

Title 3

Revenue and Finance

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Chapter 3.04 - Sales and Use Tax Ordinance

3.04.010 Purpose. The 48th Session of the Utah Legislature of Utah has authorized the counties and municipalities of the State of Utah to enact sales and use tax ordinances imposing a one percent tax. It is the purpose of this ordinance to conform the Sales and Use Tax of the municipality to the requirements of the Sales and Use Tax Act, Chapter 12 of Title 59, Utah Code Annotated, 1953, as currently amended.
(Ord 90-1, 1/30/90; prior code Ord 86-2, §2, 1986)

3.04.020 Effective Date. This ordinance shall become effective as of 12:01 o'clock a.m., January 1, 1990. (Ord 90-1, 1/30/90 prior code: Ord 86-2, §3, 1986)

3.04.030 Sales and Use Tax.

A. Retail Tax

1. From and after the effective date of this ordinance, there is levied and there shall be collected and paid a tax upon every retail sale of tangible personal property, services and meals made within the municipality at the rate of one percent.

2. An excise tax is hereby imposed on the storage, use, or other consumption in this municipality of tangible personal property from any retailer on or after the operative date of this ordinance at the rate of one percent of the sales of the property.

3. For the purpose of this ordinance all retail sales shall be presumed to have been consummated at the place of business delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. In the event a retailer has no permanent place of business, the place or places at which the retail sales are consummated shall be as determined under the rules and regulations prescribed by and adopted by the State Tax Commission.
(Repeal part Ord 97-9, 6/10/98)

B. Sales Tax

1. Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of the Sales and Use Tax Act, all of the provisions of Chapter 12, Title 59, Utah Code Annotated, 1953, as amended, and in force and effect on the effective date of this ordinance, insofar as they relate to sales taxes, excepting Sections 59-12-101 and 59-12-119 thereof, are hereby adopted and made a part of the ordinance as through fully set forth herein.

2. Wherever, and to the extent that in Chapter 12 of Title 59, Utah Code Annotated, 1953, the State of Utah is named or referred to as the taxing agency, the name of this municipality shall be substituted therefor. Nothing in subparagraph (B) shall be deemed to require substitution of the name of the municipality for the word "State" when that word is used as part of the title of the State Tax Commission, or of the Constitution of the State of Utah, nor shall the name of the municipality be substituted for that of the State in any section when the result of that substitution would require action to be taken by or against the municipality or any agency thereof, rather than by or against the State Tax Commission in

performing the functions incident to the administration or operation of the ordinance.

3. If an annual license has been issued to a retailer under Section 59-12-106 of the said Utah Code Annotated, 1953, an additional license shall not be required by reason of this section.

4. There shall be excluded from the purchase price paid or changed by which the tax is measured:

a. The amount of any sales or use tax imposed by the State of Utah upon a retailer of consumer;

b. The gross receipts from the sale of or the cost of storage, use or other consumption of tangible personal property upon which a sales or use tax has become due by reason of the sale transaction to any other municipality and any county in the State of Utah, under the sales or use tax ordinance enacted by that county or municipality in accordance with the Sales and Use Tax act. (Ord. 90-1, 1/30/90 prior code: Ord 86-2, 1986)

3.04.040 Penalties. Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine in an amount less than \$300.00 or imprisonment for a period of not more than six months, or by both such fine and imprisonment. (Ord. 90-1, 1/30/90 prior code: Ord 86-2, 1986)

3.04.050 Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance, including but not limited to any exemption is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. It is the intention of the city council that each separate provision of this ordinance shall be deemed independent of all other provisions herein. (Ord 90-1, 1/30/90)

Chapter 3.08 - Utility Revenue Tax

3.08.010 Definitions. For purposes of this chapter, the following words and phrases shall have the meanings set out in this section:

A. "Basic local exchange service revenue" means revenues received from the furnishing of telecommunications and access to the telecommunications network to either business, residential or other customers whether on a flat rate or measured basis, by means of an access line; but shall not include revenues obtained by the telephone public utility company from the provision of terminal telephone equipment services (such as basic telephone sets, private branch exchanges and key telephone systems), or from other telephone equipment which is obtainable from both the telephone company and other suppliers.

B. "Gross revenue" means revenue derived from the sale and use of public utility services; provided that the term as applied to telephone services shall be construed to mean basic local exchange service revenue.

C. "In connection with public utilities" means to trade in products or service within the same market area as a public utility.

D. "Public utility" means an entity so defined under Title 54 of UCA, 1953, as amended, which supplies electric, gas or telephone services of any kind or in any manner within the city.

E. "Public utility services" means the sale or use of electrical power and energy, natural gas and local exchange telephone service. (Ord. 85-9 §1, 1985)

3.08.020 Levied. An annual revenue tax equal to six percent of the gross revenue derived from the sale and use of public utility services within the city is levied upon the business of every person, company or entity engaged in the business of supplying electric, gas or telephone services within the city in competition with public utilities. (Ord 99-9, 5/25/99 & Ord. 85-9 §2, 1985)

3.08.030 Collection - Accounting. Within forty-five days after the close of each quarter in a calendar year, any public utility or person, company or entity in competition with public utilities shall file with the city recorder a report of its gross revenue derived from within the city, together with a computation of the tax levied under this chapter against the public utility or person, company or entity in competition with public utilities. At the same time such report is filed, the public utility or person, company or entity in competition with public utilities shall pay to the city treasurer the amount of the tax. (Ord. 85-9 §3, 1985)

3.08.040 Applicability of Provisions. This tax shall apply to all gross revenue from a public utility or person, company or entity in competition with public utilities from billings made after July, 1985, and shall continue until repealed or otherwise modified. (Ord. 85-9 §4, 1985)

Chapter 3.10 - Municipal Energy Sales & Use Tax

3.10.010 Purpose.

1. It is the intent of Pleasant View City to repeal everything relating to electricity and natural gas energy sources in Chapter 3.08 - Utility Revenue Tax.

2. It is also the intent of Pleasant View City to repeal the last sentence of Chapter 3.04 (3.04.030.A.3) - Sales and Use Tax Ordinance, which states: "Public utilities as defined by Title 54, Utah Code Annotated, 1953, shall not be obligated to determine the place or places within any county or municipality where public utilizes services are rendered, but the place of sale or the sales tax revenue arising from such service allocable to the city shall be as determined by the State Tax Commission pursuant to an appropriate formula and other rules and regulations to be prescribed and adopted by it."

3. It is the intent of Pleasant View City to adopt the municipal energy sales and use tax, pursuant to, and in conformance with, Utah Code Ann. §10-1-301 et seq. "The Municipal Energy Sales and Use Tax Act". (Ord 97-9, 6/10/97)

3.10.020 Definitions.

1. "Consumer" means a person who acquires taxable energy for any use that is subject to the Municipal Energy Sales and Use Tax.

2. "Contractual Franchise Fee" means:

a. a fee;

i. Provided for in a franchise agreement; and

ii. That is consideration for the franchise agreement; or

b. i. A fee similar to subsection (2)(a); or

ii. Any combination of subsection (2)(a) or (2)(b).

3. a. "Delivered Value" means the fair market value of the taxable energy delivered for sales or use in the municipality and includes:

i. The value of the energy itself; and

ii. Any transportation, freight, customer demand charges, service charges, or other costs typically incurred in providing taxable energy in usable form to each class of customer in the municipality,

b. "Delivered Value" does not include the amount of a tax paid under Part 1 or Part 2 of Chapter 12, Title 59 of the Utah Code Annotated.

4. "Energy Supplier" means a person supplying taxable energy, except for persons supplying a de minimus amount of taxable energy, if such persons are excluded by rule promulgated by the State Tax Commission.

5. "Franchise Agreement" means a franchise or an ordinance, contract, or agreement granting a franchise.

6. "Franchise Tax" mean:

a. A franchise tax

b. A tax similar to a franchise tax; or

c. Any combination of subsections (a) or (b).

7. "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicated, this state, any county,

city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

8. "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of taxable energy for a consideration. It includes:

- a. Installment and credit sales;
- b. Any closed transaction constituting a sale;
- c. Any transaction under which right to acquire, use or consume taxable energy is granted under a lease or contract and the transfer would be taxable if an outright sale were made.

9. "Storage" means any keeping or retention of taxable energy in this City for any purpose except sale in the regular course of business.

10. a. "Use" means the exercise of any right or power over taxable energy incident to the ownership or the leasing of the taxable energy.

b. "Use" does not include the sale, display, demonstration, or trial of the taxable energy in the regular course of business and held for resale.

11. "Taxable Energy" means gas and electricity. (Ord 97-9, 6/10/97)

3.10.030 Municipal Energy Sales and Use Tax.

A. There is hereby levied, subject to the provisions of this chapter, a tax on every sale or use of taxable energy made within Pleasant View City equaling six percent (6%) of the delivered value of the taxable energy to the consumer. This tax shall be known as the Municipal Energy Sales and Use Tax.

1. The tax shall be calculated on the delivered value of the taxable energy to the consumer.

2. The tax shall be in addition to any sales or use tax on taxable energy imposed by Pleasant View City authorized by Title 59, Chapter 12, Part 2 of the Utah Code Annotated, The Local Sales and Use Tax Act. (Ord 99-8, 5/25/99 & Ord 97-9, 6/10/97)

3.10.040 Exemptions from the Municipal Energy Sales and Use Tax.

1. No exemptions are granted from the Municipal Energy Sales and Use Tax except as expressly provided in Utah Code Ann ' 10-1-305(2)(b); notwithstanding an exemption granted by §59-1-104 of the Utah Code.

2. The following are exempt from the Municipal Energy Sales and Use Tax, pursuant to Utah Code Ann. §10-1-305(2)(b):

a. Sales and use of aviation fuel, motor fuel, and special fuels subject to taxation under Title 59, Chapter 13 or the Utah Code Annotated;

b. Sales and use of taxable energy that is exempt from taxation under federal law, the United States Constitution, or the Utah Constitution;

c. Sales and use of taxable energy purchased or stored for resales;

d. Sales or use of taxable energy to a person, if the primary use of the taxable energy is for use in compounding or producing taxable energy or a fuel subject to taxation under Title 59, Chapter 13 of the Utah Code Annotated;

e. Taxable energy brought into the state by a nonresident for the nonresident's own personal use or enjoyment while within the state, except taxable energy purchase for use in the state by a nonresident living or working in the state at the time of purchase;

- f. The sale or use of taxable energy for any purpose other than as a fuel or energy; and
 - g. The sale of taxable energy for use outside the boundaries of Pleasant View City.
3. The sale, storage, use, or other consumption of taxable energy is exempt from the Municipal Energy Sales and Use Tax levied by this Chapter, provided:
- a. The delivered value of the taxable energy has been subject to a municipal energy sales or use tax levied by another municipality within the state authorized by Title 59, Chapter 12, Part 3 of the Utah Code Annotated; and
 - b. Pleasant View City is paid the difference between the tax paid to the other municipality and the tax that would otherwise be due under this Chapter, if the tax due under this Chapter exceeds the tax paid to the other municipality. (Ord 97-9, 6/10/97)

3.10.050 No Effect upon Existing Franchises - Credit for Franchise Fees.

1. This Chapter shall not alter any existing franchise agreements between Pleasant View City and energy suppliers.
2. There is a credit against the tax due from any consumer in the amount of a contractual franchise fee paid if:
 - a. The energy supplier pays the contractual franchise fee to Pleasant View City pursuant to a franchise agreement in effect on July 1, 1997;
 - b. The contractual franchise fee is passed through by the energy supplier to a consumer as a separately itemized charge; and
 - c. The energy supplier has accepted the franchise. (Ord 97-9, 6/10/97)

3.10.060 Tax Collection Contract with State Tax Commission.

1. On or before the effective date of this Chapter, the City shall contract with the State Tax Commission to perform all functions incident to the administration and collection of the Municipal Energy Sales and Use Tax, in accordance with this Chapter. The Mayor, is hereby authorized to enter agreements with the State Tax Commission that may be necessary to the continued administration and operation of the Municipal Energy Sales and Use Tax Ordinance enacted by this Chapter.
2. An energy supplier shall pay the Municipal Energy Sales and Use Tax revenues collected from consumers directly to Pleasant View City monthly if:
 - a. Pleasant View City is the energy supplier; or
 - b.
 - i. The energy supplier estimates that the municipal energy sales and use tax collected annually from its Utah consumers equals \$1,000,000 or more, and
 - ii. The energy supplier collects the Municipal Energy Sales and Use Tax.
3. An energy supplier paying the Municipal Energy Sales and Use Tax directly to Pleasant View City may deduct any contractual franchise fees collected by the energy supplier qualifying as a credit and remit the net tax less any amount the energy supplier retains as authorized by ' 10-1-307(4), Utah Code Annotated. (Ord 97-9, 6/10/97)

3.10.070 Incorporation of Part 1, Chapter 12, Title 59, Utah Code, including Amendments.

1. a. Except as herein provided, and except insofar as they are inconsistent with the provisions of Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act, as well as this Chapter, all of the provisions of Part 1, Chapter 12, Title 59 of the Utah Code Annotated 1953, as amended, and in force and effect on the effective date of this Chapter, insofar as they relate to sales and use taxes, excepting Sections 59-12-101 and 59-12-119 thereof, and excepting for the amount of the sales and use taxes levied therein, are hereby adopted and made a part of this Chapter as if fully set forth herein.

b. Wherever, and to the extent that in Part 1, Chapter 12, Title 59, Utah Code Annotated 1953, as amended, the State of Utah is named or referred to as the "taxing agency", the name of Pleasant View City shall be substituted, insofar as is necessary for the purposes of that part, as well as Part 3, Chapter 1, Title 10, Utah Code Annotated 1953, as amended. Nothing in this subparagraph (b) shall be deemed to require substitution of the name Pleasant View City for the word "State" when that word is used as part of the title of the State Tax Commission, or of the Constitution of Utah, nor shall the name of Pleasant View City be substituted for that of the State in any section when the result of such a substitution would require action to be taken by or against Pleasant View City or any agency thereof, rather than by or against the State Tax Commission in performing the functions incident to the administration or operation of this Chapter.

c. Any amendments made to Part 1, Chapter 12, Title 59, Utah Code Annotated 1953, as amended, which would be applicable to Pleasant View City for the purposes of carrying out this Chapter are hereby incorporated herein by reference and shall be effective upon the date that they are effective as a Utah statute. (Ord 97-9, 6/10/97)

3.10.080 No Additional License to Collect the Municipal Energy Sales and Use Tax Required - No Additional License or Reporting Requirements.

No additional license to collect or report the Municipal Energy Sales and Use Tax levied by this Chapter is required, provided the energy supplier collecting the tax has a license issued under Section 59-12-106, Utah Code Annotated. (Ord 97-9, 6/10/97)

3.10.090 Effective Date.

This Chapter is effective June 30, 1997. The Municipal Energy Sales and Use Tax shall be levied beginning 12:01 A. M., July 1, 1997. (Ord 97-9, 6/10/97)

CHAPTER 3.12 - TELECOMMUNICATIONS RIGHTS-OF-WAY ORDINANCE

(Exhibit "A" of the Franchise Agreement, Chapter 3.14)

3.12.010 -- DECLARATION OF FINDINGS AND INTENT; SCOPE OF ORDINANCE

A. Declaration of Finding and Intent.

1. **Findings Regarding Rights-of-Way.** The City finds that the Rights-of-Way within the City:
 - (a) are critical to the travel and transport of persons and property in the business and social life of the City;
 - (b) are intended for public uses and must be managed and controlled consistent with that intent;
 - (c) can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and
 - (d) are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the Rights-of-Way.
2. **Finding Regarding Compensation.** The City finds that the City should receive fair and reasonable compensation for use of the Rights-of-Way.
3. **Finding Regarding Local Concern.** The City finds that while Telecommunications Systems are in part an extension of interstate commerce, their operations also involve Rights-of-Way, municipal franchising, and vital business and community service, which are of local concern.
4. **Finding Regarding Promotion of Telecommunications Services.** The City finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of Telecommunications Services, on a nondiscrimination basis, responsive to community and public interest, and to assure availability for municipal, educational and community services.
5. **Findings Regarding Franchise Standards.** The City finds that it is in the interests of the public to Franchise and to establish standards for franchising Providers in a manner that:
 - (a) fairly and reasonably compensates the City on a competitively neutral and non-discriminatory basis as provided herein;
 - (b) encourages competition by establishing terms and conditions under which Providers may use the Rights-of-Way to serve the public;
 - (c) fully protects the public *interests* and the City from any harm that may flow from such commercial use of Rights-of-Way;
 - (d) protects the police powers and Rights-of-Way management authority of the City, in a manner consistent with federal and state law;
 - (e) otherwise protects the public interests in the development and use of the City infrastructure;

- (f) protects the public's investment in improvements in the Rights-of-Way; and
- (g) ensures that no barriers to entry of Telecommunications Providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting Telecommunication Services, within the meaning of the Telecommunications Act of 1996 ("Act") [P.L. No. 104-104].

6. Power to Manage Rights-of-Way. The City adopts this Telecommunications Ordinance pursuant to its power to manage the Rights-of-Way, pursuant to common law, the Utah Constitution and statutory authority, and receive fair and reasonable compensation for the use of Rights-of-Way by Providers as expressly set forth by Section 253 of the Act.

B. Scope of Ordinance. This Ordinance shall provide the basic local scheme for Providers of Telecommunications Services and Systems that require the use of the Rights-of-Way, including Providers of both the System and Service, those Providers of the System only, and those Providers who do not build the System but who only provide Services. This Ordinance shall apply to all future Providers and to all Providers in the City prior to the effective date of this Ordinance, whether operating with or without a Franchise as set forth in Section 12.2.

C. Excluded Activity.

1. **Wireless Services.** This Ordinance shall not apply to Personal Wireless Service Facilities.
2. **Provisions Applicable to Excluded Providers.** Providers excused by other law that prohibits the City from requiring a Franchise shall not be required to obtain a Franchise, but all of the requirements imposed by this Ordinance through the exercise of the City's police power and not preempted by other law shall be applicable.

3.12.020 -- DEFINED TERMS

A. Definitions. For purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular. The word "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

1. "Application" means the process by which a Provider submits a request and indicates a desire to be granted a Franchise to utilize the Rights-of-Way of all, or a part, of the City. An Application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a Provider to the City concerning: the construction of a Telecommunications System over, under, on or through the Rights-of-Way; the Telecommunications Services proposed to be provided in the City by a Provider; and any other matter pertaining to a proposed System or Service.
2. "City" means Pleasant View City, Utah.
3. "Completion Date" means the date that a Provider begins providing Services to customers in the City.
4. "Construction Costs" means all costs of constructing a System, including make ready costs, other than engineering fees, attorneys or accountants fees, or other consulting fees.

5. "Control" or "Controlling Interest" means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the System or of a Provider. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than twenty-five percent (25%) of any Provider (which Person or group of Persons is hereinafter referred to as "Controlling Person"). "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.
6. "FCC" means the Federal Communications Commission, or any successor thereto.
7. "Franchise" means the rights and obligation extended by the City to a Provider to own, lease, construct, maintain, use or operate a System in the Rights-of-Way within the boundaries of the City. Any such authorization, in whatever form granted, shall not mean or include: (i) 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; (ii) any other permit, agreement or authorization required in connection with operations on Rights-of-Way or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.
8. "Franchise Agreement" means a contract entered into in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth, subject to this Ordinance, the terms and conditions under which a Franchise will be exercised.
9. "Gross Revenue" includes all revenues of a Provider that may be included as gross revenue within the meaning of Chapter 26, Title 11 Utah Code annotated, 1953, as amended.
10. "Infrastructure Provider" means a Person providing to another, for the purpose of providing Telecommunication Services to customers, all or part of the necessary System which uses the Rights-Of-Way.
11. "Open Video Service" means any video programming services provided to any Person through the use of Rights-of-Way, by a Provider that is certified by the FCC to operate an Open Video System pursuant to sections 651, *et seq.*, of the Telecommunications Act (to be codified at 47 U.S.C. Title VI, Part V), regardless of the System used.
12. "Open Video System" means the system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing Open Video Services to or from subscribers or locations within the City.
13. "Operator" means any Person who provides Service over a Telecommunications System and directly or through one or more Persons owns a Controlling Interest in such System, or who otherwise controls or is responsible for the operation of such a System.
14. "Ordinance" or "Telecommunications Ordinance" means this Telecommunications Ordinance concerning the granting of Franchises in and by the City for the construction, ownership, operation, use or maintenance of a Telecommunications System.
15. "Person" includes any individual, corporation, partnership, association, joint stock company,

trust, or any other legal entity, but not the City.

16. "Personal Wireless Services Facilities" has the same meaning as provided in Section 704 of the Act (47 U.S.C. 332(c)(7)(c)), which includes what is commonly known as cellular and PCS Services that do not install any System or portion of a System in the Rights-of-Way.

17. "Provider" means an Operator, Infrastructure Provider, Resaler, or System Lessee.

18. "PSC" means the Public Service Commission, or any successor thereto.

19. "Resaler" refers to any Person that provides local exchange service over a System for which a separate charge is made, where that Person does not own or lease the underlying System used for the transmission.

20. "Rights-of-Way" means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the City.

21. "Signal" means any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.

22. "System Lessee" refers to any Person that leases a System or a specific portion of a System to provide Services.

23. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing (*e.g.*, data, video, and voice), without change in the form or content of the information sent and received.

24. "Telecommunications System" or "System" means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, Wire and appurtenances owned, leased, or used by a Provider, located in the Rights-of-Way and utilized in the provision of Services, including fully digital or analog, voice, data and video imaging and other enhanced Telecommunications Services. Telecommunications System or Systems also includes an Open Video System.

25. "Telecommunications Service(s)" or "Services" means any telecommunications services provided by a Provider within the City that the Provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the Services provided within the City, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. ' ' 521, *et seq.*), and the Telecommunications Act of 1996. Telecommunications System or Systems also includes an Open Video System.

26. "Wire" means fiber optic Telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

3.12.030 -- FRANCHISE REQUIRED

A. Non-Exclusive Franchise. The City is empowered and authorized to issue non-exclusive Franchises governing the installation, construction, and maintenance of Systems in the City's Rights-of-Way, in accordance with the provisions of this Ordinance. The Franchise is granted through a Franchise Agreement entered into between the City and Provider.

B. Every Provider Must Obtain. Except to the extent preempted by federal or state law, as ultimately

interpreted by a court of competent jurisdiction, including any appeals, every Provider must obtain a Franchise prior to constructing a Telecommunications System or providing Telecommunications Services using the Rights-of-Way, and every Provider must obtain a Franchise before constructing an Open Video System or providing Open Video Services via an Open Video System. Any Open Video System or Service shall be subject to the customer service and consumer protection provisions applicable to the Cable TV companies to the extent the City is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular Telecommunications Systems may be used for multiple purposes does not obviate the need to obtain a Franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide Telecommunications Services over the same System, must also obtain a Telecommunications Franchise.

C. Nature of Grant. A Franchise shall not convey title, equitable or legal, in the Rights-of-Way. A Franchise is only the right to occupy Rights-of-Way on a non-exclusive basis for the limited purposes and for the limited period stated in the Franchise; the right may not be subdivided, assigned, or subleased. A Franchise does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its System on the property of others, including the City's property. This section shall not be construed to prohibit a Provider from leasing conduit to another Provider, so long as the Lessee has obtained a Franchise.

D. Current Providers. Except to the extent exempted by federal or state law, any Provider acting without a Franchise on the effective date of this Ordinance shall request issuance of a Franchise from the City within 90 days of the effective date of this Ordinance. If such request is made, the Provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a Franchise is not granted, the Provider shall comply with the provisions of Section 9.4 regarding abandonment.

E. Nature of Franchise. The Franchise granted by the City under the provisions of this Ordinance shall be a nonexclusive Franchise providing the right and consent to install, repair, maintain, remove and replace its System on, over and under the Rights-of-Way in order to provide Services.

F. Regulatory Approval Needed. Before offering or providing any Services pursuant to the Franchise, a Provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such Services from the appropriate federal, state and local authorities, if required, and shall submit to the City upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.

G. Term. No Franchise issued pursuant to this Ordinance shall have a term of less than five (5) years or greater than fifteen (15) years. Each Franchise shall be granted in a nondiscriminatory manner.

3.12.040 -- COMPENSATION AND OTHER PAYMENTS

A. Compensation. As fair and reasonable compensation for any Franchise granted pursuant to this Ordinance, a Provider shall have the following obligations:

- 1. Application Fee.** In order to offset the cost to the City to review an Application for a Franchise and in addition to all other fees, permits or charges, a Provider shall pay to the City, at the time of Application, \$500 as a non-refundable Application fee.
- 2. Franchise Fees.** The Franchise fee, if any, shall be set forth in the Franchise Agreement. The obligation to pay a Franchise fee shall commence on the Completion Date. The Franchise fee is

offset by any business license fee or business license tax enacted by the City.

3. **Excavation Permits.** The Provider shall also pay fees required for an excavation permit as provided in the City Excavation Permit Ordinance.

B. **Timing.** Unless otherwise agreed to in the Franchise Agreement, all Franchise Fees shall be paid on a monthly basis within forty-five (45) days of the close of each calendar month.

C. **Fee Statement and Certification.** Unless a Franchise Agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

D. **Future Costs.** A Provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the City incurs for the services of third parties (including but not limited to attorneys and other consultants) in connection with any renewal or Provider-initiated renegotiation, or amendment of this Ordinance or a Franchise, provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association. Any costs associated with any work to be done by the City Public Works Department to provide space on City owned poles shall be borne by the Provider.

E. **Taxes and Assessments.** To the extent taxes or other assessments are imposed by taxing authorities, other than the City on the use of the City property as a result of a Provider's use or occupation of the Rights-of-Way, the Provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this Ordinance.

F. **Interest on Late Payments.** In the event that any payment is not actually received by the City on or before the applicable date fixed in the Franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.

G. **No Accord and Satisfaction.** No acceptance by the City of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City may have for additional sums payable.

H. **Not in Lieu of Other Taxes or Fees.** The fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the City owned poles are not waived and remain applicable.

I. **Continuing Obligation and Holdover.** In the event a Provider continues to operate all or any part of the System after the Term of the Franchise, such operator shall continue to comply with all applicable provisions of this Ordinance and the Franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.

J. **Costs of Publication.** A Provider shall assume any publication costs associated with its Franchise that may be required by law.

3.12.050 -- FRANCHISE APPLICATIONS

A. Franchise Application. To obtain a Franchise to construct, own, maintain or provide Services through any System within the City, to obtain a renewal of a Franchise granted pursuant to this Ordinance, or to obtain the City approval of a transfer of a Franchise, as provided in Subsection 7.1.2, granted pursuant to this Ordinance, an Application must be filed with City on the form attached to this Ordinance as Exhibit A, which is hereby incorporated by reference. The Application form may be modified by the City so long as such changes request information that is consistent with this Ordinance. Such Application form, as amended, is incorporated by reference.

B. Application Criteria. In making a determination as to an Application filed pursuant to this Ordinance, the City may, but shall not be limited to, request the following from the Provider:

- (1) A copy of the order from the PSC granting a Certificate of Convenience and Necessity.
- (2) Certification of the Provider's financial ability to compensate the City for Provider's intrusion, maintenance and use of the Rights-of-Way during the Franchise term proposed by the Provider;
- (3) Provider's agreement to comply with the requirements of Section 6 of this Ordinance.

C. Franchise Determination. The City, in its discretion, shall determine the award of any Franchise on the basis of these and other considerations relevant to the use of the Rights-of-Way, without competitive bidding.

3.12.060 -- CONSTRUCTION AND TECHNICAL REQUIREMENTS

A. General Requirement. No Provider shall receive a Franchise unless it agrees to comply with each of the terms set forth in this Section governing construction and technical requirements for its System, in addition to any other reasonable requirements or procedures specified by the City or the Franchise, including requirements regarding locating and sharing in the cost of locating portions of the System with other Systems or with City utilities. A Provider shall obtain an excavation permit, pursuant to the excavation ordinance, before commencing any work in the Rights-of-Way.

B. Quality. All work involved in the construction, maintenance, repair, upgrade and removal of the System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the public health, safety or welfare, or quality of service or reliability, then a Provider shall, at its own cost and expense, promptly correct all such conditions.

C. Licenses and Permits. A Provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the System, including but not limited to any necessary approvals from Persons and/or the City to use private property, easements, poles and conduits. A Provider shall obtain any required permit, license, approval or authorization, including but not limited to excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

D. Relocation of the System.

1. **New Grades or Lines.** If the grades or lines of any Rights-of-Way are changed at any time in a manner affecting the System, then a Provider shall comply with the requirements of the excavation ordinance.

2. The City Authority to Move System in case of an Emergency. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the System and appurtenances on, over or under the Rights-of-Way of the City, in which event the City shall not be liable therefor to a Provider. The City shall notify a Provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than three business days following any action taken under this Section. Notice shall be given as provided in Section 11.4.

3. A Provider Required to Temporarily Move System for Third Party. A Provider shall, upon prior reasonable written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its System to permit the moving of said structure. A Provider may impose a reasonable charge on any Person other than the City for any such movement of its Systems.

4. Rights-of-Way Change - Obligation to Move System. When the City is changing a Rights-of-Way and makes a written request, a Provider is required to move or remove its System from the Rights-of-Way, without cost to the City, to the extent provided in the excavation ordinance. This obligation does not apply to Systems originally located on private property pursuant to a private easement, which property was later incorporated into the Rights-of-Way, if that private easement grants a superior vested right. This obligation exists whether or not the Provider has obtained an excavation permit.

E. Protect Structures. In connection with the construction, maintenance, repair, upgrade or removal of the System, a Provider shall, at its own cost and expense, protect any and all existing structures belonging to the City. A Provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under the Rights-of-Way of the City required because of the presence of the System. Any such alteration shall be made by the City or its designee on a reimbursable basis. A Provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Rights-of-Way of the City involved in the construction, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of a Provider pursuant to the Franchise.

F. No Obstruction. In connection with the construction, maintenance, upgrade, repair or removal of the System, a Provider shall not unreasonably obstruct the Rights-of-Way of fixed guide way systems, railways, passenger travel, or other traffic to, from or within the City without the prior consent of the appropriate authorities.

G. Safety Precautions. A Provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A Provider shall comply with all applicable federal, state and local requirements including but not limited to the National Electric Safety Code.

H. Repair. After written reasonable notice to the Provider, unless, in the sole determination of the City, an eminent danger exists, any Rights-of-Way within the City which are disturbed or damaged during the construction, maintenance or reconstruction by a Provider of its System may be repaired by the City at the Provider's expense, to a condition as good as that prevailing before such work was commenced. Upon

doing so, the City shall submit to such a Provider an itemized statement of the cost for repairing and restoring the Rights-of-Ways intruded upon. The Provider shall, within thirty (30) days after receipt of the statement, pay to the City the entire amount thereof.

I. System Maintenance. A Provider shall:

- (1) Install and maintain all parts of its System in a non-dangerous condition throughout the entire period of its Franchise.
- (2) Install and maintain its System in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state and local laws or regulations.
- (3) At all reasonable times, permit examination by any duly authorized representative of the City of the System and its effect on the Rights-of-Way.

J. Trimming of Trees. A Provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Rights-of-Way so as to prevent the branches of such trees from coming in contact with its System.

3.12.070 -- FRANCHISE, LICENSE, TRANSFER OR SALE

A. Notification of Sale.

1. Notification and Election. When a Provider is the subject of a sale, transfer, lease, assignment, sublease or is disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the Provider or its successor entity shall promptly notify the City of the nature of the transaction. The notification shall include either:

- (a) the successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original Provider's Franchise Agreement, or
- (b) the successor entity's Application in compliance with Section 5 of this Ordinance.

2. Transfer of Franchise. Upon receipt of a notification and certification in accordance with Subsection 7.1.1(a), the City designee, as provided in Subsection 9.1.1, shall send notice affirming the transfer of the Franchise to the successor entity. If the City has good cause to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application for the transfer. The Application shall comply with Section 5.

3. If PSC Approval No Longer Required. If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in Section 7.1, and the City has good cause to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application. The Application shall comply with Section 5.

B. Events of Sale. The following events shall be deemed to be a sale, assignment or other transfer of the Franchise requiring compliance with Section 7.1: (i) the sale, assignment or other transfer of all or a majority of a Provider's assets to another Person; (ii) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a Provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in a Provider; (iii) the issuance of additional capital stock or partnership, membership or other equity interest by a Provider so as to create a new Controlling Interest in such a Provider; or (iv) the entry by a Provider into an agreement with respect to the management or operation of such Provider or its System.

3.12.080 -- OVERSIGHT AND REGULATION

A. **Insurance, Indemnity, and Security.** Prior to the execution of a Franchise, a Provider will deposit with the City an irrevocable, unconditional letter of credit or surety bond as required by the terms of the Franchise, and shall obtain and provide proof of the insurance coverage required by the Franchise. A Provider shall also indemnify the City as set forth in the Franchise.

B. **Oversight.** The City shall have the right to oversee, regulate and inspect periodically the construction, maintenance, and upgrade of the System, and any part thereof, in accordance with the provisions of the Franchise and applicable law. A Provider shall establish and maintain managerial and operational records, standards, procedures and controls to enable a Provider to prove, in reasonable detail, to the satisfaction of the City at all times throughout the Term, that a Provider is in compliance with the Franchise. A Provider shall retain such records for not less than the applicable statute of limitations.

C. **Maintain Records.** A Provider shall at all times maintain:

(1) On file with the City, a full and complete set of plans, records and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all existing and proposed installations and the types of equipment and Systems installed or constructed in the Rights-of-Way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all Rights-of-Ways where work will be undertaken. As used herein, "as-built" maps includes "file construction prints." Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within 30 days of completion of work or within 30 days after completion of modification and repairs. "As-built" maps are not required of the Provider who is the incumbent local exchange carrier for the existing System to the extent they do not exist.

(2) Throughout the term of the Franchise, a Provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a Provider with respect to the System in a manner that allows the City at all times to determine whether a Provider is in compliance with the Franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a Provider shall alter the manner in which the books and/or records are maintained so that a Provider comes into compliance with this Section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State of Utah, and generally accepted accounting principles shall be deemed to be acceptable under this Section.

D. **Confidentiality.** If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by a Provider, such information shall be classified as a Protected Record within the meaning of the Utah Government Records Access and Management Act ("GRAMA"), making it available only to those who must have access to perform their duties on behalf of the City, provided that a Provider notifies the City of, and clearly labels the information which a Provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the Provider.

E. **Provider's Expense.** All reports and records required under this Ordinance shall be furnished at the sole expense of a Provider, except as otherwise provided in this Ordinance or a Franchise.

F. **Right of Inspection.** For the purpose of verifying the correct amount of the franchise fee, the books and

records of the Provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records, provided that the City shall not audit the books and records of the Provider more often than annually. The Provider agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the Provider has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the City may accept any amount offered by the Provider, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

3.12.090 -- RIGHTS OF CITY

A. Enforcement and Remedies.

1. **Enforcement - City Designee.** The City is responsible for enforcing and administering this Ordinance, and the City or its designee, as appointed by the Mayor, is authorized to give any notice required by law or under any Franchise Agreement.

2. **Enforcement Provision.** Any Franchise granted pursuant to this Ordinance shall contain appropriate provisions for enforcement, compensation, and protection of the public, consistent with the other provisions of this Ordinance, including, but not limited to, defining events of default, procedures for accessing the Bond/Security Fund, and rights of termination or revocation.

B. Force Majeure. In the event a Provider's performance of any of the terms, conditions or obligations required by this Ordinance or a Franchise is prevented by a cause or event not within a Provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

C. Extended Operation and Continuity of Services.

1. **Continuation After Expiration.** Upon either expiration or revocation of a Franchise granted pursuant to this Ordinance, the City shall have discretion to permit a Provider to continue to operate its System or provide Services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A Provider shall continue to operate its System under the terms and conditions of this Ordinance and the Franchise granted pursuant to this Ordinance.

2. **Continuation by Incumbent Local Exchange Carrier.** If the Provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its System and provide Services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.

D. Removal or Abandonment of Franchise Property.

1. **Abandoned System.** In the event that (1) the use of any portion of the System is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of Provider; (2) any System has been installed in the Rights-of-Way without complying with the requirements of this Ordinance or Franchise; or (3) the

provisions of Section 3.5 are applicable and no Franchise is granted, a Provider, except the Provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such System.

2. Removal of Abandoned System. The City, upon such terms as it may impose, may give a Provider written permission to abandon, without removing, any System, or portion thereof, directly constructed, operated or maintained under a Franchise. Unless such permission is granted or unless otherwise provided in this Ordinance, a Provider shall remove within a reasonable time the abandoned System and shall restore, using prudent construction standards in accordance with the City Excavation Permit Ordinance, any affected Rights-of-Way to their former state at the time such System was installed, so as not to impair their usefulness. In removing its plant, structures and equipment, a Provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the Rights-of-Way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and any security fund provided in a Franchise shall continue in full force and effect during the period of removal and until full compliance by a Provider with the terms and conditions of this Section.

3. Transfer of Abandoned System to City. Upon abandonment of any System in place, a Provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned System.

4. Removal of Above-Ground System. At the expiration of the term for which a Franchise is granted, or upon its revocation or earlier expiration, as provided for by this Ordinance, in any such case without renewal, extension or transfer, the City shall have the right to require a Provider to remove, at its expense, all above-ground portions of a System from the Rights-of-Way within a reasonable period of time, which shall not be less than one hundred eighty (180) days. If the Provider is the incumbent local exchange carrier, it shall not be required to remove its System, but shall negotiate a renewal in good faith.

5. Leaving Underground System. Notwithstanding anything to the contrary set forth in this Ordinance, a Provider may abandon any underground System in place so long as it does not materially interfere with the use of the Rights-of-Way or with the use thereof by any public utility, cable operator or other Person.

3.12.100 - OBLIGATION TO NOTIFY

A. **Publicizing Work.** Before entering onto any private property, a Provider shall make a good faith attempt to contact the property owners in advance, describe the work to be performed, and obtain their consent.

3.12.110 -- GENERAL PROVISIONS

A. **Conflicts.** In the event of a conflict between any provision of this Ordinance and a Franchise entered pursuant to it, the provisions of this Ordinance in effect at the time the Franchise is entered into shall control.

B. **Severability.** If any provision of this Ordinance is held by any federal, state or local court of competent jurisdiction, to be invalid as conflicting with any federal or state statute, or is ordered by a court to be

modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the Ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct, and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law the provision in question shall return to full force and effect and shall again be binding on the City and the Provider, provided that the City shall give the Provider thirty (30) days, or a longer period of time as may be reasonably required for a Provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

C. New Developments. It shall be the policy of the City to liberally amend this Ordinance, upon Application of a Provider, when necessary to enable the Provider to take advantage of any developments in the field of Telecommunications which will afford the Provider an opportunity to more effectively, efficiently, or economically serve itself or the public.

D. Notices. All notices from a Provider to the City required under this Ordinance or pursuant to a Franchise granted pursuant to this Ordinance shall be directed to the officer as designated by the Mayor. A Provider shall provide in any Application for a Franchise the identity, address and phone number to receive notices from the City. A Provider shall immediately notify the City of any change in its name, address, or telephone number.

E. Exercise of Police Power. To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.

3.12.120 -- FEDERAL, STATE AND CITY JURISDICTION

A. Construction. This Ordinance shall be construed in a manner consistent with all applicable federal and state statutes.

B. Ordinance Applicability. This Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall further apply, to the extent permitted by applicable federal or state law to all existing Franchises granted prior to the effective date of this Ordinance and to a Provider providing Services, without a Franchise, prior to the effective date of this Ordinance.

C. Other Applicable Ordinances. A Provider's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A Provider shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers. In particular, all Providers shall comply with the City zoning and other land use requirements.

D. City Failure to Enforce. A Provider shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or any Franchise granted pursuant to this Ordinance by reason of any failure of the City to enforce prompt compliance.

E. Construed According to Utah Law. This Ordinance and any Franchise granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the State of Utah.

3.12.130 -- TELECOMMUNICATIONS FRANCHISE APPLICATION

(See attached Exhibit "A")

EXHIBIT "A"

PLEASANT VIEW CITY
TELECOMMUNICATIONS FRANCHISE APPLICATION

(Capitalized terms are defined in the Telecommunications Rights-of-Way Ordinance)

(Name of Applicant) _____ (herein "Provider") a _____ (Corporation, LLC, Partnership, Individual), organized under the laws of _____ (state), with its principal headquarters located in _____ (state), does hereby request a Franchise to utilize the Rights-of-Way of all, or a part of, Pleasant View City (herein the "City"), pursuant to the City's Telecommunications Rights-of-Way Ordinance (herein "ROW Ordinance").

A. Please list all names (d/b/a's) the Provider will be doing business under in the City:

Name of Contact Person:

Telephone Number:

Address:

Street City State Zip Code

B. This Application is a:
_____ New Application _____ Renewal Application _____ Transfer of Franchise

C. At the time of this Application, Provider is planning to do the following (mark all that apply):

- _____ Construct a System using the Rights-of-Way
- _____ Directly provide Telecommunications Services to the public:
 - _____ Local dial tone services
 - _____ Interstate long distance services
 - _____ Intrastate long distance services
 - _____ High speed data transmission services
 - _____ High speed Internet services
- _____ Provide the private Telecommunication needs of the Provider

_____ Lease **TO** or otherwise allow all or a portion of its System to be used by another Provider. List name(s) of other Provider(s), if known:

_____ Lease **FROM** or otherwise use another Provider's System. List name(s) of other Provider(s), if known:

- _____ Construct an Open Video System
- _____ Provide an Open Video System

D. The application fee required in the ROW Ordinance accompanies this Application. The Provider understands that this Application will not be considered until the application fee is paid.

E. As provided in Section 2.1.1 of the ROW Ordinance, this Application includes all written documentation, verbal statements and representations, in whatever form, made by the Provider to the City concerning the construction of a Telecommunication System over, under, on, or through the Rights-of-Way; the Telecommunication Services proposed to be provided in the City by the Provider; and any other matter pertaining to a proposed System or Service.

F. Except to the extent any Ordinance provision referenced herein is invalidated, the Provider hereby certifies and agrees as follows:

1. All information contained in this Application and all other information presented to the City is true and correct;
2. The Provider is familiar with the ROW Ordinance and will comply with it in all respects if the Franchise is granted;
3. The Provider has received a Certificate of Convenience and Necessity from the Utah Public Service Commission, if required;
4. The Provider has the financial ability to compensate the City during the Franchise term by paying the franchise fee

as required in the ROW Ordinance and the Franchise Agreement.

5. The Provider will comply with the requirements of Section 6 of the ROW Ordinance which governs construction and technical requirements;

6. The Provider will obtain excavation permits as required in the ROW Ordinance and the Excavation Ordinance and promptly pay the permit fees;

7. The Provider will pay the up-front franchise fee required in the Franchise Agreement when it is granted;

8. The signers of this Application have the authority to make these certifications and agreements on behalf of the Provider.

Provider: _____

By: _____

Title: _____

STATE OF UTAH)

: ss

COUNTY OF _____)

On this ____ day of _____, 200__, personally appeared before me _____, who being by me duly sworn did say that he/she is the _____, of _____, and that the foregoing instrument was signed in behalf of said entity by authority of its or its bylaws, and he/she acknowledged to me that said entity executed the same.

NOTARY PUBLIC

CHAPTER 3.14 - FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into by and between Pleasant View City, Utah (hereinafter "City"), a municipal corporation and political subdivision of the State of Utah, with principal offices at 520 West Elberta Drive, Pleasant View, Utah, and _____ (hereinafter "Provider"), with its principal offices at _____.

W I T N E S S T H

WHEREAS, the Provider desires to provide voice, data or video transmission services within the City and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the City; and

WHEREAS, the City has enacted in the City Code the "Telecommunications Rights-of-Way Ordinance" which governs the application and review process for Telecommunication Franchises in the City; and

WHEREAS, the City, in exercise of its management of public Rights-of-Way, believes that it is in the best interest of the public to provide the Provider a nonexclusive franchise to operate a telecommunications network in the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the City and the Provider agree as follows:

ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE.

1.1 Agreement. Upon approval by the City Council and execution by the parties, this Agreement shall be deemed to constitute a contract by and between City and Provider.

1.2 Ordinance. The City has adopted the Telecommunications Rights-of-Way Ordinance, which is attached to this Agreement as Exhibit "A" and incorporated herein by reference. The Provider acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Rights-of-Way Ordinance. The parties agree that the provisions and requirements of the Telecommunications Rights-of-Way Ordinance are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Telecommunications Rights-of-Way Ordinance. The definitions in the Telecommunications Rights-of-Way Ordinance shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to require the Provider to comply with any provision of the Telecommunications Rights-of-Way Ordinance which is determined to be unlawful or beyond the City's authority.

1.3 Ordinance Amendments. The City reserves the right to amend the Telecommunications Rights-of-Way Ordinance at any time. The City shall give the Provider notice and an opportunity to be heard concerning any proposed amendments. If there is any inconsistency between the Provider's rights and obligations under the Telecommunications Rights-of-Way Ordinance as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, the Provider agrees to comply with any such amendments.

1.4 **Franchise Description.** The Telecommunications Franchise provided hereby shall confer upon the Provider the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network in, under, above and across the present and future public Rights-of-Way in the City. The franchise does not grant to the Provider the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude the Provider from (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the Provider's System within the City for such purposes, or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied.

1.5 **Licenses.** The Provider acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Telecommunications Rights-of-Way Ordinance.

1.6 **Relationship.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with each other.

ARTICLE 2. FRANCHISE FEE.

2.1 **Franchise Fee.** For the Franchise granted herein, the Provider shall pay to the City a franchise fee of 6% of its Gross Revenues [cannot exceed six percent], less any business license fee or business license tax enacted by the City. All payments shall be made to the City, and sent as follows, unless the Provider is otherwise notified of a change in address in writing by the City:

520 West Elberta Drive, Pleasant View, Utah 84414

2.2 **Up-front Franchise Fee.** Upon granting of this Franchise, the Provider shall pay a \$2500 up-front franchise fee. The Provider may offset the franchise fee paid to the City pursuant to Article 2.1, up to the amount of the up-front franchise fee paid to the City.

2.3 **Equal Treatment.** City agrees that if any service forming part of the base for calculating the franchise fee under this Agreement is, or becomes, subject to competition from a third party, the City will either impose and collect from such third party a fee or tax on Gross Revenues from such competing service in the same percentage specified herein, plus the percentage specified as a utility revenue tax or license fee in the then current ordinances of the City, or waive collection of the fee from Provider as required herein that are subject to such competition.

ARTICLE 3. TERM AND RENEWAL.

3.1 **Term and Renewal.** The franchise granted to Provider shall be for a period of five (5) years commencing on the first day of the month following this Agreement, unless this Franchise be sooner terminated as herein provided. At the end of the initial five (5) year term of this Agreement, the franchise granted herein may be renewed by the Provider upon the same terms and conditions as contained in this Agreement for one additional five (5) year term, by providing to the City's representative designated herein

written notice of the Provider's intent to renew not less than ninety (90) calendar days before the expiration of the initial franchise term.

3.2 Rights of Provider Upon Expiration or Revocation. Upon expiration of the franchise granted herein, whether by lapse of time, by agreement between the Provider and the City, or by revocation or forfeiture, the Provider shall have the right to remove from the Rights-of-Way any and all of its System, but in such event, it shall be the duty of the Provider, immediately upon such removal, to restore the Rights-of-Way from which such System is removed to as good condition as the same was before the removal was effected.

ARTICLE 4. PUBLIC USE RIGHTS.

4.1 City Uses of Poles and Overhead Structures. The City shall have the right, without cost, to use all poles owned by the Provider within the City for fire alarms, police signal systems, or any lawful public use; provided, however, any of the uses by the City shall be for activities owned, operated or used by the City for any public purposes and shall not include the provision of telecommunications service to third parties.

4.2 Limitations on Use Rights. Nothing in this Agreement shall be construed to require the Provider to increase pole capacity, alter the manner in which the Provider attaches equipment to the poles, or alter the manner in which the Provider operates and maintains its equipment. Such City attachments shall be installed and maintained in accordance with the reasonable requirements of the Provider and the current National Electrical Safety Code. City attachments shall be attached or installed only after written approval by the Provider, which approval will be processed in a timely manner and will not be unreasonably withheld.

4.3 Maintenance of City Facilities. The City's use rights shall also be subject to the parties reaching an agreement regarding the City's maintenance of the City attachments.

ARTICLE 5. POLICE POWERS.

5.1 The City expressly reserves, and the Provider expressly recognizes, the City's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

ARTICLE 6. CHANGING CONDITIONS AND SEVERABILITY.

6.1 Meet to Confer. The Provider and the City recognize that many aspects of the telecommunication business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the Provider conducts its business and the way the City regulates the business. In recognition of the present state of uncertainty respecting these matters, the Provider and the City each agree, upon request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during

the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

6.2 Severability. If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications Rights-of-Way Ordinance is for any reason determined to be or rendered illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the City is its ability to collect the Franchise Fee during the term of this Agreement and its ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the City's excavation ordinance. For the Provider, "material consideration" is its ability to use the Rights-of-Way for telecommunication purposes in a manner similar to that provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the City's excavation ordinance.

ARTICLE 7. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES.

7.1 Grounds for Termination. The City may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

- (a) The Provider fails to make timely payments of the Franchise Fee as required under Article 2 of this Agreement and does not correct such failure within thirty (30) calendar days after written notice by the City of such failure;
- (b) The Provider, by act or omission, materially violates a material duty herein set forth in any particular within the Provider's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its City Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the Provider notice of such determination, the Provider, within thirty (30) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the City may declare the franchise forfeited and this Agreement terminated, and thereupon, the Provider shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the City shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the Provider; or
- (c) The Provider becomes insolvent, unable or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed

by the Provider within sixty (60) days.

7.2 **Reserved Rights.** Nothing contained herein shall be deemed to preclude the Provider from pursuing any legal or equitable rights or remedies it may have to challenge the action of the City.

7.3 **Remedies at Law.** In the event the Provider or the City fails to fulfill any of its respective obligations under this Agreement, the City or the Provider, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

7.4 **Third Party Beneficiaries.** The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Provider. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

ARTICLE 8. PARTIES DESIGNEES.

8.1 **City Designee and Address.** The Mayor or his/her designee(s) shall serve as the City's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from the Provider to the City pursuant to or concerning this Agreement, shall be delivered to the City's representative at the City offices, or such other officer and address as the City may designate by written notice to the Provider.

8.2 **Provider Designee and Address.** The Provider local manager or his/her designee(s) shall serve as the Provider's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from the City to the Provider pursuant to or concerning this Agreement, shall be delivered to the Provider's representative at the Provider's offices, or such other officer and address as the Provider may designate by written notice to the City.

8.3 **Failure of Designee.** The failure or omission of the City's or Provider's representative to act shall not constitute any waiver or estoppel by the City or Provider.

ARTICLE 9. INSURANCE AND INDEMNIFICATION

9.1 **Insurance.** Prior to commencing operations in the City pursuant to this Agreement, the Provider shall furnish to the City evidence that it has adequate general liability and property damage insurance. The evidence may consist of a statement that the Provider is effectively self-insured if the Provider has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the state of Utah. Any and all insurance, whether purchased by the Provider from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage acceptable to the City.

9.2 **Indemnification.** The Provider agrees to indemnify, defend and hold the City harmless from and

against any and all claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the Provider's acts or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the City in defense of such claims. The City shall promptly give written notice to the Provider of any claim, demand, lien, liability, or damage with respect to which the City seeks indemnification and, unless in the City's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the City shall permit the Provider to assume the defense of such with counsel of the Provider's choosing, unless the City reasonably objects such counsel. Notwithstanding any provision of this section to the contrary, the Provider shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand, lien, damage, or liability arises out of or in connection with negligent acts or omissions of the City.

ARTICLE 10. GENERAL PROVISIONS.

10.1 Binding Agreement. The parties represent that (a) when executed by their respective parties, this Agreement shall constitute legal and binding obligations of the parties; and (b) that each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement.

10.2 Utah Law. This Agreement shall be interpreted pursuant to Utah law.

10.3 Time of Essence. Time shall be of the essence of this Agreement.

10.4 Interpretation of Agreement. The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

10.5 No Presumption. All parties have participated in preparing this Agreement. Therefore, the parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.

10.6 Amendments. This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

10.7 Binding Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

SIGNED AND ENTERED INTO this day of _____, 200__.

PLEASANT VIEW CITY

By: _____
Mayor

ATTEST:

City Recorder

Provider

By: _____

Title: _____

Print Name and Title Here

STATE OF _____)

: ss.

COUNTY OF _____)

On the ___ day of _____, 200__, personally appeared before me
_____, who being by me duly sworn did say that he/she is the
_____ of _____, and that the foregoing instrument was
signed in behalf of said corporation by authority of a resolution of its board of directors; and they
acknowledged to me that said corporation executed the same.

Notary Public

Chapter 3.16 - Municipal Telecommunications License Tax

WHEREAS, Pleasant View City pursuant to Utah Code Sections 10-1-401 et seq. may levy a tax on the gross receipts of telecommunication service providers; and

WHEREAS, Pleasant View City has determined that the need for such a tax as a source of general fund revenue; and

WHEREAS, to the extent Pleasant View City has previously raised general fund revenue from taxes or fees from certain telecommunication providers under the authority of Utah Code Sections 10-1-203 or 11-26-1 et seq. it now wishes to repeal those taxes.

3.16.010 Definitions. As used in this ordinance:

- (1) "Commission" means the State Tax Commission.
- (2) (a) Subject to Subsections (2) (b) and (c), "customer" means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.
 - (b) For purposes of this ordinance, "customer" means:
 - (i) the person who is obligated under a contact with a telecommunications provider to pay for telecommunications service received under the contract; or
 - (ii) if the end user is not the person described in Subsection (2) (b) (i), the end user of telecommunications service.
 - (c) "Customer" does not include a reseller:
 - (i) of telecommunications service; or
 - (ii) for mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.
- (3) (a) "End user" means the person who uses a telecommunications service.
 - (b) For purposes of telecommunications service provided to a person who is not an individual, "end user" means the individual who uses the telecommunications service on behalf of the person who is provided the telecommunications service.
- (4) "Gross Receipts attributed to the municipality" means those gross receipts from a transaction for telecommunications services that is located within the municipality for the purposes of sales and use taxes under Utah Code Title 59, Chapter 12, Sales and Use Tax Act and determined in accordance with Utah Code section 59-12-207.
- (5) "Gross receipts from telecommunications service" means the revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as:
 - (a) a tax, fee, or charge:
 - (i) imposed buy a governmental entity;
 - (ii) separately identified as a tax, fee, or charge in the transaction with the customer for the telecommunications service; and
 - (iii) imposed only on a telecommunications provider;
 - (b) sales and use taxes collected by the telecommunications provider from a customer under Title 59, Chapter 12, Sales and Use Tax Act; or
 - (c) interest, a fee, or a charge that is charged by a telecommunications provider

on a customer for failure to pay for telecommunications service when payment is due.

(6) "Mobile telecommunications service" is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(7) "Municipality" means Pleasant View City.

(8) "Place of primary use":

(a) for telecommunications service other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:

(i) the residential street address of the customer; or

(ii) the primary business street address of the customer; or

(b) for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(9) Notwithstanding where a call is billed or paid, "service address" means:

(a) if the location described in this Subsection (9) (a) is known, the location of the telecommunications equipment:

(i) to which a call is charged; and

(ii) from which the call originates or terminates;

(b) if the location described in Subsection (9) (a) is not known but the location described in this Subsection (9) (b) is known, the location of the origination point of the signal of the telecommunications service first identified by:

(i) the telecommunications system of the telecommunications provider; or

(ii) if the system used to transport the signal is not a system of the telecommunications provider, information received by the telecommunications provider from its service provider; or

(c) if the locations described in Subsection (9) (a) or (b) are not known, the location of a customer's place of primary use.

(10) (a) Subject to Subsections (10) (b) and (10) (c), "telecommunications provider" means a person that:

(i) owns, controls, operates, or manages a telecommunications service; or

(ii) engages in an activity described in Subsection (10) (a) (i) for the shared use with or resale to any person of the telecommunications service.

(b) A person described in Subsection (10) (a) is a telecommunications provider whether or not the Public Service Commission of Utah regulates:

(i) that person; or

(ii) the telecommunications service that the person owns, controls, operates, or manages.

(c) "Telecommunications provider" does not include an aggregator as defined in Utah Code Section 54-8b-2.

(11) "Telecommunications service" means:

(a) telephone service, as defined in Utah Code Section 59-12-102, other than mobile telecommunications service, that originates and terminates within the boundaries of this state; and

(b) mobile telecommunications service, as defined in Utah Code Section 59-12-102:

(i) that originates and terminates within the boundaries of one state; and

(ii) only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4

U.S.C. Sec. 116 et seq. (Ord 2004-4, 5/25/04)

3.16.020 Levy of Tax. There is hereby levied a municipal telecommunication license tax on the gross receipts from telecommunications service attributed to this municipality. (Ord 2004-4, 5/25/04)

3.16.030 Rate. The rate of the tax levy shall be 4% of the telecommunication provider's gross receipts from telecommunications service that are attributed to the municipality. If the location of the transaction is determined to be other than this municipality then the rate imposed on the gross receipts for telecommunications services shall be determined pursuant to the provisions of Utah Code Section 10-1-407. (Ord. 2004-4, 5/25/04)

3.16.040 Rate Limitation and Exemption Therefrom. This rate of this levy shall not exceed 4% of the telecommunication provider's gross receipts from telecommunication service attributed to the municipality unless a higher rate is approved by a majority vote of the voters in this municipality that vote in:

- (a) a municipal general election;
- (b) a regular general election; or
- (c) a local special election. (Ord.2004-4, 5/25/04)

3.16.050 Effective Date of Tax Levy. This tax shall be levied beginning July 1, 2004. (Ord. 2004-4, 5/25/04)

3.16.060 Changes in Rate or Repeal of the Tax. This ordinance is subject to the requirements of Utah Code Section 10-1-403. If the tax rate is changed or the tax is repealed, then the appropriate notice shall be given as provided in Utah Code Section 10-1-403. (Ord. 2004-04, 5/25/04)

3.16.070 Interlocal Agreement for Collection of the Tax. On or before the effective date of the ordinance, the municipality shall enter into the uniform interlocal agreement with the Commission as described in Utah Code Section 10-1-405 for the collection, enforcement, and administration of this municipal telecommunications license tax; (Ord 2004-4, 5/25/04)

3.16.080 Procedures for Taxes Erroneously Recovered from Customers. Pursuant to the provisions of Utah Code Section 10-1-408, a customer may not bring a cause of action against a telecommunications provider on the basis that the telecommunications provider erroneously recovered from the customer the municipal telecommunication license tax except as provided in Utah Code Section 10-1-408. (Ord. 2004-4, 5/25/04)

3.16.090 Repeal of Inconsistent Taxes and Fees. Any tax or fee previously enacted by this municipality under authority of Utah Code Section 10-1-203 or Utah Code Title 11, Chapter 26, Local Taxation of Utilities Limitation is hereby repealed. Nothing in this ordinance shall be interpreted to repeal any municipal ordinance or fee which provides that the municipality may recover from a telecommunications provider the management costs of the municipality caused by the activities of the telecommunications

provider in the rights-of-way of the municipality, if the fee is imposed in accordance with Utah Code Section 72-7-102 and is not related to the municipality's loss of use of a highway as a result of the activities of the telecommunications provider in a right of way, or increased deterioration of a highway as a result of the activities of the telecommunications provider in a right-of-way nor does this ordinance limit the municipalities right to charge fees or taxes on persons that are not subject to the municipal telecommunications license tax under this ordinance and locate telecommunications facilities, as defined in Utah Code Section 72-7-108, in this municipality. (Ord. 2004-4, 5/25/04)