

CHAPTER 10

MUNICIPAL RELATIONSHIPS

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10.1 ELECTRIC FRANCHISE

OTERO ELECTRIC COOPERATIVE INC. FRANCHISE:

There is hereby granted by the "Town of Carrizozo", to the Otero County Electric Cooperative the right and franchise to transmit and distribute electrical energy in the town of Carrizozo, and use the streets, alleys and other public places for such purpose.

**THE OTERO ELECTRIC COOPERATIVE INC. FRANCHISE
ORDINANCE 02008-12: shall from the time it became effective repeal and supersede the Franchise Ordinance adopted finally on or about February 21, 1962, granting an electric franchise to Otero County Electric Cooperative Inc., approved on December 9th, 2008.**

**SECTION 10.2
TELEPHONE SERVICE FRANCHISE**

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10.2.1 GRANT OF AUTHORITY:

There is hereby granted by the Town of Carrizozo, hereinafter called the "Town" to Tularosa Basin Telephone Company, its successors and assigns, hereinafter called the "Company", the non-exclusive right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now in use or dedicated, and all extensions thereof, and additions thereto in said Town, poles, wires, cables, underground conduits, manholes and other telecommunications facilities necessary or proper for the maintenance and operation in said Town of Carrizozo of the Company's telecommunications business; provided, however, that no poles or other facilities shall be placed where the same will interfere with any street, roadway or traffic control facilities or with any existing utility facilities and shall be placed in such a manner as to cause a minimum interference with the rights or reasonable convenience of property owners who adjoin any of said streets, alleys or public ways and places. Any and all changes made by the Company for Company reasons in the location of the poles, wires, cables, underground conduits, manholes and other communications facilities shall not require

the Town to pay for the change in any street, roadway or traffic control facility caused by the change of the locations by the Company. The cost thereof shall be paid by the Company.

10.2.2 COMPANY LIABILITY:

The Company shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the Town and to such regulations as the Town may, by resolution or ordinance, hereafter provide. It is expressly understood and agreed by and between the Company and Town that the Company shall save the Town harmless from all loss sustained by the Town on account of any suit, judgment, execution, claim or demand whatsoever, resulting from negligence on the part of the Company in the construction or maintenance of its telecommunications system in the Town. The Town shall notify the Company's representative in writing at P.O. Box 550, Tularosa, New Mexico 88352, within ten (10) days after the service of process in a suit against the Town on account of any negligence as aforesaid on the part of the Company. Failure to promptly notify the Company as required above shall operate as release of the Company's obligation to save the Town harmless regarding the claim or demand if such failure of notice results in substantial harm to the Company. The Town will forward a copy of any notice of claim made under the State Tort Claims Act involving the Company within a reasonable period of time.

10.2.3 HOUSEMOVING AND OTHER UNUSUAL USE:

Any person or corporation desiring to move a building or other structure along, or to make any unusual use of, the streets, alleys and public ways of the Town which shall interfere with the poles, wires or facilities of the Company or the Town, shall first give notice to the Company or the Town, as the case may be, and a sum sufficient to cover the expense and damages incident to the cutting, altering and moving of the wires or other facilities of the Company or the Town, and before a permit is given by the Town therefore the applicant shall present a receipt from the Company showing the payment thereupon. Thereupon the Company, upon presentation of said permit, shall within a reasonable time thereafter provide for and do such cutting, altering and moving of said wires and facilities as may be necessary to allow such moving or other unusual use of the streets, alleys and public ways of the Town.

10.2.4 TREE TRIMMING:

The Company shall have the authority, to the extent that the Town has such authority, to trim trees upon or overhanging streets, highways, alleys, bridges or other public ways or places of the Town in order to prevent the branches of such trees from coming in contact with the wires, cables, conductors, or other facilities or equipment of the Company; provided, however, that the Company shall obtain permission of any landowner should it be necessary to trim any tree where the main trunk is located on private property.

10.2.5 CONSIDERATION:

As a further consideration for this franchise, the Company shall pay to the Town franchise payments in an amount equal to three percent (3%) of the gross monthly recurring revenues from the services listed in Appendix A, exclusive of all federal and state excise services furnished to subscribers of the Company, not including uncollectible revenues related to those services within the Town of Carrizozo. Payment shall be made in quarterly installments within sixty (60) days after the end of each calendar quarter during the term of this franchise.

10.2.6 INSPECTION OF BOOKS:

The Town shall have the right, at all reasonable times, to inspect the books and records of the Company pertaining to the Company's gross monthly recurring revenues from the services listed in Appendix A received from the Company's subscribers located within the limits of the Town.

10.2.7 PAYMENT IN LIEU OF OTHER TAXES:

In consideration of the franchise payments herein above provided for, it is expressly understood and agreed by the Company and the Town that these payments shall be in lieu of any and all other franchise, license, occupation, or other forms of excise or revenue taxes based upon or measured by the revenues, employees, payroll, property, facilities or equipment of the Company, excepting, however, general ad valorem property taxes, special assessments for local improvements and sales or gross receipts taxes (all hereinafter referred to as "excepted taxes"). The franchise payments shall continue only so long as the Company is not prohibited from making the payments by any lawful authority having jurisdiction in the premises. Furthermore, if the Town does levy, charge or collect or attempt to levy, charge or collect any other franchise, license, occupation or other form of excise or revenue taxes of the type above specified in this paragraph (other than excepted taxes), the obligation to make franchise payments hereunder shall be abated to the extent such other taxes are levied, charged or collected by the Town.

10.2.8 RELEASE OF CLAIMS UNDER PRIOR FRANCHISE:

The Town and the Company recognize the existence of and validity of Section 10.2 of the Code of Ordinances, Carrizozo, New Mexico 1972 being Ordinance # 72-100, previously granting a franchise to The Mountain States Telephone and Telegraph Company ("Prior Franchise"), and agree that the Prior Franchise has been extended by mutual agreement in order to negotiate this agreement, it being the intent and understanding that there are no claims by the Town against The Mountain States Telephone and Telegraph Company or the Company and no claims by The Mountain States Telephone and telegraph Company or the Company against the Town with respect to the location, establishment, construction, maintenance or operation of the

Company's lines and facilities within the Town, or amounts due to the Town under the Prior Franchise.

10.2.9 ALTERNATIVE DISPUTE RESOLUTION

(a) Any party considering the other to be in default of this Agreement shall give the other written notice of the default. The party receiving the notice shall have thirty (30) days to remedy the default or within which to commence actions to remedy the default, if the default cannot reasonably be remedied within thirty (30) days. If the party alleged to be in default fails to remedy the default within the prescribed period or to complete remedial actions within a reasonable time, the other party may, upon sixty (60) days written notice, elect to cancel this Agreement, subject to payment of any accrued amounts due under Section 10.2.5.

(b) The parties desire to resolve disputes arising out of this Ordinance without litigation. Accordingly, in the event of any dispute hereunder, the parties agree to attempt to negotiate in good faith to resolve any dispute arising under this Ordinance. The parties intend that these negotiations shall be conducted by non-lawyer, business representatives.

(c) Except for action seeking a temporary restraining order or injunction related to the purposes of this Ordinance, or suit to compel compliance with this dispute resolution process, the parties agree to use the following alternative dispute resolution procedure and also agree not to sue any party to this Ordinance with respect to any controversy or claim arising out of or relating to this Ordinance or its breach prior to exhausting the procedures set out in this Section.

(d) If the parties are unable to settle their dispute within sixty (60) days of the initial request, either party may, on written notice to the other party, initiate non-binding mediation of the dispute before a single mediator.

The mediator shall be selected by agreement of the parties within thirty (30) days after one of the parties has requested mediation. If a single mediator cannot be agreed upon, each party shall select its own mediator and those mediators shall select an independent mediator who will conduct the mediation session(s). The mediator's fees shall be borne equally by both parties. The mediation shall be completed by recommendation of the mediation panel submitted to both parties within thirty (30) days after selection of the entire mediation panel.

Unless the parties agree otherwise, all matters, including the communications, conduct and demeanor of the parties and their counsel during mediation, are confidential and shall be inadmissible as settlement discussions in any subsequent

litigation. In the event mediation fails, the parties may resort to means outside the scope of this Section to resolve their dispute.

10.2.10 NOTICES:

Written notice to the Town shall be sent to Board of Trustees of the Town of Carrizozo, Carrizozo, NM 88301. Written notice to the Company shall be sent to General Manager, Tularosa Basin Telephone Company, Post Office Box 550, Tularosa, New Mexico 88352. Hand-delivery is acceptable. However, receipt shall be acknowledged.

10.2.11 ANNEXATION:

Upon any annexation of territory to the Town, any gross monthly recurring revenues from the services listed in Appendix A received from subscribers located within the annexed area shall be included in the base for computation of payments due to the Town. Such inclusion shall be effective thirty (30) days after written notice to the Company of such annexation is delivered by the Town to the Company.

10.2.12 NON-WAIVER OF OTHER RIGHTS:

It is expressly understood and agreed by and between the Town and the Company that neither the grant nor acceptance of this franchise shall constitute a waiver, either upon the part of the Company or the Town, of any rights or claims had or made by either with respect to the occupancy of the streets, alleys,, and public places of the Town, under the Constitution and laws of the State of New Mexico, nor shall anything herein in any way prejudice or impair any rights or claims existing independently of this franchise of the Town or the Company, or its predecessors or successors, with respect to the construction, operation, and maintenance, either before or after the life of this franchise, of a telecommunications system in the Town.

10.2.13 TERM OF FRANCHISE:

The franchise and rights herein granted shall continue in force and effect for a term of ten (10) years after the effective date of this franchise.

10.2.14 EFFECTIVE DATE:

This Ordinance shall become effective thirty (30) days after its enactment, provided the Company within those thirty (30) days shall have filed with the Town Clerk of the Town of Tularosa an unconditional acceptance thereof. Within ten (10) days after the filing of the acceptance, the Town Clerk shall acknowledge in writing the receipt of the Company's acceptance.

10.2.15 SEVERABILITY CLAUSE:

If any section, subsection, sentence, clause, word or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Board of Trustees, the Governing Body of the Town of Carrizozo, hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, word or phrase thereof regardless of any one or more sections, subsections, sentences, clauses, words or phrases being declared unconstitutional or otherwise invalid.

10.2.16 ADOPTION:

Passed, Approved and Adopted by the Governing Body of the Town of Carrizozo, May 8, 2001.

SECTION 10.3
CABLE TELEVISION FRANCHISE AGREEMENT
[RESERVED]

**SECTION 10.4
GREENTREE SOLID WASTE
[RESERVED]**

**10.4 Greentree Solid Waste
 [RESERVED]**

**SECTION 10.6
OFFICIAL NEWSPAPER**

10.6.1 OFFICIAL NEWSPAPER:

The Lincoln County News, a newspaper being published once a week in the Town and being of general circulation in the Town, is hereby declared to be the Official Newspaper of the Town of Carrizozo.

**SECTION 10.8
GRANTS**

[RESERVED]