

**ELECTRIC UTILITY FRANCHISE AGREEMENT
BETWEEN THE TOWN OF JOHNSTOWN, COLORADO
AND
UNITED POWER, INC.**

TABLE OF CONTENTS

ARTICLE 1: DEFINITIONS..... 1

 1.1 Short Title 1

 1.2 Definitions..... 1

ARTICLE 2: GRANT OF FRANCHISE 5

 2.1 Grant of Franchise..... 5

 2.2 Effective Date and Term of Franchise 6

 2.3 Financial Responsibility..... 6

 2.4 Notice of Boundary Changes 7

 2.6 Police Powers 10

 2.7 Payment of Expenses Incurred by Town in Relation to Ordinance..... 11

 2.8 Continuation of Utility Service 11

ARTICLE 3: FRANCHISE FEE 12

 3.1 Franchise Fee 12

 3.2 Surcharge of Franchise Fee..... 12

 3.3 Electric Service Provided to the Town 12

 3.4 Franchise Fee Payment in Lieu of Certain Taxes and Other Fees..... 12

 3.5 Franchise Fee Payment Not In Lieu of Permit or Other Fees..... 12

 3.6 Payment Schedule 13

 3.7 Audit of Franchise Fee Payments 13

 3.8 Change of Franchise Fee and Other Franchise Terms 15

 3.9 Most Favored Party Clause 15

 3.10 Contract Obligation..... 15

 3.11 Payment of Taxes and Fees..... 16

 3.12 Changes in Utility Service Industries 16

ARTICLE 4: ADMINISTRATION OF FRANCHISE..... 17

 4.1 Supervision 17

 (A) Town Designee 17

 (B) United Power Designee..... 17

 4.2 Coordination of Work 19

 4.3 Examination of Records..... 19

ARTICLE 5: REPORTS 20

 5.1 Reports of United Power Operations 20

 5.2 Annual Reports 20

5.3	Requested Reports	20
5.4	Copies of Tariffs and Regulatory Filings.....	21
ARTICLE 6: SUPPLY, CONSTRUCTION AND DESIGN		21
6.1	Adequate Supply at Lowest Reasonable Cost	21
6.2	Service Reliability.....	22
6.3	Planned Outage	22
6.4	Town Participation.....	23
6.5	Compliance with Town Requirements.....	23
6.6	Excavation, Construction, and Maintenance and Repair Work.....	23
6.7	Outages and Restoration of Service	25
	(A) Customer Notification.....	25
	(B) Town Notification.....	25
	(C) Restoration	25
6.8	Installation and Maintenance of United Power Facilities	25
	(A) United Power Facilities.....	25
	(B) Town Projects	26
6.9	Obligations Regarding United Power Facilities	27
	(A) United Power Facilities.....	27
	(B) United Power Work Within the Town	27
	(C) Permit and Inspection	27
	(D) Compliance	28
	(E) Increase in Voltage	28
	(F) As-Built Drawings	28
6.10	Relocation of United Power Facilities	29
	(A) Relocation Obligation	29
	(B) Private Projects	29
	(C) Relocation Performance.....	30
	(D) Town Revision of Supporting Documentation	30
	(E) Completion.....	30
	(F) Scope of Obligation	31
	(G) Underground Relocation.....	31
	(H) Coordination	32
	(I) Proposed Alternatives or Modifications	32
6.11	Service to New Areas.....	33

6.12	New or Modified Service to Town Facilities.....	33
	(A) Performance	33
	(B) Town Revision of Supporting Documentation	34
	(C) Completion/Restoration	34
6.13	Modifications to United Power Facilities	34
	(A) Performance	34
	(B) Completion/Restoration	35
	(C) Coordination	35
6.14	Third Party Damage Recovery.....	35
	(A) Damage to United Power Interests	35
	(B) Damage to Town Interests	36
	(C) Meeting	36
6.15	Technological Improvements.....	36
ARTICLE 7: COMPLIANCE.....		37
7.1	Town Regulation.....	37
7.2	Compliance with Regulatory Agencies	37
7.3	Continued Compliance with Air and Water Pollution Laws	37
ARTICLE 8: UNDERGROUND CONSTRUCTION AND OVERHEAD CONVERSION		37
8.1	New Lines Under-grounded.....	37
8.2	Overhead Conversion of Electrical Lines	37
8.3	Planning and Coordination of Under-grounding Projects	38
8.4	Cooperation with Other Utilities.....	39
8.5	Town Requirement to Underground	39
	(A) Undergrounding Performance.....	40
	(B) Performance	40
	(C) Town Revision of All Service Application Submittal Requirements.....	40
	(D) Completion/Restoration	41
	(E) Estimates	41
	(F) Report of Actual Costs.....	41
	(G) Audit of Underground Projects.....	41
8.6	Audit of Underground Fund.....	42
ARTICLE 9: ENVIRONMENT AND CONSERVATION		42
9.1	Environmental Leadership.....	42
9.2	Energy Conservation and Efficiency	43

(A) Energy Efficiency Programs	43
(B) Renewable Resource Programs.....	44
(C) Five Year Review	45
ARTICLE 10: USE OF UNITED POWER FACILITIES.....	45
10.1 Town Use of United Power Facilities	45
10.2 Use of United Power Land.....	46
10.3 Third Party Use of United Power Facilities.....	47
10.4 Emergencies	47
ARTICLE 11: RIGHT OF FIRST PURCHASE/USE OF UNITED POWER LAND.....	47
11.1 Right of First Purchase.....	47
ARTICLE 12: INDEMNIFICATION OF TOWN	48
12.1 Town Held Harmless	48
12.2 Notice to United Power.....	49
12.3 Indemnification	49
(A) Town Indemnified.....	49
12.4 Immunity.....	49
12.5 Waiver of Subrogation.....	50
ARTICLE 13: TRANSFER OF FRANCHISE.....	50
13.1 Consent of Town Required	50
ARTICLE 14: MUNICIPALLY-PRODUCED RENEWABLE ENERGY	51
14.1 Municipally-Produced Renewable Energy.	51
ARTICLE 15: PURCHASE OR CONDEMNATION	51
15.1 Franchise Not to Limit Town’s Rights	51
15.2 Town’s Right to Purchase or Condemn.....	52
15.3 Notice of Intent to Purchase or Condemn.....	52
15.4 Negotiated Purchase Price or Condemnation Award.....	52
15.5 Continued Cooperation by United Power	52
ARTICLE 16: CHANGING CONDITIONS.....	53
ARTICLE 17: UNCONTROLLABLE FORCES.....	53
ARTICLE 18: BREACH AND REMEDIES.....	54
18.1 Non-Contestability.....	54
18.2 Breach/Notice/Cure/Remedies.....	54
18.3 Termination of Franchise by Town.....	54
18.4 United Power Shall Not Terminate Franchise	55

18.5	No Limitation.....	55
ARTICLE 19: UNITED POWER OPERATIONS.....		55
19.1	Corporate Structure.....	55
ARTICLE 20: AMENDMENTS		56
20.1	Amendment to Franchise.....	56
20.2	Proposed Amendments	56
ARTICLE 21: EQUAL OPPORTUNITY		56
21.1	Equal Opportunity.....	56
21.2	Contracting.....	56
21.3	Economic Development.....	57
ARTICLE 22: UNDOCUMENTED WORKERS		57
22.2	Employment Prohibited	57
22.3	Affirmative Action.....	57
22.4	Subcontractors.....	58
22.5	Compliance	59
22.6	Documentation.....	59
22.7	Violation	59
ARTICLE 23: MISCELLANEOUS		59
23.1	No Waiver.....	59
23.2	Successors and Assigns.....	60
23.3	Notice and Representatives.....	60
23.4	Severability	61
23.5	Entire Agreement.....	61
23.6	Third Parties, Rights to Third Parties	61
23.7	Prevailing Party.....	61
23.8	Headings for Reference Only.....	61
23.9	Responsibility for Language	61
23.10	Authority	62
23.11	Applicable Law	62
ARTICLE 24: APPROVAL		62

ARTICLE 1: DEFINITIONS

1.1 Short Title. This agreement shall be known as the Town of Johnstown/United Power Electric Franchise Agreement (“Franchise, Franchise Agreement, or Agreement”).

1.2 Definitions. For the purpose of this Franchise, the following words and phrases shall have the meaning given in this article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” or “will” are mandatory and “may” is permissive. Words not defined in this article shall be given their common and ordinary meaning.

“**Commission**” or “**CPUC**” means the Colorado Public Utilities Commission.

“**Council**” or “**Council Members**” means the governing body of the Town of Johnstown.

“**Electric Distribution Facility**” means that portion of United Power’s electric system, which delivers electricity from the substation breakers to United Power’s meters including all devices connected to that system.

“**Electricity**” and “**Electric Service**” means all electric energy and electric service provided to customers located within the Town, including street lighting and traffic signal services.

“**Emergencies**” means an event that directly influences the ability to provide service or is life threatening.

“**Energy Conservation**” means the decrease in energy requirements of specific customers during any selected time period, with end-use services of such customers held constant.

“**Energy Efficiency**” means methods of energy conservation, reduced demand or improved load factors resulting from hardware, equipment, devices, or practices that are installed or instituted at a customer facility.

“**Facilities**” means all physical components of United Power which are deemed necessary by United Power to provide electricity within and through the Town for transportation, distribution and sale of electricity and include, but are not limited to, plants, works, systems, substations, transmission and distribution structures, lines, street lighting fixtures, equipment, conduit, transformers, underground lines, meter reading devices, communications and data transfer equipment, wireless facilities and equipment (which are properly permitted by the Town to be in a Town right-of-way), wires, cables, poles, and building structures.

“**Party**” or “**Parties**” refers to and includes United Power and the Town, either singly or collectively as the context requires.

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

“**Public Project**” refers to (1) any public work or improvement within the Town that is wholly owned or wholly funded by the Town; or (2) any public work or improvement within the Town where fifty percent (50%) or more of the funding is provided by any combination of the Town, the Federal government, the State of Colorado, the County of Weld other entities established under Titles 29, 31 and 32 of the Colorado Revised Statutes.

“**Renewable Resource**” refers to any facility, technology, measure, plan or action utilizing a renewable “fuel” source such as wind, solar, biomass, geothermal, municipal, animal, waste-tire or other waste, or hydroelectric generation of twenty megawatts or less, including any eligible renewable energy resource as defined in § 40-2-124(1)(a), C.R.S., as the same shall be amended from time to time.

“Residents” means all persons, businesses, industry, governmental agencies and any other entity whatsoever, presently located or which are hereinafter located, in whole or in part, within the territorial boundaries of the Town of Johnstown.

“Revenues” means those amounts of money, which United Power bills for the sale of electricity under authorized rates to residents and any other sums that are generated by United Power from the use of its Facilities located within the Streets and Public Utilities easement. The word “revenue” does not include any other receipts including, but not limited to, receipts from the Town or any other person or entity, pole attachment revenue, disconnect/reconnect charges or late payment charge, right-of-way fees imposed by the Town (UP shall not be entitled to collect right-of-way fees absent written authorization from the Town), or permit charges, as “Revenues” consists of only receipts of money from the sale of electricity to Residents.

“Service Area” means the area within the Town of Johnstown that United Power is certified to serve by the CPUC.

“Streets and Public Places” means streets, alleys, viaducts, bridges, highways, avenues, boulevards, roads, lanes, public and private (to the extent permitted by law) rights-of-way, easements, and places suitable for the placement of Facilities that are located in the Town.

“Street Lighting Facilities” refers to all United Power Facilities necessary to provide street lighting service.

“Street Lighting Service” refers to the illumination of streets and other Town property by means of United Power-owned non-ornamental street lights and United Power-owned ornamental street lights located in the Town or along the streets adjacent to the Town limits thereof, supplied from United Power’s overhead or underground electric distribution system.

“**Tariff**” or “**Tariffs**” shall mean the rules, regulations and rates which apply to United Power’s provision of electric service to its customers as implemented by United Power. To the extent Colorado law allows the CPUC regulation over the distribution of electric service by United Power, such regulations validly implemented would also apply to the distribution of electric service under this Agreement.

“**Town**” means the Town of Johnstown, a Colorado home rule municipal corporation, located in Weld and Larimer Counties, Colorado.

“**Town Manager**” means the Town Manager of the Town of Johnstown, and any agent, representative, officer or employee of the Town designated by the Town Council Members or the Town Manager to act as the official Town representative with the authority to act on behalf of the Town under this Franchise.

“**Town Property**” refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the Town or hereafter held by the Town, which would not otherwise fall under the definition of “Streets.”

“**Town Streets**” or “**Streets**” means the roads, streets and associated right-of-way easements owned or controlled by the Town.

“**Traffic Facilities**” refers to any Town-owned or authorized traffic signal, traffic signage or other traffic control or monitoring device, equipment or facility, including all associated controls, connections and other support facilities or improvements, located in any streets or other Town property.

“**Traffic Signal Lighting Service**” refers to the furnishing of electricity from United Power’s distribution system for use in traffic facilities pursuant to the rules and regulations relating to such service in United Power’s Tariffs.

“**Utility Easement**” refers to any easement over, under, through, or above public or private property, lawfully acquired by, used by, or dedicated to the use of United Power, its predecessors in interest, or other public or private utility companies for the placement of public or private utility facilities including, but not limited to, United Power Facilities. Utility Easement shall not include any easement for the use of United Power that is located within the Streets.

“**United Power**” means United Power, Inc. of Colorado, a Colorado not-for-profit electric cooperative, and its successors and assigns, but does not include its affiliates, subsidiaries, or any other entity in which it has an ownership interest.

ARTICLE 2: GRANT OF FRANCHISE

2.1 Grant of Franchise. The Town hereby grants to United Power, for the period specified herein, and subject to the conditions, terms and provisions contained in this Agreement and United Power Tariffs (which are included within this Agreement), a non-exclusive right to furnish, sell and distribute electricity within the Town, to the Town, and to all Residents of the Town within United Power’s Service Area as specified by the CPUC. Subject to the conditions, terms and provisions contained in this Agreement, the Town also hereby grants to United Power an non-exclusive right to acquire, construct, install, locate, maintain, operate, and to access, extend into, within, and through the Town and Town Property, all Facilities reasonably necessary to furnish, sell and distribute electricity within the Service Area, and as may be necessary to carry out the terms of this Agreement; subject to the Town’s prior right of usage for and subject to the Town’s reasonable exercise of the police powers including, but not limited to, zoning, subdivision, permit, and building code requirements. These rights shall extend to all areas of the Town and Town Property within United Power’s Service Area as specified by the CPUC, as the Town is now constituted, and to additional areas as the Town may increase in size by annexation or otherwise in said service area. The Town and United Power do not waive any of their rights under the statutes

and Constitution of the State of Colorado and the United States, except as otherwise specifically set forth herein. The rights granted in this Franchise will include the right to provide Street Lighting Service and Traffic Signal Lighting Service to the Town, for which the Town will pay in accordance with its agreement with United Power or its established Tariffs. These rights shall extend to all areas of the Town within United Power's Service Area, as it is now constituted, and to additional areas as the Town may increase in size by annexation or otherwise within United Power's Service Area.

2.2 Effective Date and Term of Franchise. This Franchise shall be effective as of the effective date of the ordinance adopting the same and shall supersede any prior franchise grants to United Power by the Town, and shall supersede the provisions of Article II, Chapter 5 of the Johnstown Municipal Code. The term of the Franchise shall be twenty (20) years unless extended by mutual agreement of the Parties. This Franchise is not intended to revoke any prior license, grant, or right to use the Streets or other Town Property and such licenses, grants or rights of use are hereby affirmed. Such rights shall hereafter be governed by the terms of this Franchise. Any events occurring prior to the effective date of this Agreement shall be construed under the agreement in place as of the date of any such event except that any provisions relating to under-grounding of distribution lines shall be construed under this Agreement. All under-grounding fund balances in existence and work-in-process on the date this Franchise Agreement becomes effective shall carry forward unaffected by this transition and as provided generally herein.

2.3 Financial Responsibility.

(A) At the time of presentation of the letter accepting the terms of this Franchise, United Power shall submit to the Town certificates of insurance to demonstrate that United Power has the following insurance coverage to meet its obligations under the Franchise

Agreement: worker's compensation insurance, comprehensive general liability and automobile liability insurance. The Town shall be listed as an additional listed insured for the comprehensive general liability insurance. United Power shall continuously maintain such coverage during the term of the Franchise, and the certificates of insurance shall be kept current by annual revisions as of January 1 during the term of the Franchise. The Town reserves the right to request and receive a copy of an insurance certificate(s) from United Power's insurers, demonstrating the placement of the coverage required hereunder. The Town may require, from time to time, and United Power agrees to provide, additional reasonable funding of United Power's indemnification obligations as a self-insured, if United Power is acting as a self-insured. Nothing herein contained shall create any right in any third party or cause the Town to be liable to any party for a failure so to act.

(B) The parties hereto understand and agree that the Town, its officers, and its employees are relying on, and do not waive or intend to waive by any provision of this Franchise Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or its employees.

2.4 Notice of Boundary Changes.

(A) United Power will provide the Town with a map defining the current United Power Service Area within the Town within thirty (30) days of the execution of this Agreement and will transmit the map as an attachment to a letter from United Power to the Town Manager.

(B) United Power will notify the Town within thirty (30) days of any changes in boundaries of United Power Service Area in the Town. Such notice will be in written form

addressed to the Town Manager and will transmit the map as an attachment defining the new boundaries, if requested.

(C) The Town will notify United Power of a proposed annexation by publication of the Town Council's resolution finding the petition for annexation to be in substantial compliance with the statutory requirements in a local newspaper. The Town shall thereafter endeavor to notify United Power of final approval of all annexations of land into the Town which occur within United Power's service area, after the effective date of the annexation. Upon actual notice received by United Power of the effective date of the annexation, United Power shall begin billing and collecting Franchise Fees from customers in the newly annexed area to the Town's account for payment to the Town pursuant to this Agreement. United Power shall not be deemed to be in breach of this Agreement if, upon due diligence, it was not aware of the effective date of the annexation. In such case, United Power shall remit Franchise Fees previously collected from customers in the newly annexed area to the Town's account for payment to the Town pursuant to this Agreement.

2.5 Conditions, Limitations and Exclusions.

(A) The right to use and/or occupy public streets, alleys, viaducts, bridges, roads and public places for the purposes set forth herein is not, and shall not be deemed to be an exclusive Franchise, and the Town reserves the right to itself to make or grant a similar use of public streets and other public places to any other person, firm or corporation. The right to make reasonable use of Town streets and other public property to provide electric service to the Town and its residents under the Franchise is subject to and subordinate to any Town usage of said streets or other public property.

(B) Nothing contained in this Franchise shall be construed to authorize United Power to engage in any activities requiring a license or permission from the Town other than the provision of electric service without first obtaining such license, permit, or permission. This Agreement does not grant United Power the right, privilege, or authority to engage in the cable television business, but does not prohibit joint use agreements between United Power and cable television companies for the shared use of Facilities. This Agreement also does not prohibit joint use and/or pole attachment or similar agreements between United Power and any communications (including, but not limited to, wireless and/or broadband) service provider for the shared use of Facilities. Any such joint use, pole attachment or similar agreements entered into by United Power shall be consistent with United Power's obligations and responsibilities under this Franchise, including inserting provisions that require any joint user (except a wireless service provider, as such providers' facilities must be above ground) of an above ground Facility be required to bear their costs of relocating such facility under-ground where United Power converts its shared above ground Facilities to an under-ground facility. All above ground wireless and/or broadband attachments to United Power Facilities (except those which are United Power proprietary devices and are needed to provide service within the Town) must also comply with the Town's right-of-way permitting process. The location of all above ground wireless and/or broadband attachments is subject to Town approval.

(C) This Agreement does not grant United Power the right, privilege or authority to use or occupy any land currently designated as parks, park land or open space of the Town or which may in the future be so designated except to the extent United Power is currently using or occupying said parks, park land or open space and as otherwise authorized in writing by the Town. United Power shall not expand its use or occupancy of said parks, park land or open

space except by specific written authorization of the Town; provided, however, that nothing herein contained shall limit or restrict United Power's right to maintain, renovate, repair or replace any such facilities currently occupying said parks, park land or open space, subject to the conditions set forth in this Franchise. The Town may require removal, relocation, or under-grounding of Facilities from any parks, park land or open space subject to conditions set forth herein.

2.6 Police Powers.

(A) The Town retains the following rights in regard to this Franchise:

(1) To use, control and regulate, through the exercise of its police power, Town Streets, public easements and other Town Property, places and the space above and beneath them.

(2) To impose such other regulations as may be determined by the Town Council to be necessary in the exercise of its police power to protect the health, safety, welfare and convenience of the public.

(B) United Power expressly acknowledges the Town's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the Town considers making any substantive changes in its local codes or regulations that in the Town's reasonable opinion will significantly impact United Power's operations in the Town's Streets and other Town property, it will make a good faith effort to advise United Power of such consideration; provided, however, that lack of notice shall not be justification for United Power's non-compliance with any applicable local requirements. United Power expressly acknowledges the Town's right to enforce regulations concerning United Power's access to or use of the Streets and other Town property, including requirements for permits.

(C) United Power shall comply with all laws, regulations, permits, and orders enacted by the Town that are, among others, applicable to United Power's provision of electric service within the Town.

2.7 Payment of Expenses Incurred by Town in Relation to Ordinance. At the Town's option, United Power shall reimburse the Town for reasonable expenses incurred in publication of notices and ordinances related to this Franchise.

2.8 Continuation of Utility Service. In the event this Franchise is not renewed at the expiration of its term or is terminated for any reason, and the Town has not provided for alternative utility service, United Power will not remove any United Power Facilities pending resolution of the disposition of the system, or portions thereof, and shall continue to provide, and be paid for at current rates, electric service within the Town until the Town arranges for utility service from another provider. United Power further agrees that it will not withhold any continued interim electric services necessary to protect the public. The Town agrees that in the circumstances of this Section 2.8, United Power shall be entitled to monetary compensation as provided in United Power's Tariffs on file with the CPUC and United Power shall be entitled to collect from residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the Franchise, an aggregate amount equal to the amount which United Power would have paid as a franchise fee as consideration for the continued interim use of the Town Streets. Only upon receipt of written notice from the Town stating that the Town has adequate alternative electric service for residents and upon order of the CPUC shall United Power be allowed to discontinue the provision of electric service to the Town and its residents. United Power will be compensated through the agreed upon final date of interim electric service provided by United Power.

ARTICLE 3: FRANCHISE FEE

3.1 Franchise Fee. In consideration for the grant of this Franchise, United Power shall pay the Town a sum equal to three percent (3%) of all Revenues received from the sale of electricity within the Town. Payment of the franchise fee shall not exempt United Power from any lawful taxation upon its property or sales, except as set forth in 3.5 below. All amounts paid to United Power by the Town for use of electricity by any of its departments shall be excluded from computation of the franchise fee.

3.2 Surcharge of Franchise Fee. Except to the extent ever required by the CPUC, United Power may collect this fee by adding a surcharge not to exceed the franchise fee upon all Town residents that use Facilities of United Power in the Town to obtain electrical service.

3.3 Electric Service Provided to the Town. No franchise fee shall be charged to the Town for electric service provided to the Town for its own consumption, including, without limitation, electric service to municipal buildings and facilities, Street Lighting Service and Traffic Signal Lighting Service.

3.4 Franchise Fee Payment in Lieu of Certain Taxes and Other Fees. The Town accepts payment of the franchise fee by United Power in lieu of any occupation tax, occupancy tax, license tax, or similar tax or fee the Town might charge United Power or its subcontractors for the privilege of doing business in the Town, for the use or occupation of Town Streets, for the installation, operation and maintenance of United Power Facilities.

3.5 Franchise Fee Payment Not In Lieu of Permit or Other Fees. Notwithstanding the provisions of 3.4, payment of the franchise fee does not exempt United Power from any other lawful tax or fee imposed generally upon its property or persons doing business within the Town or from sales and use taxes, including by way of illustration any fee for a street closure permit, an excavation permit, a street cut permit, or other lawful permits hereafter required by the Town,

except that the franchise fee provided for herein shall be in lieu of any occupation fee or similar tax for the use of Town Streets.

3.6 Payment Schedule. Unless otherwise specifically provided herein, payment of the franchise fee accruing after the effective date of this Agreement shall be made in monthly installments not more than twenty days following the close of the month for which payment is to be made for the franchise fees resulting from the sale of electricity. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this Agreement. All payments shall be made to the Town in care of the Director of Finance.

3.7 Audit of Franchise Fee Payments.

(A) If requested, every three (3) years commencing at the end of the third year of this Franchise, United Power shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the Town. Such audit shall be limited to the previous three (3) calendar years. If requested, United Power shall provide a written report to the Town Manager containing the audit findings regarding the franchise fee paid to the Town for the previous three (3) calendar years.

(B) If the Town disagrees with the results of the audit, and if the Parties are not able to informally resolve their differences, the Town may conduct its own audit at its own expense, and United Power shall cooperate fully, including but not necessarily limited to, providing the Town's auditor with all information reasonably necessary to complete the audit. If the results of a Town audit conducted pursuant to Section 3.7 concludes that United Power has underpaid the Town by three percent (3%) or more, in addition to the obligation to pay such amounts to the Town, United Power shall also pay all costs of the audit. Errors arising solely from customer addresses inadvertently not identified as located within the municipal boundaries of the

Town shall not be included in determining the error rate unless the Town has provided written notice to United Power (by written notice pursuant to Section 23.3) that such location address is within the municipal boundaries of the Town.

(C) Either Party may challenge any written notification of error as provided for in this Section 3.7 of this Franchise by filing a written notice to the other Party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the Party's notice. The Parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

(D) In addition to the three (3) year audit provided above, the Town Manager, or official Town representative, shall have access to the records of United Power related to collection of Revenues during normal business hours upon reasonable notice for the purpose of auditing to ascertain that the franchise fee has been correctly computed and paid. All information obtained by the Town Manager during a franchise fee audit shall be kept confidential and shall be utilized for the sole purpose of verifying that the franchise fee has been correctly computed and paid.

(E) In the event the Town determines, after written notice to United Power, that the Town has a claim against United Power for payments, costs, expenses, or damages of any nature, the Town may, without waiving any other rights the Town may have hereunder or pursuant to law, provide United Power written notice of the amount, and then may withhold fifty percent (50%) of such amount from any other amounts currently due and owing to United Power pending discussions between United Power and the Town to resolve the issue. Upon receipt of such written notice, United Power's designee and a designee of the Town Manager shall promptly meet at a

mutually convenient time to attempt to resolve the dispute. If not resolved, either party may take further action under law.

3.8 Change of Franchise Fee and Other Franchise Terms. The Town Council, upon giving ninety (90) days' notice to United Power, may request that the Town and United Power review the franchise fee rate and other material financial aspects of the Franchise. Upon such a request by the Town, the Parties shall engage in good faith negotiations related to amending the franchise fee rate, and/or other related provisions of this Franchise to allow the Town to receive a different franchise fee rate, or other significant change in the financial aspects of the Agreement. In no event shall the franchise fee rate be increased more than twenty percent (20%) in any five (5) year period, Notwithstanding the foregoing, the franchise fee may be modified as provided in Section 3.9.

3.9 Most Favored Party Clause. United Power shall report to the Town, within sixty (60) days of execution, the terms of any franchise or of any change of franchise in any other municipality that contains a franchise fee or other significant financial benefit greater than the franchise fee rate or other significant financial benefit to the Town contained in this Franchise. United Power shall also report about such other provisions which may be beneficial to the Town. If the Town Council decides the Franchise fee or other significant financial benefit should be incorporated into the Franchise, then such change shall be agreed to in writing and approved by the Town Council by ordinance.

3.10 Contract Obligation. This Franchise Agreement constitutes a valid and binding agreement between United Power and the Town. In the event that the franchise fee specified in this Agreement is declared illegal, unconstitutional or void for any reason by final judgment of any court (or other proper authority), United Power shall be contractually bound to pay monthly

fees to the Town in an aggregate amount that would be equivalent to the amount which would have been paid by United Power as a franchise fee hereunder as partial consideration for use of the Town Streets and other Town property.

3.11 Payment of Taxes and Fees. United Power shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extra-ordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against its Facilities and this Agreement , provided that United Power shall have the right to contest any such impositions and shall not be in breach of this section so long as it is actively contesting such impositions. The Town shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable Tariffs on file and in effect from time to time with the CPUC.

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

fee rate paid to the Town on the date that such initiatives and changes adversely impact the future franchise fee revenue.

ARTICLE 4: ADMINISTRATION OF FRANCHISE

4.1 Supervision.

(A) **Town Designee.** The Town Manager, or the Manager's designated representative, is hereby designated the official of the Town having full power and authority to take appropriate action for and on behalf of the Town and its inhabitants to enforce the provisions of this Franchise and to investigate any alleged violations or failures of United Power to comply with the provisions hereto or to adequately and fully discharge its responsibilities and obligations hereunder. The failure or omission of said official Town representative to so act shall not constitute any waiver or estoppel nor limit independent action by other Town officials. The Town Manager may also designate one or more Town representatives to act as the primary liaison with United Power as to particular matters addressed by this Franchise and shall provide United Power with the name and telephone numbers of said Town representatives. The Town may change these designations by providing written notice to United Power. The Town's designee(s) shall have the right, at all reasonable times, to inspect any United Power Facilities in Town Streets.

(B) **United Power Designee.** United Power shall designate a representative to act as the primary liaison with the Town and shall provide the Town with the name, address, and telephone number for United Power's representative under this Franchise. United Power may change its designation by providing written notice to the Town. The Town shall use this liaison to communicate with United Power regarding electric service and related service needs for Town Facilities.

(C) In order to facilitate such duties of the said official Town representative, United Power agrees as follows:

(1) To allow said official Town representative or his or her designee reasonable access to any part of United Power’s plant and Facilities that are directly used to serve the Town, and that said Town official may make and supervise tests to determine the quality of the electric service supplied to customers of United Power within the municipal boundaries of the Town. Access to United Power Facilities described in this paragraph and 4.1(C)(2) shall be on an “appointment made” basis during normal business hours, which appointment shall be scheduled within a reasonable time and not be unduly delayed. The Town official(s) provided access shall be accompanied by at least one employee of United Power of its choosing. The Town official(s) shall comply with all United Power requirements for such access, and particularly safety requirements. For safety reasons, United Power shall have the right to designate — at its sole discretion — the method, means, and timing of such access, which access United Power can terminate or deny at its discretion.

(2) To grant said official Town representative or his or her designee reasonable access to the books and records of United Power, insofar as they relate to relevant matters covered by this Franchise only, upon advance appointment made during normal business hours.

(3) To provide said Town official with such reasonable reports containing or based on information readily obtainable from United Power’s books and records as the Town may from time to time reasonably request with respect to the electric service supplied under this Franchise.

(4) To meet as requested, but no less than annually, with said official Town representative to share information useful in coordinating management, operation, and repair of the Facilities of United Power and the operations and property of the Town.

4.2 Coordination of Work.

(A) United Power agrees to meet with the Town's designee upon a reasonable written request for the purpose of reviewing, implementing, or modifying mutually beneficial procedures for the efficient processing of United Power bills, invoices and other requests for payment.

(B) United Power agrees to coordinate its activities in Town Streets and on other Town Property with the Town in accordance with the Johnstown Municipal Code, regulations, and this Franchise. The Town and United Power will meet annually upon the written request of the Town designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Town Streets and other Town Property. The Town and United Power shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the Town will be assured that all provisions of this Franchise, building and zoning codes, and air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

4.3 Examination of Records. The Parties agree that any duly authorized representative of the Town and United Power shall have access to and the right to examine any directly pertinent non-confidential books, documents, papers, and records of the other Party involving any activities related to this Franchise. All such records must be kept for a minimum of four (4) years from their date of creation, and then may be, at the option of their holder, appropriately disposed of. To the extent that either Party believes in good faith that it is necessary in order to monitor compliance with the terms of this Franchise to examine confidential books,

documents, papers, and records of the other Party, the Parties agree to meet and discuss providing confidential materials including, but not limited to, providing such materials subject to a reasonable confidentiality agreement which effectively protects the confidentiality of such materials.

ARTICLE 5: REPORTS

5.1 Reports of United Power Operations. United Power will submit reasonable financial and operating reports containing or based on information available from United Power's books and records annually to the Town and other reports the Town may from time to time reasonably request with respect to the operations of United Power under this Franchise only. Such reports shall be marked "CONFIDENTIAL" by United Power and the Town shall keep the reports as confidential and not subject to public inspection, except as otherwise required by law. Such form of reports may be changed from time to time as mutually agreed between the Town and United Power. If the Town requests more than a reasonable audit, the Town and United Power will split the costs thereof equally.

5.2 Annual Reports. United Power will provide the Town on or before May 1 of each year beginning, for the preceding calendar year, after the effective date of this Franchise:

- (A) United Power's then modified debt service calculation;
- (B) A report of margins collected by United Power; and
- (C) Short-term (three years or less) and long-term (over three years) plans for all major capital improvements, construction and excavation within the Town or affecting service to the Town and its residents.

5.3 Requested Reports. Upon a reasonable request by the Town, United Power will provide the Town:

(A) A list of real property and leasehold interests in real property owned by United Power within the municipal boundaries of the Town, for the purpose of calculating property taxes;

(B) A map (paper or electronic copy) indicating the major location of United Power Facilities within and contiguous of the municipal boundaries of the Town of Johnstown;

(C) A report regarding the reliability indexes of United Power's electric service;

(D) A list of all Town electrical accounts and account numbers and items metered;

(E) A list of street lights in the Town energized by United Power; and/or

(F) Service outages.

5.4 Copies of Tariffs and Regulatory Filings. United Power will notify the Town of all proposals to change rates relating to service by United Power to its customers located within the Town. Upon a reasonable request by the Town, United Power will provide the Town with copies of all rules, regulations, rate tariffs, and policies. Town acknowledges that United Power is a not-for-profit electric cooperative formed primarily to distribute electrical energy, and its utility rates are not subject to regulation by the CPUC and are largely determined by the cost of acquiring electric power from its supplier(s).

ARTICLE 6: SUPPLY, CONSTRUCTION AND DESIGN

6.1 Adequate Supply at Lowest Reasonable Cost. United Power will work with its wholesale power suppliers to take all reasonable and necessary steps to assure an adequate supply of electricity to United Power's customers at the lowest reasonable cost consistent with long term supply reliability.

6.2 Service Reliability.

(A) United Power will operate and maintain United Power Facilities efficiently and economically and in accordance with general utility practices and best systems, methods, and skills consistent with the provision of adequate, safe, and reliable electric service. United Power recognizes and agrees that, as part of its obligations and commitments under this Franchise, United Power shall carry out each of its performance obligations in a timely, expeditious, efficient, economical, and workmanlike manner.

(B) United Power shall be excused from the performance of its obligations hereunder, to the extent that performance of said obligations are delayed due to: failure of high voltage transmission Facilities needed to serve the Town which are beyond United Power's responsibility and control including, but not limited to, strikes; acts of public or private enemies; war; order of military authority; anarchy; insurrections; riots; effects, results, and/or consequences of epidemics and/or pandemics; meteorological; atmospheric (including, but not limited to, effects of or objects from the atmosphere, troposphere, stratosphere, mesosphere, thermosphere, exosphere, and beyond); spacial; stellar; weather; tornadoes; landslides; earthquakes; floods; any Act of God; or any other reason beyond United Power's control. Notwithstanding the foregoing, if the supply of electricity to United Power's customers should be interrupted due to any circumstance beyond United Power's control, United Power will take all necessary and reasonable actions to restore such supply at the earliest practicable time.

6.3 Planned Outage. If the supply of electricity to United Power's customers should be interrupted due to a planned outage, except cases of emergency outage repair, United Power shall notify, consistent with the provisions of Section 6.7, its customers as soon as practical in

advance of the planned outage. United Power agrees that it will in good faith try to contact all customers at least forty-eight (48) hours prior to a planned outage.

6.4 Town Participation. The Town shall have the right to approve or deny major facility site plans within the Town in accordance with applicable law. Upon reasonable notice to United Power, the Town shall have the right to hold public hearings related to United Power's Facilities, site selection, under-grounding of overhead lines, construction, and service quality. United Power agrees to fully participate in such public hearings as requested by the Town and to provide to the Town information available to United Power that relates to the hearings described in this paragraph.

6.5 Compliance with Town Requirements. Representatives of the Town and United Power will meet annually to discuss annual and long-term planning for capital improvement projects contemplated by each within the Town. United Power will include within its capital improvement projects the plans of the Town relating to same. United Power and the Town, upon request, shall exchange copies of their reports or plans regarding annual and long-term planning for capital improvement projects with descriptions of construction activities including, to the extent known, the timing and method of construction.

6.6 Excavation, Construction, and Maintenance and Repair Work. United Power will be responsible for obtaining, paying for, and complying with all applicable permits including, but not limited to, excavation, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the Town. All construction, excavation, maintenance and repair work done by United Power will be done in a timely manner, which minimizes inconvenience to the public and individuals. When United Power does any work in or affecting the Town Streets, it will, at its own expense, promptly remove any obstructions therefrom and

restore such Town Streets or other Town Property to a condition that meets applicable Town standards. If weather or other conditions do not permit the complete site restoration for work done pursuant to this Section, United Power may, with the written approval of the Town, temporarily restore the affected Town Streets or other Town Property, provided that such temporary site restoration is at United Power's sole expense and provided further that United Power promptly undertakes and completes any necessary permanent site restoration when the weather or other conditions no longer prevent such permanent restoration. All site restoration work under this section will be subject to inspection by the official Town representative and compliance by United Power with reasonable remedial action required by said official pursuant to inspection and left in equivalent or better conditions as found. Upon the request of the Town, United Power will restore the Streets or other Town Property to a better condition than existed before the work was undertaken, provided that the Town shall be responsible for any additional costs of such site restoration. If United Power fails to promptly restore the Town Streets or other Town Property as required by this Section, the Town may, upon notice to United Power, restore such Town Streets or other Town Property or remove the obstruction therefrom; provided, however, that such Town actions do not unreasonably interfere with United Power Facilities. United Power shall be responsible for the actual cost incurred by the Town to restore such Town Streets or other Town Property or to remove any obstructions therefrom in an addition to a ten percent (10%) administrative fee. In the course of its site restoration of Town streets or other Town property under this Section, the Town shall not perform work on United Power Facilities unless specifically authorized by United Power in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

6.7 Outages and Restoration of Service.

(A) **Customer Notification.** Upon a reasonable request by the Town, United Power will provide annually to the Town Manager a written protocol that addresses the process for customer notification of power outages, including the specific provisions to be included in the notice, the estimated time for restoration, the manner by which such notice will be provided, and the contact names and telephone numbers associated therewith.

(B) **Town Notification.** United Power will provide to the Town daytime and nighttime telephone numbers of a designated United Power representative from whom the Town designee may obtain status information from United Power on a twenty-four (24) hour basis concerning interruptions of electrical service in any part of the Town.

(C) **Restoration.** In the event United Power's electric system, or any part thereof, is partially or wholly destroyed or incapacitated, United Power will use due diligence to restore such systems to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if United Power elects not to restore such system.

6.8 Installation and Maintenance of United Power Facilities.

(A) **United Power Facilities.** Except for emergencies, the construction, excavation, installation, maintenance, renovation, repair and replacement of any Facilities by United Power within the municipal boundaries of the Town will be subject to permitting, inspection and approval of locations by the official Town representative and all applicable Town ordinances and regulations. Such regulation shall include, but not be limited to, the following matters: location of Facilities in the streets, alleys and dedicated easements; disturbance and reconstruction of pavement, sidewalks and surface of streets, alleys, dedicated easements and driveways. All United Power Facilities will be installed so as to cause a minimal amount of

interference with such property. United Power Facilities will not interfere with any water mains or sewer mains or Town telecommunications Facilities, traffic signal lights, parks, or any other municipal use of the Town's streets and right-of-ways except to the extent the Town agrees through the permit process. United Power will erect and maintain its Facilities in such a way as to minimize interference with trees and other natural features and vegetation. United Power and all its subcontractors will comply with all permitting, local regulations and ordinances. In emergency situations, United Power will promptly, after the fact, provide notice to the Town and comply with permitting and inspection requirements of the Town. United Power will install, repair, renovate and replace its Facilities with due diligence in good and workmanlike manner, and United Power's Facilities will be of sufficient quality and durability to provide adequate and efficient electric service to the Town and its residents. All new substations located in unincorporated areas within the Town's Growth Management Area shall, to the extent reasonably feasible, comply with all applicable Town land use and other Town Code requirements.

(B) **Town Projects.** Where United Power performs construction projects requested by the Town, United Power will provide in advance a cost estimate for such work in sufficient detail to justify the estimated total cost. The Town shall deposit funds with United Power in the amount of the cost estimate prior to commencement of the work. Construction project change orders shall be limited to significant changes in project scope that are requested by and approved by the Town. United Power will promptly invoice any Town approved change orders to the Town and the Town will promptly pay the change order invoice. Upon completion of the agreed work, United Power will provide a final detailed report to the Town, reconciling the original projected cost estimates, including any approved change orders, to the actual costs incurred in completing the project. Upon reconciliation of the construction of the extension, the construction

deposit shall be compared to the actual cost of the design and construction as entered in to the books of United Power. If the actual cost is less than originally estimated, United Power will promptly refund the portion of the construction deposit greater than the actual costs, without interest, to the Town. United Power will exercise commercially reasonable means to keep the cost of projects performed for the Town to a minimum, and will bill the Town for such construction projects based on the actual costs incurred in completing the project. Where projects requested by the Town, that are located on a Town owned parcel, require removal of electrical Facilities, United Power will not reasonably withhold approval of the Town to perform such work, so long as United Power has determined that said work can be accomplished in as safe manner as to not cause harm to any of its distribution system, or other electrical Facilities.

6.9 Obligations Regarding United Power Facilities.

(A) **United Power Facilities.** All United Power Facilities within Town Streets will be maintained in good repair and condition.

(B) **United Power Work Within the Town.** All work within Town Streets performed or caused to be performed by United Power will be done:

- (1) In a high-quality manner;
- (2) In a timely and expeditious manner;
- (3) In a manner which minimizes inconvenience to the public; in a cost-effective manner, which may include the use of qualified contractors; and in accordance with all applicable laws, ordinances, and regulations.

(C) **Permit and Inspection.** The installation, renovation, and replacement of any United Power Facilities in the Town Streets or other Town Property by or on behalf of United Power will be subject to permit, inspection and approval by the Town. Such inspection and

approval may include, but will not be limited to, the following matters: location of United Power Facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks, and surfaces of Town Streets or other Town Property. United Power agrees to cooperate with the Town in conducting inspections and will promptly perform any remedial action lawfully required by the Town pursuant to any such inspection.

(D) **Compliance.** United Power and all of its contractors will comply with the requirements of all municipal laws, ordinances, regulations, permits, and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. United Power will assure that its contractors working in Town Streets or other Town Property hold the necessary licenses and permits required by law.

(E) **Increase in Voltage.**

(1) **Customer Notification.** United Power will use best efforts to notify affected customers if there will be facility changes that result in a material increase in voltage of the service to such customers.

(2) **Town Facilities.** United Power will reimburse the Town for the reasonable and necessary cost of upgrading the electrical system or facility of any Town building or facility that uses electric service where such upgrading is caused or occasioned by United Power's decision to increase the voltage of delivered electrical energy; unless such change is caused by, requested, or mandated by the Town, in which case the Town shall reimburse United Power for any reasonable costs United Power incurs in relation to such upgrading.

(F) **As-Built Drawings.** Upon reasonable written request of the Town designee, United Power will provide within ninety (90) days of the request, as-built drawings of

any United Power Facility newly installed within the Town Streets or contiguous to the Town Streets. As used in this section, as-built drawings refers to the Facility drawings as maintained in United Power's geographical information system or any equivalent system. United Power will not be required to create drawings that do not exist at the time of the request, but shall be required to obtain as-built drawings of all improvements made subsequent to the execution of this Agreement.

6.10 Relocation of United Power Facilities.

(A) **Relocation Obligation.** United Power will, at its sole cost and expense, temporarily or permanently remove, relocate, change, or alter the position of any United Power Facility in Town Streets or in other Town Property whenever the Town shall determine that such removal, relocation, change or alteration is necessary for the completion of any public project. For all relocations, United Power and the Town agree to cooperate on the location and relocation of United Power Facilities in the Town Streets or other Town Property in order to achieve relocation in the most efficient and cost-effective manner possible. Upon a reasonable request by the Town, United Power will exercise commercially reasonable means to relocate Facilities in a shorter period of time for good cause shown by Town and United Power shall not unreasonably deny such relocation. Notwithstanding the foregoing, once United Power has relocated any United Power Facility at the Town's direction, if the Town requests that the same United Power Facility be relocated within two (2) years, the subsequent relocation shall not be at United Power's expense.

(B) **Private Projects.** United Power shall not be responsible for the expenses of any relocation required by the Town's direct or indirect assistance for private projects, and United Power has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation. Upon completion, the Parties shall perform a "true-up" to ensure United Power has been fully compensated for all work performed.

(C) **Relocation Performance.** The relocations set forth in Section 6.10(A) of this Franchise Agreement shall be completed within a reasonable time, not to exceed ninety (90) days from the later of the date on which the Town designee requests in writing that the relocation commence, or the date when United Power is provided all reasonably requested service application submittal requirements. Upon United Power's request, which request shall not be unreasonably denied by the Town, United Power shall be entitled to a reasonable extension of time to complete a relocation where United Power's performance was delayed due to a cause that could not be reasonably anticipated by United Power or is beyond its reasonable control, after exercise of best efforts to perform, including without limitation fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of labor, materials or equipment and failures or delays in delivery of materials. Upon request of United Power, the Town may also grant United Power reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

(D) **Town Revision of Supporting Documentation.** Any revision by the Town of all service application submittal requirements provided to United Power that causes United Power to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under the Franchise.

(E) **Completion.** Each such relocation shall be deemed complete only when United Power actually relocates the United Power Facilities, restores the relocation site in accordance with Sections 6.6 and 6.7 of this Franchise or as otherwise agreed with the Town, and removes from the site or properly abandons on site all unused Facilities, equipment, material and other impediments.

(F) **Scope of Obligation.** Except as otherwise set forth herein, the relocation obligation set forth in this Section shall only apply to United Power Facilities located in Town Streets or other Town Property, and shall not apply (i) to United Power Facilities located in, on, or above property owned by United Power in fee, (ii) to United Power Facilities located in, on, or above Town Property whose ownership or use was donated to the Town by United Power, and (iii) to United Power Facilities located in, on, or above privately-owned easements and/or Utility Easements. With respect to payment for the relocation of those limited Facilities, subject to the provisions of Section 6.10(A), which shall supersede this Section, if the Town requests the relocation, the Town shall pay all costs associated therewith to United Power, except that if a substantial portion of the relocation involves United Power Facilities located in the Town Streets or other Town Property, then United Power shall pay the costs associated with the relocation. If the relocation is at the instance of United Power, then United Power shall pay all costs associated with the relocation. In no event shall the Town pay for relocation expenses associated with third party attachments to United Power Facilities.

(G) **Underground Relocation.** Underground Facilities shall be relocated underground. Above ground Facilities shall be placed above ground unless United Power is paid for the incremental amount by which the underground cost would exceed the above ground cost of relocation, or the Town requests that such additional incremental cost be paid out of available funds under Article 8 of this Franchise (except that wireless and/or broadband facilities properly permitted to be in the Town right-of-way which must be, and are specifically hereby permitted to be, located above ground and cannot be relocated, in order to operate shall not be required to be placed underground, but shall remain subject to the Town's permitting requirements and may only be placed in an above ground location approved by the Town).

(H) **Coordination.** When requested in writing by the Town or United Power, representatives of the Town and United Power shall meet to share information regarding anticipated projects which will require relocation of United Power Facilities in Town Streets or other Town Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any timetable established by the Town for any public project.

(I) **Proposed Alternatives or Modifications.** Upon receipt of written notice of a required relocation, United Power may propose an alternative to or modification of the public project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of United Power Facilities. The Town shall in good faith review the proposed alternative or modification. The Town's acceptance of the proposed alternative or modification shall be at the sole discretion of the Town, provided however that such acceptance shall not be unreasonably withheld. In the event the Town accepts the proposed alternative or modification, United Power agrees to promptly compensate the Town for all reasonable additional costs, expenses or delay that the Town reasonably determines that it has incurred as a direct result of implementing the proposed alternative. For implementing the proposed alternative, the Town will provide in advance a cost estimate for such work in sufficient detail to justify the estimated total cost. United Power shall deposit funds with the Town in the amount of the cost estimate prior to commencement of the work. Construction project change orders shall be limited to significant changes in project scope within the proposed alternative or modification that are determined in the sole discretion of the Town. The Town will promptly invoice United Power for any change orders incurred by the Town and United Power will promptly pay the change order invoice. Upon completion of the agreed work, the Town will provide a final detailed report to United Power,

reconciling the original projected cost estimates, including any approved change orders, to the actual costs incurred in completing the project. Upon reconciliation of the construction of the extension, the construction deposit shall be compared to the actual cost of the design and construction as entered into the books of the Town. If the actual cost is less than originally estimated, the Town will promptly refund the portion of the construction deposit greater than the actual costs, without interest, to United Power.

6.11 Service to New Areas. If, during the term of this Franchise, the municipal boundaries of the Town are expanded within United Power's Service Area, United Power shall extend service to residents of the newly incorporated areas, and United Power shall be paid therefor, in accordance with United Power's extension policy set forth in its Tariffs at the earliest practicable time. Service to annexed areas shall be in accordance with the terms of this Franchise Agreement, including payment of franchise fees as defined in Section 3.1 of this Franchise.

6.12 New or Modified Service to Town Facilities. In providing new or modified electric service to Town Facilities, United Power agrees to perform as follows:

(A) **Performance.** United Power will complete each project requested by the Town within a reasonable time. The Parties agree that a reasonable time will not exceed one hundred eighty (180) days from the date upon which the Town designee makes a written request, unless a shorter time is warranted, as determined by the Town, for a public purpose. Upon request of the Town, United Power may complete electric service to Town Facilities in less than one hundred eighty (180) days for good cause shown and United Power will not unreasonably deny such expedited service. United Power shall be entitled to an extension of time to complete a project where United Power's performance was delayed due to a cause that could not be reasonably anticipated by United Power or is beyond its reasonable control, after exercise of best efforts to

perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials, or other causes described in 6.2(B) above. Upon request of United Power, the Town designee may, in writing, also grant United Power reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

(B) **Town Revision of Supporting Documentation.** Any revision by the Town of supporting documentation provided to United Power that causes United Power to substantially redesign and/or change its plans regarding new or modified service to Town Facilities shall be deemed good cause for a reasonable extension of time to complete the relocation under the Franchise.

(C) **Completion/Restoration.** Each such project shall be complete only when United Power actually provides the service installation or modification required, restores the project site in accordance with the terms of the Franchise or as otherwise agreed with the Town and removes from the site or properly abandons on site any unused Facilities, equipment, material and other impediments.

6.13 Modifications to United Power Facilities. United Power will modify United Power Facilities, including manholes and other appurtenances in Town Streets and other Town Property, to accommodate Town street maintenance, repair and paving operations at no cost to the Town. In providing such modifications to United Power Facilities, United Power agrees to perform as follows:

(A) **Performance.** United Power will complete each requested modification within a reasonable time, not to exceed thirty (30) days from the date upon which the Town makes

a written request and provides to United Power all information reasonably necessary to perform the modification. United Power shall be entitled to an extension of time to complete a modification where United Power's performance was delayed due to a cause that could not be reasonably anticipated by United Power or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials, or other reasons as described in 6.2(B) above. Upon request of United Power, the Town may also grant United Power reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

(B) **Completion/Restoration.** Each such modification shall be complete only when United Power actually adjusts United Power facility to accommodate the Town operations in accordance with Town instructions and, if required, readjusts, following Town paving operations.

(C) **Coordination.** As requested by the Town or United Power, representatives of the Town and United Power shall meet regarding anticipated street maintenance operations which will require such modifications to United Power Facilities in Town Streets or other Town Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

6.14 Third Party Damage Recovery.

(A) **Damage to United Power Interests.** If any individual or entity damages any United Power Facilities, the Town will notify United Power of any such incident and will provide to United Power within a reasonable time all pertinent information within its possession

regarding the incident and the damage, including the identity of the individual or entity who/which caused the damage.

(B) **Damage to Town Interests.** If any individual or entity damages any United Power Facilities for which the Town is obligated to reimburse United Power for the cost of the repair or replacement of the damaged facility, to the extent permitted by law, United Power will notify the Town of any such incident and will provide to the Town within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

(C) **Meeting.** United Power and the Town agree to meet periodically, upon written request of either Party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging United Power Facilities.

6.15 Technological Improvements. United Power may install future improvements and technological advances to its equipment and service within the Town, at United Power's discretion (but upon reasonable notice to the Town), when such improvements and advances are technologically and economically feasible, and safe and beneficial to the Town and in accordance with all Town ordinances and regulations. At a minimum, United Power shall install future improvements and technological advances to its equipment and service within the Town that are equivalent to the improvements United Power installs in similarly sized and situated municipalities. Upon reasonable notice from the Town, United Power shall meet with the Town representatives to discuss planned growth and anticipated activities related to long term availability of electric service in the Town.

ARTICLE 7: COMPLIANCE

7.1 Town Regulation. The Town expressly reserves, and United Power expressly recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such provisions, ordinances and rules and regulations ("New Provisions") as may be deemed necessary by the Town, in the exercise of its police power, to protect the health, safety and welfare of its citizens and their properties. The Town shall make a good faith effort to provide United Power advanced notice of any provisions, ordinances, rules or regulations which may affect United Power's rights, obligations, and performance hereunder. If the New Provisions substantially alter the Parties' rights, obligations or performance hereunder, upon written request of United Power, the Parties shall meet and confer on a proposed course of action, which may include modifying this Agreement or terminating it.

7.2 Compliance with Regulatory Agencies. United Power states that its Facilities will comply with the standards promulgated by all regulatory agencies with jurisdiction over United Power's services.

7.3 Continued Compliance with Air and Water Pollution Laws. United Power shall take reasonable measures to ensure that its Facilities and operations meet the standards required by applicable Town, county, state, and Federal air and water pollution laws, and laws regulating transportation of hazardous materials. Upon the Town's reasonable request, United Power will provide the Town with a status report of such measures.

ARTICLE 8: UNDERGROUND CONSTRUCTION AND OVERHEAD CONVERSION

8.1 New Lines Under-grounded. United Power will place all newly constructed electrical distribution lines underground unless approved otherwise by the Town in writing.

8.2 Overhead Conversion of Electrical Lines. United Power agrees to allocate an annual amount, equivalent to one and one-half percent (1-1/2%) of the preceding calendar year's

electric revenues derived from customers within the Town boundaries, for the purpose of undergrounding United Power's existing overhead electric distribution Facilities within the Town, at the expense of United Power, as requested by the Town (the "Under-grounding Funds"). Any unexpended portion of the one and one-half percent (1-1/2%) revenues shall be carried over to succeeding years, and shall be in addition to the contribution in subsequent years. Until three (3) years from the conclusion of this Agreement and upon request by the Town, United Power agrees to anticipate amounts to be available for up to three (3) years in advance to be used to underground its overhead distribution Facilities, as requested by the Town. Any amounts so advanced shall be credited against amounts to be expended in succeeding years until such advance is eliminated. Except as provided in Section 6.10(G) no relocation expenses which United Power would be required to expend pursuant to Article 6 of this Franchise Agreement shall be charged to this allocation. United Power shall not withhold approval of the plans of the Town except where essential for safety, or protection of the operating integrity of United Power's electric system. If, after any and all undergrounding of United Power lines has taken place and no more United Power overhead lines remain in the Town, there are any undergrounding funds remaining, or, if at any time the Town and United Power mutually agree in writing, undergrounding funds may be used by the Town for other mutually agreed electric utility related projects in the Town mutually agreed upon by the Town and United Power.

8.3 Planning and Coordination of Under-grounding Projects. The Town and United Power shall mutually plan in advance the scheduling of under-grounding projects to be undertaken according to this Article as a part of the review and planning for other Town and United Power construction projects. In addition, the Town and United Power agree to meet, as required, to review the progress of then-current under-grounding projects and to review planned future

under-grounding projects. The purpose of such meetings shall be to further cooperation between the Town and United Power to achieve the orderly under-grounding of United Power Facilities.

At such meetings, the Parties shall review:

(A) Undergrounding, including conversions, public projects and replacements which have been accomplished or are underway, together with United Power's plans for additional undergrounding;

(B) Public projects anticipated by the Town; and

(C) Such meetings shall be held to achieve a continuing program for the orderly under-grounding of electrical lines in the Town.

8.4 Cooperation with Other Utilities. When undertaking a project of under-grounding, the Town and United Power shall work with other utilities or companies which have their lines overhead to attempt to have all lines under-grounded as part of the same project. When other utilities or companies such as cable television and telephone companies or other utilities with overhead Facilities embark upon a program of underground construction where United Power has overhead Facilities, United Power will cooperate with these utilities and companies and undertake to underground United Power Facilities as part of the same project at no cost to the Town. United Power shall not be required to pay for the cost of under-grounding the Facilities of other companies or the Town.

8.5 Town Requirement to Underground. In addition to the provisions of this Article, the Town may require any above ground United Power Facilities to be moved underground at the Town's expense; provided, however, that United Power shall not be required to underground any of its Facilities to which wireless and/or broadband facilities are attached and/or jointly used (which facilities were properly permitted by the Town to be in the subject right-of-way), as such

facilities (of United Power or other joint use/attaching provider) are required to be above ground in order to operate, and all requirements of undergrounding in this Agreement are subject to this exception, unless the Town provides a reasonable alternative above-ground location to relocate the wireless and/or broadband facilities.

(A) **Undergrounding Performance.** Upon receipt of a written request from the Town, United Power will, to the extent of monies available in the Fund and as otherwise provided herein, underground United Power Facilities in accordance with the procedures set forth in this Section 8.5.

(B) **Performance.** United Power shall complete each under-grounding project requested by the Town within a reasonable time, not to exceed one hundred eighty (180) days from the later of the date upon which the Town designee makes a written request or the date the Town provides to United Power all reasonable service application submittal requirements, unless a shorter time is warranted for a public purpose. United Power shall be entitled to an extension of time to complete each under-grounding project where United Power's performance was delayed due to a cause that could not be reasonably anticipated by United Power or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to, fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials, or other reasons as set forth in 6.2(B) above. Upon request of United Power, the Town may also grant United Power reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

(C) **Town Revision of All Service Application Submittal Requirements.** Any revision by the Town of all service application submittal requirements provided to United

Power that causes United Power to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the under-grounding project under the Franchise.

(D) **Completion/Restoration.** Each such undergrounding project shall be deemed complete only when United Power actually undergrounds the designated United Power Facilities, restores the undergrounding site in accordance with Sections 6.6 and 6.7 of this Franchise or as otherwise agreed with the Town designee and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

(E) **Estimates.** Promptly upon receipt of an undergrounding request from the Town and all service application submittal requirements necessary for United Power to design the undergrounding project, United Power will prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the Town to review and, if acceptable, issue a project authorization. United Power will not proceed with any requested project until the Town has provided a written acceptance of United Power estimate.

(F) **Report of Actual Costs.** Upon completion of each under-grounding project, United Power will submit to the Town a detailed report of United Power's actual cost to complete the project and United Power shall reconcile this total actual cost with the accepted cost estimate.

(G) **Audit of Underground Projects.** The Town may require that United Power undertake an independent audit of any under-grounding project for five hundred thousand dollars (\$500,000.00) or greater. The cost of any such independent audit shall be paid from and reduce the amount of the fund. United Power shall cooperate fully with any audit and the independent auditor shall prepare and provide to the Town and United Power a final audit report

showing the actual costs associated with completion of the project. If a project audit is required by the Town, only those actual project costs, including reasonable internal costs and overhead as charged to the project by United Power's normal cost accounting rules and protocols, confirmed and verified by the independent auditor as commercially reasonable and commercially necessary to complete the project shall be charged to the fund.

8.6 Audit of Underground Fund. Upon a reasonable written request by the Town, but no more frequently than once every three (3) years, United Power will audit the fund for the Town. Such audits shall be limited to the previous three (3) calendar years. United Power will provide the audit report to the Town and will reconcile the fund consistent with the findings contained in the audit report. If the Town has concerns about any material information contained in the audit, the Parties shall meet and make good faith attempts to resolve any outstanding issues. If the matter cannot be resolved to the Town's reasonable satisfaction, United Power will, at its expense, cause an independent auditor, selected by agreement with the Town, to investigate and determine the correctness of the charges to the underground fund. The independent auditor shall provide a written report containing its findings to the Town and United Power. United Power will reconcile the fund consistent with the findings contained in the independent auditor's written report. If the independent auditor's report confirms United Power's allocations, costs and expenses, the Town shall be responsible for fifty percent (50%) of the cost for the independent auditor's work and report.

ARTICLE 9: ENVIRONMENT AND CONSERVATION

9.1 Environmental Leadership. United Power is committed to using the earth's resources wisely; supporting the advancement of emerging technologies, and helping its customers use energy as efficiently as possible. United Power will strive to conduct its operations in a way that avoids adverse environmental impacts where feasible, subject to constraints faced by a

cooperative utility. In doing so, United Power will consider environmental issues in its planning and decision making, and will invest in environmentally sound technologies when such technologies are deemed prudent and feasible. United Power will continue with its voluntary carbon reduction program to reduce greenhouse gas emissions and shall continue to explore ways to reduce water consumption at its Facilities. United Power will continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds caused by transmission and distribution lines.

9.2 Energy Conservation and Efficiency.

(A) Energy Efficiency Programs.

(1) **General.** The Town and United Power recognize and agree that energy conservation and efficiency programs offer opportunities for the efficient use of energy and reduction of customers' energy consumption and costs. United Power recognizes and shares the Town's desire to advance the implementation of cost-effective energy conservation and efficiency programs, which direct opportunities to United Power's customers to manage more efficiently their use of energy and, thereby, create the opportunity to reduce their energy consumption, costs, and impact on the environment. United Power will seek to develop and offer energy efficiency programs to its customers. United Power commits to offer Demand Side Management (DSM) programs and similar succeeding programs, which provide customers the opportunity to reduce their energy usage. In doing so, United Power recognizes the importance of (i) implementing cost-effective programs, the benefits of which could otherwise be lost if not pursued in a timely fashion and (ii) developing cost-effective energy management programs for the various classes of United Power's customers. United Power commits to offer programs that attempt to capture market

opportunities for cost-effective energy efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy. United Power will advise the Town and United Power's customers of the availability of assistance that United Power makes available for investments in energy conservation, and may do so through dissemination of such information through its Community Affairs Representatives, newsletters, newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information of these programs on United Power's website.

(2) **Town Improvements.** United Power agrees to work with the Town to implement periodic grant or other financial assistance programs or mechanisms to assist the Town in defraying costs incurred by the Town in making technology changes and/or modifications to Town Facilities or purchasing equipment to provide energy efficiencies and/or conservation. A mutually cooperative process including discussion during the June to August time frame for each ensuing budget year to include such expenditures in the next annual budget cycle will materially assist the Parties in best utilizing such grant or other financial assistance programs. Both Parties must agree on the program uses, terms, conditions and funding mechanisms for all such grant or other financial assistance programs before United Power will advance any funds for such program.

(B) **Renewable Resource Programs.** United Power agrees to invest in clean, renewable electric power and include renewable resource programs as an integral part of United Power's provision of electric service to its customers. United Power will continue to promote existing or new programs in its service territory and take the following steps to encourage

participation by the Town and United Power's customers in available renewable resource programs:

- (1) Notify the Town regarding eligible renewable resource programs;
- (2) Provide the Town with support regarding how the Town may participate in eligible renewable resource programs; and,
- (3) Advise customers regarding participation in eligible renewable resource programs.

(C) **Five Year Review.** The Town and United Power agree to meet no less frequently than every five (5) years during the term of the Franchise to review and exchange information concerning new and additional energy conservation and efficiencies that may be implemented to further the stated intention of this Article 9.

ARTICLE 10: USE OF UNITED POWER FACILITIES

10.1 Town Use of United Power Facilities. The Town shall be permitted to make reasonable use of United Power's distribution Facilities such as poles and conduits in the Town at no cost to the Town for the placement of Town equipment or Facilities necessary to serve a legitimate police, fire, emergency, communications, public safety or traffic control purpose, or for any other purpose consistent with exercise of the Town's municipal powers and services; provided, however, that such use does not interfere with United Power Facilities or increase costs to United Power. The Town may, upon written approval by United Power, which approval shall not be unreasonably withheld, and as long as United Power's and industry standard safeguards are not compromised, string decorative banners or similar type of removable attachments to United Power Facilities. The Town shall notify United Power in writing in advance of its intent to use United Power Facilities and the nature of such use. The Town shall be responsible for its materials costs and any costs associated with modifications to United Power Facilities to accommodate the

Town's joint use of such United Power Facilities and for any electricity used. No such use of United Power Facilities shall be required if it would constitute a safety hazard or would interfere with United Power's use of United Power Facilities. Any such Town use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations. Subsequently, if United Power determines that it will no longer utilize the shared facilities, Town will be responsible, at its cost, for procuring alternatives for its facilities. United Power will be required to provide at least one hundred eighty (180) days' notice if it intends to abandon any shared Facility, unless such change is occasioned by external circumstances beyond United Power's control. In that event, reasonable notice is all that is required.

10.2 Use of United Power Land. United Power will grant to the Town use of distribution and transmission rights-of-way which it now, or in the future, owns or has an interest in within the Town for the purposes set forth in the Colorado Parks and Open Space Act of 1984, § 29-7.5-101, *et seq.*, C.R.S. provided that United Power shall not be required to allow such use in any circumstance where such use would interfere with United Power's use of the distribution and transmission rights-of-way or increase United Power's costs. Such grant shall be made only if United Power is given at least sixty (60) days advance notice of the Town's desired use. Any use by the Town pursuant to this Section 10.2 shall be made at the Town's sole expense, and shall be subject to any safety or other requirements imposed by United Power. The Town hereby expressly understands that United Power's rights-of-way contain electrical lines that could prove deadly if contact is made with any electrical current. To the extent permitted by law, the Town shall hold harmless and indemnify United Power for any and all liability and damages associated with the Town's use of United Power's distribution and transmission rights-of-way, conduits and poles, including the payment of United Power's reasonable attorney and expert witness fees, if

applicable, except to the extent the loss is caused by United Power's own negligence or willful misconduct.

10.3 Third Party Use of United Power Facilities. If requested in writing by the Town, United Power may, but will not be required to, allow other companies who hold Town franchises, or otherwise have obtained consent from the Town to use the streets, to utilize United Power Facilities for the placement of their Facilities upon approval by United Power and agreement upon reasonable terms and conditions including payment of fees established by United Power. No such use shall be permitted if it would constitute a safety hazard or would interfere with United Power's use of United Power Facilities or increase United Power's costs. United Power shall not be required to allow the use of United Power Facilities for the provision of utility service except as otherwise required by law.

10.4 Emergencies. Upon request, United Power will cooperate with the Town in developing an emergency management plan. In the case of any emergency or disaster, United Power will, upon a reasonable verbal request by the Town, make available United Power Facilities for temporary emergency use during the emergency or the disaster period. Such use of United Power Facilities shall be of a limited duration and will only be allowed if the use does not interfere with United Power's own use of such United Power Facilities or increase United Power's costs.

ARTICLE 11: RIGHT OF FIRST PURCHASE/USE OF UNITED POWER LAND

11.1 Right of First Purchase. If at any time during the term of this Franchise, United Power proposes to sell or dispose of any of its real property located within the Town, it will provide to the Town the right of first purchase of same. United Power will obtain an appraisal by a qualified appraiser on any such real property and the Town shall have ninety (90) days after receipt of the qualified appraisal in which to exercise the right of first purchase at the appraised value by giving written notice to United Power. If the Town is not satisfied with the appraisal tendered by

United Power, the Town may obtain, within ninety (90) days of United Power's tender of its appraisal, which time period may be extended upon request of the Town and approval by United Power, which approval shall not be unreasonably withheld, and at the Town's cost, a second appraisal which, upon receipt, shall be tendered to United Power. If United Power is satisfied with the Town's appraisal, then, upon notice, the Town shall purchase the property at the price set forth in the second appraisal. If United Power is not satisfied with the second appraisal, then the appraisers issuing the first and second appraisals shall choose a third appraiser who will also appraise the property. The Town and United Power shall share the cost of the third appraiser equally and shall be bound by the value concluded by the third appraiser. The sixty (60) day time period by which the Town may have the first right to purchase the property shall be extended thirty (30) days from the dates of the second or third appraisal (as the case may be), and the Town shall close on the sale and pay the value set forth in the controlling appraisal within said thirty (30) days. Should the Town not provide the required written notice that it wishes to purchase the subject property within the time frames above, United Power may proceed to negotiate with others for the sale of such property, provided that United Power may not sell such property for an amount less than ninety-five percent (95%) of the appraised value without first providing the Town an opportunity to purchase such property at such lesser price, in which instance the Town shall have thirty (30) days to determine if it wishes to purchase such property.

ARTICLE 12: INDEMNIFICATION OF TOWN

12.1 Town Held Harmless. United Power will construct, maintain and operate its Facilities in a manner which provides reasonable protection against injury or damage to persons or property. United Power shall not be obligated to hold harmless or indemnify the Town for claims, demands, judgments or losses which are a result of the negligence or willful misconduct of the Town or its officers, contractors, agents or employees.

12.2 Notice to United Power. Within sixty (60) days after receipt of the same by the Town Attorney, the Town will provide notice to United Power of the pendency of any claim or action against the Town arising out of the exercise by United Power of its Franchise rights. United Power will be permitted, at its own expense, to appear and defend or to assist in defense of such claim.

12.3 Indemnification.

(A) **Town Indemnified.** United Power agrees to indemnify, defend and hold the Town harmless from and against claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the grant of this Franchise, the exercise by United Power of the related rights, or from the operations of United Power within the Town, and shall pay the costs of defense plus reasonable attorneys' fees. The Town shall (a) give prompt written notice to United Power of any claim, demand or lien with respect to which the Town seeks indemnification hereunder and (b) unless in the Town's judgment a conflict of interest may exist between the Town and United Power with respect to such claim, demand or lien, shall permit United Power to assume the defense of such claim, demand, or lien with counsel satisfactory to the Town. If such defense is assumed by United Power, United Power shall not be subject to any liability for any settlement made without its consent.

Notwithstanding any provision hereof to the contrary, United Power shall not be obligated to indemnify, defend, or hold the Town harmless to the extent any claim, demand or lien wholly arises out of, relates to, or is in connection with negligence or willful misconduct by or of the Town or its officers, contractors, agents or employees.

12.4 Immunity. Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Town may have under the Colorado

Governmental Immunity Act (§24-10-101, et seq., C.R.S.) or of any other defenses, immunities, or limitations of liability available to the Town by law.

12.5 Waiver of Subrogation. The Town and United Power hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to their respective property resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Town and United Power. These waivers and releases shall apply between the Town and United Power, and they shall also apply to any claims under or through either one as a result of any asserted right of subrogation. All policies of insurance covering property damage obtained by either the Town or United Power concerning the property shall waive the insurer's right of subrogation against the other Party.

ARTICLE 13: TRANSFER OF FRANCHISE

13.1 Consent of Town Required.

(A) United Power shall not sell, transfer or assign this Franchise or any rights under this Franchise to another, by merger or otherwise, excepting only corporate reorganizations of United Power not involving a third party, unless the Town shall approve in writing such sale, transfer or assignment of rights. Approval of the sale, transfer or assignment shall not be unreasonably withheld. The charging or collection of the transfer fee hereinafter set forth is conclusively deemed reasonable.

(B) In order that the Town may share in the value this Franchise adds to United Power's operations, any such transfer or assignment by United Power of rights under this Franchise requiring Town approval under Section 13.1(A) shall require that the transferee to promptly pay to the Town an amount that is equal to the greater of: (i) Fifty thousand dollars (\$50,000.00) or (ii) three times the most recent twelve (12) months of franchise fees collected by the Town from United

Power. In the event only a portion of United Power's service area within the municipal boundaries of the Town is transferred, the transfer fee shall be calculated by multiplying the greater of (i) and (ii) above by number of customers transferred, divided by the then current number of customers served by United Power in the Town before said transfer. Such transfer fee shall not be recovered from the Town or from the Town residents or property owners through electric rates of customers in the Town or by a surcharge of the Residents of the Town by the transferee or United Power.

(C) Any sale, transfer or assignment of electric Facilities which cause degradation of electric service within United Power's Service Area or results in a significant increase in rates to Town customers, shall constitute a violation of this Franchise, for which United Power shall remain liable.

ARTICLE 14: MUNICIPALLY-PRODUCED RENEWABLE ENERGY

14.1 Municipally-Produced Renewable Energy.

(A) **Town Reservation.** The Town expressly reserves the right to engage in the generation of renewable energy for the sole purpose of selling such renewable energy to United Power, and not for the purpose of operating its own utility. United Power agrees in good faith to negotiate a power purchase agreement to purchase Town-generated energy made available for sale, and consistent with CPUC and established United Power Board requirements, and considering the then existing agreements with United Power's current providers.

ARTICLE 15: PURCHASE OR CONDEMNATION

15.1 Franchise Not to Limit Town's Rights. Subject to the provisions of Part 2 of Title 40, Article 9.5 of the Colorado Revised Statutes, nothing in this Franchise prohibits the Town from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law; provided, however, that if the Town does so, it will comply with the provisions of such statutes requiring the compensation of United Power therefor.

15.2 Town's Right to Purchase or Condemn. The right of the Town to construct, purchase or condemn any public utility works or ways, and the right of United Power in connection therewith, as provided by the Colorado Constitution and Statutes, are hereby expressly reserved. The Town shall have the right during the term of this Franchise and using the procedures set forth herein, to purchase United Power Facilities, land, rights-of-way and easements now owned or to be owned by United Power located within the municipal boundaries of the Town.

15.3 Notice of Intent to Purchase or Condemn. The Town shall provide United Power no less than ninety (90) days' prior written notice of its intent to purchase or condemn United Power Facilities. Nothing in this section shall be deemed or construed to constitute consent by United Power to the Town's purchase or condemnation of United Power Facilities.

15.4 Negotiated Purchase Price or Condemnation Award. Upon the exercise of the Town's option to purchase, the Parties shall negotiate in good faith to determine a mutually acceptable purchase price. This purchase price will be calculated by the methodology set forth in § 40-9.5-201, C.R.S.

15.5 Continued Cooperation by United Power.

(A) In the event the Town exercises its option to purchase or condemn, United Power agrees that it will continue to supply in whole or in part any service it supplies under this Franchise Agreement and the ordinance adopting the same, at the Town's request, for the duration of the term of this Agreement and shall continue to pay the Franchise Fee to the Town during this period. United Power's Facilities shall be available for continued service until nine (9) months after final order is entered in a condemnation proceeding or the effective date of a purchase agreement between the Parties; provided however, said obligation to maintain Facilities shall not exceed a twenty-four (24) month period after the termination of the Franchise. United Power shall

continue to provide service pursuant to the terms of this Agreement for said twenty-four (24) months until the Town has either purchased or condemned United Power's Facilities, or alternative arrangements have been made to supply electricity to the Town and its residents, whichever date shall occur earlier, and shall continue to pay the Franchise Fee, or funds equivalent to the Franchise Fee, to the Town during this period. The Town shall not pay for any services no longer required.

(B) United Power will cooperate with the Town by making available then existing pertinent United Power records, which are not privileged, to enable the Town to evaluate the feasibility of acquiring United Power Facilities. United Power will not be obligated to conduct studies or accrue data without reimbursement by the Town, but will make such studies if reimbursed its actual costs for the same. United Power will take no action, which could inhibit the Town's ability to effectively or efficiently use the acquired systems. At the Town's request, United Power will supply electricity for use by the Town in a Town-owned system.

ARTICLE 16: CHANGING CONDITIONS.

United Power and the Town recognize that many aspects of the electric utility business are currently the subject of discussion, examination and inquiry by different segments of industry and affected regulatory authorities, and that these activities may ultimately result in fundamental changes in the way United Power conducts its business and meets its service obligations. In recognition of the present state of uncertainty respecting these matters, United Power and the Town agree, on request of the other, to negotiate in good faith an amendment of this Franchise or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of such developments.

ARTICLE 17: UNCONTROLLABLE FORCES.

Neither the Town nor United Power shall be in breach of this Franchise Agreement if a failure to perform any of the duties under this Franchise is due to uncontrollable forces, which

shall include but not be limited to accidents, breakdown of equipment, shortage of materials, acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government, other causes or contingencies of whatever nature beyond the reasonable control of the Party affected, including the causes set forth in 6.2(B) above, and which could not reasonably have been anticipated and avoided.

ARTICLE 18: BREACH AND REMEDIES

18.1 Non-Contestability. The Town and United Power agree to take all reasonable and necessary actions to assure that the terms of this Franchise are performed and, except as may be specifically provided in this Franchise Agreement, neither will take any unilateral legal action to secure the modification or amendment of this Franchise.

18.2 Breach/Notice/Cure/Remedies. Except as otherwise provided in this Franchise, if a party (the “breaching party”) to this Franchise fails or refuses to perform any of the terms or conditions of this Franchise (a “breach”), the other party (the “non-breaching party”) may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach and except as provided under Article 17. If the breaching party does not remedy the breach within the time allowed in the notice, the non-breaching party may exercise the following remedies for such breach:

- (A) Specific performance of the applicable term or condition; and,
- (B) Recovery of actual damages from the date of such breach incurred by the

non-breaching party in connection with the breach, but excluding any consequential damages.

18.3 Termination of Franchise by Town. In addition to the foregoing remedies, if United Power fails or refuses to perform any material term or condition of this Franchise (a “material breach”), and such failure is not an occurrence by force majeure under Article 17, the

Town may provide written notice to United Power of such material breach. Upon receipt of such notice, United Power shall be given a reasonable time, not to exceed ninety (90) days, within which to remedy the material breach. If United Power does not remedy the material breach within the time allowed in the notice, the Town may, at its sole option, terminate this Franchise. This remedy shall be in addition to the Town's right to exercise any of the remedies provided for elsewhere in this Franchise. Upon such termination, United Power shall continue to provide electric service to the Town and its residents until the Town makes alternative arrangements for such service and be paid for such service in an amount equivalent to the Franchise Fee payable hereunder. United Power shall also be entitled to collect from Residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the Franchise, an aggregate amount equal to the amount which United Power would have paid as a franchise fee as consideration for use of the Town streets.

18.4 United Power Shall Not Terminate Franchise. In no event, other than caused by the Town's material breach of this Agreement, does United Power have the right to terminate this Franchise, but may transfer its rights hereunder after notice to Town and as otherwise set forth in Article 13.

18.5 No Limitation. Except as provided herein, nothing in this Franchise shall limit or restrict any legal rights or remedies that either Party may possess arising from any alleged breach of this Franchise.

ARTICLE 19: UNITED POWER OPERATIONS

19.1 Corporate Structure. Unless otherwise required by law, United Power shall continue its operations hereunder as a Colorado nonprofit corporation and cooperative controlled by its customers and as generally provided under § 40-9.5-101, et seq., C.R.S. This subsection

shall not limit the power of United Power to engage in other lawful business ventures through the use of subsidiary or controlled entities, including for profit ventures.

ARTICLE 20: AMENDMENTS

20.1 Amendment to Franchise. This Franchise Agreement represents the entire Franchise Agreement between the Parties and, except as otherwise specified in this Agreement and the granting of the Franchise Fees and matters related thereto, there are no oral or collateral agreements or understandings.

This Franchise Agreement may be amended only by an instrument in writing signed by United Power and the Town.

20.2 Proposed Amendments. At any time during the term of this Franchise, the Town or United Power may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired. However, nothing contained in this Section 20.2 shall be deemed to require either Party to consent to any amendment proposed by the other Party.

ARTICLE 21: EQUAL OPPORTUNITY

21.1 Equal Opportunity. United Power is an equal opportunity employer. United Power will comply with all federal, state and Town laws regarding employment, contracting and operating its business activities with a policy of non-discrimination with people of all race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability, or any other protected status in accordance with all Federal, state, or local laws.

21.2 Contracting. United Power agrees to require all of its contractors to comply with all Federal, state, and Town laws regarding employment, contracting and operating their business activities with regards to non-discrimination with people of all race, color, religion, national origin,

gender, age, military status, sexual orientation, marital status, or physical or mental disability, or any other protected status in accordance with all Federal, state, or local laws.

21.3 Economic Development. The Parties agree that promoting economic development with the Town is in the best interest of all Parties. United Power is committed to the principle of stimulating, cultivating, and strengthening the participation and representation of under-represented groups in the local Johnstown business community. United Power believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. United Power is also committed to the principle that the success and economic well-being of United Power is closely tied to the economic strength and vitality of the diverse communities and people it serves. United Power believes that contributing to the development of a viable and sustainable economic base among all United Power customers is in the best interests of United Power and its member-owners and will keep these goals in mind in formulating its economic development strategies, programs and policies.

ARTICLE 22: UNDOCUMENTED WORKERS

Undocumented Workers. At all times during the term of this Franchise Agreement, United Power agrees that it will comply with all applicable Federal, State, and Town laws prohibiting the employment of, or contracting with, undocumented workers.

22.2 Employment Prohibited. United Power will not knowingly employ or contract with an undocumented worker to perform work for United Power that is or may be related to this Franchise Agreement or knowingly contract with a subcontractor who knowingly employs or contracts with undocumented workers to perform work under this Franchise Agreement.

22.3 Affirmative Action. United Power agrees to take affirmative action to ensure that it does not employ or contract with undocumented workers to perform work on this Franchise by

participation in the Social Security Administration and Department of Homeland Security E-Verify Program.

22.4 Subcontractors.

(A) United Power will require all subcontractors of United Power to certify in writing to United Power that the subcontractor does not knowingly employ or contract with undocumented workers and further to agree in writing not to knowingly employ or contract with an undocumented worker to perform work that is or may be related to this Franchise Agreement.

(B) United Power shall not enter into a contract with a subcontractor that fails to certify to United Power that the subcontractor shall not knowingly employ or contract with an undocumented worker to perform work that is or may be related to this Franchise Agreement.

(C) If United Power obtains actual knowledge that a subcontractor performing work under this Franchise Agreement knowingly employs or contracts with an undocumented worker, United Power shall:

(1) Notify the subcontractor and the Town within three (3) days that United Power has actual knowledge that the subcontractor is employing or contracting with an undocumented worker; and

(2) Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to Section 21.4(C)(2), the subcontractor does not terminate the employment or contract with the undocumented worker; except that United Power shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an undocumented worker.

22.5 Compliance. United Power will comply with any reasonable request by the Town or the Colorado Department of Labor and Employment made in the course of an investigation that the Town or the Department is undertaking for the purpose determining the immigration status of all newly hired employees or contractors working on this Franchise, including, but not limited to:

(A) Inspections and/or interviews at such locations as this contract is being performed;

(B) Review documentation related to the immigration status and/or employment eligibility of all newly hired employees or contractors performing work which is or may be related to this Franchise; or,

(C) Any other reasonable steps as necessary to determine whether United Power or subcontractor is complying with the provisions of this Franchise related to the employment of or contracting with undocumented workers.

22.6 Documentation. United Power will, upon request, provide to the Town copies of documentation and verification of immigration status and employment eligibility received by United Power for itself or from subcontractors; and, if requested, copies of information received from a subcontractor submitted to establish that the subcontractor has not knowingly employed or contracted with an undocumented worker.

22.7 Violation. If United Power violates a provision of this Article 22, such violation may constitute a breach of this Franchise Agreement and the Town, in its sole discretion, may terminate the Franchise for breach of contract. If the Franchise is so terminated, United Power shall be liable for actual damages to the Town.

ARTICLE 23: MISCELLANEOUS

23.1 No Waiver. Neither the Town nor United Power shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its

officers, employees, or agents, upon any one or more occasions. Further, neither the Town nor United Power waives any rights under the laws, statutes and/or constitution of the State of Colorado or of the United States except as otherwise specifically set forth herein.

23.2 Successors and Assigns. The rights, privileges, franchises and obligations granted and contained in this Agreement shall inure to the benefit of and be binding upon United Power, its successors and assigns as same may succeed to the rights of United Power pursuant to Article 13.

23.3 Notice and Representatives. Both Parties shall designate from time to time in writing, representatives for United Power and the Town who will be the person(s) to whom notices shall be sent regarding any action to be taken under this Agreement. Notice shall be in writing and forwarded by overnight courier (with receipt /signature required), United States first-class certified mail (return receipt requested), or by hand delivery, facsimile or electronic transmission with proof of delivery (the sender shall confirm the receiver's facsimile number or email address in advance of sending, and shall request a confirmation of receipt), to the persons and addresses as hereinafter stated unless the names and addresses are changed at the written request of either Party, delivered in the manner provided herein. Until any such change shall hereafter be made, notices shall be sent to the following:

For the Town of Johnstown:

Town Manager
Johnstown City Hall
P.O. Box 609
450 Parrish Avenue.
Johnstown, CO 80534
Email: mlecerf@townofjohnstown.com

For United Power:

Chief Executive Officer
United Power, Inc.
500 Cooperative Way
Brighton, CO 80603
Email: notices@unitedpower.com

23.4 Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a replacement provision that will achieve the original intent of the Parties hereunder.

23.5 Entire Agreement. This Agreement constitutes the entire agreement of the Parties. There have been no representations made other than those contained in this Agreement.

23.6 Third Parties, Rights to Third Parties. Nothing herein contained shall be construed to provide rights or benefits to third parties.

23.7 Prevailing Party. In any judicial or administrative action to enforce any of the terms or conditions of this Franchise, the Party that substantially prevails as determined by the court shall be entitled to recover its costs and expenses incurred in such action, including reasonable attorney fees, but only to the extent permitted by law, recognizing the constitutional and statutory limitations prohibiting, among other potential limitations, a municipality from expending unbudgeted and unappropriated funds.

23.8 Headings for Reference Only. The headings used in this Franchise are for references only and convey no substantive rights or impose no substantive obligations on the Parties.

23.9 Responsibility for Language. The Parties hereby acknowledge during the drafting of this document each has been represented by legal counsel and that each Party bears equal and

identical responsibility for the language of this Agreement. In case of ambiguity, there shall be no presumption based upon responsibility for drafting this Franchise, and the Agreement shall not be construed against one Party in favor of another.

23.10 Authority. Each Party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable laws, to legally authorize the undersigned signatories to execute this Agreement on behalf of the Parties to its terms. The persons executing this Agreement on behalf of each of the Parties warrant that they have full authorization to execute this Agreement.

23.11 Applicable Law and Venue. Colorado law shall apply to the construction and enforcement of this Franchise. The Parties agree that venue for any litigation arising out of this Franchise shall be in the District Court for Weld County, State of Colorado.

ARTICLE 24: APPROVAL

TOWN APPROVAL. This grant of Franchise Agreement shall not become effective unless approved and granted by ordinance of the Town Council.

UNITED POWER APPROVAL. United Power shall file with the Town Clerk its written approval of this Franchise and of all of its terms and provisions at least ten (10) days prior to public hearings set for consideration of the Ordinance by the Town Council. United Power shall file with the Town Clerk its written ratification thereof within ten (10) days after the approval of this Franchise Agreement by the Town Council. The acceptance and ratification shall in form and content be approved by the Town Attorney. If United Power shall fail to timely file its written acceptance or ratification as herein provided, this Franchise shall be and become null and void.

(The remainder of this page is blank; signature page follows)

IN WITNESS WHEREOF, the Parties have executed this agreement this ____ day of _____, 2021.

UNITED POWER, INC.,
a Colorado nonprofit cooperative corporation

TOWN OF JOHNSTOWN, COLORADO
a municipal corporation

By: _____
Chief Executive Officer of United Power

By: _____
Mayor

ATTEST:

Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021 by _____, Chief Executive Officer of United Power, Inc., a Colorado cooperative association.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public
My Commission expires:

(SEAL)