

**PLANNING & DEVELOPMENT DEPARTMENT**  
**MEMORANDUM# 12 - 15**

**DATE:** May 14<sup>th</sup>, 2012  
**TO:** Honorable Mayor Joyce Downing and City Council Members  
**FROM:** William A. Simmons, City Manager *WAS*  
Brook Svoboda, Planning & Development Director *BS*  
**SUBJECT:** CB-1768, United Power Inc Franchise Agreement

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**BACKGROUND**

Attached to this memo is an ordinance that, if adopted, would approve a Utility Franchise Agreement with United Power inc for Northglenn's Section 36. The franchise would provide for electric and natural gas utility service, (ATTACHMENT A).

The key points to the Franchise Agreement includes, among other provisions, the following major terms and conditions:

- (1) A term of twenty (20) years, commencing on June 25<sup>th</sup>, 2012 and terminating on June 25<sup>th</sup>, 2032;
- (2) A requirement that the Company pay the City a franchise fee of three percent (3%) of all revenues received from the sale and transportation of gas and electricity within the City during the term of the Franchise Agreement, excluding revenues received from the City for the sale of gas and electricity during said term;
- (3) The Company's express acknowledgment of the City's police powers, including the Company's recognition that the City may enforce regulations concerning the Company's access to public rights-of-way, including permit requirements;
- (4) A requirement that the Company undertake an internal audit every three (3) years during the term of the Franchise Agreement to verify the accuracy of the franchise fee paid to the City;
- (5) The Company's commitment to pursue energy conservation and energy efficiency measures during the term of the Franchise Agreement;
- (6) Other provisions regarding the provision of gas and electric service within the City, and the construction, operation, undergrounding and relocation of Company Facilities; and

**BUDGET/TIME IMPLICATIONS**

The City receives approximately \$1400/yr from the Franchise Fee.

**RECOMMENDATION**

Staff recommends Council to set a public hearing CB-1768 as presented for June 25<sup>th</sup>, 2012

**STAFF REFERENCE**

Brook Svoboda, Director of Planning and Development [bsvoboda@northglenn.org](mailto:bsvoboda@northglenn.org) or 303.450.8937

**ATTACHMENTS**

Attachment 1 CB-1768

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1768  
Series of 2012

\_\_\_\_\_  
Series of 2012

A BILL FOR A SPECIAL ORDINANCE GRANTING AN ELECTRIC FRANCHISE BY THE CITY OF NORTHGLENN, COLORADO TO UNITED POWER, INC FOR ELECTRIC UTILITY SERVICE WITHIN CERTAIN PORTIONS OF THE CITY LOCATED WITHIN WELD COUNTY, COLORADO

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The City Council of the City of Northglenn hereby approves the Electric Utility Agreement with United Power, Inc. as follows:

**ELECTRIC UTILITY FRANCHISE AGREEMENT  
BETWEEN THE CITY OF NORTHGLENN, COLORADO  
AND  
UNITED POWER, INC.**

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**ELECTRIC UTILITY FRANCHISE AGREEMENT  
BETWEEN THE CITY OF NORTHGLENN, COLORADO  
AND  
UNITED POWER, INC.**

**ARTICLE 1. DEFINITIONS**

1.1 **Short Title.** This Agreement shall be known as the City of Northglenn/United Power Electric Franchise Agreement (“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.

“**City**” means the City of Northglenn, a Colorado home rule municipal corporation, located in relevant part in Weld County, Colorado.

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

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

“**Council**” or “**Council Members**” means the governing body of the City of Northglenn.

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

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

“**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 reasonably necessary to provide electricity within and through the City 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, wires, cables, poles, and building structures.

**“Municipal Facilities and Properties”** refers to all buildings, properties and related appurtenances that are city owned/controlled infrastructure.

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

**“Party”** or **“Parties”** refers to and includes United Power and the City, 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 City that is wholly owned or wholly funded by the City, Improvement District or Urban Renewal Authority created by Title 31; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, Weld County, and other entities established under Title 32 of the Colorado Revised Statutes.

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

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

“**Revenues**” means those amounts of money, which United Power bills for the sale of electricity under authorized rates to residents.

“**Service Area**” means the area within the City of Northglenn, which United Power is certified to serve.

“**Streets and Public Places**” means the roads, streets, alleys, viaducts, bridges, highways, avenues, boulevards, roads, lanes, public rights-of-way, easements, and places suitable for the placement of facilities that are located in the City.

“**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 City property by means of United Power-owned non-ornamental street lights and United Power-owned ornamental street lights located in the City or along the streets adjacent to the City limits thereof, supplied from United Power’s overhead or underground electric distribution system (Street Lighting Service shall not include service by City-owned facilities).

“**Supporting Documentation**” refers to all information reasonably required in order to allow United Power to design and construct any work performed under the provisions of this franchise. Supporting Documentation may include, but is not limited to, construction plans, a description of known environmental issues, the identification of critical right-of-way or easement issues, and the date the site will be ready for United Power to begin construction.

“**Traffic Facilities**” refers to any City-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 City property.

“**Traffic Signal Lighting Service**” refers to the furnishing of electric energy 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.

“**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.

“**Written Request**” means any request, not including any “notice” required herein, made in writing, including but not limited to, in electronic format such as e-mail.

## **ARTICLE 2. GRANT OF FRANCHISE**

### **2.1 Grant of Franchise.**

(A) The City hereby grants to United Power, for the period specified herein, and subject to the conditions, terms and provisions contained in this Agreement, an exclusive right to furnish, sell and distribute electricity within the City, to the City and to all residents of the City within United Power’s service area as specified by the Commission.



(B) Subject to the conditions, terms and provisions contained in this Agreement, the City also hereby grants to United Power an exclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City all facilities reasonably necessary to furnish, sell and distribute electricity within the City as may be necessary to carry out the terms of this Agreement subject to the City's prior right of usage for and subject to the City's reasonable exercise of the police powers, including but not limited to, zoning, subdivision, permit and building code requirements.

(C) These rights shall extend to all areas of the City within United Power's service area as specified by the Commission, as the City is now constituted, and to additional areas as the City may increase in size by annexation or otherwise in said service area. The City 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.

(D) The rights granted in this franchise will include the right to provide street lighting service and traffic signal lighting service to the City, for which the City will pay in accordance with an agreement with United Power, or by United Power's established tariffs. These rights shall extend to all areas of the City within United Power's certificated territory, as it is now constituted and to additional areas as the City may increase in size by annexation or otherwise within United Power's service territory.

## **2.2 Effective Date and Term of Franchise.**

(A) 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 City.

(B) 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 City property and such licenses, grants or rights of use are hereby affirmed. Such rights shall hereafter be governed by the terms of this Franchise.

(C) 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 City 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 City 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 City 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 City 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 City to be liable to any party for a failure so to act.

(B) The parties hereto understand and agree that the City, 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 (as of March 2012, \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as from time to time amended, or otherwise available to the City, its officers, or its employees.

#### **2.4 Notice of Boundary Changes.**

(A) United Power will provide the City with a map defining the current United Power service area within the City 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 City Manager.

(B) United Power will notify the City within thirty (30) days of any changes in boundaries of United Power service area in the City. Such notice will be in written form addressed to the City Manager.

(C) The City will notify United Power of a proposed annexation within fourteen (14) days of the City Council's resolution finding the petition for annexation to be in substantial compliance with the statutory requirements. Further, the City will notify United Power of final approval of all annexations of land into the City which occur within United Power's service area, within thirty (30) days after the effective date of the annexation. Failure by the City to comply with the thirty-day time frame does not preclude the City from collecting franchise fees from revenues received by United Power from residents of the annexed area after the effective date of the annexation.

#### **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 City 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 City streets and other public property to provide electric service to the City and its residents under the Franchise is subject to and subordinate to any City 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 City other than the provision of electric service without first obtaining such license 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. Any such joint use agreement entered by United Power shall be consistent with United Power's obligations and responsibilities under this Franchise, including inserting provisions that require any joint user of an above-ground facility shall 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. If requested in writing by the City, United Power may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets and Public Places, to utilize United Power's electric distribution poles in City Streets and Public Places, or on Municipal Facilities and Properties, or Other City Property, for the placement of their facilities upon approval by United Power, which approval may be denied in United Power's sole discretion, and agreement upon reasonable terms and conditions including payment of fees or a lease rate established by United Power.

(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 City 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 City. United Power shall not expand its use or occupancy of said parks, park land or open space except by specific written authorization of the City; 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 City 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 City retains the following rights in regard to this Franchise:

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

(2) To impose such other regulations as may be determined by the City 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 City'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 City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact United Power's operations in the City's Streets and Public Places, or on Municipal Facilities and Properties, or Other City 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 City's right to enforce regulations concerning United Power's access to or use of the City's Streets and Public Places, or on Municipal Facilities and Properties, or Other City Property, including requirements for permits.

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

2.7 **Payment of Expenses Incurred by City in Relation to Ordinance.** At the City's option, United Power shall pay in advance or reimburse the City for expenses incurred in publication of notices and ordinances related to this Franchise Agreement.

2.8 **Continuation of Utility Service.**

(A) In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, 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 prevailing rates, electric service within the City until the City arranges for utility service from another provider.

(B) United Power further agrees that it will not withhold any continued interim electric services necessary to protect the public.

(C) The City 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 Public Utilities Commission and United Power shall be entitled to collect from residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the Franchise, an aggregate amount equal to the amount which United Power would have paid as a franchise fee as consideration for the continued interim use of the City's Streets.

(D) Only upon receipt of written notice from the City stating that the City 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 City 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 City a sum equal to three percent (3%) of all revenues received from the sale of electricity within the City. 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 City for use of electricity by any of its departments shall be excluded from computation of the franchise fee.

3.2 **Surcharge of Franchise Fee.** United Power may collect this fee by adding a surcharge not to exceed the franchise fee upon all City residents that use facilities of United Power in the City to obtain electrical service.

3.3 **Electric Service Provided to the City.** No franchise fee shall be charged to the City for electric service provided to the City for its own consumption, including but not limited to Municipal Facilities and Properties, Street Lighting Service and Traffic Signal Lighting Service.

3.4 **Franchise Fee Payment in Lieu of Certain Taxes and Other Fees.** The City 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 City might charge United Power or its subcontractors for

the privilege of doing business in the City, for the use or occupation of City Streets, or for the installation, operation and maintenance of United Power facilities.

**3.5 Franchise Fee Payment Not In Lieu of Permit or Other Fees.** Payment of the franchise fee does not exempt United Power from any other lawful tax or fee imposed generally upon persons doing business within the City, 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 City, except that the franchise fee provided for herein shall be in lieu of any occupation fee or similar tax for the use of City 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 City in care of the Director of Finance.

**3.7 Audit of Franchise Fee Payments.**

(A) 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 City. Such audit shall be limited to the previous three (3) calendar years. United Power shall provide a written report to the City Manager containing the audit findings regarding the franchise fee paid to the City for the previous three (3) calendar years.

(B) If the City disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, and United Power shall cooperate fully, including but not necessarily limited to, providing the City's auditor with all information reasonably necessary to complete the audit. If the results of a City audit conducted pursuant to subsection (2) concludes that United Power has underpaid the City by three percent (3%) or more, in addition to the obligation to pay such amounts to the City, United Power shall also pay all costs of the audit. Errors arising solely from customer addresses inadvertently not identified as located within the City shall not be included in determining the error rate unless the City has provided specific detailed written notice to United Power that such location address is within the City limits.

(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 year audit provided above, the City Manager, or official City representative, shall have access to the metering records of United Power 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 City 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 City determines after written notice to United Power that United Power is liable to the City for payments, costs, expenses or damages of any nature, and subject to United Power's right to challenge such determination, the City may deduct all monies due and owing the City from any other amounts currently due and owing United Power. Upon receipt of such written notice, United Power may request a meeting between United Power's designee and a designee of the City Manager to discuss such determination. As an alternative to such deduction, the City may bill United Power for such assessment(s), in which case, United Power shall pay each such bill within thirty (30) days of the date of receipt of such bill. If United Power challenges the City determination of liability, the City shall make such payments pursuant to United Power's tariffs until the challenge has been finally resolved.

### **3.8 Change of Franchise Fee and Other Franchise Terms.**

The City Council, upon giving ninety (90) days notice to United Power, may request that the City and United Power review the franchise fee rate and other material financial aspects of the Franchise. Upon such a request by the City, 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 City 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.

**3.9 Most Favored Nation Clause.** United Power shall report to the City, within 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 City contained in this Franchise. United Power shall also report about such other provisions which may be beneficial to United Power. If the City Council decides the franchise fee or other significant financial benefit should be incorporated into the Franchise, such change shall be provided for by ordinance; any such change shall not be considered an amendment, renewal or enlargement of this Franchise.

**3.10 Contract Obligation.** This Franchise Agreement constitutes a valid and binding agreement between United Power and the City. 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 City 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 consideration for use of the City Streets and other City 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 extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Agreement ("Impositions"), provided that 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 City shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable tariffs on file and in effect from time to time with the CPUC.

3.12 **Changes in Utility Service Industries.** The City 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 City, United Power will cooperate with and assist the City in amending this Franchise to assure that the City 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 City as of the date that such initiatives and changes adversely impact the future franchise fee revenue.

#### **ARTICLE 4. ADMINISTRATION OF FRANCHISE**

##### **4.1 Supervision.**

(A) **City Designee.** The City Manager, or the Manager's designated representative, is hereby designated the official of the City having full power and authority to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of this Franchise and to investigate any alleged violations or failures of 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 City representative to so act shall not constitute any waiver or estoppel nor limit independent action by other City officials. The City Manager may also designate one or more City 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 City representatives. The City may change these designations by providing written notice to United Power. The City's designee shall have the right, at all reasonable times, to inspect any United Power facilities in City Streets.

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

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

(1) To allow said official City representative or his designee reasonable access to any part of United Power's plant, works and systems, and that said City official may make and supervise tests to determine the quality of the electric service supplied the customers of United Power. 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. The City official(s) provided access shall be accompanied by at least one employee of United Power of its choosing. The City 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 City representative or his designee reasonable access to the books and records of United Power, insofar as they relate to any matters covered by this Franchise, upon advance appointment made during normal business hours.

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

(4) To meet at least annually with said official City representative to share information useful in coordinating management, operation and repair of the facilities of United Power and the operations and property of the City.

#### **4.2 Coordination of Work.**

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

(B) United Power agrees to coordinate its activities in City Streets and on other City Property with the City, in accordance with the applicable provisions of the City of Northglenn Municipal Code, Administrative Policies and Permits, as well as all applicable State and Federal jurisdictional permitting requirements. The City and United Power will meet annually upon the written request of the City designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City Streets and other City Property. The City 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 City will be assured that all provisions of this Franchise, and applicable municipal, state and federal 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 City 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. 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 shall submit reasonable financial and operating reports containing or based on information available from United Power's books and records annually to the City and other reports the City may from time to time request with respect to the operations of United Power under this Franchise, provided that such



information can be provided at a reasonable cost to the City. Such reports shall be marked “CONFIDENTIAL” by United Power and the City 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 City and United Power.

5.2 **Annual Reports.** United Power shall provide the City on or before May 1 of each year beginning after the effective date of this franchise:

- (A) The modified debt service calculation;
- (B) A report of margins collected by United Power;
- (C) The rate base in place to serve the City; and
- (D) Short-term (three years or less) and long-term (over three years) plans for all major capital improvements, construction and excavation within the City or affecting service to the City and its residents.

5.3 **Requested Reports.** Upon request by the City, United Power shall provide the City:

- (A) A list of real property and leasehold interests in real property owned by United Power within the municipal boundaries of the City, for the purpose of calculating property taxes; and
- (B) A map (or computer disk) indicating the location of United Power distribution facilities within and contiguous to the City.
- (C) A report regarding the reliability of United Power Facilities and electric service.
- (D) A list of all City electrical accounts and account numbers and items metered.
- (E) A list of all street lights in the City energized by United Power.

5.4 **Copies of Tariffs and Regulatory Filings.** United Power shall notify the City of all proposals to change rates relating to service by United Power to its customers located within the City and pursuant to United Power’s Bylaws. Upon request by the City, United Power shall provide the City with copies of all rules, regulations, rate tariffs, and policies. City acknowledges that United Power is a nonprofit cooperative formed to distribute, not generate, 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.** Subject to the jurisdiction of the PUC, United Power shall 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 shall operate and maintain United Power facilities efficiently and economically and in accordance with the high standards and best systems, methods, and skills consistent with the provision of adequate, safe, and reliable 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 transmission to the City beyond United Power's responsibility and control; strikes; acts of public enemies; war; order of military authority; insurrections; riots; acts of epidemics; 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 shall take all necessary and reasonable actions to restore such supply at the earliest practicable time.

## 6.3 **Outages and Restoration of Service.**

(A) **Customer Notification.** United Power shall provide to the City Manager, Chief of Police and City Office of Emergency Management, upon request or at any time the protocol identified in this paragraph is updated, modified or changed, 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 shall be provided and the contact names and telephone numbers associated therewith.

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

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

6.4 **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.

6.5 **City Participation.** The City shall have the right to approve major facility site plans within the City. Upon reasonable notice to United Power, the City 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 City and to provide to the City information available to United Power that relates to the hearings described in this paragraph.

**6.6 Planning for Capital Improvement Projects.** Representatives of the City and United Power shall meet annually to discuss annual and long-term planning for capital improvement projects contemplated by each within the City. United Power shall include within its capital improvement projects the plans of the City relating to same. United Power and the City 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.

**6.7 Installation and Maintenance of United Power Facilities; United Power Obligations.**

(A) **United Power Facilities.** Except for emergencies, the construction, excavation, installation, maintenance, renovation, repair and replacement of any United Power Facilities within the City shall be subject to permitting, inspection and location approval by the City pursuant to all applicable City ordinances and regulations. All United Power Facilities shall be installed in full compliance with all applicable City ordinances, regulations and permits. United Power and all its subcontractors shall comply with all permitting, local regulations and ordinances. In emergency situations, United Power shall, after as soon as is practical, comply with permitting and inspection requirements of the City. United Power shall 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 City and its residents. All construction, excavation, maintenance and repair work conducted by United Power shall be performed in a timely manner to minimize inconvenience to the public and individuals. All United Power Facilities within the City shall be maintained in good condition and repair.

(B) **Permits - Compliance with City Code.** United Power shall be responsible for obtaining, paying for and complying with any and all permits required under the City of Northglenn's Municipal Code, as amended from time to time (the "City Code"), including, but not limited to, building, grading and discharge permits

(C) **City Projects.** Where United Power performs construction projects requested by the City, the City shall pay United Power therefor. Upon completion of the agreed work, and if the project cost is more than \$200,000, United Power shall provide a final detailed reconciliation report to the City reconciling the original projected cost estimates to the actual costs incurred in completing the project. Such report shall include sufficient detail to explain any material departures from the original cost estimate. For the purposes of this Section, "material departures" shall mean a variance of more than ten percent (10%).

(D) **Performance.** The installation and maintenance set forth in Section 6.7(A) of this Franchise shall be completed within a reasonable time, not to exceed ninety (90) days from the later of either the date on which the City Representative requests in writing that the relocation commence or the date United Power is provided all supporting documentation.

(E) **Increase in Voltage.**

(1) **Customer Notification.** United Power shall 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) City Facilities. United Power shall reimburse the City for the cost of upgrading the electrical system or facility of any City 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, requested or mandated by the City.

(F) As-Built Drawings. Upon reasonable written request of the City Representative, United Power shall provide, within sixty (60) days of the request, as-built drawings of any United Power Facility installed within the City Streets or contiguous to the City Streets. As used in this section, as-built drawings refers to the facility drawings as maintained in United Power's geographical information system or any equivalent system. United Power may be required to create drawings that do not exist at the time of the request.

#### **6.8 Relocation of United Power Facilities.**

(A) Relocation Obligation. United Power shall, at its sole cost and expense, temporarily or permanently remove, relocate, change or alter the position of any United Power Facility in City streets or in other City Property whenever the City 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 City agree to cooperate on the location and relocation of United Power Facilities in the City Streets and Public Places in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once United Power has relocated any United Power Facility at the City's direction, if the City requests that the same United Power Facility be relocated within two (2) years thereafter, the subsequent relocation shall be at the City's expense.

(B) Private Projects. United Power shall not be responsible for the expenses of any relocation required by the City'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.

(C) Relocation Performance. The relocations set forth in Section 6.8(A) of this Franchise shall be completed within a reasonable time, not to exceed ninety (90) days from the later of either the date on which the City Representative requests in writing that the relocation commence, or the date United Power is provided all supporting documentation.

(D) City Revision of Supporting Documentation. Any revision by the City of supporting documentation 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 United Power Facilities, restores the relocation site in accordance with the applicable provisions of this Franchise or as otherwise agreed with the City, and removes from the site or properly abandons on site all unused Facilities, equipment, material and other impediments.

(F) Scope of Obligation. Except as otherwise set forth herein, the relocation obligation set forth in this Section shall only apply to United Power Facilities located in City

Streets or other City Property and shall not apply to (i) United Power Facilities located on property owned by United Power in fee; or (ii) United Power Facilities located in privately-owned easements or public utility easements, unless such public utility easements are on or in City-owned property.

(G) **Underground Relocation.** Underground Facilities shall be relocated underground. Above ground Facilities shall be placed above ground unless United Power is paid the incremental amount by which the underground cost would exceed the above ground cost of relocation or the City requests that such additional incremental cost be paid out of available funds under Article 8 of this Franchise.

(H) **Coordination.** When requested in writing by the City or United Power, Representatives of the City and United Power shall meet to share information regarding anticipated projects that will require relocation of United Power Facilities in City Streets or other City Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any timetable established by the City 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 City shall in good faith review the proposed alternative or modification. The City's acceptance of the proposed alternative or modification shall be at the sole discretion of the City; provided, however, that such acceptance shall not be unreasonably withheld. In the event the City Representative accepts the proposed alternative or modification, United Power agrees to promptly compensate the City for all additional costs, expenses or delay that the City reasonably determines it has incurred as a direct result of implementing the proposed alternative.

**6.9 Service to New Areas.** If, during the term of this Franchise, the boundaries of the City 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 therefore, in accordance with United Power's extension policy set forth in its tariffs at the earliest practical 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.

**6.10 New or Modified Service to City Facilities.** In providing new or modified electric service to City facilities, United Power agrees to perform as follows:

(A) **Performance.** United Power shall complete each project requested by the City within a reasonable time. The Parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the City designee makes a written request and provides the required supporting documentation as described in this section.

(B) **City Revision of Supporting Documentation.** Any revision by the City 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 City 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 deemed 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 City and removes from the site or properly abandons on site any unused Facilities, equipment, material and other impediments.

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

(A) Performance. United Power shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the City makes a written request and provides to United Power all information reasonably necessary to perform the adjustment.

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

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

**6.12 Third Party Damage Recovery.**

(A) Damage to United Power Interests. If any individual or entity damages any United Power Facilities that United Power is responsible to repair or replace, to the extent permitted by law, the City will notify United Power of any such incident and will provide to United Power within a reasonable time all pertinent information within the City's possession regarding the incident and the damage including the identity of the responsible individual or entity.

(B) Damage to City Interests. If any individual or entity damages any United Power Facilities for which the City 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 City of any such incident and will provide to the City within a reasonable time all pertinent information within its possession regarding the incident and the damage including the identity of the responsible individual or entity.

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

6.13 **Technological Improvements.** United Power shall use its best efforts to incorporate within the City improvements and technological advances in its equipment and service, when such improvements and advances are technologically and economically feasible and are safe and beneficial to the City and its Residents.

## **ARTICLE 7. COMPLIANCE**

7.1 **City Regulation.** The City expressly reserves, and United Power expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such provisions, ordinances and rules and regulations as may be deemed necessary by the City, in the exercise of its police power, to protect the health, safety and welfare of its citizens and their properties.

7.2 **Compliance with Regulatory Agencies.** United Power shall assure that its distribution facilities 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 use its best efforts to take measures which will result in its facilities and operations meeting the standards required by applicable City, county, state and federal air and water pollution laws, and laws regulating transportation of hazardous materials. Upon the City's request, United Power will provide the City with a status report of such measures.

## **ARTICLE 8. UNDERGROUND CONSTRUCTION AND OVERHEAD CONVERSION**

8.1 **Undergrounding of New Lines.** United Power shall place all newly constructed electrical distribution lines underground unless approved otherwise by the City.

### **8.2 Overhead Conversion of Electrical Lines.**

(A) United Power agrees to allocate an annual amount, equivalent to one and one-half percent (1½%) of the preceding calendar year's electric revenues derived from customers within the City, for the purpose of under-grounding United Power's existing overhead electric distribution facilities within the City, at the expense of United Power, as requested by the City (the "Under-grounding Funds"). Any unexpended portion of the one and one-half percent (1½%) revenues shall be carried over to succeeding years. Until three (3) years from the conclusion of this Agreement and upon request by the City, 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 City. Any amounts so advanced shall be credited against amounts to be expended in succeeding years until such advance is eliminated.

(B) Except as provided in Section 6.8(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 City except where essential for safety or protection of the operating integrity of United Power's electric system. If, after any and all under-grounding of United Power lines has taken place and no more United Power overhead lines remain in the City, there are any under-grounding funds remaining, such funds may be used by the City for other mutually agreed electric utility related projects in the City mutually agreed upon by the City and United Power.

**8.3 Planning and Coordination of Undergrounding Projects.** The City 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 City and United Power construction projects. In addition, the City 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 City and United Power to achieve the orderly under-grounding of United Power facilities. At such meetings, the parties shall review:

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

(B) Public projects anticipated by the City. Such meetings shall be held to achieve a continuing program for the orderly under-grounding of electrical lines in the City

**8.4 Cooperation with Other Utilities.** When undertaking a project of under-grounding, the City and United Power shall work with other utilities or companies which have their lines overhead to attempt to have all lines undergrounded 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 shall cooperate with these utilities and companies and undertake to underground United Power facilities as part of the same project at no cost to the City. United Power shall not be required to pay for the cost of undergrounding the facilities of other companies or the City.

**8.5 City Requirement to Underground.** In addition to the provisions of this Article, the City may require any above ground United Power Facilities to be moved underground at the City's expense.

(A) Under-grounding Performance. Upon receipt of a written request from the City, United Power shall, 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 City within a reasonable time, not to exceed one hundred eighty (180) days from the later of the date upon which the City designee makes a written request and the date the City provides to United Power all supporting documentation. 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. Upon request of United Power, the City may also grant United Power reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

(C) City Revision of Supporting Documentation. Any revision by the City of



supporting documentation provided to United Power that causes United Power to substantially redesign and/or change its plans regarding an under-grounding 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 under-grounding project shall be deemed complete only when United Power actually undergrounds the designated United Power facilities, restores the under-grounding site in accordance with the applicable sections of this franchise or as otherwise agreed with the City 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 under-grounding request from the City and the supporting documentation necessary for United Power to design the under-grounding project, United Power shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable, issue a project authorization. United Power will not proceed with any requested project until the City has provided a written acceptance of United Power's estimate.

(F) Report of Actual Costs. Upon completion of each under-grounding project, United Power shall submit to the City 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. If the total actual cost is materially (i.e. more than 10%) different than the cost estimate provided, United Power shall provide a reasonably detailed explanation of the difference. This explanation shall be provided with the detail of the total actual cost. The parties shall then meet within ten (10) business days of United Power providing such detail. The purpose of the meeting shall be to reconcile and agree on a process of crediting or debiting the account, if even necessary, so payment can be made or processed.

(G) Audit of Underground Projects. The City 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 reduce the amount of the fund. United Power shall cooperate fully with any audit and the independent auditor shall prepare and provide to the City 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 City, 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 written request of the City, but no more frequently than once every three (3) years, United Power shall audit the fund for the City. Such audits shall be limited to the previous three (3) calendar years. United Power shall provide the audit report to the City and shall reconcile the fund consistent with the findings contained in the audit report. If the City 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 City's reasonable satisfaction, United Power shall, at its expense, cause an independent auditor, selected by agreement with the City, 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 City and United Power. United Power shall 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 City 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 shall 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 shall consider environmental issues in its planning and decision making and shall invest in environmentally sound technologies when such technologies are deemed prudent and feasible. United Power shall 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 shall continue to work with the U. S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds caused by transmission and distribution lines.

### **9.2 Energy Conservation and Efficiency.**

#### **(A) Energy Efficiency Programs.**

(1) **General.** The City 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 City'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 shall 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 re-commissioning programs to analyze existing systems to optimize performance and conserve energy. United Power shall advise the City 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 District Representatives, newsletters, newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information of these programs on United Power's website.

(2) **City Improvements.** United Power agrees to work with the City to implement periodic grant or other financial assistance programs or mechanisms to assist the City

in defraying costs incurred by the City in making technology changes and/or modifications to City facilities or purchasing equipment to provide energy efficiencies and/or conservation. Such grant or other programs or mechanisms may include the provision of matching funds for external grant programs and/or other agreements to utilize accrued but unspent under-grounding funds, provided such programs or mechanisms do not affect materially United Power's current budget year. A mutually cooperative process including discussion during the August to September 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 City and United Power's customers in available renewable resource programs.

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

(C) Five Year Review. The City 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 City Use of United Power Facilities.** The City shall be permitted to make use of United Power's distribution facilities such as poles and conduits in the City at no cost to the City for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, communications, public safety or traffic control purpose, or for any other purpose consistent with exercise of the City's municipal powers and services. The City shall notify United Power in writing in advance of its intent to use United Power facilities and the nature of such use. The City shall be responsible for its materials costs and any costs associated with modifications to United Power facilities to accommodate the City'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 City 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, City 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 shall grant to the City use of distribution and transmission rights-of-way which it now, or in the future, owns or has an interest in within the City for the purposes set forth in the Colorado Parks and Open Space Act of 1984, 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 transmission rights-of-way. Such grant shall be made only if United Power is given at least sixty (60) days advance notice of the City's desired use. Any use by the City pursuant to this Section 10.2 shall be made at the City's sole expense and shall be subject to any safety or other requirements imposed by United Power. The City 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. The City shall hold harmless and indemnify United Power for any and all liability and damages associated with the City'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 if the loss is caused by United Power's own negligence.

**10.3 Third Party Use of United Power Facilities.** If requested in writing by the City, United Power may allow other companies who hold City franchises, or otherwise have obtained consent from the City to use the streets, to utilize United Power facilities for the placement of their facilities upon approval by United Power (which approval may be denied by United Power in its sole and absolute discretion) 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. 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 City in developing an emergency management plan. In the case of any emergency or disaster, United Power shall, upon verbal request of the City, 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.

## **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 City, it shall grant to the City the right of first purchase of same. United Power shall obtain an appraisal by a qualified appraiser on any such real property, and the City shall have sixty (60) 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 City is not satisfied with the appraisal tendered by United Power, the City may obtain, within thirty (30) days of United Power's tender of its appraisal, and at the City's cost, a second appraisal which, upon receipt, shall be tendered to United Power. If United Power is satisfied with the City's appraisal, then, upon notice, the City 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 City 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 City 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 City shall close on the sale and pay the value set forth in the controlling appraisal within said thirty (30) days. Should the City 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 City an opportunity to purchase such property at such lesser price, in which instance the City shall have thirty (30) days to determine if it wishes to purchase such property.

## **ARTICLE 12. INDEMNIFICATION OF CITY**

**12.1 City Held Harmless.** United Power Facilities. United Power shall 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 City for claims, demands, judgments or losses which a court of competent jurisdiction has found to have arisen out of or in connection with any act or failure to act of the City or its officers, contractors, agents or employees.

**12.2 Notice to United Power.** Within sixty (60) days after receipt of the same by the City Attorney, the City will provide notice to United Power of the pendency of any claim or action against the City 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 Mutual Indemnification.**

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

(B) **United Power Indemnified.** To the extent permitted by law, the City shall indemnify, defend and hold United Power harmless from and against claims, demands, and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise, to the extent that such claim arises from an direct act or material omission by the City or its agents and shall pay the costs of defense plus reasonable attorneys' fees. United Power shall (a) give the City prompt written notice to of any claim, demand or lien with respect to which United

Power seeks indemnification hereunder; and (b) unless in United Power's judgment a conflict of interest may exist between the City and United Power with respect to such claim, demand or lien, shall permit the City to assume the defense of such claim, demand, or lien. If such defense is assumed by the City, United Power shall not be subject to any liability for any settlement made without its consent. If such defense is not assumed by the City or if United Power determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other.

Notwithstanding any provision hereof to the contrary, United Power shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers or employees.

**12.4 Immunity.** Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (C.R.S. § 24-10-101, *et seq.*) or of any other defenses, immunities, or limitations of liability available to the City by law.

**12.5 Waiver.** The City 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 City and United Power. These waivers and releases shall apply between the City 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 City 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 City Required.**

(A) United Power shall not sell, transfer or assign this franchise or any rights under this Franchise to another, by stock exchange, merger, or otherwise, excepting only corporate reorganizations of United Power not involving a third party, unless the City 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 City 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 City approval under Section 13.1(A) shall require that the transferee promptly pay to the City an amount that is equal to the lesser of (i) Three dollars (\$3.00) per metered account located within the franchise area; or (ii) three times the most recent twelve (12) months of franchise fees collected by the City from United Power. In the event only a portion of United Power's service area within the City 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 City before said transfer. Such transfer fee shall not be recovered from the City or from the City residents or property owners

through electric rates of customers in the City or by a surcharge of the Residents of the City by the transferee or United Power.

(C) Any sale, transfer or assignment of electric facilities, service territory or public utility franchise, which cause service degradation within United Power's service Area or results in a significant increase in rates to City customers, shall constitute a violation of this Franchise.

## **ARTICLE 14. MUNICIPALLY-PRODUCED UTILITY SERVICE**

### **14.1 Municipally-Produced Utility Service.**

(A) **City Reservation.** The City expressly reserves the right to engage in the production of utility service to the extent permitted by law. United Power agrees to negotiate in good faith long term contracts to purchase City-generated power made available for sale, consistent with CPUC and established United Power Board requirements and considering the then existing agreements with United Power's current providers.

(B) **Franchise Not to Limit City'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 City from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law.

## **ARTICLE 15. PURCHASE OR CONDEMNATION**

15.1 **City's Right to Purchase or Condemn.** The right of the City 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 City 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 territorial boundaries of the City.

15.2 **Notice of Intent to Purchase or Condemn.** The City shall provide United Power no less than one (1) year's 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 City's purchase or condemnation of United Power facilities.

15.3 **Negotiated Purchase Price or Condemnation Award.** Upon the exercise of the City's option to purchase, the parties shall negotiate in good faith to determine a mutually acceptable purchase price. This purchase price will be in the range of original cost less depreciation (lower range) and replacement cost less depreciation (upper range). In the event of any such purchase, no incremental value shall be ascribed or given to the rights granted under this Franchise in the valuation of the property thus taken. If the City and United Power cannot reach agreement as to the purchase price or acceptable payment terms within ninety (90) days after commencement of negotiations, the City may commence condemnation proceedings, and each party shall have the rights provided by law relating to condemnation, and United Power shall be entitled to and shall receive and retain that part of the award or price paid by the City attributable to the improvements, fixtures, betterments, antennas, equipment and all other things, and rights of United Power.

#### **15.4 Continued Cooperation by United Power.**

(A) In the event the City 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 City's request, for the duration of the term of this Agreement. United Power's facilities shall be available for continued service until nine months after a 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 City has either purchased or condemned United Power's facilities, or alternative arrangements have been made to supply electricity to the City and its residents, whichever date shall occur earlier. The City shall not pay for any services no longer required.

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

### **ARTICLE 16. CHANGING CONDITIONS**

United Power and the City 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 City 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 City 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 and other causes or contingencies of whatever nature beyond the reasonable control of the party affected, which could not reasonably have been anticipated and avoided.



## ARTICLE 18. BREACH AND REMEDIES

18.1 **Non-Contestability.** The City 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 City.** 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 City 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 City may, at its sole option, terminate this Franchise. This remedy shall be in addition to the City’s right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, United Power shall continue to provide electric service to the City and its residents until the City makes alternative arrangements for such service and be paid for such service in accordance with United Power’s Bylaws. United Power shall also be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the Franchise, an aggregate amount equal to the amount which United Power would have paid as a franchise fee as consideration for use of the City streets.

18.4 **United Power Shall Not Terminate Franchise.** In no event, other than caused by the City’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 City 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 C.R.S. § 40-9.5-101, *et seq.*, 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 related 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 City.

20.2 **Proposed Amendments.** At any time during the term of this Franchise, the City 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 City 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 City 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 City 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 Northglenn 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 shareholders and will keep these goals in mind in formulating its economic development strategies, programs and policies.

## ARTICLE 22. IMMIGRATION

22.1 **Illegal Aliens.** At all times during the term of this Franchise Agreement, United Power agrees that it will comply with all applicable Federal, State and City laws prohibiting the employment of, or contracting with, undocumented workers or illegal aliens.

22.2 **Employment Prohibited.** United Power shall not knowingly employ or contract with an undocumented worker or illegal alien 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 (illegal aliens) to perform work under this franchise.

22.3 **Affirmative Action.** United Power agrees to take affirmative action to insure that it does not employ or contract with undocumented workers or illegal aliens to perform work on this franchise by participation in either of the following options:

(A) **OPTION 1 - E-VERIFY PROGRAM**

(1) Execute a Memorandum of Understanding with the Social Security Administration and Department of Homeland Security for participation in the E-verify Program for the verification of immigration status of employees hired after the date of execution of the Memorandum of Understanding.

(2) Verify or attempt to verify through participation in the E-verify Program that United Power does not and will not employ undocumented workers or illegal aliens.

(3) United Power shall comply with all terms and conditions of the Memorandum of Understanding related to the E-verify Program, and in particular shall not use the process for verification of immigration status to verify an applicant's employment eligibility; submit a request for verification until after the employee is hired and the Form I-9 is completed and submitted; or, to re-verify employees hired prior to the date of the Memorandum of Understanding.

(B) **OPTION 2 - STATE OF COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT PROGRAM ("DEPARTMENT PROGRAM")**

(1) United Power shall notify the Department and the City of its intent to participate in the Department Program, and United Power's consent in writing to the Department conducting random audits of the affidavits of United Power filed with the City and the related documents maintained by United Power.

(2) United Power shall, within twenty (20) days after hiring a new employee, file with the Department an affidavit affirming that United Power has examined the legal work status of such employee, retained file copies of the required documents related thereto, and has not altered or falsified the documents for such employee.

(3) United Power shall provide a written, notarized copy of the affirmation to the City on or before its filing with the Department.

22.4 **Subcontractors.**

(A) United Power shall 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 or illegal aliens and further to agree in writing not to knowingly employ or contract with an undocumented worker or illegal alien 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 illegal alien 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 illegal alien, United Power shall:

(1) Notify the subcontractor and the City within three (3) days that United Power has actual knowledge that the subcontractor is employing or contracting with an illegal alien; 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 illegal alien; 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 illegal alien.

**22.5 Compliance.** United Power shall comply with any reasonable request by the City or the Colorado Department of Labor and Employment made in the course of an investigation that the City 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 are 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 or illegal aliens.

**22.6 Documentation.** United Power shall, upon request, provide to the City 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 illegal alien.

**22.7 Violation.** If United Power violates a provision of this Article 22, such violation may constitute a material breach of this Franchise Agreement and the City, 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 City.

## **ARTICLE 23. MISCELLANEOUS**

**23.1 No Waiver.** Neither the City 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, to insist upon or to seek compliance with any such terms and conditions. Further, neither the City 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 City 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 certified mail, or hand delivery, facsimile or electronic transmission with proof of delivery, 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 City of Northglenn:  
City Manager  
11701 Community Center Drive  
P.O. Box 330061  
Northglenn, CO 80233-8061

With a faxed copy to: (303) 833-5528

For United Power, Inc.:  
Chief Executive Officer  
United Power, Inc.  
500 Cooperative Way  
Brighton, CO 80603

With a faxed copy to: (303) 637-1348

**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.

**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.** 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**

**CITY APPROVAL.** This grant of Franchise shall not become effective unless approved and granted by ordinance of the City Council.

**UNITED POWER APPROVAL.** United Power shall file with the City 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 City Council. United Power shall file with the City Clerk its written ratification thereof within ten (10) days after the approval of this Franchise Agreement by the City Council. The acceptance and ratification shall in form and content be approved by the City 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.

IN WITNESS WHEREOF, the parties have executed this agreement this \_\_\_\_ day of \_\_\_\_\_, 2012.

UNITED POWER, INC.,  
a Colorado nonprofit corporation

CITY OF NORTHGLENN, COLORADO,  
a municipal corporation


By: \_\_\_\_\_  
Ron Asche, CEO  
United Power, Inc.

By: \_\_\_\_\_  
Joyce Downing, Mayor  
City of Northglenn

ATTEST:

\_\_\_\_\_  
City Clerk

INTRODUCED, READ AND ORDERED POSTED this 14<sup>th</sup> day of May,  
2012.

  
\_\_\_\_\_  
JOYCE DOWNING  
Mayor

ATTEST:

  
\_\_\_\_\_  
JOHANNA SMALL, CMC  
City Clerk

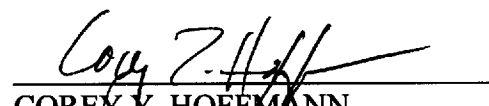
PASSED ON SECOND AND FINAL READING this \_\_\_\_\_ day of \_\_\_\_\_,  
2012.

\_\_\_\_\_  
JOYCE DOWNING  
Mayor

ATTEST:

\_\_\_\_\_  
JOHANNA SMALL, CMC  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
COREY Y. HOFFMANN  
City Attorney