purchased at retail. The use tax is complementary to the sales tax in those situations where a sales tax cannot, as a practical matter, be collected, or has not, for any reason, been collected in the course of the retail transaction. A sale by a licensed or unlicensed vendor to a user or consumer and not for resale is a retail sale.

The obligation for the payment of the tax is upon the user whether the tax is a sales tax or a use tax.

The sales tax and the use tax complement each other and together provide a uniform tax upon the sales, storage, use or consumption of all tangible personal property and taxable services purchased at retail. The amount of the tax is measured by the purchase price of the property or service.

Where tangible personal property is traded or exchanged between unlicensed persons, the sales or use tax is based on the fair market value of each article. Each person owes the tax on the fair market value of the tangible personal property that he received in exchange except for exchanges governed by Section 3.01.180(17).

The use to which property is put, in order to bring about imposition of the use tax, is not necessarily the actual and ultimate use, but may be only such use as is made by the owner or purchaser in exercising control. Use shall be deemed sufficient for the imposition of the use tax

when the article purchased is actually used or made available for use after delivery is completed, as well as when keeping, storing, withdrawing from storage, moving, installing, or performing any other act by which dominion or control over the property is assumed by the purchaser.

"Consumption" means the act or process of consuming and includes waste, destruction, or using up.

The use tax imposed pursuant to Section 3.01.210 shall be imposed as set forth in Regulation 3.01.140(2).

Regulation 3.01.220(1)(a) and (b) Use tax reporting

All purchases subject to use tax must be reported in detail on the sales tax form supplied by the Finance Director. If the Taxpayer has any use tax liability that he has not reported on a sales tax form, then the statute of limitations shall not run on any such deficiency.

Regulation 3.01.220(2) Use tax for retailers not maintaining a location in the City

Any retailer who is engaged in selling at retail, and who does not maintain a location in the City, as specified in subsection 3.01.020(17), shall impose, collect and remit to the Finance Director a use tax on such sales instead of collecting the sales tax imposed pursuant to Section 3.01.120. Such retailer, upon application, shall be issued a use tax license which is issued without charge. If the only activities of a retailer who does not maintain a location in the City are through the United States mail or common carrier, then such retailer shall not be required to comply with Section 3.01.220(2). (See National Bellas Hess, Inc. v. Department of Revenue of the State of Illinois, 386 U.S. 753 (1967). If there are any other contacts, then such retailer would be required to have a license and to collect the retailer's use tax. (See National Geographic Society v. California Board of Equalization, 430 U.S. 551 (1977)).

Every retailer who is doing business in this City and who does not maintain a location in the City is required to collect the retailer's use tax from the purchaser regardless of whether title to the goods passes within or without the City, if the sale of tangible personal property is subject to taxation due to the storage, use or consumption of that property within the City.

All sales subject to the retailer's use tax must be reported on the forms supplied by the Finance Director.

Any retailer collecting sales or use tax thereby becomes a trustee for any such tax collected and is responsible as an agent of the City.

Regulation 3.01.220(3)(a) Reserved
Regulation 3.01.220(3)(b) Reserved
Regulation 3.01.220(4)(a) Reserved

Regulation 3.01.220(4)(b) Improvements to realty – parking lots, sidewalks & lighting

Improvements to realty include parking lots, sidewalks, landscaping and lighting systems.

Regulation 3.01.220(4)(c) Reserved

(Refer to Regulation 3.01.220(4)(b).)

Regulation 3.01.220(5) Reserved

Regulation 3.01.230(1) Imposition of a use tax

Section 3.01.230 is intended to prevent the imposition of a use tax on tangible personal property where the consumer actually paid sales tax to a licensed vendor located within the City or use tax to a licensed vendor located outside the City.

Regulation 3.01.230(2) Use tax as a complement to sales tax

Use tax is a complement to sales tax. Since sales tax is imposed only on retail sales, which are defined by Regulation 3.01.020(29) as sales to the user of consumer of property or services sold, use tax shall not apply to the storage, use or consumption of tangible personal property purchased by a licensed retailer for resale within the regular course of a business.

Tangible personal property that was purchased tax-free for resale or as an ingredient of a manufactured or compounded product and subsequently withdrawn from stock for the purchaser's own use or consumption shall be taxed at the acquisition cost of all materials. The tax liability attaches at the time that the tangible personal property is withdrawn from stock. The tax must be reported on the return forms furnished by the Finance Department.

Chapter 3.01 exempts a sale of tangible personal property which becomes an ingredient or component part of the product.

To be exempt from the operation of the sales tax and use tax, tangible personal property purchases by a manufacturer, which property enters into the processing of the manufactured article, must become a constituent part thereof, wholly or partially, either by chemical or mechanical means. (See Regulation 3.01.180(20).) (See also Western Electric v. Weed, Jr., 185 Colo. 340, 524 P.2d 1369 (1974) and Bedford v. Colorado Fuel and Iron Corp., 102 Colo. 538, 81 P.2d 752 (1938).)

Regulation 3.01.230(3) Reserved

Regulation 3.01.230(4) Nonresidents acquiring residency in the City

(See Regulation 3.01.230(11) as to nonresidents acquiring residency in the City.)

Regulation 3.01.230(5) Reserved

(Refer to Regulations 3.01.180(1) and 3.01.180(2).

Regulation 3.01.230(6) Reserved

Refer to Regulation 3.01.180(20).)

Regulation 3.01.230(7) Reserved

(Refer to Regulation 3.01.180(21).)

Regulation 3.01.230(8) Reserved
Regulation 3.01.230(9) Reserved

(Refer to Regulation 3.01.180(30).)

Regulation 3.01.230(10) Reserved

Regulation 3.01.230(11) Property brought into the city by a nonresident

Section 3.01.230(11) provides an exemption as to property brought into the City by a nonresident for his own use if he becomes a resident. This exemption does not extend to a nonresident engaged in business within the City who purchases tangible personal property for use or consumption in his business.

Regulation 3.01.230(12) Reserved
Regulation 3.01.230(13) Reserved
Regulation 3.01.230(14) Reserved
Regulation 3.01.230(15) Reserved
Regulation 3.01.230(16) Reserved
Regulation 3.01.230(17) Reserved
Regulation 3.01.230(18) Reserved
Regulation 3.01.230(19) Reserved
Regulation 3.01.230(20) Reserved

Regulation 3.01.230(21) Reserved

Charitable organizations are defined in Section 3.01.020(5).

Regulation 3.01.230(22) Reserved
Regulation 3.01.230(23) Reserved
Regulation 3.01.230(24) Reserved
Regulation 3.01.230(25) Reserved
Regulation 3.01.240(1) Reserved
Regulation 3.01.240(2) Reserved
Regulation 3.01.240(3) Reserved
Regulation 3.01.240(4) Reserved
Regulation 3.01.240(5) Reserved
Regulation 3.01.240(6) Reserved
Regulation 3.01.250(1) Reserved
Regulation 3.01.250(2) Reserved

Regulation 3.01.250(3) Refund Request

(1) Claims for refund shall be executed and filed with the Finance Department on forms furnished by the Finance Department in accordance with instructions accompanying such forms or appearing thereon.

(2) The refund claims shall be signed by the claimant or his authorized officer or employee.

(3) The claim shall be supported by an affidavit of the contractor or subcontractor that the sales or use tax sought to be refunded has been paid and that the tangible personal property so taxed has been "built in" to the structures owned and used by the tax-exempt entity, and shall indicate therein where the books and records and other substantiating evidence of payment of said tax are located, and where they may be examined by authorized representatives of the Finance Department.

(4) The claim shall also be accompanied by a certificate of the architect, superintendent of construction, or other person who shall have personal, technical, and official knowledge that the property on which the tax has been paid and in fact been "built in" by the contractor in accordance with the specifications of the contract and in the amount required thereby.

(5) Refunds shall be made only on taxes paid by the contractor or the subcontractor if such contractor or subcontractor applies to the Finance Director for a refund within sixty (60) days directly following the final inspection of the job site or the issuance of the certificate of occupancy.

(6) In order to properly verify the contents of a claim for refund, the Finance Department may require such other and additional information as may be deemed necessary before payment of the claim shall be authorized.

Regulation 3.01.250(4) Reserved

Regulation 3.01.250(5) Tax credit(s) applied to future returns

If any vendor makes overpayment of the tax or is entitled to a credit on his tax payments because of mistakes, errors or canceled sales, in lieu of filing a claim for refund, credit for the amount of overpayment may be taken by the vendor on a subsequent return, but if the vendor is no longer engaged in business, then he should apply for a refund.

Regulation 3.01.250(6) Reserved

Regulation 3.01.260(1) Trusteeship of funds

The use of recognized accounting procedures to segregate and account for the funds shall be considered proper trusteeship of the funds. No statute of limitations applies to funds of the City in the possession of the retailer, and such moneys are collectible at any time after their due date upon demand of the Finance Director.

Regulation 3.01.260(2)(a) Reserved
Regulation 3.01.260(2)(b) Reserved
Regulation 3.01.260(2)(c) Reserved
Regulation 3.01.260(3)(a) Reserved
Regulation 3.01.260(3)(b) Reserved
Regulation 3.01.260(4) Reserved
Regulation 3.01.260(5) Reserved
Regulation 3.01.260(6)(a) Reserved
Regulation 3.01.260(6)(b) Reserved
Regulation 3.01.260(7) Reserved

Regulation 3.01.260(8) Reserved
Regulation 3.01.260(9) Reserved

Regulation 3.01.260(10) Claims for recovery (tax remitted to incorrect cities)

Claims for Recovery. The intent of this section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or vendor to correctly pay, collect, and remit sales and use taxes to the City.

(1) As used herein, "Claim for Recovery" means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.

(2) When it is determined by the Director of Finance of the City of Lakewood that sales and use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the vendor that taxes are being improperly collected and remitted, and that as of the date of the notice the vendor must cease improper tax collections and remittances.

(3) The City may make a written Claim for Recovery directly to the municipality that received tax and/or penalty and interest owed to the City, or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a Claim for a Recovery lies in the sole discretion of the City. Any Claim for Recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the Claim, and a request that the municipality approve or deny in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a Claim for Recovery may, for good cause, request an extension of time to investigate the Claim, and approval of such extension by the City shall not be unreasonably withheld.

(4) Within ninety (90) days after receipt of a Claim for Recovery, the city receiving such claim shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the City of Lakewood in writing that the Claim is either approved or denied in whole or in part, including the reasons for the decision. If the Claim is approved in whole or in part, the City shall remit the undisputed amount to the City of Lakewood within thirty (30) days of approval. If a Claim is submitted jointly by the City of Lakewood and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a Claim for Recovery may only be made for good cause.

(5) A city may deny a Claim on the grounds that it has previously paid a Claim for Recovery arising out of an audit of the same taxpayer.

(6) The period subject to a Claim for Recovery shall be limited to the thirty-six (36) month period prior to the date the municipality that was wrongly paid the tax receives the Claim for Recovery.

Regulation 3.01.260(11) Reserved
Regulation 3.01.270(1)(a) Reserved
Regulation 3.01.270(1)(b) Reserved
Regulation 3.01.270(1)(c) Reserved

Regulation 3.01.270(1)(d) Sales of business by owner

If any vendor sells his business, then he shall make a return and pay all taxes due within ten (10) days of such sale. The purchaser of the business is liable for any unpaid tax due on sales made by his predecessor, including tax on outstanding accounts on which sales tax has not been remitted. The purchaser is required to withhold a sufficient amount of the purchase money to cover any taxes due and unpaid until the vendor can provide proof that any such taxes have been paid.

Sales tax shall be remitted by the purchaser on the price paid for tangible personal property, other than inventory, acquired with the purchase of business and for use or consumption in the operation of the business. The tax shall be based on the price paid for such chattels as are recorded in the bill of sale or purchase agreement and which constitute part of the total transaction at the time of sale or transfer. Where the transfer of ownership is a "package deal" in a lump sum transaction, then the sales tax shall be based on the book value set up by the purchaser for income tax depreciation purposes or, if no such value is established, then the fair market value.

Regulation 3.01.270(1)(e) Reserved
Regulation 3.01.270(2) Reserved
Regulation 3.01.280 Reserved
Regulation 3.01.290 Reserved
Regulation 3.01.300(1) Reserved
Regulation 3.01.300(2) Reserved
Regulation 3.01.300(3) Reserved
Regulation 3.01.300(4) Reserved
Regulation 3.01.310 Reserved
Regulation 3.01.320 Reserved
Regulation 3.01.330(1) Reserved
Regulation 3.01.330(2) Reserved
Regulation 3.01.340 Reserved
Regulation 3.01.350 Reserved

Special Regulations

THESE SPECIAL REGULATIONS ARE PROMULGATED FOR SPECIFIC BUSINESSES AND SPECIAL CIRCUMSTANCES. THEY SHALL APPLY IN ADDITION TO AND HAVE THE SAME EFFECT AS THE NUMBERED SALES AND USE TAX RULES AND REGULATIONS. UNLESS OTHERWISE NOTED, ALL REFERENCES HEREIN TO CHAPTER 3.01 OR ANY SECTION OR SUBSECTION SHALL REFER TO CHAPTER 3.01 OF THE CITY OF LAKEWOOD MUNICIPAL CODE, AND ALL REFERENCES HEREIN TO RULES OR REGULATIONS SHALL REFER TO THE NUMBERED SALES AND USE TAX RULES AND REGULATIONS.

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ADVERTISING AGENCIES

Advertising agencies primarily furnish a service for their customers and, in connection with furnishing such service, acquire items of tangible personal property which are used by the agencies to perform a service or which go to their customers in connection with the performance of the service.

1. If the advertising agency is primarily performing a service and does not sell tangible personal property, it does not need a sales tax license. Purchasers of articles delivered in the City are subject to sales tax imposed by a City vendor.

2. If an agency acquires articles for resale to its clients, then the agency must have a sales tax license to purchase such property tax-free for resale. The sales tax charged by the agency would apply to the total amount of the retail sale of property prepared by its employees or acquired from outside sources. Sales by an advertising agency or direct mail advertising pieces, handouts, throwaways, and similar articles are subject to sales tax if delivered to customers in the City.

3. An agency could operate under both (1) and (2) of the Regulation. If so, records must be maintained to account for retail sales to customers.

AGRICULTURAL PRODUCERS

"Agricultural producer" means a person regularly engaged in the business of using land for the production of crops or livestock. The term includes farmers, market gardeners, commercial fruit growers, livestock breeders, feeders, dairymen, poultrymen, and other persons similarly engaged.

"Agricultural producer" does not include a person who breeds or markets animals, birds, or fish for domestic pets nor a person who cultivates, grows, or harvests plants or plant products exclusively for his own consumption.

Containers, labels and furnished shipping cases purchased by an agricultural producer to deliver his products to his customers are not subject to tax. (See Weed v. Occhiato, 175 Colo. 509, 588 P.2d 877 (1971)). "Containers" and "shipping case" include wire, twine, rope, tape and similar binding materials, together with any other material or product used to wrap, bag, bundle, or similarly contain products. Containers not used to deliver a product, or which are used for any

purpose whatsoever prior to use in delivering a product to a customer, are subject to tax at the time of acquisition.

Fertilizer purchased by an agricultural producer is not subject to tax. "Fertilizer" includes compounds of nitrogen, phosphorus, potassium, trace elements or similar materials or substances which

provide essential plant food elements and which become ingredients of the growing plant. "Fertilizer" does not include soil, sand, peat moss, limestone, disinfectants, mulches and similar materials primarily used to condition the soil or the preserve or facilitate plant growth, regardless of incidental nutritive value. Therefore, purchases of such materials are taxable. Similarly, the purchases of insecticides, fungicides, germicides, herbicides, and similar materials or substances are taxable.

AUTOMOBILE DEALERS AND DEMONSTRATION VEHICLES

Motor vehicles used by automobile dealers for demonstration and other company purposes are subject to tax as follows:

(1) A vehicle actually sold to a salesman, partner, or other official of the dealer's company is subject to the sales tax on the selling price, or if there is a trade-in allowance, on the net selling price of the vehicle.

(2) A motor vehicle dealer who uses a vehicle for other than promotion of business, as defined in (3)(c) below, shall pay a use tax upon the dealer's net invoice price.

(3) The dealer's use of an inventory or stock vehicle is not subject to a use tax if this vehicle is available for and in fact used for the promotion of business. As used in this rule, the following terms shall have the following meanings:

(a) "Available for use in the promotion of the business of selling vehicles by the dealership" means that the vehicle is on the dealership premises during a substantial portion of normal business hours.

(b) "In fact used" means that the vehicle not only must be available but actually must be used by the dealership in the promotion of its business.

(c) "Promotion of business" means any efforts to sell motor vehicles, but does not include vehicles used in the dealer's service or repair business.

(4) To be entitled to the exemption provided in (3) above, a dealer shall file with his sales tax return a certification of the usage of all motor vehicles used in his business. Such certification shall be on a form prescribed by the City Manager.

AUTOMOTIVE REPAIRS

Parts and accessories installed in motor vehicles are of the same nature as other sales of tangible personal property and, therefore, are taxable. The taxable amount is the total charge made to the customer, with deductions therefrom allowed for service or labor charges if separately stated.

If the repair of a motor vehicle is subcontracted to another repairman by the customer's repairman, the subrepairman shall charge sales tax to the customer's repairman on the retail price of the parts used in the repair job unless specifically instructed that the job is for resale, in which case the tax shall be billed to the customer by the customer's repairman. In either case, an itemized bill from the subrepairman must be available to the customer to show that tax was charged by either the subrepairman or the repairman.

Motor vehicle dealers, garages, repairmen, and the like may purchase tax-free only tangible personal property for resale. This exemption does not apply to service vehicles, machinery, equipment, supplies, tools, and similar items which they purchase for their own use or consumption and not for resale. Supplies consumed in the performance of a job (such as sandpaper and masking tape) are taxable to the repairman.

BROADCASTING STATIONS AND OTHER MEDIA

Purchases of tangible personal property by broadcasting stations are subject to sales tax if title to the property is acquired by the stations, and the property is not to be resold in the regular course of business. Such purchases include equipment, materials, and supplies for transmitter (such as phonographic records and blank discs), relay, studio, business office and general station facilities.

Advertisements for a City vendor making retail sales of tangible personal property to City residents through a broadcasting station or by direct orders to the advertiser must state that sales tax must be added to the sales price remitted by City residents.

CEMETERIES

Cemeteries must charge sales tax on the selling prices of cement vaults, liners, markers and similar items.

Persons furnishing foundations are deemed to be contractors and must follow the rules set forth herein under "Contractors."

COINS AND BULLION

If any coin or currency is exchanged in the open market at the current exchange rate, then the transaction is not subject to sales tax. If coins, however, are commemorative or otherwise, and the coins, although legal tender in the issuing country and also acceptable as legal tender in other countries, are purchased at rates not reflecting actual currency value (as for numismatic or coin collecting purposes or where the previous metal content of the coins determine their value), then the transaction is the sale of tangible personal property and is subject to sales tax.

Sales of bullion are subject to sales tax. Bullion sold within the City and physically or constructively transferred into the City is subject to the sales tax. If the purchaser, however, paid a sales tax in the city or state in which he took delivery, then he is liable to the City for the difference between the sales tax paid and the City sales tax. Sales of gold and silver commodity contracts are not subject to sales tax unless delivery of the commodity is taken in the City.

CONSIGNED MERCHANDISE SALES

Regardless of the status of the consigned inventory for the purpose of any other tax, and regardless of whether the retail customer knows that inventory is not owned by the vendor, the vendor is: (i) the retailer of the property; and (ii) liable for the tax due on the retail sales.

CONTAINERS

Sales of containers, labels, tags, cartons, packing cases, wrapping paper, twine, bags, shipping cases, bottles, cans, similar articles and receptacles sold to manufacturers, producers, wholesalers, jobbers, retailers, or other licensed vendors for use as containers, labels, and shipping cases for articles sold by them are not taxable if such items are being resold even though no separate charge is made for them.

Deposits on returnable beverage bottle containers are not subject to sales or use tax.

CONTRACTORS

(1) "Contractors" mean any individual, partnership, firm, association, corporation, trust, estate or joint venture who performs work on real property for another party under the terms of an agreement. An individual working for a salary or wages is not considered a contractor.

"Contractor" includes building contractors, road contractors, grading and excavating contractors, electrical contractors, plumbing and heating contractors, and also includes any other person engaged under a contractual arrangement in the construction, reconstruction, or repair of any building, bridge or structure and the realty related thereto. For purposes of this rule, "subcontractor" has the same meaning as "contractor."

(2) All contractors, as defined in (1) above, who purchase tangible personal property in the City which is to be built by them into some building or structure or into or on the realty related thereto are regarded, for purposes of Chapter 3.01, as retail purchasers and must pay sales tax to the vendors; provided, however, that if: (i) a contractor purchases construction and building materials, as such term is used in Section 29-2-109 of the Colorado Revised Statutes; (ii) such materials are picked up by the contractor; and (iii) the contractor presents to the vendor a building permit or other documentation acceptable to the City evidencing that a local use tax has been paid or is required to be paid, then no sales tax is payable to the vendor. Sales tax is payable on all purchases of lumber, fixtures, equipment, materials, supplies, tools and similar items.

(3) Some contractors, as defined in (1) above, may also be retail merchants of building supplies or construction materials which were purchased tax-free for resale. In the performance of their own construction contracts, they might remove from their own stock whatever is needed for their contract operations. Such use of tax-free merchandise is subject to sales or use tax based upon the greater of: (i) the acquisition cost of the merchandise; or (ii) the cost of the merchandise to the party for whom the building or structure is being constructed.

An over-the-counter sale of a complete unit not made to order with an agreement for installation of the unit is not a building contract. This rule includes sales of stoves, refrigerators, furnaces, air conditioners, washing machines, dryers, carpets, electrical fixtures, ready-made

cabinets, storm doors, storm windows, screens, sod and similar items. On such sales, the sales tax must be collected from the purchaser by the retailer-contractor. If the installation charges are segregated in the bid proposal or sales invoices, these charges are not taxable. Repairs of such articles are not considered repairs to real property as contemplated under this rule.

(2) Contractors are not required to file sales tax returns. They shall pay the sales tax to the persons in the City from whom they make purchases of tangible personal property.

(3) No sales tax license shall be issued to regular contractors. They are not retailers of tangible personal property and are deemed to be the users or consumers of all articles used by them.

(4) Any subcontractor purchasing materials for his job is the consumer of the materials and is liable for the payment of the sales tax on such purchases. No sales tax license shall be issued to subcontractors.

COUPONS

Retailers accept coupons from their customers for a reduction in the regular selling price of an article. These coupons are classified as either manufacturer's coupons or store coupons.

A manufacturer's coupon is issued by the manufacturer of an article and allows the customer a reduction in the sales price of the product upon presentation of the coupon to the retailer. Because the retailer is reimbursed by the manufacturer for the amount of the reduction, sales tax applies to the full selling price before the deduction for the manufacturer's coupon.

A store coupon is issued by the retailer for a reduction in the price of an article when the coupon is presented to the retailer by the customer. Because there is no reimbursement to the retailer for such reduction, the sales tax applies to the reduced selling price of the article.

DENTAL LABORATORIES AND DENTISTS

A purchase made by a dental laboratory, which becomes a constituent part of a prosthetic device to be resold to a dentist, is exempt from sales and use tax.

Purchases of supplies and materials that do not become constituent parts of a prosthetic device are subject to sales tax.

Sales of prosthetic devices to a dentist are exempt from sales or use tax.

Prosthetic devices are replacements for lost or missing natural parts or are the addition of devices through prosthetic dentistry to aid the dental bodily functions. Prosthetic dentistry consists of the use of inlays, crowns, replacement of lost teeth, bands, brackets, and other band attachments, wires, intraoral and/or extraoral traction devices, and retaining or holding appliances and other devices which aid in the dental bodily functions. Gold and silver used for fillings are also exempt.

General business equipment and supplies are taxable as are all hand instruments and other items used for patient care, and dental equipment and furnishings, and supplies used for patient diagnostic records.

Dental laboratories must obtain a sales tax license and must collect and remit sales tax on taxable sales.

The filing of monthly sales tax returns by dentists may present a hardship to them because of the nature of their operation and because equipment and supplies that are used in their businesses are purchased at irregular intervals throughout the year. Therefore, upon the approval of the Finance Director, dentists may file a sales tax return on other than a monthly basis, as determined by the Finance Director, covering all purchases of equipment and supplies upon which sales tax has not been paid.

EATING AND DRINKING ESTABLISHMENTS

The sale of meals and beverages is subject to sales tax, and any person making such sales must acquire a sales tax license and collect sales tax based upon the total consideration paid thereon.

Caterers and other persons similarly engaged are liable for sales tax on the total selling price for items sold and/or charges for service essential to providing meals and beverages.

Private enterprises, such as commercial and manufacturing companies, and public agencies, such as governmental organizations, regularly serving and charging their employees or the public for meals and beverages are liable for sales tax based upon the selling price of such meals and beverages.

Fund-raising meals priced in excess of the regular selling price are subject to sales tax on the regular selling price.

The vendor of meals and drinks must pay the tax on purchases of most products used or consumed in the operation of his business, including fixtures, linens, silverware and glassware. (Carpenter v. Carmen Co., 111 Colo. 566, 114 P.2d 770 (1943).

Plastic and paper products such as tablecloths, towelettes, napkins, soda straws, plates, knives, forks, spoons, and cups are specifically exempt from sales tax. (Sections 3.01.180(15) and (16)).

When a customer purchases one dinner and receives another dinner free as a result of presenting a coupon for the free dinner, sales tax applies only to the actual amount charged.

Nontaxable gratuities include cash tips (money left by the patrons for use of those providing the service), charge tips (amounts added to sales check by the patrons for use of those providing the service), banquet tips and tips separately stated and added to the sales check by the vendor at a flat rate, and the amount is distributed by the vendor to persons who actually render the service.

FABRICATING, PRODUCING AND PROCESSING

"Fabricating, producing, and processing" includes any operation which results in the creation or production of an article of tangible personal property, or which is a step in a process or series of operations resulting in the creation or production of such an article, excluding operations not so related for the creation or production of such an article.

An operation which changes the form or state of tangible personal property is one of fabrication. Persons regularly engaged in the fabrication or production of articles of sale at retail shall collect and remit the tax on the sales price. If the fabricator converts such property to his own use, then he shall remit the tax based on his acquisition cost.

The tax applies to the total charges for the fabrication or production of an article of tangible personal property made to order. For example, if a manufacturer orders a machine part from a machine shop, then the tax shall be paid on the total charge for the part, including labor, although charges for labor may be segregated from the cost of the materials. Similarly, the total charges for making drapes are subject to sales tax.

FEDERAL AREAS, SALES ON

"No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any state, or by any duly constituted taxing authority therein, having

jurisdiction to levy such a tax, on the grounds that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a federal area; and such a state or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any federal area within such state to the same extent an with the same effect as though such area was not a federal area."

"The provisions of sections 105 and 106 of this Act shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser." (See Title 4, U.S.C.A., Sections 105-110, 197 (Buck Act)).

FIDUCIARIES

Trustees, receivers, executors, or administrators who, by virtue of their appointment by a state or federal court, operate, manage, or control a business engaged in buying and selling tangible personal property, including the liquidation of assets of a bankrupt, insolvent, or deceased person, must acquire a sales tax license in the fiduciary's name and otherwise meet the collection and reporting requirements of Chapter 3.01.

FINANCIAL INSTITUTIONS

Banks, savings and loan associations, and similar financial organizations who offer gifts or premiums of tangible personal property as an inducement for opening an account, making a deposit or adding to an account are, for purposes of Chapter 3.01, making sales of tangible personal property (see (1) below) or are making taxable purchases (see (2) below).

These gifts and premiums are purchased by the financial institution and given to the customer or offered to the customer at a reduced price when a deposit is made to the customer's account. The purchase of these gifts and premiums or sales thereof are to be reported in the following manner:

(1) The sales of these premiums and gifts at their reduced price are treated as retail sales, and the financial institutions must collect the sales tax from the depositor.

(2) The difference between the bank's purchase price and the cash price paid by the depositor shall be taxable to the financial institutions. If an item is given to the

depositor, then the item's purchase price (cost) shall be reported on the appropriate line of the sales tax return.

FREIGHT, DELIVERY AND TRANSPORTATION

(1) Where tangible personal property is sold "F.O.B. shipping point", and the purchaser at that point assumes the risks of ownership, and transportation costs do not appear on the seller's invoice, then the cost of transportation paid by the purchaser to the carrier is not subject to the sales tax.

(2) Where tangible personal property is sold "F.O.B. shipping point", and the invoice allows a credit for transportation charges paid or to be paid by the purchaser, then the sales tax shall be computed on the total invoice charge.

(3) Where tangible personal property is sold on a delivered or "F.O.B. destination" basis, the sales tax shall be computed on the total charges, even though the seller bills the purchaser separately for the freight charges.

(4) Where the seller delivers the shipment and makes a charge which appears separately on the invoice, and in fact the seller assumes responsibility for loss and damage in transit, the sales tax shall be computed on the total invoice charge.

(5) Where the seller has prepaid the transportation charges which appear on the seller's invoice as an additional charge or a separate invoice charge is made, the sales tax shall be computed on the total charges unless a satisfactory showing is made to the Finance Director that the seller was acting as a bona fide agent of the purchaser to effect transportation by the carrier of the purchased goods.

GAS AND ELECTRIC SERVICES

Gas and electric services, whether furnished by municipal, public, or private corporations or enterprises, are subject to sales tax when furnished for domestic and commercial consumption, but are not taxable when sold for resale or for any of the uses set out in Section 3.01.180(21) or if subject to any of the general exemptions of Chapter 3.01.

The sales tax applies to all amounts paid for taxable gas or electrical services, irrespective of whether there is an actual consumption. The sales tax is imposed on all payments, whether in the form of a minimum charge, a flat rate, or otherwise.

Sales of electricity, coal, coke, gas, fuel oil, and nuclear fuel are exempt when sold for the following uses: construction, mining, refining, irrigation, telecommunication services and street and railroad transportation services.

The use of electricity, coal, gas, fuel oil, coke, and nuclear fuel in a continuing business activity of manufacturing or producing tangible personal property or services is subject to sales tax. Persons performing services, such as restaurants, laundries, and dry cleaners, as well as stores, office buildings and other commercial users, are not industrial users and are required to pay the sales tax.

GIFT CERTIFICATES

Sales of gift certificates and similar documents, as well as their redemption for cash, are not subject to tax. If the gift certificates or similar documents are redeemed for merchandise and not cash, then sales tax is due on the total selling price of the merchandise.

GIFTS, PREMUMS, AND PRIZES

Purchases of tangible personal property for use as gifts, premiums or prizes for which no valuable consideration is received from the recipient are subject to sales tax on the total purchase price. The purchaser is deemed to be the user consumer of such property. If the property is purchased from a licensed City vendor, then sales tax should be paid to the vendor upon such purchase.

Any person purchasing tangible personal property to give away in any manner is a user or consumer and is liable for the tax thereon. Such property includes advertising gifts and articles given as prizes, premiums, or for goodwill.

HOTELS AND MOTELS

Such supplies as toilet tissue, soap, shoeshine cloths, clothes bags, matches, facial tissue, coffee and other items available for guests are not subject to sales or use tax at the time of purchase by the hotel or motel.

Linens, furniture, pool equipment and supplies, an similar items are subject to sales tax at the time of purchase by the hotel or motel.

If a hotel or motel operates a restaurant or lounge, see the rules set forth herein under "Eating and Drinking Establishments."

ICE

Sales of ice to other sellers of ice or to sellers of soft drinks for use as a component part of a drink are for resale and are not subject to the sales tax.

Persons selling ice to manufacturers, carriers, or any other consumer for the purpose of cooling or keeping perishable items or property or for other uses are making taxable sales.

If ice is used for the sole purpose of becoming an ingredient or component of the finished product, as where it is used solely to supply all or a part of the water content of the sausage and luncheon meats, then the sale of the ice is a sale for resale. If not purchased for that sole purpose, and the purchase is not otherwise exempt, as for resale, then the purchase is subject to sales tax.

INITIAL USE OF PROPERTY

Any item purchased for use or consumption by the purchaser is subject to sales or use tax at the time of purchase, even though the item shall be resold later in either its original or altered form. A tax-free purchase is taxable in full at the first time it is used by the purchaser for a nonexempt purpose.

(Example: A junkman may not buy a new car tax-free under the theory that the car is going to be junked someday and resold through his business for scrap.)

INSURANCE COMPANIES

Insurance companies are not exempt from sales tax on purchases of tangible personal property for their consumption.

Purchases of articles by an insurance company to replace insured damaged property are subject to tax. Articles purchased by the insured with the proceeds of a damage claim settlement received from an insurance company are subject to tax.

JANITORIAL SERVICES

Items such as hand soaps, paper towels, toilet tissue, and disinfectants which are furnished under service contract and which are billed to the customer as a separate and distinct item from the service that is performed are considered retail sales of tangible personal property. Sales tax shall be collected from the customer and remitted by the janitorial service.

If such consumable items are not separately stated but are included in the janitorial service contract, then the janitorial service shall be deemed to be the user or consumer of the products and shall pay sales tax at the time of purchase.

No sales or use tax is applicable to the charge for service rendered.

LEASED DEPARTMENTS

Leased departments in department stores, for the purpose of licensing under the State chain store license law, are separate and distinct stores, just the same as if the various businesses conducted in such departments were conducted in separate and distinct buildings. The fact that the various departments are in one building or on one floor of a building does not alter the fact that ownership and control of merchandise is different in each leased department. Where a store has leased departments to persons for retail sales of tangible personal property, each leased department shall make separate monthly sales tax returns. The lessee shall keep his own books and make his own sales tax collections on retail sales. If the lessor store keeps the books for the lessee departments and makes collections for their sales, then the lessor store shall make separate sales tax returns for such departments and shall pay the taxes due thereon, but the lessee is not relieved of his ultimate liability under Chapter 3.01 if the lessor store fails to make the proper sales tax returns or to remit the taxes to the Finance Director.

LINEN SERVICES

Sales or use tax is applicable to the entire amount paid or charged for linen services by a linen service company, including amounts paid or charged for services rendered and tangible personal property furnished in connection therewith.

MAINTENANCE AND DECORATING SERVICES

Persons engaged in the business of rendering renovation services, such as painters and paper hangers, floor waxing services and others similarly engaged in repairing and servicing tangible personal property under a maintenance or service contract are rendering a service and are

considered the users of the articles purchased and are subject to tax on such articles at the time that they are purchased.

No sales or use tax is applicable to the charges made for these services.

MANUFACTURERS AND PREFABRICATORS ACTING AS CONTRACTORS

A manufacturer or prefabricator may contract to build into real property that which he manufactures or prefabricates. If the contract provides for the transfer of title to the materials prior to the time that the materials are built into the real property, and if the material price is separately stated from the installation price, then the manufacturer shall be considered to have sold the material. Therefore, sales tax must be charged only on the selling price of the material. If not properly segregated, then the amount included for installation is also part of the taxable price.

If a manufacturer or prefabricator builds materials into real property, and title to the materials does not pass until incorporated in the real property, then the manufacturer is a contractor contemplated in the Special Regulation for "Contractors" and must follow such Special Regulation.

MODULAR OR SECTIONAL HOMES

A "modular or sectional home" is a factory-built structure that: (i) is built to a customer's specifications or inventory standards; (ii) is not titled; (iii) may be approved for HUD/FHA long-term financing; (iv) complies with conventional residential building codes; and (v) is separate from its delivery chassis.

A manufacturer or dealer who enters into a single contract with the customer is a construction contractor if the contract requires that manufacturer or dealer to sell and install the structure by incorporating it into the realty of the customer before title to the structure is passed. The manufacturer or dealer is considered to be the final consumer of the materials and supplies incorporated into the real estate under the contract. (See the Special Regulation for "Contractors" regarding the payment of sales tax.) A manufacturer or dealer who merely sells a modular or sectional home to a customer and does not at the time agree to incorporate it into the realty of the customer is considered a retailer and is required to charge sales tax on fifty-two percent (52%) of the sales price of the structure.

A modular and sectional home manufacturer or dealer may be both a contractor and a retailer. (See the Special Regulation for "Contractors" as it relates to retail-contractors.)

MORTICIANS

Morticians are considered to be rendering services and making sales of tangible personal property and shall collect sales tax in accordance with the following rules:

(1) If a funeral service is contracted for in such a manner that the charges for such articles as caskets, urns, vaults, shipping boxes, clothing, and similar articles, are separately stated from the charges for services as music, police escort, clergy honorarium, and similar services, then sales tax shall be imposed only upon the selling price of such articles.

The fact that the remains are consigned to a common carrier for delivery elsewhere, whether inside or outside the City, does not change the fact that such articles were first used in the City and, therefore, are subject to sales tax. These rules apply to all sales of funeral services and related tangible personal property within the City.

Articles that are purchased and that are not to be resold in the normal course of business are subject to sales tax at the time of purchase. Tax-free purchases for resale, when removed from inventory and used in the regular course of a mortician's business, must be included in the sales tax return for the month in which such articles are removed from inventory.

NEWSPAPERS, MAGAZINES, AND OTHER PUBLICATIONS

The sale of newspapers, as defined in Section 3.01.020(25) of Chapter 3.01 of the City Code, is exempt from sales and use tax. Such definition would include the following:

"Every newspaper printed and published daily, or daily except Sundays and legal holidays, or on each of any five days in every week excepting legal holidays and including or excluding Sundays shall be considered and held to be a daily newspaper; every newspaper printed and published at regular intervals three times each week shall be considered and held to be a triweekly newspaper; every newspaper printed and published at regular intervals twice each week shall be considered and held to be a semiweekly newspaper; and every newspaper printed and published at regular intervals once each week shall be considered and held to be a weekly newspaper. No

publication, no matter how frequently published, shall be considered a legal publication unless it has been admitted to the United States mails as second-class matter."

This exemption on sale of newspapers may not be extended to include magazines, trade publications or journals, credit bulletins, advertising pamphlets, circulars, directories, maps, racing programs, reprints, newspaper updating or revision service, book or pocket editions of books or other newspapers not otherwise qualifying under the immediately preceding paragraph. A publisher who only makes sales of newspapers is not required to obtain a sales tax license. The publisher shall pay sales tax upon all purchases of tangible personal property except newsprint and printer's ink used in the production of the newspaper products. If the newspaper publisher makes retail sales of other articles delivered in the City, then he shall obtain a sales tax license and collect sales tax and may purchase such articles tax-free for resale.

Magazines, periodicals, trade journals, an similar items are tangible personal property whose retail sale is subject to sales tax.

If publications are printed and sold within the City, then the subscription price is subject to sales tax. If the publication is printed in the City and delivery is made outside the City, then the sale is not subject to sales tax.

Trade journals, advertising pamphlets, circulars, etc. which are to be distributed free of charge and are distributed by means of house-to-house delivery are not exempt from sales tax. Sales tax must be paid to the printer by the advertiser at the time that such items are prepared by the printer. If such items are purchased outside the City, and no sales tax has been paid thereon, then the advertiser must pay the City's use tax on such items.

Organizations which produce and distribute free trade publications, and similar items, are deemed to be purchasers for their consumption, and such items are subject to sales tax based on the purchase price of the tangible personal property consumed.

OPTICAL SALES

Eyeglasses, lenses, frames, contact lenses, and similar articles, together with cases or similar containers used to transfer the property to the customer, when dispensed under a prescription or

other written order of a legally qualified member of the healing arts are considered to be prosthetic devices and are exempt from sales and use tax.

Sunglasses, reading glasses, binoculars, telescopes, and similar articles not dispensed under a qualified prescription are subject to sales tax.

PHOTOGRAPHERS AND PHOTOFINISHERS

Photographers and photofinishers are primarily engaged in the business of selling tangible personal property to their customers, and such sales are subject to sales tax. Purchases of materials which become ingredients or component parts of the finished picture, such as mounts, frames, and sensitized paper, are not subject to sales tax because such items are purchased by the photographer or photofinisher for resale. Conversely, purchases of materials that do not become a part of the product sold to the customer are taxable to the photographer or photofinisher. Mounted negatives sold by photographers and photofinishers are subject to sales tax on the total price charged on negative and mount. Only the sale of developed negatives, such as movie film, would be exempt from sales tax.

The charge made by photographers and photofinishers for only the development of film is a service charge and is not subject to sales tax. If individuals deliver their own pictures to photographers for tinting or coloring, then the transaction is a service and is not subject to sales tax. If prints made from developed negatives are sold to a customer, then tangible personal property has been sold, and the selling price is subject to sales tax.

A photographer may be performing a service subject to the Special Regulations relating to "Service Enterprises." If his service is specifically bargained for without regard to the tangible personal property involved, and if the value of the service is greater than the property transferred, then no sales or use tax is to be charged to the purchaser, but the photographer must pay sales tax on purchases of materials used to perform his service.

PRINTERS AND PRINTING

Sales of catalogs, books, letterheads, bills, envelopes, folders, advertising circulars, and other printed matter are taxable retail sales if the purchaser does not resell the articles but consumes them as by distributing them free of charge. Except as herein stated, a printer may not

deduct from the selling price any charge for labor or service in performing the printing, even though the labor or service charges may be billed separately from the charge for stock. The labor or service is expended in the production of the article sold. Consequently, it is manufacturing labor incorporated in the product.

If separately stated on the invoice, then the services of typesetting, color separation, and design, art and camera mechanicals performed by a printer or his subcontractor for a customer or another printer is not subject to sales or use tax.

On commercial printing of postal cards or stamped envelopes purchased from the United States Postal Service, the amount subject to tax does not include the amount of postage involved.

Printed matter which is partially printed, invoiced to the customer, held in stock for further imprinting, and finally invoiced for subsequent imprinting is subject to sales tax on the full price charged by the printer for the item. Sales tax must be collected on the selling price of each part of the job. The subsequent imprinting before delivery is deemed to be completion of the initial sale and not a separate transaction.

Exempt purchases of tangible personal property for resale include:

(1) Paper: Newsprint, stock on which the finished product is printed and delivered to the customer, and wrapping materials for finished products sold to customers.

(2) Ink: Printer's ink, ink additives, and overprint varnishes.

(3) Chemicals: Anti-offset sprays, fountain etch solutions, gum solutions, and all component chemicals when used with the above materials.

(4) Materials: Padding compound, stitching wire and staples, and bookbinder's tape.

(5) Pre-press preparation materials: Light sensitive film, plates and proofing materials. Such exemption shall be allowed upon compliance with the procedures stated below.

Printers who are just performing a service shall be subject to the Special Regulations relating to "Service Enterprises." Printer's ink and newsprint are exempt under Section 3.01.180(30). Pre-press preparation materials (which shall be defined as light sensitive films, plates, and proofing materials) shall qualify as exempt purchases of tangible personal property to the extent that such items are utilized for the production of a specific product for a

specific customer, and title passes to the customer as part of the total sale, and adequate cost records for the particular job showing amount of prepress preparation material are retained by the printer.

A printer may at times retain a customer's property in his place of business. When tangible personal property is retained in the printer's place of business, the department may examine the various records applicable to this property, such as who is liable for the payment of insurance and personal property tax on the property, who is allowed to deduct the depreciation expense on the property, and who benefits from salvage of the item in making a determination of the ownership of the property.

PRIVATE CLUBS

Private clubs such as country clubs, athletic clubs, fraternal organizations, or organizations of persons formerly in the armed services of the United States are subject to tax when such clubs sell tangible personal property at retail or do anything else subject to tax as provided in Chapter 3.01. Such transactions are taxable even though transactions are with members of such clubs.

READY-MIX CONCRETE

Ready-mix concrete is subject to sales tax on the delivered price, which includes minimum load and transportation charges. Standby charges charged after arrival at the destination are not subject to sales tax if segregated on the customer's invoice.

REPOSSESSED PROPERTY

If the repossessor of tangible personal property sold the property to the person from whom it was taken and remitted the tax on the total selling price, then the retailer-repossessor may deduct the uncollected selling price from the gross sales on the sales tax return for the period during which the repossession occurred. Repossessed property must be held exclusively for resale by a person holding a valid license. The subsequent retail sale of the repossessed property is subject to sales tax.

No deduction or other credit may be taken from gross sales on account of the repossession where:

(1) The repossessed property is a motor vehicle;

(2) The retailer-repossessor reports sales tax on the cash basis; or

(3) The retailer-repossessor reports sales tax on the accrual basis but elects under Section 3.01.020(22) to report on the cash basis the collections of such credit sales as that subject to repossession.

A person is not liable for sales or use tax on the transaction of repossessing tangible personal property for which he retained a security interest.

SAND AND GRAVEL

Tax must be imposed on the delivered price of sand and gravel, including minimum load and transportation charges in accordance with the provisions of Regulation 3.01.020(27). Tax on charges for hauling materials to the customer's destination may be avoided only if all of the following conditions are met:

(a) The retailer has fixed and posted prices both for the material and for hauling. These prices must be completely independent of each other. In other words, the price of the material must be the same to the customer whether the retailer provides the hauling or the customer arranges for his own transportation. If the retailer provides the hauling, the charges must be clearly segregated on the customer's invoice.

(b) The customer must have the option to determine the means of transportation to his destination. There must be practical as well as economic alternatives available for the customer in terms of providers of transportation.

(c) Regardless of who provides the transportation, the retailer and the customer must agree and acknowledge in writing that the sale of the materials takes place, and title to the goods transfers at the retailer's place of business. The customer must acknowledge that he is the owner of the material being transported.

Stand-by charges made after arrival at the destination are not subject to sales tax if segregated on the customer's invoice.

Sand and gravel removed from the ground become tangible personal property and are subject to the sales tax that applies to retail sales of tangible personal property. Sales of sand and gravel are subject to sales tax unless sold to a licensed vendor for resale.

The retailer of sand and gravel who removes sand and gravel stocks to fulfill his own construction obligations is subject to sales tax on the acquisition cost of the products consumed at the time of conversion to his own consumption.

SERVICE ENTERPRISES

Persons engaged in the business of rendering service are consumers--not retailers--of the tangible personal property which they use incidentally in rendering the service. Therefore, sales tax applies to the sales of the property to them. If, in addition to rendering service, they regularly sell tangible personal property to consumers, they are retailers with respect to such sales, and they must obtain a license, file returns, and remit tax on such sales.

Example: A film company contracts to make a ski film for a firm owning a resort. The cost to the resort for the original film is $25,000. Additional reels may be purchased for $250 each. The $25,000 charge for the first reel of film is not subject to tax as the film company is charging for their services in producing tangible personal property, the transfer of which is incidental to the performance of the service. The sale of additional reels at $250 would, however, be subject to sales tax. The basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is one of the true objects of the contract. In other words, if the real object sought by the buyer is the service per se, then the transaction is not subject to sales tax even though some tangible personal property is transferred. For example, a firm which performs business advisory, recordkeeping, payroll and tax services for small businesses and furnishes forms, binders, and other property to its clients, as an incident to the rendition of its services, is the consumer and not the retailer of such tangible personal property. The true object of the contract between the firm and its client is the performance of a service an not the furnishing of tangible personal property. Similarly, an idea may be expressed in the form of tangible personal property and that property may be transferred for a consideration from one person to another. The person transferring the property, however, may still be regarded as the consumer of the property. Thus, the transfer to a publisher of an original manuscript by the author thereof for the purpose of publication is not

subject to taxation. The author is the consumer of the paper on which he has recorded the text of his creation. The tax would apply, however, to the sale of artistic expressions in the form of paintings and sculptures even though the work of art may express an original idea since the purchaser desires the tangible object itself since the true object of the contract is the work of art in its physical form.

When a transaction is regarded as a sale of tangible personal property, tax applies to the gross receipts from the furnishing thereof, without any deduction on account of the work, labor, skill, thought, time spent, or other expense of producing the property.

A research and development contract is distinguished from a contract for the manufacture of a customer-made item. In the latter, the research and design, although necessary to the manufacture of the item, is incidental to the primary purpose of the contract. Generally, custom-made items are for consumption or resale. The buyer wants the item for its intrinsic value as an item and is not interested in the data developed in the course of its manufacture. In such contracts, the entire contract price is subject to tax if the tax applies. A person contracting for research and development is primarily contracting for information which is intangible. Generally, the person contracting for information is going to use it to manufacture and sell some item of tangible personal property.

The development of the information in a research and development contract is not a sale of tangible personal property. It is a service. Since the information, such as plans, design, and parts lists, cannot ordinarily be conveyed orally, the information is conveyed on paper. The transfer of the information on paper is not a sale of tangible personal property, and the transfer is incidental to the service of developing information. In certain instances, the information cannot be conveyed without the transfer of a prototype. In such cases, the transfer of the prototype is incidental to the transfer of the information and is not a sale of the prototype.

Contracts for research work which require only the development of ideas, plans, and engineering data do not constitute sales of tangible personal property although models and drawings are furnished to convey such ideas.

Thereafter, if an entirely separate contract is entered into for the production of the finished product, then tax applies to the gross receipts received for the sale of the drawings, visualizations, and similar items performed under a separate agreement. For example, the original construction plans contemplated that a fifty dollar ($50) charge for original plans made according to the desires

of each person interested in converting existing buses or van trucks into "house cars" would not be subject to tax. The total charge would be subject to tax if the plan sold was merely a duplicate of a plan drawn for a preceding customer. The planner is the consumer of the paper and other material used to present the plan.

TOOLS, JIGS, DIES, PATTERNS, MOLDS, AND SIMILAR ITEMS

A person who makes and sells tools, jigs, dies, patterns, molds and similar items to a customer for use in his manufacturing or processing is making retail sales of the articles and is required to collect and remit the sales tax. After using such items, the purchaser may resell them to the customer for whom he is manufacturing articles. Such resales, however, do not exempt the sale first described above because that customer purchased the article primarily for use and not for resale. If an article is sold to a customer after use by the seller, then the sale is subject to sales tax.

UPHOLSTERERS

An upholsterer who is engaged in the repair, recovering, upholstering or similar work on a customer's property is engaged in the sale of tangible personal property, and therefore, shall charge his customers sales tax on the tangible personal property used in this service. The upholsterer must separately state the tangible personal property and the service or labor charges on his billing to his customer.

A sale by the upholsterer of upholstery material, manufactured articles, or other tangible personal property to a retail customer, without service rendered in connection with the sale, is taxable on the full selling price of the property.

An upholsterer who purchases property which he upholsters and then offers such property for sale is required to charge sales tax on the full selling price of such property.

Upholstery material an other items of tangible personal property that become a part of the upholstered item may be purchased tax-free, but the upholsterer must pay sales tax on those items used or consumed that do not become a part of the completed upholstered property.

Chapter 5.32 - Utilities B and O Tax

5.32.010 Findings

The City Council of the City of Lakewood hereby finds:

A. Providers of basic local exchange service are currently subject to a business and occupation tax upon the business and occupation of providing basic local exchange service within the City and to the residents of the City. The City enacted such a tax in 1969 and has continuously maintained such tax.

B. The City recognizes that although the business of providing basic local exchange service was once a monopoly service under state law, it is now a competitive service under both state and federal law.

C. The City recognizes that multiple companies now provide basic local exchange service within Lakewood and more are likely to do so in the future.

D. There may be significant differences in the size of the basic local exchange service providers operating within the City, and the City's business and occupation tax should reflect such differences.

E. A business and occupation tax on providers of basic local exchange service should be uniform and nondiscriminatory and should not create barriers to entry into the business of providing basic local exchange service within Lakewood.

F. The business and occupation tax set forth in this chapter recognizes the difference in size of the providers of basic local exchange service that may operate within Lakewood and is uniform, nondiscriminatory and does not create barriers to entry.

G. The business and occupation tax set forth in this chapter is not a new tax, the extension of an existing tax or an increase in a tax, but is the reduction of an existing tax to new entrants in order to eliminate a potential barrier to the entry of new providers into the business of providing basic local exchange service within Lakewood and, further, intends to use definitions for the service subject to the business and occupation tax consistent with state and federal law.

H. The tax provided in this chapter neither increases nor reduces the amount of the tax levied against the incumbent provider of basic local exchange service.

I. This tax is nondiscriminatory to all providers of basic local exchange service because it is based upon the relative number of lines each company provides within Lakewood.
(Ord. O-2015-3 § 13, 2015;Ord. O-96-43 § 1 (part), 1996: Ord. O-90-55 § 1 (part), 1990: Ord. O-89-88 § 1 (part), 1989: Ord. O-88-51 § 1 (part), 1988: Ord. O-86-120 § 1 (part), 1986: Ord. O-85-113 § 1 (part), 1985: Ord. O-84-127 § 1 (part), 1984: Ord. O-83-173 § 1 (part), 1983: Ord. O-82-158 § 1 (part), 1982: Ord. O-81-143 § 1 (part), 1981: Ord. O-80-111 § 1 (part), 1980: Ord. O-79-124 § 1 (part), 1979: Ord. O-78-121 § 1 (part), 1978: Ord. O-78-9 § 1 (part), 1978: Ord. O-77-43 § 1, 1977: Ord. O-77-2 § 1 (part), 1977: Ord. O-76-51 § 1 (part), 1976: Ord. 5 § 1, 1969 Series).

5.32.015 Levy of tax

There is hereby levied a tax on and against each person engaged in the business or occupation of providing basic local exchange service within the City of Lakewood. (Ord. O-2015-3 § 13, 2015; Ord O-96-43 § 1 (part), 1996).

5.32.020 Definitions

The following words and phrases as used in this section shall have the following meanings for the purpose of calculating the tax:
"Basic local exchange service" is the service that provides: (a) A local dial tone; (b) local usage necessary to place or receive a call within an exchange area; and (c) access to emergency, operator and interexchange telecommunications services. Basic local exchange service is also intended to be analogous to "telephone exchange service" as that term is defined in federal law, namely, service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service. The provision of cellular, mobile radio or any wireless voice service to any business, person or entity shall be deemed basic local exchange service for the purpose of determining the applicability of this business and occupation tax.

"Line" means a separate telephone number, or its functional equivalent such as a unique locator, having a service address located within the City, except that to the extent basic exchange service is provided through trunks, a line shall mean a network access register or its functional equivalent. (Ord. O-2015-3 § 13, 2015; Ord. O-96-43 § 1 (part), 1996: Ord. O-90-55 § 1 (part), 1990: Ord. O-89-88 § 1 (part), 1989: Ord. O-88-51 § 1 (part), 1988: Ord. O-86-120 § 1 (part), 1986: Ord. O-85-113 § 1 (part), 1985: Ord. O-84-127 § 1 (part), 1984: Ord. O-83-173 § 1 (part), 1983: Ord. O-82-158 § 1 (part), 1982: Ord. O-81-143 § 1 (part), 1981: Ord. O-80-111 § 1 (part), 1980: Ord. O-79-124 § 1 (part), 1979: Ord. O-78-121 § 1 (part), 1978: Ord. O-78-9 § 1 (part), 1978: Ord. O-77-2 § 1 (part), 1977: Ord. O-76-51 § 1 (part), 1976: Ord. 5 § 2, 1969 Series).

5.32.025 Amount of tax

The amount of the tax levied shall be as follows:

A. Effective January 1, 2016, the tax rate shall be the 2014 monthly line charge adjusted by the percentage change in the U.S. Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index. This adjustment shall be based upon the August 2015 report of such index.

B. Each year thereafter the prior year's monthly rate shall be adjusted by the percentage change in the U.S. Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index based upon the August report of the prior year. The new rate shall be effective on the following January 1.

C. The amount of tax levied against each basic local exchange provider shall be the monthly per line charge multiplied by the provider's number of lines having a service address located within the City for the reporting period.
(Ord. O-2015-3 § 13, 2015; Ord. O-96-43 § 1 (part), 1996).

5.32.030 Payment of tax

Basic local exchange providers shall be liable and responsible for the payment of this business and occupation tax and shall, before the twentieth (20th) day of each month, make a return and remit payment to the Finance Director for the preceding calendar month. (Ord. O-2015-3 § 13, 2015; Ord. O-96-43 § 1 (part), 1996: Ord. O-93-64 § 32, 1993: Ord. O-76-51 § 1 (part), 1976: Ord. 5 § 3, 1969 Series).

5.32.035 Inspection of records

The City of Lakewood and its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of basic local exchange service companies that are subject to the provisions of this chapter and to make copies of the entries or contents thereof. (Ord. O-2015-3 § 13, 2015; Ord O?96-43 § 1 (part), 1996).

5.32.040 Failure to pay; Interest on late payment; Penalty

A. In any case in which a basic local exchange provider fails to remit the tax to the City within the time required by this chapter, there shall be added as a penalty ten percent (10%) of the total unremitted amount, but not less than fifteen dollars ($15.00), and interest in such cases shall be collected at the rate established by the State Commissioner of Banking pursuant to C.R.S. § 39-21-110.5 plus one-half percent (0.5%) per month, or fraction thereof, not exceeding eighteen percent (18%) in the aggregate, on the unremitted amount from the time the return was due to the date the tax is remitted, which interest and addition shall become due and payable within twenty (20) days after written notice and demand by the City Manager, and such interest shall be assessed, collected and paid in the same manner as the tax itself.

B. Payment of part but less than all of the unremitted amount, including interest, or interest and penalty, shall first be applied to the penalty, if any, second to accrued interest, and last to the tax itself.

C. If any basic local exchange service provider subject to the provisions of this chapter fails to remit the taxes as herein provided, the full amount thereof, plus interest and penalties as set forth in this section, shall be due and collected from such provider and is declared to be a debt due and owing to the City by such provider. The City Attorney, upon request of the City Manager, shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action to collect such debt in the name of the City. (Ord. O-2015-3 § 13, 2015)

5.32.050 Hearings and Appeals

A. Hearings by Finance Director.

1. If any person contests any decision, deficiency notice or denial of refund received from the Finance Director, such person may apply to the Finance Director by petition in writing within thirty (30) days after such decision, deficiency notice or denial of refund is mailed to the person for a hearing, in which petition such person shall set forth the reasons why, and the amount by which, such tax should be reduced or the amount of the refund requested should be granted or the decision overturned. The Finance Director shall notify the petitioner in writing of the time and place set for such hearing. After the hearing, the hearing officer shall make such order in the matter as is just and lawful and shall furnish a copy of such order to the petitioner.

2. Every decision of the hearing officer shall be in writing, and notice thereof shall be mailed to the petitioner within thirty (30) days after the hearing, and all such decisions shall become final and all amounts due shall be paid upon the expiration of thirty (30) days after notice of the decision shall have been mailed to the petitioner.

B. Review by District Court. If the petitioner is aggrieved by the final decision of the hearing officer, the petitioner may proceed to have such final decision reviewed by the District Court in accordance with C.R.C.P 106(a)(4).
(Ord. O-2015-3 § 13, 2015; Ord. O-2011-1 § 9, 2011; Ord. O-96-43 § 1 (part), 1996: Ord. O-76-51 § 1 (part), 1976: Ord. 5 § 4, 1969 Series).

Chapter 5.44 - Cable Systems

5.44.010 Short title

The ordinance codified in this chapter shall be known as the Lakewood ordinance for regulation of cable systems. (Ord. O-2011-23 § 1, 2011; Ord. O-72-97 § 1, 1972)

5.44.020 Definitions

As used in this chapter, the following words and terms shall be defined as follows:

“Affiliated Entity” or “Affiliate” shall mean any person or entity that is owned or controlled by, or under common ownership or control with, a Cable Operator, and provides any Cable Service or Other Service.

“Applicant” means an applicant for a cable franchise pursuant to the provisions of the Competitive Franchise Application Rule (“CFAR”) set forth in Part 76 of Title 47 of the Code of Federal Regulations, §76.41, and includes the Parent Corporation, its subsidiaries and Principals.

“Cable Operator” or “Operator” shall mean any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

“Cable Service” shall mean (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by a television broadcast station; and "other programming service" is information that a Cable Operator makes available to all subscribers generally.

"Cable system" or "system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves subscribers without using any Public Rights-of-Way;
A reference to a Cable System includes pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics, and other equipment necessary to operate the Cable System.

"City" means the City of Lakewood, Colorado, its departments, divisions, and agencies, and all the territory within its existing and future territorial corporate limits.

"Franchise" refers to the authorization granted by the City to an Operator of a Cable System under this Chapter giving the Operator the non-exclusive right to occupy the space, or use facilities upon, across, beneath, or over any Public Rights-of-Way in the City, or to provide a specified Cable Service within a Franchise Area. Any Franchise shall be issued in the form of an ordinance, and must be accepted by the Franchisee to become effective in the time and manner specified in the City Charter,

Lakewood Municipal Code, or the Franchise ordinance. Such Franchise shall not include or be a substitute for:

1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City;

2. Any permit, agreement, or authorization required in connection with operations on, or in a specific part of, the public streets or property, including, by way of example and not limitation, street cut permits;

3. Any permits or agreements for occupying any property of the City other than Public Rights-of-Way or property of private entities to which access is not specifically granted by the Franchise including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the City or a private entity; or

4. The right to place devices in the Public Rights-of-Way, such as pay telephones, for end-user use in terminating or originating transmissions.

"Franchise agreement" means the separate agreement by which the franchise is granted to the franchisee, as required by this chapter.

“Franchise Area” means the area of the City that a Franchisee is authorized to serve by the terms of its Franchise Agreement or by operation of law.

"Franchisee" means all Persons , holding a Franchise granted by City ordinance.

“Operator,” when used with reference to a Cable System, refers to a Person who has ownership of any part of such Cable System or has control over the use of any part of such Cable System through a lease, swap, rental or other similar bargained for arrangement.

“Parent Corporation” includes any entity with ownership or control of the Applicant.

“Person” means and includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City, unless the City department provides Telecommunications Service as defined herein,

"Public Rights-of-Way" means any public street and easement which, under the City Charter, the Lakewood Municipal Code, City ordinances, and applicable laws, the City has authority to grant Franchises, permits, or licenses for use thereof or has regulatory authority thereover, and as may be more specifically defined in the Franchise, license, or permit granting any right to or use thereof, excluding railroad rights-of-way. Public Rights-of-Way for the purpose of this Chapter does not include buildings, parks, poles, similar facilities, or property owned by or leased to the City, including, by way of example and not limitation, structures in the Public Rights-of-Way such as utility poles and light poles. For the purposes of this chapter, it shall also include any utility easement dedicated to the City.

"Subscriber" means a member of the general public who legally receives any transmission or service distributed by a cable system and does not further distribute it. (Ord. O-2011-23 § 1, 2011; Ord. O-83-94 § 1, 1983; Ord. O-78-61 § 1, 1978: Ord. O-76-56 § 1, 1976: Ord. O-72-97 § 2, 1972).

5.44.030 Purpose and characteristics

In order to enable the City to treat Persons providing similar Cable Services similarly, as may be appropriate to comply with applicable law and considering differences in circumstances, and to comply with requirements of federal law, the City requires individual Franchises for Persons who provide Cable Services in the City. No Franchise shall be exclusive. (Ord. O-2011-23 § 1, 2011)

5.44.040 Franchise-Required

A. The City Council from the City may grant to any Person, other than as stated herein, a nonexclusive Franchise to install, construct, operate and maintain a Cable System within the City limits. The award of such Franchises shall be made pursuant to the procedures, terms and conditions set forth in this chapter, and only to such Persons who offer to provide a Cable System under and pursuant to the terms and conditions of this chapter.

B. It shall be unlawful for any person to install, construct, operate or maintain a Cable System on streets within all or any part of the City without first obtaining a Franchise under and pursuant to the terms and provisions of this chapter. (Ord. O-2011-23 § 1, 2011)

5.44.050 Franchise Breach

A breach by a Franchisee of any material provision of a Franchise Agreement, in addition to constituting a breach of contract, constitutes a violation of this chapter. The cost of any litigation incurred by the City to enforce this chapter or a Franchise granted pursuant hereto, or a Franchise Agreement, or in relation thereto, or in relation to the cancellation or termination of a Franchise, shall be reimbursed to the City by the Franchisee. Such costs shall include filing fees, costs of depositions, discovery, and expert witnesses, all other expenses of suit, and a reasonable attorney's fee. (Ord. O-2011-23 § 1, 2011; Ord. O-72-97 § 3(2), 1972).

5.44.060 Nature of grant

A Franchise shall not convey title, equitable or legal, in the Public Rights-of-Way. The right granted is only the right to occupy those portions of the Public Rights-of-Way to which the City has the right to grant access, for the purposes and for the period stated in the Franchise, and, subject to the limitations in this section and elsewhere in this subtitle, the right may not be subdivided or subleased. Every Franchise shall be interpreted in a manner that conforms to the requirements of Article VIII of the Lakewood City Charter. (Ord. O-2011-23 § 1, 2011)

5.44.070 Rights limited

A Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide a Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof. (Ord. O-2011-23 § 1, 2011)

5.44.080 Minimum Contents of Every Franchise

In addition to satisfying the other applicable requirements of this Chapter, every Franchise for a Cable System shall contain the following provisions:

A. The Franchise shall provide that neither the granting of any Franchise, nor any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City as may exist at the time the Franchise is

issued or thereafter be obtained.

B. The Franchise shall only authorize occupancy of the Public Rights-of-Way to provide the Services and for the purposes described in the Franchise.

C. A Franchise shall be a privilege that is held in the public trust and personal to the original Franchisee. The Franchise shall ensure that no Transfer of the Franchise may occur, directly or indirectly, without the prior consent of the City; except as contemplated by Section 5.44.150, or as otherwise expressly provided in this Chapter.

D. A Franchise shall ensure that any Person placing a Cable System in the Public Rights-of-Way will not unlawfully discriminate in hiring, in contracting, or in the provision of Services.

E. The Franchise shall be nonexclusive and for a specified term set forth in the Franchise. No Franchise granted hereunder, nor any renewal thereof, shall be for a term of more than fifteen years, unless the Council determines that a longer period would be in the City's interest. A renewal may be granted pursuant to Section 5.44.130 hereof.

F. A Franchisee shall at all times be subject to and shall comply with all applicable federal, state and local laws and regulations. Further, a Franchisee shall at all times be subject to all lawful exercise of the City's police power including, but not limited to, all rights the City may have regarding zoning, supervision of construction, control of rights-of-way, customer service and consumer protection.

G. A Franchise shall require continuous and uninterrupted service to the public in accordance with the terms of the Franchise throughout the entire period thereof.

H. At the expiration of the term for which a Franchise is granted or upon the termination and cancellation as provided therein, the franchisee shall be required to remove at its own expense any and all portions of the Cable System from the public rights-of-way within the City.

I. A Franchisee shall indemnify and hold harmless the City at all times during the term of the Franchise and will be responsible for all damages and penalties which the City may be legally required to pay as a result of granting the Franchise. In the case suit is filed against the City either independently or jointly with the Franchisee to recover for any claim or damages, the Franchisee, upon notice to it by the City, shall defend the City against the action and, in the event of a final judgment being obtained against the City, either independently or jointly with the Franchisee solely by reason of the acts of the Franchisee, the Franchisee will pay the judgment and all costs and hold the City harmless therefrom.

J. A Franchisee shall have no recourse whatsoever against the City or its officers, boards, commissions, agents or employees for any loss, cost, expense or damage arising out of any provision or requirement of a Franchise or because of its enforcement.

K. Such other terms as are required to be included by the City Charter.

L. The Franchise shall contain such further conditions or provisions as may be included in a request for proposal and/or negotiated between the City and the Franchisee, except that no

such conditions or provisions shall be such as to conflict with any provisions of this Chapter or other law. In case of such conflict, or ambiguity between any terms or provisions of the Franchise Agreement and this Chapter, the words of this Chapter shall control. (Ord. O-2011-23 § 1, 2011; Ord. O-84-82 § 2, 1984; Ord. O-72-97 § 6(2), 1972).

5.44.090 Franchise-Bid request and Application Process

A. An application may be filed by any Person on that Person's own initiative or in response to a request for proposals. The City Manager is authorized to issue requests for proposals from time to time.

B. Instructions.

1. An Applicant for a competitive cable Franchise shall include the requisite information set forth below, in writing, in its Franchise application, in addition to any information required by 47 C.F.R. §76.41 and applicable state and local laws and the application fee set by resolution of the City Council. For purposes of this Section, a competitive cable Franchise shall mean a Franchise in an area currently served by another cable operator or cable operators in accordance with 47 U.S.C. 541(a)(1).

2. The City shall accept and review only those applications that include complete responses to every requirement of this Section. Submission of an application that does not include the requisite information set forth in this Section and the application fee shall not commence the time period for granting or denying the application set forth in 47 C.F.R. §76.41(d). The Applicant shall submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout the City's review of the application.

3. Applications shall be made to the City Manager.

4. Upon request, the City will promptly provide access to documents or information in its possession or control that are necessary for the completion of this application, provided that the Applicant does not otherwise have access to such documents or information and that such documents or information are subject to disclosure under Colorado open records laws.

C. Requisite Application Information:

1. Identification and Ownership Information. The application shall include:

a. The name, address, telephone number and web site (if applicable) of the Applicant and the proposed Franchisee (if different from Applicant), and

b. The name, address, primary telephone number and primary e-mail address of all individual(s) authorized to represent the Applicant before the City during its consideration of the Franchise(s) requested, including the Applicant's primary contact and any additional authorized contacts.

2. Business Structure.

a. If a corporation, the Applicant shall provide

1. A list all officers and members of the Board of Directors, their principal affiliations and their addresses;

2. A certificate of good standing indicating that the Applicant is licensed to do business in the State of Colorado; and

3. A statement indicating whether the Applicant is directly or indirectly controlled by another corporation or legal entity. If so, Applicant shall attach an explanatory statement and respond to subsections 1.a. and b above concerning the controlling corporation.

b. If a partnership, the Applicant shall

1. Describe the structure of the partnership and the interests of general and limited partners; and

2. State whether the Applicant is controlled directly or indirectly by any corporation or other legal entity. If so, Applicant shall attach an explanatory statement and respond to subsections 1.a. and b, or 2.a above, as applicable, concerning the controlling entity.

c. If a limited liability company, the Applicant shall

1. Describe the structure of the entity and the interests of members;

2. A list all officers and members of the Board of Directors, their principal affiliations and their addresses;

3. A certificate of good standing indicating that the Applicant is licensed to do business in the State of Colorado; and

4. State whether the Applicant is controlled directly or indirectly by any corporation or other legal entity. If so, Applicant shall attach an explanatory statement and respond to subsections 1.a. and b, or 2.a above, as applicable, concerning the controlling entity.

d. If any other form of legal entity other than a corporation, partnership or limited liability company, the Applicant shall describe the structure of the entity and the interests of its owners, and provide additional information that approximates the kind of information for the entities described in subsections a, b and c above.

3. Experience.

a. Current Franchises. An Applicant shall list all Cable Systems in which it or any Affiliate owns more than five percent of the system. If an Applicant owns more than five Cable Systems in Colorado as well as Cable Systems in other states, it need only list the Cable Systems in Colorado. For each system

Applicant shall include name of system, address, communities served, number of subscribers, number of homes passed, date of system award, duration (start and end date) of franchise, status of construction, and percent of penetration of homes passed as of most recently available date (indicate date).

b. Potential Franchises. An Applicant shall list communities where it or any Affiliate currently has a formal or informal request pending for an initial franchise, the renewal of a franchise, or the approval of a transfer of ownership. If an Applicant has such requests pending for more than five Cable Systems in Colorado as well as for Cable Systems in other states, it need only list the pending requests in Colorado. The Applicant shall include the name of communities, date of application, and date of expected action.

4. Management Structure. Every application for a competitive franchise shall include a management/organizational chart, showing the management structure of the Applicant.

D. Legal Qualification

1. Media Cross-Ownership.

a. Section 613 of the Cable Communications Policy Act of 1984, 47 U.S.C. §533 (a), and applicable FCC rules prohibit certain forms of media cross-ownership. An Applicant shall state whether it or an Affiliate directly or indirectly owns, operates, controls or has an Interest in any of the following, or whether the Applicant holds or operates any company or business operating jointly with any of the following:

1. A national broadcast television network (such as ABC, CBS or NBC, etc.).

2. A television broadcast station whose predicted Grade B contour, computed in accordance with Section 73.684 of the FCC's rules, overlaps in whole or in part the City's service area, or an application for license to operate such a station.

3. A telecommunications or telephone company whose service area includes any portion of the City's service area.

b. If the response to any of Subsections 1-3 above is affirmative, the Applicant shall state the name of the Applicant or Affiliate, the nature and percentage of ownership or Interest and the company that is owned or in which the Interest is held.

2. Franchise Violations.

a. An Applicant shall state whether it or any Affiliate has been found in violation by a court, regulatory authority or franchising authority of any franchise ordinance or agreement, contract or regulation governing a Cable

System. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

3. Other Violations.

a. An Applicant shall state whether it has been found in violation by a regulatory authority of any other type (e.g. utility) of franchise or similar ordinance, agreement, permit, contract or regulation. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

E. Financial Qualifications

1. Unless SEC Forms 10K and 10Q are available on the EDGAR database, Applicants with existing operations shall provide audited financial statements, including statements of income, balance sheets and cash flow statements, together with any notes necessary to the understanding of the financial statements for the last three fiscal years for the Applicant and any Parent Corporation.

2. Applicants that are new (start-up) entities shall provide pro forma projections for the next five fiscal years, if available, but at a minimum the next three fiscal years from the date of the application.

F. Technical Qualifications, Planned Services and Operations

1. The application shall describe the Applicant's planned initial and proposed Cable Services geographic area, including a map of all areas proposed to be served and proposed dates for offering Service to each area. The application shall additionally state whether the Applicant proposes to provide Cable Services to the entire Franchise Area, and if so, a proposed timetable for meeting that goal;

2. If the Applicant has or asserts existing authority to access the public right of way in any of the initial or proposed Service areas listed in Section F.1 above, the Applicant shall state the basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority;

3. The Applicant shall describe with particularity its planned residential Cable Services, including basic cable services, other cable programming service tiers, and any additional pay-per-view, on-demand or digital services; and the projected rates for each category or tier or Service;

4. The Applicant shall describe with particularity its planned system technical design, upstream and downstream capacity and speed, distribution of fiber, planned count of households per residential node, and any other information necessary to demonstrate that the Applicant's technology will be deployed so as to be able to successfully offer Cable Services in the proposed locations;

5. The Applicant shall describe with particularity its planned non-residential Cable Services;

6. The Applicant shall describe its planned construction and extension or phase schedule, as applicable, including system extension plans or policy; and describe the current status of the Applicant's existing or proposed arrangements with area utilities, including pole attachments, vault, or conduit sharing agreements as applicable;

7. The Applicant shall describe its plan to ensure that the safety, functioning and appearance of property and convenience and safety of other persons not be adversely affected by installation or construction of the Applicant's facilities, and that property owners are justly compensated for any damages caused by the installation, construction, operation or removal of the facilities;

8. The Applicant shall describe its plan to comply with the subscriber privacy protections set forth in 47 U.S.C. §551, and the privacy protections of the City's local cable customer service standards.

G. Affidavit of Applicant. Each application shall be accompanied by an affidavit substantially in the form set forth below:

This application is submitted by the undersigned who has been duly authorized to make the representations within on behalf of the Applicant and certifies the representations are true and correct.

The Applicant recognizes that all representations are binding on it, that all application commitments are enforceable, and that material misrepresentations or omissions, or failure to adhere to any such representation may result in a denial of an application by the City.

The Applicant shall comply with all applicable local laws.

Consent is hereby given to the City, and its representatives to make inquiry into the legal, character, technical, financial and other qualifications of the Applicant by contacting any persons or organizations named herein as references, or by any other appropriate means.

Name of Applicant's Authorized Representative: ______________________________

Affiant's Signature: ______________________________

Official Position: ______________________________

Date: ________________

STATE OF COLORADO)
) ss.
COUNTY OF ________________)

Subscribed and sworn to before me this _____day of, ____________20____.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: ______________.

____

NOTARY PUBLIC

H. Open Records/Confidentiality

The City will treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Applicant makes the City aware of such confidentiality. An Applicant shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City receives a demand under the Colorado Open Records Act from any Person for disclosure of any information designated by an Applicant as confidential, or believes for any other reason that it may be legally required to disclose such information, the City will, so far as consistent with applicable law, advise the Applicant and provide it with a copy of any written request demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction and to the extent permitted by applicable law, the City will deny access to any Applicant books and records marked confidential as set forth above to any Person.

I. Application Fee and Publication Expenses

1. The City shall, by resolution, set an application fee sufficient to cover the reasonable cost of processing applications under this ordinance. Every application for a new Franchise shall be accompanied by the application fee.

2. Upon request of the Applicant, the City may reduce or waive the application fee. In evaluating such a request, the City will consider the following factors: (1) the size of the proposed franchise area; (2) the number of potential subscribers in the proposed franchise area; (3) the financial hardship to the Applicant (including any

Parent Corporation or Affiliate); and (4) other information relevant to the cost of processing the application and/or the Applicant's ability to pay the fee.

3. In addition, an Applicant that is awarded a Franchise shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of a Franchise. Such payment shall be made by delivery of payment to the City Treasurer within 30 days after the City furnishes the Franchisee with a written statement of such expenses.

4. No Franchise shall become effective until all required fees and costs are paid. (Ord. O-2011-23 § 1, 2011)

5.44.100 Franchise-Applicant Review Process

A. Acceptance of application. Within ten business days of receipt of an application for a new Franchise, the City shall review the application to ensure all requisite information is included in the application. If the application is not complete, the City will notify the Applicant in writing, listing the requisite information that is required to complete the application. If the application is complete, the City will notify the Applicant in writing that all requisite information has been received.

B. Staff review. The City staff shall review all completed applications based on the review criteria set forth herein. If, during the review of an application, staff reasonably requires additional information from the Applicant, staff will promptly request the information from the Applicant, in writing, along with a notification that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will be tolled until such information is received by the City. After completing the review, staff shall provide an analysis of the application to the City Council.

C. Franchise negotiations. Upon acceptance of a complete application, the City shall commence the process for negotiating a Franchise agreement with the Applicant. Within the time period set forth in 47 C.F.R. § 76.41(d), the City shall attempt to negotiate a cable franchise agreement with the Applicant, and within that time period, schedule the application and any proposed franchise for public hearing as set forth in Section 5.44.110. (Ord. O-2011-23 § 1, 2011)

5.44.110 Franchise-Hearing-Notice-Grant or Denial

A. The City Council shall hold a public hearing before acting on the application, affording participants a process substantially equivalent to that required by 47 U.S.C. §546(c)(2) governing renewal of cable franchises. (Ord. O-72-97 § 5(3), 1972).

B. Review criteria. The City may deny an application if, based on the information provided in the application and/or any terms of a proposed Franchise agreement:

1. The Applicant does not have the financial, technical, or legal qualifications to provide Cable Service; or

2. The Applicant will not provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; or

3. The Applicant's proposed terms do not comply with applicable federal, state, and local laws, policies and regulations, including, but not limited to, relevant existing contractual obligations of the City

C. Grant or denial of Franchise application. If the City finds that it is in the public interest to grant a Franchise considering the criteria set forth above, the City may adopt a Franchise ordinance setting forth the terms and conditions of the Franchise, which Franchise shall become effective upon satisfaction of conditions precedent to effectiveness, and when signed and accepted by the Applicant. If the City denies a Franchise, it will cause a written explanation of the denial to issue, which may be in any appropriate form. Without limiting its authority to deny an application for a Franchise, the City specifically reserves the right to reject any application that is incomplete. Nothing in this Section shall be construed in any way to limit the discretion and legislative authority

of the City Council in making decisions relative to the granting, denial, or renewal of a Franchise.

D. Appeal. Any Applicant whose application is denied by the City may file an appeal with the District Court in Jefferson County, Colorado, within thirty (30) days of the City's final action to deny the application. Such appeal shall be considered pursuant to Rule 106 of the Colorado Rules of Civil Procedure. (Ord. O-2011-23 § 1, 2011)

5.44.120 Non-CFAR Franchise Applications

Notwithstanding any other provisions of this ordinance, any competitive cable services franchise Applicant may elect to submit a cable franchise application to the City and/or engage in cable franchise negotiations without regard to the application of the FCC Competitive Franchise Application Rule, 47 C.F.R. § 76.41 ("CFAR"). In such cases, the City will negotiate the terms of a competitive cable franchise without regard to 47 C.F.R. §76.41 and the other provisions of this ordinance. Agreement by any Applicant to negotiate a franchise without regard to 47 C.F.R. §76.41 and the other provisions of this ordinance shall not be deemed by the City to effect a waiver of any Applicant's right under applicable law to trigger application of 47 C.F.R. §76.41 and this ordinance, where applicable. (Ord. O-2011-23 § 1, 2011)

5.44.130 Franchise-Renewal

A. A franchise may be renewed by the City upon application of the Franchisee Such an application may be submitted not more than one hundred eighty days nor less than one hundred twenty days before expiration of the current Franchise, and the City may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time. An application for renewal will be considered under any legal criteria permitted by applicable law, and may be denied for failure to meet such criteria, and/or failure to comply with the obligations of the current Franchise.

B. Formal Renewal Pursuant to Federal Law. Nothing contained herein shall affect the rights, duties and obligations of the City or any Franchisee pursuant to 47 U.S.C. § 546. (Ord. O-2011-23 § 1, 2011)

5.44.140 Applications for modification of Franchise

A. An application for modification of a Franchise shall include, at minimum, the following information:

1. The specific modification requested;

2. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the Applicant if the modification is approved or disapproved, demonstrated through submission of pro forma financial statements or similar financial documentation, or other evidence of the impacts on subscribers;

3. Any other information that the Applicant believes is necessary for the City to make an informed determination on the application for modification; and

4. A declaration of the Applicant or Applicant's authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is

consistent with the requirements of applicable law.

B. A request for modification submitted pursuant to 47 U.S.C. § 545 shall be considered in accordance with the requirements of that section.

C. Public meetings. An Applicant shall be notified of any public meetings held in connection with the evaluation of its application and shall be given a reasonable opportunity to be heard. (Ord. O-2011-23 § 1, 2011)

5.44.150 Transfers and Transactions affecting ownership or control of Franchise facilities

A. City approval required. No Transfer shall occur without prior written notice to and approval of the City Council. The granting of approval for a Transfer in one instance shall not render unnecessary approval of any subsequent Transfer.

B. Application.

1. The Franchisee shall promptly notify the City of any proposed Transfer involving a Cable System.

2. At least 120 calendar days prior to the contemplated effective date of a Transfer involving a Cable System, the Franchisee shall submit to the City an application for approval of the Transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the Transferee subject to applicable law, and on the potential impact of the Transfer on Subscriber rates and service. At a minimum, the following information must be included in the application, provided that, a Franchisee is not required to duplicate information that it submits to the City to comply with its obligations under federal or state law:

(a) All information and forms required by FCC Form 394 and any other form that may be promulgated under federal law, or, the equivalent of such forms if no longer required by federal law or if Operator elects not to utilize such forms, any contracts or other documents that relate to the proposed transaction or other documents, schedules, or exhibits that would have been provided to the City under FCC form 394;

(b) Any shareholder reports or filings with the Securities and Exchange Commission ("SEC") that discuss the transaction;

(c) Other information necessary to provide a complete and accurate understanding of the financial position of the Cable System before and after the proposed Transfer; and

(d) Complete information regarding any potential impact of the Transfer on Subscriber service.

3. For the purposes of determining whether it shall consent to a Transfer, the City, or its agents, may inquire into all qualifications of the prospective Transferee and such other matters subject to applicable law as the City may deem necessary to determine whether the Transfer is in the public interest and should be approved, denied, or conditioned as provided under Section C below. The Franchisee and any prospective transferees shall

assist the City in any such inquiry, and if they fail to do so, the request for Transfer may be denied.

C. Determination by City. In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise under this section, the City shall consider the legal, financial, and technical qualifications of the transferee to operate the Cable System; any potential impact of the Transfer on Subscriber services; whether the incumbent Cable Operator is in compliance with its Franchise and this subtitle and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transferee owns or controls any other Cable System in the City, and whether operation by the transferee may eliminate or reduce competition in the delivery of Cable Service in the City; and whether operation by the transferee or approval of the Transfer would adversely affect Subscribers, the public, or the City's interest under this subtitle, the Franchise, or other applicable law.

D. Transferee's agreement. No application for a Transfer of a Franchise, subject to this section, shall be granted unless the transferee agrees in writing that it will abide by and accept all lawful terms of this subtitle and the Franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this subtitle and the Franchise for all purposes, including renewal, unless the City, in its sole discretion, expressly waives this requirement in whole or in part.

E. Approval does not constitute waiver. Approval by the City of a Transfer of a Franchise, pursuant to this section, does not constitute a waiver or release of any of the rights of the City under this subtitle or a Franchise, whether arising before or after the date of the Transfer.

F. Exception for intra-company Transfers. Notwithstanding the foregoing, a Franchise may provide that Transfers to Affiliates of a Franchisee shall be excepted from the requirements of this section where (1) the Affiliate is wholly-owned and managed by an entity that will guarantee the performance under a Franchise or provide other adequate assurance acceptable to the City; and (2) the transferee Affiliate:

1. Notifies the City of the Transfer at least 60 days before it occurs and, at that time provides the agreements and warranties required by this section, describes the nature of the Transfer, and submits complete information describing who will have direct and indirect ownership and control of the Cable System after the Transfer;

2. Warrants that it has read, accepts, and agrees to be bound by each and every term of the Franchise and related amendment, regulations, ordinances, and resolutions then in effect;

3. Agrees to assume all responsibility for all liabilities, acts, and omissions known and unknown, of its predecessor Franchisees for all purposes, including renewal;

4. Agrees that the Transfer shall not permit it to take any position or exercise any right which could not have been exercised by its predecessor Franchisees;

5. Warrants that the Transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the Franchisee (the warranty to be based on comparing the burdens upon and resources that will be available to the transferee compared to its predecessors), or otherwise adversely affect the ability of the Franchisee to perform;

6. Warrants that the Transfer will not in any way adversely affect the City or Subscribers (including by increasing rates);

7. Notifies the City that the Transfer is complete within five business days of the date the Transfer is complete; and

8. Agrees that the Transfer in no way affects any evaluation of its legal, financial, or technical qualifications that may occur under the Franchise or applicable law after the Transfer, and does not directly or indirectly authorize any additional Transfers. (Ord. O-2011-23 § 1, 2011)

5.44.160 Prohibition of discriminatory or preferential practices

The Franchisee shall not, in its rates or charges, or in making available the Services or facilities of its system, or in its rules or regulations, or in any other respect, make or grant preferences or advantages to any subscriber or potential subscriber to the system, or to any user or potential user of the system; and shall not subject any such persons to any prejudice or disadvantage. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscriptions to the system or other legitimate uses thereof. (Ord. O-2011-23 § 1, 2011)

5.44.170 Franchise-Annual fee

During the term of any franchise granted pursuant to this chapter, the franchisee shall pay to the city, for the use of its streets, public places and other facilities, as well as the maintenance, improvements and supervision thereof, an annual franchise fee in an amount equal to five percent of the annual gross subscriber revenues received by it from cable operations conducted within the city, or in such other amount that may be mutually agreed to by the parties. This payment shall be in addition to any other tax or payment owed to the city by the franchisee. (Ord. O-2011-23 § 1, 2011; Ord. O-72-97 § 8(2), 1972).

5.44.180 Franchise-Fee not exclusive

No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this chapter or any Franchise, or for the performance of any other obligation hereunder. (Ord. O-2011-23 § 1, 2011; Ord. O-72-97 § 8(4), 1972).

5.44.190 Franchise-Fee payment failure action

Failure to pay any fees required by Sections 5.44.160 and 161 may result in automatic suspension of the franchise granted, and reinstatement thereof may be had only upon resolution by the City Council, and payment of the delinquent fee or fees plus any interest or penalties as may be required by the resolution. (Ord. O-2011-23 § 1, 2011; Ord. O-83-94 § 17, 1983: Ord. O-72-97 § 8(5), 1972).

5.44.200 Franchise-Compliance required

The Franchisee shall not be relieved of its obligation to comply promptly with any of the provisions of the Franchise by any failure of the City to enforce prompt compliance. (Ord. O-2011-23 § 1, 2011; Ord. O-72-97 § 9(1), 1972).

5.44.210 Violation liability

All persons, including officers of any franchisee, causing, participating in or permitting any violation of any provision of this chapter shall be severally or jointly liable therefor. (Ord. O-2011-23 § 1, 2011; Ord. O-72-97 § 9(2), 1972).

5.44.220 Penalties

For failure to pay franchise fee when due, pursuant to Section 5.44.490, a Franchisee shall pay a late penalty of two percent per month of the amount due and prorated for each day, or part thereof, that the violation continues. (Ord. O-2011-23 § 1, 2011; Ord. O-83-94 § 18, 1983: Ord. O-76-56 § 16, 1976: Ord. O-72-97 § 10(3), 1972).

5.44.230 Section headings

The captions to sections are inserted solely for information and shall not affect the meaning or interpretation of the chapter. (Ord. O-2011-23 § 1, 2011; Ord. O-76-56 § 19, 1976: Ord. O-72-97 § 11(1), 1972).

IV. Franchise Fee

5.50.090 Franchise Fee

A. Fee. In partial consideration for the franchise, which provides for the Company's use of City Streets, which are valuable public properties acquired and maintained by the City at great expense to its Residents, and in recognition that the grant to the Company of the use of City Streets is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of all Gross Revenues. To the extent required by law, the Company shall collect this fee from a surcharge upon City residents who are customers of the Company.

B. Obligation in Lieu of Fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as partial consideration for use of the City Streets. To the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to City Residents.

C. Changes in Utility Service Industries. The City and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations.Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in modifying this franchise to assure that the City receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the City as of the date that such initiatives and changes adversely impact franchise fee revenues.

D. Utility Service Provided to the City. No franchise fee shall be charged to the City for Utility Service provided directly or indirectly to the City for its own consumption, including Street Lighting Service and traffic signal lighting service, unless otherwise directed by the City. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989)

5.50.100 Remittance of franchise fee

A. Remittance Schedule. Franchise fee revenues shall be remitted by the Company to the City as directed by the City in monthly installments not more than 30 days following the close of each month.

B. Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City, it shall provide written notice to the other party of the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Subsection 5.50.100 D of this franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the City, and said overpayment is in excess of Five Thousand Dollars ($5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any

overpayment or underpayment made as a result of a Company error which occurred more than three (3) years prior to the discovery of the Company error.

C. Audit of Franchise Fee Payments.

1. Every three (3) years commencing at the end of the third year of this franchise, the Company shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the City. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the City Manager containing the audit findings.

2. If the City disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, and the Company shall cooperate fully, including but not necessarily limited to, providing the City's auditor with all information reasonably necessary to complete the audit.

3. If the results of a City audit conducted pursuant to subsection C (2) concludes that the Company has underpaid the City by two percent (2%) or more, in addition to the obligation to pay such amounts to the City, the Company shall also pay all costs of the City's audit.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Subsection 5.50.100 B of this franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

E. Reports. Upon written request by the City, but not more than once per year, the Company shall supply the City with reports, in such formats and providing such details as reasonably requested by the City, of all suppliers of utility service that utilize Company Facilities to sell or distribute utility service to Residents and the names and addresses of each such supplier. (Ord. O-2009-44 § 1, 2009; Ord. O-93-64 § 62, 1993: Ord. O-89-87 § 1 (part), 1989).

5.50.110 Franchise fee payment not in lieu of permit or other fees

Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, including any fee for a street closure permit, an excavation permit, a street cut permit, or other lawful permits hereafter required by the City, except that the franchise fee provided for herein shall be in lieu of any occupation, occupancy or similar tax for the use of City Streets. (Ord. O-2009-44 § 1, 2009; Ord. O-93-64 § 63, 1993: Ord. O-89-87 § 1 (part), 1989).

Chapter 5.50 - Electric and Gas Franchise

X. Use of Company Facilities

5.50.350 City use of company electric distribution poles

The City shall be permitted to make use of Company electric distribution poles in the City at no cost to the City for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The Company may allow the use of electric distribution poles for other purposes at the Company's sole discretion. The City will notify the Company in advance and in writing of its intent to use Company facilities and the nature of such use unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the City will provide such notice as soon as practicable. The City shall be responsible for costs associated with modifications to Company electric distribution facilities to accommodate the City's use of such Company electric distribution facilities and for any electricity used. No such use of Company electric distribution facilities shall be required if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution facilities. Any such City use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.360 City Use of Street Lighting and Traffic Signal Lighting Poles

The City shall be allowed to use the Company's street lighting and traffic signal lighting poles in the future for legitimate police, public safety or traffic control purposes under the terms and conditions set forth in the Company's PUC tariffs and any subsequent agreements that may be entered between the parties, but must obtain prior written approval of the Company. No such use shall be allowed if the Company determines in good faith that the City's use of specific street lighting or traffic signal lighting poles creates a safety hazard or interferes with the Company's use of its Utility Facilities. The City shall be responsible for paying the Company's reasonable costs of determining whether the proposed use of street lighting and traffic signal lighting poles creates a safety hazard or interferes with Company Utility Facilities.

The City shall not be required to remove its existing signs, equipment or facilities from street lighting or traffic signal lighting poles, unless the Company determines after consultation with the City that attachment of specific equipment or facilities on specific poles creates a safety hazard or interferes with the Company's use of its Utility Facilities. If after such determination the City is required to remove its existing equipment or facilities from those poles, the Company shall allow the City ten (10) days from the date of written notice, including by electronic mail, within which to remove its equipment or facilities. If the City fails to remove the equipment or facilities, the Company may perform the removal at the City's sole expense. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.370 City use of company transmission rights of-way

The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for the purposes set forth in and pursuant to the provisions of the Park and Open Space Act of 1984, on terms comparable to those offered to other municipalities, provided that the Company shall not be required to make such an offer in any circumstance where such offer would constitute a safety hazard or interfere with the Company's use of the transmission right-of-way. City use of transmission rights-of-way may include use for trails, parks and open space. In order to exercise this right, the City must make specific written request to the Company for any such use. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.380 Emergencies

Upon written request, the Company shall assist the City in developing an emergency management plan. In the case of any emergency or disaster, the Company shall, upon oral request of the City, make available Company Facilities for emergency use during the emergency or the disaster period. Such use of Company Facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of Company Facilities. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

I. Definitions

5.50.010 Short title

The ordinance codified in this chapter shall be known as the Lakewood electric and gas franchise ordinance. (Ord. O-2009-44 § 1; Ord. O-89-87 § 1 (part), 1989).

5.50.020 Definitions

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Chapter. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. 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 the City of Lakewood, a municipal corporation of the State of Colorado.

“City Council” or “Council” refers to the legislative body of the City.

"Clean Energy" refers to energy produced from Renewable Energy Resources, eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, “cost” means all those costs as determined by the PUC.

“Company” refers to Public Service Company of Colorado d/b/a Xcel Energy and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise.

“Company Facilities” refers to all facilities of the Company reasonably necessary to provide gas and electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles.

“Distribution Facilities” refers to those lines designed to operate at the utility’s distribution voltages in the area defined in the Company’s tariffs including substation transformers that transform electricity to a distribution voltage and also includes other equipment within a transforming substation which is not integral to the circuitry of the utility’s transmission system. Distribution Facilities shall not include facilities that are exclusively used to provide street lighting service.

“Electric Gross Revenues” refers to those amounts of money which the Company receives from the sale or delivery of electricity in the City, after adjusting for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not

limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. "Electric Gross Revenues" shall exclude any revenue for the sale or delivery of electricity to the City as a customer of the Company.

"Energy Conservation" refers to the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

"Energy Efficiency" refers to the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.

"Force Majeure" refers to the inability to undertake an obligation of this franchise due to a cause that could not be reasonably anticipated by a party or is beyond its reasonable control after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, terrorist's acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in delivery of materials. Neither the City nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to a Force Majeure condition.

"Gross Revenues" refers to those amounts of money which the Company receives from the sale of gas and electricity within the City under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the City and those amounts of money, excluding expense reimbursements, which the Company receives from the use of Company facilities in Streets and Other City Property (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation.

"Gross Revenues" shall exclude any revenues from the sale of gas or electricity to the City or the transportation of gas to the City as a customer of the Company.

"Other City Property" refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the City or hereafter held by the City, that would not otherwise fall under the definition of "Streets", but which provides a suitable location for the placement of Company facilities as specifically approved in writing by the City.

"Private Project" refers to any project which is not covered by the definition of Public Project.

"Public Project" refers to (1) any public work or improvement within the City that is wholly or beneficially owned by the City; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, any Colorado county, the Urban Drainage and Flood Control District, or the Regional Transportation District, but excluding all other entities established under Title 32 of the Colorado Revised Statutes.

"Public Utilities Commission" or "PUC" refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.

"Public Utility Easement" refers to any easement over, under, or above public or private property, dedicated to the use of public utility companies for the placement of utility facilities, including but

not limited to Company Facilities. Public Utility Easement shall not include any easement that is located within Streets or Other City Property.

“Renewable Energy Resources” refers to wind; solar; geothermal; biomass from nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush, or from animal wastes and products of animal wastes, or from methane produced at landfills or as a by-product of the treatment of wastewater residuals; new hydroelectricity with a nameplate rating of ten megawatts or less, and hydroelectricity in existence on January 1, 2005, with a nameplate rating of thirty megawatts or less; fuel cells using hydrogen derived from a Renewable Energy Resource; and recycled energy produced by a generation unit with a nameplate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel, and includes any eligible renewable energy resource as defined in § 40-2-124(1)(a), C.R.S., as the same shall be amended from time to time.

"Residents” refers to all persons, businesses, industries, governmental agencies, including the City, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City.

“Streets” or “City Streets” refers to the surface, the air space above the surface and the area below the surface of any City-dedicated streets, alleys, bridges, roads, lanes, public easements (excluding any easements the terms of which do not permit the use thereof by public utilities), and other public rights-of-way within the City, which are primarily used for motorized vehicle traffic. Streets shall not include Public Utility Easements.

“Supporting Documentation” refers to all information reasonably required in order to allow the Company to design and construct any work performed under the provisions of this franchise. Supporting Documentation may include, but is not limited to, construction plans, a description of known environmental issues, the identification of critical right of way or easement issues, the final recorded plat for the property, the date the site will be ready for the Company to begin construction, the date electric service and meter set are needed, the date gas service and meter set are needed, and the name and contact information for the City’s project manager.

“Tariffs” refers to those tariffs of the Company on file and in effect with the PUC.

“Transmission Facilities” refers to those lines and related substations designed and operating at voltage levels above the utility’s voltages for Distribution Facilities, including but not limited to related substation facilities such as transformers, capacitor banks, or breakers that are integral to the circuitry of the Company’s transmission system.

“Utility Service” refers to the sale of gas or electricity to Residents by the Company under rates approved by the PUC, as well as the delivery of gas or electricity to Residents by the Company. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

II. Grant of Franchise

5.50.030 Grant of franchise

A. Grant. The City hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this franchise, the non-exclusive right to make reasonable use of City Streets and Other City Property.

1. to provide Utility Service to the City and to its Residents under tariffs on file with the PUC; and

2. to acquire, purchase, construct, install, locate, maintain, operate, and extend into, within and through the City all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transmission, transportation and distribution of Utility Service within and through the City.

B. Street Lighting And Traffic Signal Lighting Service. The rights granted by this franchise encompass the nonexclusive right to provide street lighting service and traffic signal lighting service as directed by the City, and the provisions of this franchise shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company. Wherever reference is made in this franchise to the sale or provision of Utility Service, these references shall be deemed to include the provision of street lighting service and traffic signal lighting service. Street lighting service and traffic signal lighting service within the City shall be governed by this franchise, any separate agreements between the Company and the City executed on or after the effective date of this franchise, and Tariffs on file with the PUC. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.040 Conditions and limitations

A. Scope of Franchise. The grant of this franchise shall extend to all areas of the City as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.
B. Subject to City Usage. The right to make reasonable use of City Streets to provide Utility Service to the City and its Residents under the franchise is subject to and subordinate to any City usage of said Streets.
C. Prior Grants Not Revoked. This grant is not intended to revoke any prior license, grant, or right to use the Streets and such licenses, grants or rights of use are hereby affirmed. Such rights shall, however, be governed by the terms of this franchise.
D. Franchise Not Exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a franchise to any other person, firm, or corporation. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.050 Effective date and term

A. Term. This franchise shall take effect on January 16, 2009, and shall supersede any prior franchise grants to the Company by the City. This franchise shall terminate on January 15, 2030, unless extended by mutual consent. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

IV. Franchise Fee

5.50.090 Franchise fee

A. Fee. In partial consideration for the franchise, which provides for the Company's use of City Streets, which are valuable public properties acquired and maintained by the City at great expense to its Residents, and in recognition that the grant to the Company of the use of City Streets is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of all Gross Revenues. To the extent required by law, the Company shall collect this fee from a surcharge upon City residents who are customers of the Company.

B. Obligation in Lieu of Fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as partial consideration for use of the City Streets. To the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to City Residents.

C. Changes in Utility Service Industries. The City and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations.Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in modifying this franchise to assure that the City receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the City as of the date that such initiatives and changes adversely impact franchise fee revenues.

D. Utility Service Provided to the City. No franchise fee shall be charged to the City for Utility Service provided directly or indirectly to the City for its own consumption, including Street Lighting Service and traffic signal lighting service, unless otherwise directed by the City. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989)

5.50.100 Remittance of franchise fee

A. Remittance Schedule. Franchise fee revenues shall be remitted by the Company to the City as directed by the City in monthly installments not more than 30 days following the close of each month.

B. Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City, it shall provide written notice to the other party of the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Subsection 5.50.100 D of this franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the City, and said overpayment is in excess of Five Thousand Dollars ($5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than three (3) years prior to the discovery of the Company error.

C. Audit of Franchise Fee Payments.

> 1. Every three (3) years commencing at the end of the third year of this franchise, the Company shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the City. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the City Manager containing the audit findings.

2. If the City disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, and the Company shall cooperate fully, including but not necessarily limited to, providing the City's auditor with all information reasonably necessary to complete the audit.

3. If the results of a City audit conducted pursuant to subsection C (2) concludes that the Company has underpaid the City by two percent (2%) or more, in addition to the obligation to pay such amounts to the City, the Company shall also pay all costs of the City's audit.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Subsection 5.50.100 B of this franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

E. Reports. Upon written request by the City, but not more than once per year, the Company shall supply the City with reports, in such formats and providing such details as reasonably requested by the City, of all suppliers of utility service that utilize Company Facilities to sell or distribute utility service to Residents and the names and addresses of each such supplier. (Ord. O-2009-44 § 1, 2009; Ord. O-93-64 § 62, 1993: Ord. O-89-87 § 1 (part), 1989).

5.50.110 Franchise fee payment not in lieu of permit or other fees

Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, including any fee for a street closure permit, an excavation permit, a street cut permit, or other lawful permits hereafter required by the City, except that the franchise fee provided for herein shall be in lieu of any occupation, occupancy or similar tax for the use of City Streets. (Ord. O-2009-44 § 1, 2009; Ord. O-93-64 § 63, 1993: Ord. O-89-87 § 1 (part), 1989).

IX. Billing and Payment

5.50.330 Billing for utility services

A. Unless otherwise provided in its tariffs, the rules and regulations of the PUC, or the Public Utility Law, the Company shall render bills monthly to the offices of the City for Utility Service and other related services for which the Company is entitled to payment and for which the City has authorized payment.

B. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the City and payment for same shall be made as prescribed in this agreement and the applicable tariff on file and in effect from time to time with the PUC.

C. The Company shall provide all billings and any underlying support documentation reasonably requested by the City and in an editable and manipulatable electronic format that is acceptable to the Company and the City.

D. The Company agrees to meet with the City designee at least annually for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for

the efficient and cost effective rendering and processing of such billings submitted by the Company to the City. (Ord. O-2009-44 § 1, 2009; (Ord. O-89-87 § 1 (part), 1989).

5.50.340 Payment to city

In the event the City determines after written notice to the Company that the Company is liable to the City for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the City may deduct all monies due and owing the City from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the City to discuss such determination. The City agrees to attend such a meeting. As an alternative to such deduction, the City may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill. If the Company challenges the City determination of liability, the City shall make such payments to the Company pursuant to the Company's tariffs until the challenge has been finally resolved. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

V. Administration of Franchise

5.50.120 City designee

The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address, and telephone number for the Company's representative under this franchise. The Company may change its designation by providing written notice to the City. The City shall use this liaison to communicate with the Company regarding Utility Service and related service needs for City facilities. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.130 Company designee

The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address, and telephone number for the Company's representative under this franchise. The Company may change its designation by providing written notice to the City. The City shall use this liaison to communicate with the Company regarding Utility Service and related service needs for City facilities. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.140 Coordination of work

A. The Company agrees to meet with the City's designee upon written request for the purpose of reviewing, implementing, or modifying mutually beneficial procedures for the efficient processing of Company bills, invoices and other requests for payment.
B. The Company agrees to coordinate its activities in City Streets with the City. The City and the Company will meet annually upon the written request of the City designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City Streets.
The City and Company shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all provisions of this franchise, building and zoning codes, and City air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

VI. Supply, Construction and Design

5.50.150 Purpose

The Company acknowledges the critical nature of the municipal services performed or provided by the City to the Residents which require the Company to provide prompt and reliable Utility Service and the performance of related services for City facilities. The City and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the City in order to facilitate and enhance the operation of City facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the City. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.160 Supply

Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to Residents at the lowest reasonable cost consistent with reliable supplies. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.170 Service to city facilities

A. Transport Gas. To the extent the City is or elects to become a gas transport customer of the Company, the Company shall transport natural gas purchased by the City for use in City facilities pursuant to separate contracts with the City.

B. Charges to the City. No charges to the City by the Company for Utility Service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the Colorado PUC over the Company's regulated intrastate electric and gas rates. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.180 Restoration of service

A. Notification. The Company shall provide to the City daytime and nighttime telephone numbers of a designated Company representative from whom the City designee may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of Utility Service in any part of the City.

B. Restoration. In the event the Company's gas system or electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such systems to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if the Company elects not to restore such system. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.190 Obligations regarding company facilities

A. Company Facilities. All Company Facilities within City Streets shall be maintained in good repair and condition.

B. Company Work within the City. All work within City Streets performed or caused to be performed by the Company shall be done:

1. in a high-quality manner;
2 in a timely and expeditious manner;
3 in a manner which minimizes inconvenience to the public;

4 in a cost-effective manner, which may include the use of qualified contractors; and
5 in accordance with all applicable laws, ordinances, and regulations

C. No Interference with City Facilities. Company Facilities shall not interfere with any City facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other City uses of the Streets or Other City Property. Company Facilities shall be installed and maintained in City Streets and Other City Property so as to minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services. Company facilities may not be installed on any Other City Property without obtaining permission from the City.

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the City Streets or Other City Property by or on behalf of the Company shall be subject to permit, inspection and approval by the City. Such inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks, and surfaces of City Streets or Other City Property. The Company agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection.

E. Compliance. The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits, and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall assure that its contractors working in City Streets or Other City Property hold the necessary licenses, registrations and permits required by law. Whenever the Company proposes to make curb and pavement cuts, or to excavate, dig or perform any other construction activities in City Streets and Other City Property, the Company and the City shall meet at the City's request to discuss the placement of poles and other similar facilities in order to mitigate adverse impacts of such activities within the City.

F. Increase in Voltage. The Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses Utility Service where such upgrading is solely caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases required by law, including but not limited to a lawful order of the PUC, or voltage increases requested by the City.

G. As-Built Drawings. Upon written request of the City designee, the Company shall provide within 14 days of project completion, on a project by project basis, as-built drawings of any Company Facility installed within the City Streets or contiguous to the City Streets. As used in this Section, as-built drawings refers to the facility drawings as maintained in the Company's geographical information system or any equivalent Company system. The Company shall not be required to create drawings that do not exist at the time of the request, but the foregoing shall not be construed to affect any obligation to prepare drawings pursuant to any separate agreement. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.200 Excavation and construction

The Company shall be responsible for obtaining, paying for, and complying with all applicable permits for all construction, excavation, maintenance and repair work done by the Company and its contractors including, but not limited to, excavation, traffic control, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the City. Although the Company shall be responsible for obtaining and complying with the terms of such permits when

performing relocations requested by the City under Section 5.50.220 of this franchise and undergrounding requested by the City under Section 5.50.410 of this franchise, the City will not require the Company to pay the fees charged for such permits. Upon the Company submitting a construction design plan, the City shall promptly and fully advise the Company in writing of all requirements for restoration of City Streets in advance of Company excavation projects in City Streets based upon the design submitted. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.210 Restoration

When the Company performs any work in or affecting the City Streets or Other City Property or any landscaping or improvements therein, it shall, at its own expense, promptly remove any obstructions therefrom, repair any damage, and restore such City Streets or Other City Property and landscaping and improvements therein to a condition that meets applicable City standards. If weather or other conditions do not permit the complete restoration or repair required by this Section, the Company may with the approval of the City, temporarily restore the affected City Streets or Other City Property, provided that such temporary restoration is at the Company's sole expense and provided further that the Company promptly undertakes and completes the required permanent restoration or repair when the weather or other conditions no longer prevent such permanent restoration or repair. If the Company fails to promptly restore or repair the City Streets or Other City Property and landscaping and improvements therein as required by this Section, the City may, upon giving fourteen (14) days' written notice to the Company, restore such City Streets or Other City Property, remove the obstruction therefrom or repair the damage; provided however, City actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the City to restore or repair such City Streets or Other City Property and landscaping and improvements therein or to remove any obstructions therefrom. The City shall not perform work on Company Facilities. Upon request of the City, the Company shall restore the City Streets or Other City Property to a better condition than existed before the work was undertaken, provided that the City shall be responsible for any additional costs of such restoration. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.220 Relocation of company facilities

A. Relocation Obligation. The Company shall temporarily or permanently remove, relocate, change or alter the position of any Company Facility in City Streets or in Other City Property at no cost or expense to the City whenever such removal, relocation, change or alteration is necessary for the completion of any Public Project. Any City-required removal, relocation, change or alteration of Company Facilities located in any Company owned property or any private easement or Public Utility Easement shall be at no cost to the Company. For all relocations, the Company and the City agree to cooperate on the location and relocation of the Company Facilities in the City Streets or Other City Property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be relocated within two years, the subsequent relocation shall not be at the Company's expense unless said subsequent relocation is necessary to remedy public health and safety concerns not reasonably foreseeable by the City at the time of the prior relocation. Nothing provided herein shall prevent the Company from recouping its relocation costs and expenses from third parties.

B. Private Projects. The Company shall not be responsible for the expenses of any relocation required by Private Projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation

C. Relocation Performance. The relocations set forth in Section 5.50.220 of this franchise shall be completed within a reasonable time, not to exceed ninety (90) days from the later of the date on which the City designee requests, in writing, that the relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall receive an extension of time to complete a relocation where the Company's performance was delayed due to Force Majeure or the failure of the City to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

D. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.

E. Completion. Each such relocation shall be complete only when the Company actually relocates the Company Facilities, restores the relocation site in accordance with Section 6.7 of this franchise or as otherwise agreed with the City, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.

F. Scope of Obligation. The relocation obligation set forth in this Section shall only apply to Company Facilities located in City Streets or Other City Property. The obligation shall not apply to Company Facilities located on property owned by the Company in fee, or to Company Facilities located in privately-owned easements or Public Utility Easements, unless such Public Utility Easements are on or in City-owned property.

G. Underground Relocation. Underground facilities shall be relocated underground. Above ground facilities shall be placed above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of relocation, or the City requests that such additional incremental cost be paid out of available funds under Section 5.50.390 to 5.50.440 of this franchise.

H. Coordination.

> 1. When requested in writing by the City designee or the Company, representatives of the City and the Company shall meet to share information regarding anticipated projects which will require relocation of Company Facilities in City Streets. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any Public Project.
>
> 2. The City shall make reasonable best efforts to provide the Company with two (2) years advance notice of any planned street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the street within the two-year period if practicable.

I. Proposed Alternatives or Modifications. Upon receipt of written notice of a required relocation, the Company may propose an alternative to or modification of the Public Project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of Company Facilities. The City shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the sole discretion of the City. In

the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses, or delay that the City reasonably determines resulted from the implementation of the proposed alternative. Unless otherwise agreed by the City, the presentation of a proposed alternative or modification shall not be deemed good cause for any extension of time to complete the relocation. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.230 New or modified service requested by city

The conditions under which the Company shall install new or modified Utility Service to the City as a customer shall be governed by this franchise and the Company's PUC tariffs. Under no circumstances will the Company install any street lights within City Streets or Other City Property without the express written direction from the City Representative. (Ord. O-2009-44 § 1; Ord. O-89-87 § 1 (part), 1989).

5.50.240 Service to new areas

If the territorial boundaries of the City are expanded during the term of this franchise, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time if the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the Company's PUC tariffs and this franchise, including the payment of franchise fees. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.250 City not required to advance funds

Upon receipt of the City's authorization for billing and construction, the Company shall extend Company Facilities to provide Utility Service to the City as a customer, without requiring the City to advance funds prior to construction. The City shall pay for the extension of Company Facilities once completed in accordance with the Company's extension policy on file with the PUC. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.260 Technological improvements

The Company shall use its best efforts to incorporate, as soon as practicable, 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. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

VII. Reliability

5.50.270 Reliability

The Company shall operate and maintain Company Facilities efficiently and economically and in accordance with the high standards and best systems, methods and skills consistent with the provision of adequate, safe, and reliable Utility Service.(Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.280 Franchise performance obligations

The Company recognizes that, as part of its obligations and commitments under this franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical, and workmanlike manner.(Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.290 Reliability reports

Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

VIII. Company Performance Obligations

5.50.300 New or Modified service to city facilities

In providing new or modified Utility Service to City facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each project requested by the City within a reasonable time. The Parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the City designee makes a written request and provides the required Supporting Documentation for all Company Facilities other than traffic facilities. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City designee may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to City facilities shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise. The Company shall promptly advise the City of any claimed extension under this provision, including the estimated length of the claimed extension and the revised date by which the installation or modification is estimated to be completed.

C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of the franchise or as otherwise agreed with the City and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.310 Adjustments to company facilities

The Company shall perform adjustments to Company Facilities, including manholes and other appurtenances in Streets and Other City Property, to accommodate City street maintenance, repair and paving operations at no cost to the City. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the City makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts the Company Facility to accommodate the City operations in accordance with City instructions and, if required, readjusts, following City paving operations.

C. Coordination. As requested by the City or the Company, representatives of the City and the Company shall meet regarding anticipated street maintenance operations which will require such adjustments to Company Facilities in Streets or Other City Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.320 Third party damage recovery

A. Damage To Company Interests. II any individual or entity damages any Company Facilities that the Company is responsible to repair or replace, the City will notify the Company of any such incident and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity, except that this provision shall not be construed to require any disclosure prohibited by state open records or criminal justice records statutes, or other law.

B. Damage To City Interests. If any individual or entity damages any Company Facilities for which the City is obligated to reimburse the Company for the cost of the repair or replacement of the damaged facility, the Company will notify the City of any such incident and will provide to the City within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity, except that this provision shall not be construed to require any disclosure prohibited by law applicable to the Company.

C. Meeting. The Company and the City agree to meet periodically, upon written request of either party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XI. Undergrounding of Overhead Facilities

5.50.390 Underground electrical lines in new areas

The Company shall, upon payment to the Company of the charges provided in its tariffs or their equivalent, place all newly constructed electrical distribution lines in newly developed areas of the City underground in accordance with applicable laws, regulations and orders. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.400 Underground conversion at expense of company

A. Underground Fund. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues (the "Fund"), for the purpose of undergrounding existing overhead distribution facilities in the City, as may be requested by the City Designee. Except as provided in Subsection 5.50.220G, Sections 5.50.150 to 5.50.260, no relocation expenses which the Company would be required to expend pursuant to Article 6 of this franchise shall be charged to this allocation.

B. Unexpended Portion And Advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the City, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated under any prior franchise shall be carried over to this franchise. The City shall have no vested interest in monies allocated to the Fund and any monies in the Fund not expended at the expiration or termination of this franchise shall remain the property

of the Company. At the expiration or termination of this franchise, the Company shall not be required to underground any existing overhead facilities under this Article, but may do so in its sole discretion.

C. System-wide Undergrounding. If, during the term of this franchise, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution facilities, the Company will budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. City Requirement To Underground. In addition to the provisions of this Article, the City may require any above ground Company Facilities to be moved underground at the City's expense. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.410 Undergrounding performance

Upon receipt of a written request from the City, the Company shall underground Company Facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section. Any work on the customer's side of the meter that may be caused by an undergrounding project pursuant to this Article shall not be included within the scope of an undergrounding project for the purposes of this Section and shall not be the responsibility of the Company.

A. Estimates. Promptly upon receipt of an undergrounding request from the City and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable to the City, the City will issue a project authorization. At the City's request, the Company will provide all documentation which forms the basis of the estimate. The Company will not proceed with any requested project until the City has provided a written acceptance of the Company estimate.

B. Performance. The Company shall complete each undergrounding project requested by the City within a reasonable time, not to exceed 240 days from the later of the date upon which the City designee makes a written request or the date the City provides to the Company all Supporting Documentation. The Company shall have 120 days after receiving the City's written request to design project plans, prepare the good faith estimate, and transmit same to the City Designee for review. If City approval of the plans and estimate has not been granted, the Company's good faith estimate will be void 60 days after delivery of the plans and estimate to the City Designee. If the plans and estimate are approved by the City, the Company shall have 120 days from date of the City Designee's authorization of the underground project, plus any of the 120 unused days in preparing the good faith estimate to complete the project. At the Company's sole discretion, if the good faith estimate has expired because the City Designee has not approved the same within 60 days, the Company may extend the good faith estimate or prepare a new estimate using current prices. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure condition. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

C. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable

extension of time to complete the undergrounding project under the franchise. The Company shall promptly advise the City of any claimed extension under this provision, including the estimated length of the claimed extension and the revised date by which the undergrounding project is estimated to be completed.

D. Completion/Restoration. Each such undergrounding project shall be complete only when the Company actually undergrounds the designated Company Facilities, restores the undergrounding site in accordance with Section 5.50.210 of this franchise, or as otherwise agreed with the City, and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

E. Report of Actual Costs. Upon completion of each undergrounding project, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within 120 days after completion of the project and written request from the City.

F. Audit of Underground Projects. The City may require that the Company undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The cost of any such independent audit shall reduce the amount of the Fund. The Company shall cooperate fully with any audit and the independent auditor shall prepare and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as reasonable and necessary to complete the project shall be charged against the Fund balance. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.420 Audit of underground fund

Upon written request, every three (3) years commencing at the end of the third year of this franchise, the Company shall cause an independent auditor to investigate and determine the correctness of the charges to the underground fund. Such audits shall be limited to the previous three (3) calendar years. The independent auditor shall provide a written report containing its findings to the City and the Company. The Company shall reconcile the Fund consistent with the findings contained in the independent auditor's written report. The Company shall pay the costs of the audit and investigation. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 2 (part), 1989).

5.50.430 Cooperation with other utilities

When undertaking an undergrounding project the City and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior written notification, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for the cost of undergrounding the facilities of other companies or the City. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.440 Planning and coordination of undergrounding projects

The City and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other City and Company construction projects. The City and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future

undergrounding projects. The purpose of such meetings shall be to further cooperation between the City and the Company in order to achieve the orderly undergrounding of Company Facilities. Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding of Company Facilities and at such meetings shall review:

A. Undergrounding, including conversions, Public Projects and replacements which have been accomplished or are underway, together with the Company's plans for additional undergrounding; and
B. Public Projects anticipated by the City. (Ord. O-2009-44 § 1, 2009; (Ord. O-89-87 § 1 (part), 1989).

XII. Purchase or Condemnation

5.50.450 Municipal right to purchase or condemn

A. Right and Privilege of City. The right and privilege of the City to construct, purchase, or condemn any Company Facilities located within the territorial boundaries of the City, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution and statutes of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The City shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to purchase Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the City. In the event of any such purchase, no value shall be ascribed or given to the rights granted under this franchise in the valuation of the property thus taken.

B. Notice of Intent to Purchase or Condemn. The City shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the City's purchase or condemnation of Company Facilities. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XIII. Municipally Produced Utility Service

5.50.460 Municipally produced utility service

A. City Reservation. The City expressly reserves the right to engage in the production of Utility Service to the extent permitted by law. The Company agrees to negotiate in good faith long term contracts to purchase City-generated power made available for sale, subject to applicable statutory requirements and consistent with PUC requirements. The Company further agrees to offer transmission and delivery services to the City that are required by judicial, statutory and/or regulatory directive and that are comparable to the services offered to any other customer with similar generation facilities.

B. Franchise Not To Limit City's Rights. Nothing in this franchise prohibits the City from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XIV. Environment and Conservation

5.50.470 Environmental leadership

The City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of energy conservation

and energy efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet or exceed the requirements of environmental laws, regulations and permits; shall invest in cost-effective environmentally-sound technologies; shall consider environmental issues in its planning and decision-making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. On or before December 1 of each year, the Company shall provide the City a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.480 Conservation

The City and the Company recognize and agree that energy conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City and the Company further recognize that creative and effective energy conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective energy efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future Demand Side Management ("DSM") programs. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs the benefits of which would otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective programs for the various classes of the Company's customers, including low-income customers. The Company shall advise the City and its Residents of the availability of assistance that the Company makes available for investments in energy conservation through newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information about these programs on the Company's website. Further, the Company will designate a conservation representative to act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City facilities and how the City may participate in energy conservation and energy efficiency programs sponsored by the Company. As such, the Company and the City commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers and Residents. The Company agrees to help the City participate in Company programs and when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City pursue those opportunities. In addition, and in order to assist the City and its Residents' participation in Renewable Energy Resource programs, the Company shall:

A. notify the City regarding all eligible Renewable Energy Resource programs;

B. provide the City with technical support regarding how the City may participate in Renewable Energy Resource programs; and

C. advise Residents regarding eligible Renewable Energy Resource programs.
Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the City, the Company retains the sole discretion as to whether to incur such costs. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.490 Continuing commitment

It is the express intention of the City and the Company that the collaborative effort provided for in this Article continue for the entire term of this agreement. The City and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with energy conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this agreement by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this agreement in order to help the City achieve its environmental goals. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.500 PUC approval

Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XIX. Amendments

5.50.580 Proposed amendments

At any time during the term of this franchise, the City or the Company may propose amendments to this franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.590 Effective amendments

No alterations, amendments or modifications to this franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XV. Transfer of Franchise

5.50.510 Consent of City required

The Company shall not transfer or assign any rights under this franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to

legislation or regulatory requirements, unless the City approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.520 Transfer fee

In order that the City may share in the value this franchise adds to the Company's operations, any transfer or assignment of rights granted under this franchise requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by the Company multiplied by one million dollars ($1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XVI. Continuation of Utility Service

5.50.530 Continuation of utility service

In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall have no right to remove any Company Facilities or discontinue providing Utility Service unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City until the City arranges for utility service from another provider. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Franchise, the Company shall be entitled to monetary compensation as provided in the Company's tariffs on file with the Public Utilities Commission and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City's Streets. Only upon receipt of written notice from the City stating that the City has adequate alternative Utility Service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.540 City held harmless

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 may exist between the City and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers or employees. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.550 Immunity

Nothing in this Section or any other provision of this agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§24-10-101, C.R.S., et. seq.) or of any other defenses, immunities, or limitations of liability available to the City by law. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XVIII. Breach

5.50.560 Non-contestability

The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise are performed. The Company reserves the right to seek a change in its tariffs including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the City and its Residents, and the City retains all rights that it may have to intervene and participate in any such proceedings. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.570 Breach

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

1. specific performance of the applicable term or condition; and

2. recovery of actual damages from the date of such breach incurred by the non-breaching party in connection with the breach, but excluding any consequential damages.

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

C. Company Shall Not Terminate Franchise. In no event does the Company have the right to terminate this franchise.

D. No Limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XX. Equal Opportunity

5.50.600 Economic development

The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is also committed to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.610 Employment

A. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.

B. The Company recognizes that the City and the business community in the City, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under represented communities into management positions, and agrees to keep the City regularly advised of the Company's progress by providing the City a copy of the Company's annual affirmative action report upon the City's written request.

C. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity-specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity-specific expertise.

D. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training, and leadership programs.

E. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, sex, age, national origin or ancestry or handicap, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified, and further agrees to insert the foregoing provision or its equivalent in all agreements the Company enters into in connection with this franchise.

F. The Company shall identify and consider women, persons of color and other under represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the Shareholders, customers and employees of the Company. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.620 Contracting

A. It is the Company's policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

B. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the City regularly advised of the Company's programs.

C. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority owned, women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company. (Ord. O-2009-44 § 1, 2009;Ord. O-89-87 § 1 (part), 1989).

5.50.630 Coordination

City agencies provide collaborative leadership and mutual opportunities or programs relating to City based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XXI. Miscellaneous

5.50.640 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. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.650 Successors and assigns

The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Sections 5.50.510 and 5.50.520 of this franchise. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.660 Third parties

Nothing contained in this franchise shall be construed to provide rights to third parties. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.670 Notice

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 franchise. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent as follows:
To the City:

Mayor of Lakewood
City of Lakewood
480 S. Allison Pkway
Lakewood, CO 80226

and

City Manager
City of Lakewood
480 S. Allison Pkwy
Lakewood, CO 80226

With a copy to:

City Attorney
City of Lakewood
480 S. Allison Pkwy
Lakewood, CO 80226

To the Company:

Regional Vice President, Customer and Community Services
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

With a copy to:

Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201
(Ord. O-2009-44 § 1, 2009 ; Ord. O-89-87 § 1 (part), 1989).

5.50.680 Examination of records

A. The Parties agree that any duly authorized representative of the City and the Company shall have access to and the right to examine any directly pertinent non-confidential books, documents, papers, and records of the other party involving any activities related to this franchise. All such records must be kept for a minimum of four (4) years. To the extent that either Party believes in good faith that it is necessary in order to monitor compliance with the terms of this franchise to examine confidential books, documents, papers, and records of the other Party, the Parties agree to meet and discuss providing confidential materials, including but not limited to providing such materials subject to a reasonable confidentiality agreement which effectively protects the confidentiality of such materials.

B. PUC Filings. Upon written request, the Company shall provide the City copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Colorado Public Utilities Commission.

C. Information. Upon written request, the Company shall provide the City Manager or the City Manager's designee with:

1. a copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's web site;

2. subject to legitimate security concerns, maps or schematics indicating the location of specific Company Facilities, including gas or electric lines, located within the City, to the extent those maps or schematics are in existence at the time of the request and related to a specific, ongoing project of the City; and

3. a copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.690 List of utility property

The Company shall provide the City, upon request not more than every two (2) years, a list of utility related property owned or leased by the Company within the City. All such records must be kept for a minimum of four (4) years. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.700 Payment of taxes and fees

A. The Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extra-ordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this agreement ("Impositions"), provided that Company shall have the right to contest any such impositions and shall not be in breach of this Section so long as it is actively contesting such impositions.

B. The City shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable tariffs on file and in effect from time to time with the PUC. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.710 Conflict of interest

The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.720 Certificate of public convenience and necessity

The City agrees to support the Company's application to the PUC to obtain a certificate of public convenience and necessity to exercise its rights and obligations under this franchise. (Ord. O-2009-44 § 1, 2009).

5.50.730 Authority

Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this agreement on behalf of the parties and to bind the parties to its terms. The persons executing this agreement on behalf of each of the parties warrant that they have full authorization to execute this agreement. The City acknowledges that notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise. (Ord. O-2009-44 § 1, 2009).

5.50.740 Severability

Should any one or more provisions of this franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder. (Ord. O-2009-44 § 1, 2009).

5.50.750 Force majeure

Neither the City nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to Force Majeure, as defined herein. (Ord. O-2009-44 § 1, 2009).

5.50.760 Earlier franchises superseded

This franchise shall constitute the only franchise between the City and the Company for the furnishing of Utility Service, Street Lighting Service and traffic signal lighting service and it supersedes and cancels all former franchises between the parties hereto. (Ord. O-2009-44 § 1, 2009).

5.50.770 Titles not controlling

Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this franchise. (Ord. O-2009-44 § 1, 2009).

5.50.780 Applicable law

Colorado law shall apply to the construction and enforcement of this franchise. The parties agree that venue for any litigation arising out of this franchise shall be in the District Court for Jefferson County, State of Colorado. (Ord. O-2009-44 § 1, 2009).

5.50.790 Payment of expenses incurred by City in relation to franchise agreement

The Company shall pay for expenses reasonably incurred by the City for the adoption of this franchise, including the publication of notices, publication of ordinances, and photocopying of documents. (Ord. O-2009-44 § 1, 2009).